

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Appellant

- and -

ATTORNEY GENERAL OF CANADA

- and -

Respondent

CANADIAN TRANSPORTATION AGENCY

Intervener
(Responding Party)

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CANADIAN TRANSPORTATION AGENCY**

(Pursuant to Rule 365 of the *Federal Courts Rules*)

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Court File No.: A-102-20

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AIR PASSENGER RIGHTS

Applicant

- and -

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court of Appeal in **Vancouver, British Columbia**.

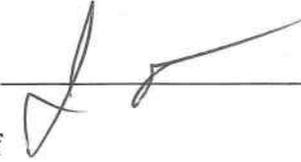
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date: April 8, 2020

Issued by:



**JEAN-FRANÇOIS DUPORT
REGISTRY OFFICER
AGENT DU GREFFE**

Address of

local office: Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario, K1A 0H9

TO: CANADIAN TRANSPORTATION AGENCY

APPLICATION

This is an application for judicial review pursuant to section 28 of the *Federal Courts Act* in respect of two public statements issued on or about March 25, 2020 by the Canadian Transportation Agency [Agency], entitled “Statement on Vouchers” [Statement] and the “Important Information for Travellers During COVID-19” page [COVID-19 Agency Page] that cites the Statement.

These public statements, individually or collectively, purport to provide an unsolicited advance ruling on how the Agency will treat and rule upon complaints of passengers about refunds from air carriers relating to the COVID-19 pandemic.

The Statement was issued without hearing the perspective of passengers whatsoever.

The Applicant makes application for:

1. a declaration that:
 - (a) the Agency’s Statement is **not** a decision, order, determination, or any other ruling of the Agency and has no force or effect of law;
 - (b) the issuance of the Statement on or about March 25, 2020, referencing of the Statement within the COVID-19 Agency Page, and the subsequent distribution of those publications is contrary to the Agency’s own *Code of Conduct* and/or gives rise to a reasonable apprehension of bias for:
 - i. the Agency as a whole, or
 - ii. alternatively, the appointed members of the Agency who supported the Statement;
 - (c) further, the Agency, or alternatively the appointed members of the Agency who supported the Statement, exceeded and/or lost its (their) jurisdiction under the *Canada Transportation Act*, S.C. 1996, c. 10 to rule upon any complaints of passengers about refunds from carriers relating to the COVID-19 pandemic;

2. an interim order (*ex-parte*) that:

- (a) upon service of this Court's interim order, the Agency shall prominently post the interim clarification (below) at the top portion of both the French and English versions of the "Statement on Vouchers" [**Statement**] and the "Important Information for Travellers During COVID-19" page [**COVID-19 Agency Page**] (both defined in paragraphs 11-12 of the Notice of Application):

The Canadian Transportation Agency's "Statement on Vouchers" is not a decision, order, determination, or any legal ruling of the Canadian Transportation Agency. It does **not** have the force of law. The "Statement on Vouchers" is currently pending judicial review by the Federal Court of Appeal. This notice is posted by Order [insert URL link to PDF of order] of the Federal Court of Appeal.;

- (b) starting from the date of service of this Court's interim order, the Agency shall bring the above interim clarification to the attention of anyone that contacts the Agency with a formal complaint and/or informal inquiry regarding air carriers' refusal to refund arising from the COVID-19 pandemic;
- (c) the Agency shall not issue any decision, order, determination, or any other ruling with respect to refunds from air carriers in relation to the COVID-19 pandemic; and
- (d) this interim order is valid for fourteen days from the date of service of this Court's interim order on the Agency, and may be renewed by the Applicant under Rule 374(2);

3. an interlocutory order that:

- (a) the Agency shall forthwith completely remove the Statement from the Agency's website including any references to the Statement within the COVID-19 Agency Page and substitute it with this Court's interlocutory order, or alternatively the order renewing the interim clarification (subparagraph 2(a) above), until final disposition of the Application;

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- (b) the interim orders in subparagraphs 1(b)-(c) above are maintained until final disposition of the Application;
 - (c) the Agency shall forthwith communicate with persons that the Agency has previously communicated with regarding the Statement and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement; and
 - (d) the Agency shall forthwith communicate with air carriers under the Agency's jurisdiction, the Association of Canadian Travel Agencies, and Travel Pulse and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement;
4. a permanent order that:
- (a) the Agency prominently post at the top portion of the COVID-19 Agency Page that the Agency's Statement has been ordered to be removed by this Court;
 - (b) the Agency remove the Statement, and references to the Statement within the COVID-19 Agency Page, from its website and replace the Statement with a copy of this Court's judgment;
 - (c) in the event the Agency receives any formal complaint or informal inquiry regarding air carriers' refusal to refund in respect of the COVID-19 pandemic, promptly and prominently inform the complainant of this Court's judgment; and
 - (d) the Agency, or alternatively the appointed members of the Agency who supported the Statement, be enjoined from dealing with any complaints involving air carriers' refusal to refund passengers in respect of the COVID-19 pandemic, and enjoined from issuing any decision, order, determination or any other ruling with respect to refunds from air carriers for the COVID-19 pandemic;
5. costs and/or reasonable out-of-pocket expenses of this Application; and

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6. such further and other relief or directions as the Applicant may request and this Honourable Court deems just.

The grounds for the application are as follows:

A. Overview

1. The present Application challenges the illegality of the Canadian Transportation Agency's Statement, which purports to provide an unsolicited advance ruling in favour of air carriers without having heard the perspective of passengers beforehand.
2. The Statement and the COVID-19 Agency Page preemptively suggest that the Agency is leaning heavily towards permitting the issuance of vouchers in lieu of refunds. They further suggest that the Agency will very likely dismiss passengers' complaints to the Agency for air carriers' failure to refund during the COVID-19 pandemic, irrespective of the reason for flight cancellation.
3. Despite the Agency having already determined in a number of binding legal decisions throughout the years that passengers have a fundamental right to a refund in cases where the passengers could not travel for events outside of their control, the Agency now purports to grant air carriers a blanket immunity from the law via the Statement, without even first hearing passengers' submissions or perspective as to why a refund is **mandated** by law. This is inappropriate.
4. The Agency, as a quasi-judicial tribunal, must at all times act with impartiality. That impartiality, unfortunately, has clearly been lost, as demonstrated by the Agency's issuance of the unsolicited Statement and usage thereof.
5. The fundamental precept of our justice system is that "*justice should not only be done, but should manifestly and undoubtedly be seen to be done*" (*R. v. Yumnu*, 2012 SCC 73 at para. 39). This fundamental precept leaves no room for any exception, even during difficult times like the COVID-19 pandemic.
6. Impartiality is further emphasized in the Agency's own *Code of Conduct* stipulating that the appointed members of the Agency shall not express an opinion on potential cases.

B. The COVID-19 Pandemic

7. The coronavirus [COVID-19] is a highly contagious virus that originated from the province of Hubei in the Peoples Republic of China, and began spreading outside of the Peoples Republic of China on or around January 2020.
8. On or about March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.
9. On or about March 13, 2020, the Government of Canada issued a blanket travel advisory against non-essential travel outside of Canada until further notice and restricting entry of foreign nationals into Canada, akin to a “declaration of war” against COVID-19, and that those in Canada should remain at home unless absolutely necessary to be outside of their homes [**Declaration**].
10. COVID-19 has disrupted air travel to, from, and within Canada. The disruption was brought about by the COVID-19 pandemic and/or the Declaration, such as:
 - (a) closure of borders by a number of countries, resulting in cancellation of flights by air carriers;
 - (b) passengers adhering strictly to government travel advisories (such as the Declaration) and refraining from air travel (and other forms of travel) unless absolutely necessary; and
 - (c) air carriers cancelling flights on their own initiative to save costs, in anticipation of a decrease in demand for air travel.

C. The Agency’s Actions in Relation to COVID-19, Including the “Statement on Vouchers”

11. Since March 13, 2020 and up to the date of filing this Application, the Agency has taken a number of steps in relation to COVID-19. Those listed in the four sub-paragraphs below are **not** the subject of review in this Application.
 - (a) **On March 13, 2020**, the Agency issued Determination No. A-2020-42 providing, *inter alia*, that various obligations under the *Air Passen-*

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ger Protection Regulations, SOR/2019-150 [APPR] are suspended until April 30, 2020:

- i. Compensation for Delays and Inconvenience for those that travel: compensation to passengers for inconvenience has been reduced and/or relaxed (an air carrier's obligation imposed under paragraphs 19(1)(a) and 19(1)(b) of the *APPR*);
 - ii. Compensation for Inconvenience to those that do not travel: the air carrier's 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; and
 - iii. Obligation to Rebook Passengers on Other Carriers: the air carrier's obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the *APPR*.
- (b) **On or about March 25, 2020**, the Agency issued Determination No. A-2020-47 extending the exemptions under Decision No. A-2020-42 (above) to June 30, 2020. This Determination further exempted air carriers from responding to compensation requests within 30 days (s. 19(4) of *APPR*). Instead, air carriers would be permitted to respond to compensation requests 120 days *after* June 30, 2020 (e.g. October 28, 2020).
 - (c) **On or about March 18, 2020**, the Agency issued Order No. 2020-A-32, suspending **all** dispute proceedings until April 30, 2020.
 - (d) **On or about March 25, 2020**, the Agency issued Order No. 2020-A-37, extending the suspension (above) to June 30, 2020.
12. On or about March 25, 2020, almost concurrently with the Order and Determination on the same date (above), the Agency publicly posted the Statement on its website (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **En-**

glish: <https://otc-cta.gc.ca/eng/statement-vouchers>) providing that:

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.

13. On or about March 25, 2020, concurrently with the Statement, the Agency posted an amendment to the COVID-19 Agency Page on its website, adding four references to the Statement (French: **Information importante pour les voyageurs pour la période de la COVID-19** [<https://otc-cta.gc.ca/fra/information->

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importante-pour-voyageurs-pour-periode-covid-19]; English: **Important Information for Travellers During COVID-19** [<https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19>]).

14. The COVID-19 Agency Page cites and purports to apply the Statement in the context of an air carrier's legal obligation in three circumstances: (1) situations outside airline control (including COVID-19 situations); (2) situations within airline control; and (3) situations within airline control, but required for safety.
15. In effect, the COVID-19 Agency Page purports to have relieved air carriers from providing passengers with refunds in practically **every** imaginable scenario for cancellation of flight(s), contrary to the Agency's own jurisprudence and the minimum passenger protections under the *APPR*.

D. Jurisprudence on Refunds for Passengers

16. Since 2004, in a number of decisions, the Agency confirmed passengers' fundamental right to a refund when, for whatever reason, an air carrier is unable to provide the air transportation, including those outside of the air carrier's control:
 - (a) *Re: Air Transat*, Decision No. 28-A-2004;
 - (b) *Lukács v. Porter*, Decision No. 344-C-A-2013, para. 88;
 - (c) *Lukács v. Sunwing*, Decision No. 313-C-A-2013, para. 15; and
 - (d) *Lukács v. Porter*, Decision No. 31-C-A-2014, paras. 33 and 137.
17. The Agency's jurisprudence was entirely consistent with the common law doctrine of frustration, the civil law doctrine of *force majeure*, and, most importantly, common sense.
18. The *APPR*, which has been in force since 2019, merely provides **minimum** protection to passengers. The *APPR* does not negate or overrule the passengers' fundamental right to a refund for cancellations in situations outside of a carrier's control.
19. Furthermore, the COVID-19 Agency Page also suggests that the Statement *would* apply to cancellations that are within airline control, or within airline control but required for safety purposes, squarely contradicting the provisions

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of subsection 17(7) of the *APPR*. Subsection 17(7) clearly mandates that any refund be in the original form of payment, leaving no room for the novel idea of issuing a voucher or credit.

20. Finally, whether an air carrier's flight cancellation could be characterized as outside their control, or within their control, remains to be seen. For example, if a cancellation was to save costs in light of shrinking demand, it may be considered a situation within an air carrier's control. However, the Statement and the COVID-19 Agency Page presuppose that **any and all** cancellations at this time should be considered outside an air carrier's control.
21. The combined effect of the Statement and the COVID-19 Agency Page purports to ignore decade old and firmly established jurisprudence of the Agency. This all occurred without any formal hearing, adjudication, determination, or otherwise, or even a single legal submission or input from the passengers.
22. As described further below, the Agency does not even outline its legal basis or provide any support for those public statements.
23. The Agency's public statements are tantamount to endorsing air carriers in illegally withholding the passengers' monies, all without having to provide the services that were contracted for. The air carriers all seek to then issue vouchers with varying expiry dates and usage conditions to every passenger, effectively depriving all the passengers of their fundamental right to a refund, which is a right the Agency itself firmly recognized.

E. The Agency's Conduct Gives Rise to a Reasonable Apprehension of Bias

24. The Agency is a quasi-judicial tribunal that is subject to the same rules of impartiality that apply to courts and judges of the courts.
25. Tribunals, like courts, speak through their legal judgments and not media postings or "statements."
26. The Statement and/or the COVID-19 Agency Page is not a legal judgment. They give an informed member of the public the perception that it would be more

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likely than not that the Agency, or the members that supported the Statement, will not be able to fairly decide the issue of refunds relating to COVID-19.

27. The Agency has already stipulated a general rule, outside the context of a legal judgment, that refunds need not be provided. No support was provided for this radical departure from the fundamental rights of passengers. The Agency merely provided a bald assertion or conclusion that passengers are not entitled to any refund.
28. The Agency's own Code of Conduct expressly prohibits members of the Agency from expressing an opinion about potential cases or any other issue related to the Agency's work, or comments that may create a reasonable apprehension of bias:

(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.

[Emphasis added.]

29. Although neither the Statement, nor the COVID-19 Agency Page, contain the signature or names of any specific member of the Agency, given the circumstances and considering the Agency's own Code of Conduct providing that the professional civilian staff's role are to **fully** implement the appointed member(s)' directions, the Statement and the COVID-19 Agency Page ought to be attributed to the member(s) who supported the Statement either before or after its posting on the internet.
30. In these circumstances, the Court must proactively step in to protect the passengers, to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done," and to ensure that the administration of justice is not put to disrepute.
31. The Court ought to issue an interim, interlocutory, and/or permanent order restricting the Agency's involvement with passengers' COVID-19 related refunds against air carriers.

F. The Applicant

32. The Applicant is a non-profit corporation under the *Canada Not-for-profit Corporations Act*, SC 2009 that is an advocacy group representing the rights of air passengers.
33. Air Passenger Rights is led by a Canadian air passenger rights advocate, Dr. Gábor Lukács, whose work and public interest litigation has been recognized by this Honourable Court in a number of judgments:
- (a) *International Air Transport Assn et al. v. AGC et al.* (Federal Court of Appeal File No. A-311-19, Order of Near J.A., dated March 3, 2020) that:
- [...] the Court is of the view that the case engages the public interest, that the proposed intervener [Dr. Gábor Lukács] would defend the interests of airline passengers in a way that the parties [the Agency, the Attorney General of Canada, and an airlines trade association] cannot, that the interests of justice favour allowing the proposed intervention in the appeal, and that the proposed intervention would be of assistance to the Court in deciding the appeal [...]
- (b) *Lukács v. Canada (Transportation Agency)* 2016 FCA 174 at para. 6;
- (c) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 269 at para. 43;
- (d) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140 at para. 1; and
- (e) *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at para. 62.

G. Statutory provisions

34. The Applicant will also rely on the following statutory provisions:
- (a) *Canada Transportation Act*, S.C. 1996, c. 10 and, in particular, sections

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25, 37, and 85.1;

(b) *Federal Courts Act*, R.S.C. 1985, c. F-7, and in particular, sections 18.1, 18.2, 28, and 44; and

(c) *Federal Courts Rules*, S.O.R./98-106, and in particular, Rules 300, 369, and 372-374; and

35. Such further and other grounds as counsel may advise and this Honourable Court permits.

This application will be supported by the following material:

1. Affidavit of Dr. Gábor Lukács, to be served.
2. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

The Applicant requests the Canadian Transportation Agency to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Canadian Transportation Agency to the Registry and to the Applicant:

1. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents involving the appointed members of the Agency relating to the Statement and/or issuance of vouchers or credits in relation to the COVID-19 incident, including both before and after publication of the Statement;
2. The number of times the URLs for the Statements were accessed (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **English:** <https://otc-cta.gc.ca/eng/statement-vouchers>) from March 24, 2020 onward;
3. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents between the Canadian Transportation Agency and the travel industry (including but not limited to any travel agencies, commercial airlines, industry groups, etc.) from February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected

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by COVID-19; and

4. Complete and unredacted copies of all correspondences, e-mails, and/or complaints that the Agency received from passengers between February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected by COVID-19.

April 6, 2020

"Simon Lin"

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**Counsel for the Applicant,
Air Passenger Rights**

I HEREBY CERTIFY that the above document is a true copy of the original files in the Court./

JE CERTIFIE qu' le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date
Date de dépôt

April 9, 2020

April 9, 2020

Dated
Fait le

JF
JEAN-FRANÇOIS DUPOUR
REGISTRY OFFICER
AGENT DU GREFFE

Court File No.: A-102-20

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

CANADIAN TRANSPORTATION AGENCY

Intervener

AFFIDAVIT OF BARBARA CUBER
AFFIRMED APRIL 21, 2022

I, Barbara Cuber, of the City of Gatineau in the Province of Québec, AFFIRM THAT:

1. I am Senior Counsel in the Legal Services Directorate of the Enabling Services Branch of the Canadian Transportation Agency ("Agency") and, as such, have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief, in which case I believe such information to be true.
2. In an Order dated April 11, 2022 ("the April Order"), the Court ordered that the person responsible for complying with this Court's previous Order dated October 15, 2021 ("the October Order") should be required to serve and file an affidavit detailing what has been done to ensure the required disclosure was made.

3. In my capacity as counsel of record at the time, I was the individual at the Agency who was tasked with gathering documents responsive to the October Order, and with producing these to the parties.
4. I was assisted in this task by the Director of Registrar, Secretariat and Information Management; the Access to Information and Privacy Division; the Information Technology Services Division; the Office of the Chair and Chief Executive Officer; members of the Executive Committee; and the Legal Services Directorate.
5. In paragraph 47 of the April Order, the Court indicated that it expects this affidavit to address the following questions:
 - (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.

6. In the paragraphs below, I have responded to each question set out in paragraph 47 of the April Order. However, I have re-arranged the order of the questions in order to respond to the April Order as fully and accurately as possible.
7. Nothing in this affidavit should be interpreted as waiving solicitor-client privilege or litigation privilege.

What steps were taken, if any, to gather and/or preserve documents upon being served with the Notice of Application on April 9, 2020 (question (b) in paragraph 47 of the April Order)

8. On April 14, 2020, Allan Matte, counsel of record at the time, sent a notification to relevant Agency personnel, including members. He informed them of the Notice of Application and the request for material pursuant to Rule 317 of the *Federal Courts Rules*, SOR 98-106. He notified personnel of the need to identify and preserve documents responsive to this request.

What record-keeping systems the CTA has, and whether all of them were searched for responsive documents (question (e) in paragraph 47 of the April Order)

9. The Agency uses an electronic corporate repository called RDIMS.
10. The Agency is required to preserve all documents of business value and to delete all transitory records, as set out in the following document: "What to Keep! What Not to Keep!"

at Exhibit A.

11. All paper documents that constitute records of business value are required to be saved in RDIMS, as outlined in the following document: "Conseils de nettoyage de documents papiers/Paper Documents Clean Up Tips" at Exhibit B.
12. All Microsoft Outlook items that are of business value are required to be saved in RDIMS. Agency personnel are required to delete transitory records from their Outlook account, as outlined in the following documents: MS Outlook 2016 Email Clean Up Tips at Exhibit C; and Tips on Managing Your Emails at Exhibit D.
13. RDIMS was searched for responsive documents.
14. In addition to RDIMS, the Outlook accounts of Agency staff and members were searched for responsive documents.

Who at the CTA conducted the searches for documents (question (c) in paragraph 47 of the April Order)

15. Staff in the Information Technology Division, Information Management Division, Access to Information and Privacy Directorate, and Office of the Chair and Chief Executive Officer conducted searches for documents.

Steps taken to comply with disclosure required in the October Order

16. To ensure that disclosure required by the October Order was made, I reviewed each document that had previously been gathered and preserved in connection with two Access to Information requests and one Parliamentary Standing Committee request, each of which

related to the subject matter of the Statement on Vouchers.

17. The first Access to Information request, A-2020-00002, was received by the Agency on or around May 5, 2020. It sought unpublished notes and exchanges that led to the Statement on Vouchers and subsequent FAQ answers on vouchers and refunds.

18. The text of the request reads as follows:

Simply mean records not on CTA website or published initial 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. TIMEFRAME June 1, 2019 to March 25, 2020.¹

19. On October 26, 2021, I contacted Myriame Côté, Access to Information and Privacy Coordinator at the Agency, to obtain access to search records. Ms. Côté is the person at the Agency responsible for responding to Access to Information requests. I was provided with access to the search results from this request on November 1, 2021.

20. The search results consisted of 683 items. I reviewed each one of these items to identify documents responsive to the October Order.

¹ Motion Record of Air Passenger Rights, Motion pursuant to Rules 41 and 318 of the Federal Courts Rules, Affidavit of Gábor Lukács dated January 3, 2021, Exhibit AH at 225 and 229.

21. The second Access to Information request, A-2020-00029, was received by the Agency on or around August 25, 2020. The request was made by Gábor Lukács, President and Director of Air Passenger Rights.
22. That Request sought all documents relating to the drafting, review, approval and/or publication of the Statement on Vouchers between March 11 and April 9, 2020.
23. The text of the request reads as follows:
- All documents, including e-mails, notes, meeting minutes, internal correspondences, and any other written record, relating to the drafting, review, approval, and/or publication of the Statement on Vouchers (<https://otc-cta.gc.ca/eng/statement-vouchers>). The time period we request is March 11, 2020 to April 9, 2020.²
24. On October 18 and 26, 2021, I contacted Myriame Côté to request access to the complete, unredacted search results associated with this request.
25. On October 29, November 1 and December 3, 2021, I was provided with access to these search results. These results consisted of 1417 Outlook items, 25 electronic documents, and a 5099-page working copy of the search results.
26. I reviewed each document contained in this collection of search results to identify documents responsive to the October Order.

² Motion Record of Air Passenger Rights, Motion pursuant to Rules 41 and 318 of the Federal Courts Rules, Affidavit of Gábor Lukács dated January 3, 2021, Exhibit AE at 206.

27. On or around October 22, 2021, I spoke with Patrice Bellerose about documents required to be produced pursuant to the October Order. Ms. Bellerose is the Director of Secretariat, Registrar and Information Management at the Agency. Both the Information Management Division and Access to Information and Privacy Directorate fell under her authority.
28. Following our discussion, I consulted a collection of documents that were preserved in RDIMS in early April 2021. This collection of documents consisted of communications between Transport Canada, including the Minister of Transport's Office, and the Agency regarding cancelled plane tickets.
29. This collection stemmed from a motion from the Standing Committee on Transportation, Infrastructure and Communities from March 25, 2021.
30. According to the Minutes of Proceedings from March 25, 2021, the Motion read as follows:
- That, pursuant to Standing Order 108(1)(a), an Order of the Committee do issue for correspondence between Transport Canada, including the Minister of Transport's office, and the Canadian Transportation Agency regarding cancelled plane tickets and that these documents be provided to the Committee Clerk within 30 days following the adoption of this motion.³
31. I reviewed each document in this collection on or around November 29, 2021 to identify documents responsive to the October Order.

³ See Air Passenger Rights Informal Motion in connection with its motion under Rules 41 and 318 of the Federal Courts Rules, dated May 12, 2021 and accompanying affidavit of Gábor Lukács affirmed on May 12, 2021.

32. All responsive documents I found in the search results from these previous document searches were produced to the parties in compliance with the October Order.
33. In addition to reviewing documents from these three searches, on October 26, 2021, I contacted Lesley Robertson, Executive Coordinator of the Office of the Chair and CEO of the Agency. Ms. Robertson worked directly with the Chair, Scott Streiner, in March 2020.
34. From our exchange, Ms. Robertson provided five documents.
35. I reviewed each of these documents and determined that one of the documents was responsive to the October Order.
36. This document consisted of a letter to Scott Streiner from Jean-Marc Eustache from Air Transat dated March 22, 2020. This document was produced to the parties on December 14, 2021.
37. On October 22 and 26 and November 19 and 22, 2021, I communicated with Jonathan Guindon, who is Manager of Information Technology Operations in the Information Technology Services Division of the Agency. Mr. Guindon is the person responsible for searches conducted in the Outlook accounts of Agency staff and members.
38. Based on our exchanges, staff in the Information Technology Services Division conducted an electronic search in all Agency staff and member Outlook accounts in order to search for documents responsive to the October Order.
39. I was given access to the search results, consisting of 799 items, on November 26, 2021.

40. I reviewed each document contained in the results from this search to identify documents responsive to the October Order.
41. I provided all responsive documents that I found from this search to the parties on December 14, 2021.
42. After the Agency disclosed responsive documents on December 14, 2021, Air Passenger Rights wrote several letters alleging deficiencies in the disclosure package. In response to these letters, I repeatedly verified the existing search results to ensure that I had not overlooked any items.
43. I verified my findings with Patrice Bellerose as she was familiar with the Access to Information requests outlined above.
44. I also spoke with the Agency's Chief of Staff, Sébastien Bergeron; Senior General Counsel Valérie Lagacé; Lesley Robertson; and various members of the Executive Committee during this time to confirm my findings.
45. On December 22, 2021, after receiving a letter from counsel for Air Passenger Rights concerning a missing covering e-mail that would have accompanied Jean-Marc Eustache from Air Transat's March 22, 2020 letter to the Agency, I contacted Ms. Robertson to ask if she had that covering email. As set out in paragraph 36, on October 26, 2021, she had provided me with Mr. Eustache's letter to Mr. Streiner.
46. She checked her records again and concluded that she did have the covering email. She sent it to me immediately. I provided the covering email to the parties on December 24, 2021

and explained that its omission was an oversight.

How the CTA narrowed down the several thousands of pages of documents to less than two hundred pages it has disclosed (question (a) in paragraph 47 of the April Order)

47. I understand this question to be a reference to the thousands of pages of documents that were generated from Access to Information Request A-2020-00029, and/or to the Agency's reference to the thousands of pages it reviewed in complying with the October Order.

48. In reviewing these search results, thousands of documents that fell outside of the timeframe of the Order were excluded; internal documents not shared with Members were excluded pursuant to paragraph 27 of the October Order; duplicates were excluded; and documents unrelated to the Statement on Vouchers were excluded.

49. For ease of reference, paragraph 27 of the October Order read as follows:

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.⁴

⁴ *Air Passenger Rights v Canada (Attorney General)*, [2021 FCA 201](#) at para 27.

Whether the CTA reviewed its encrypted emails or documents (question (d) in paragraph 47 of the April Order)

50. All emails and documents which were identified during the search were reviewed. No encrypted emails or documents were identified during the search.

Whether the CTA has any backups or archives of their emails and other electronic documents, and whether those backups or archives were searched (question (f) in paragraph 47 of the April Order)

51. As a corporate repository, all documents of business value are archived in RDIMS. RDIMS was searched for responsive documents.

52. All documents that are transitory are required to be deleted.

53. All documents in Outlook are kept on backup tapes for a period of 10 days. These tapes are then moved offsite and kept for 12 weeks.

54. The Agency did not search these tapes.

Whether the CTA conducted any investigation after learning that some documents no longer exist, and any steps taken to recover those documents (question (g) in paragraph 47 of the April Order)

55. The Agency did not conduct any investigation after learning that some documents no longer exist.

56. The Agency searched its records in RDIMS and in Outlook for responsive documents.

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 (question (h) in paragraph 47 of the April Order)

57. The Agency's audio and video conferencing systems have a recording feature.

58. No. These meetings were not recorded.

59. This affidavit is made at the request of this Court following the April 11, 2022 Order and for no other or improper purpose.

DATED at the City of Gatineau, in the Province of Quebec, this 21st day of April, 2022.

AFFIRMED BEFORE ME
at the City of Gatineau,
in the Province of Quebec,
this 21st day of April, 2022.

Commissioner of Oaths



BARBARA CUBER

Exhibit A of the affidavit of Barbara Cuber
affirmed before me on April 21, 2022

A handwritten signature in blue ink, appearing to be 'K. BF', written in a cursive style.

Signature



WHAT TO KEEP!

WHAT NOT TO KEEP!

It is the responsibility of every individual working for the Agency to preserve corporate records, and dispose of transitory records, in support of the Agency's information management goals.

WHAT TO KEEP!

Corporate Records:

any type of information collected or created by the Agency in order to control, support, or document the delivery of programs, carry out operations, to make decisions, or to account for the activities of the Agency. Examples include records which:

- document the delivery of programs or services;
- record decisions and actions;
- provide evidence of financial and legal transactions;
- have policy, program and procedural implications;
- give or request direction or comments on Agency activity; and
- are substantive drafts that demonstrate a document's evolution, the decision making process, or the development of policy and legislation.

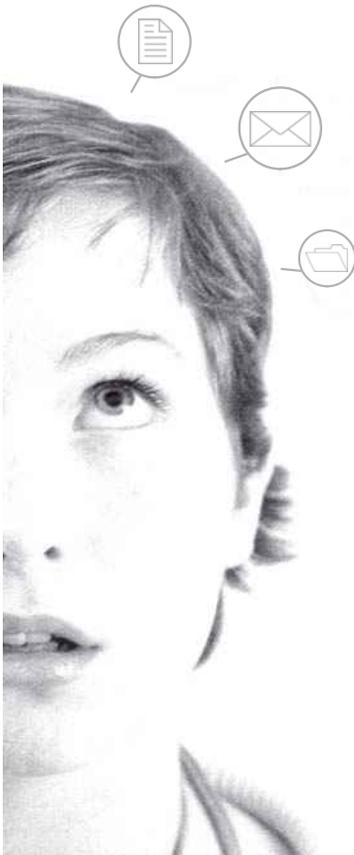
WHAT NOT TO KEEP!

Transitory Records:

are only required for a limited time to complete a routine action or to prepare a subsequent record. An employee must dispose of or delete transitory records, including e-mail messages and attachments, once they have served their purpose. The sheer volume of transitory records can impede the ability to manage official records. Examples include:

- records with no business, legal, financial or administrative value;
- records needed only for a limited time to complete a routine action or prepare a subsequent record;
- draft documents, where all substantive content/changes have been incorporated into a subsequent document;
- duplicate copies used for convenience only;
- casual communications, FYI e-mail and information received as part of a distribution list;
- e-mail that are captured in a more recent message; and
- personal information.

IMPORTANT: You cannot dispose of or delete transitory records that are required for an active ATIP request.





DOCUMENT À CONSERVER! ET À NE PAS CONSERVER!

Il incombe à chaque employé(e) de l'Office de conserver les documents officiels et de disposer des documents éphémères, conformément aux objectifs de l'Office en matière de gestion de l'information.

DOCUMENTS À CONSERVER!

Documents officiels :

Toute information produite ou conservée sert à contrôler, à appuyer ou documenter l'exécution des programmes, le déroulement des activités, la prise de décisions, ou encore pour rendre compte des activités de l'Office. Citons à titre d'exemples de documents organisationnels, ceux qui :

- documentent l'exécution des programmes ou la prestation des services;
- documentent la prise de décisions et de mesures;
- témoignent de transactions financières et d'actes juridiques;
- ont des incidences sur les politiques, les programmes et les procédures;
- constituent des demandes de directives ou présentent des commentaires relativement aux activités de l'Office;
- constituent des ébauches de fond faisant état de leur évolution, du processus décisionnel ou de l'élaboration d'une politique ou d'une loi.

DOCUMENTS À NE PAS CONSERVER!

Documents éphémères:

Les documents éphémères sont des documents dont on a besoin seulement pour une période limitée, afin d'achever un travail en cours ou de rédiger d'autres documents. Ils **doivent être supprimé ou éliminé**, notamment les messages électroniques, **dès qu'ils ne sont plus utiles**. Le nombre de documents éphémères à lui seul peut nuire à la capacité de gérer les documents organisationnels de l'Office. Citons à titre d'exemples :

- les documents sans valeur organisationnelle, juridique, financière ou administrative;
- les documents nécessaires pendant un certain temps en vue d'achever un travail courant ou de préparer un document ultérieur;
- les ébauches si les principaux éléments ou les changements ont été incorporés dans un document ultérieur;
- les copies utilisées à des fins de commodité seulement;
- les communications informelles transmises uniquement à des fins d'information.
- les messages électroniques qui sont repris dans un messages plus récent;
- l'information personnelle.

IMPORTANT : Vous ne pouvez pas éliminer ou supprimer des documents éphémères requis dans le cadre d'une demande active d'AIPRP

Exhibit **B** of the affidavit of Barbara Cuber
affirmed before me on April 21, 2022

A handwritten signature in blue ink, appearing to be 'K. BF', written in a cursive style.

Signature

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

Click [HERE](#) to jump to English version

Mythe à déboulonner!

Mythe : J'ai tellement de papiers que ça ne vaut pas la peine d'essayer de faire le ménage!

Vérité : Certaines études suggèrent que nous perdons de une à deux heures par journée de travail à chercher de l'information. Un ménage dans vos dossiers papiers facilitera la conservation, le repérage et la communication de l'information à l'avenir.

1. Faites le ménage dans vos papiers en trois étapes :

1. Apprenez à CONNAÎTRE la valeur de votre information
2. CLASSEZ votre information
3. PASSEZ À L'ACTION en conservant ou en éliminant l'information

Apprenez à CONNAÎTRE la valeur de votre information

Quel que soit le type d'information que vous avez ou l'endroit où elle se trouve, sa valeur détermine ce que vous devez en faire.

INFORMATION À VALEUR OPÉRATIONNELLE

Les ressources documentaires à valeur opérationnelle (RDVO) sont des documents de l'organisation qui, quelle qu'en soit la forme,

- **appuient la prestation des programmes et des services** (p. ex., politiques, lignes directrices, dossiers des clients, documents de planification)
- **rendent compte des activités opérationnelles** (p. ex., attribution des tâches, documents relatifs aux projets et aux processus, offres d'emploi, contrats, transactions)
- **font état des données et des raisons justifiant les décisions ou les mesures prises** (p. ex., comptes rendus de décision, autorisations, notes d'information, avis juridiques, documents relatifs aux réunions)
- appuient l'élaboration des rapports ministériels, des rapports sur le rendement et la reddition de comptes ministérielle (p. ex., plans stratégiques, rapports de l'organisation, statistiques)
- Vous devez conserver ce type d'information.

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

INFORMATION ÉPHÉMÈRE

L'information éphémère comprend l'information qui :

- **appuie la création d'information à valeur opérationnelle, mais n'est nécessaire que pour une durée limitée** (p. ex., copies de présentations ou de documents faites pour des besoins pratiques, courriels envoyés pour information, bulletins d'information, documents de formation, et documents de travail dont les modifications importantes ont été enregistrées dans une version ultérieure)
- **n'appuie pas la création de l'information à valeur opérationnelle** (p. ex., pourriels, invitations à des réunions, avis concernant les congés et les vacances, renseignements personnels)

Vous devez détruire* cette information quand vous n'en avez plus besoin.

*Exception : Si l'information éphémère est visée par une demande d'accès à l'information en cours, une affaire judiciaire (investigation électronique), ou une vérification, l'information doit être conservée. En cas de doute, communiquez avec la Gestion de l'information.

2. CLASSEZ votre information

Le saviez-vous? Par papier, on entend les documents imprimés, les cahiers de notes, les papillons adhésifs (Post-it), les dossiers et les télécopies.

À conserver	À jeter	Ne sait pas
Information à valeur opérationnelle	Information éphémère	Information que vous ne savez pas où classer*

*Lorsque vous vous demandez s'il s'agit d'une RDVO ou d'information éphémère, ou si vous devez numériser votre document, communiquez avec votre gestionnaire.

Qu'en est-il des ouvrages de référence? Toutes les publications doivent être envoyées à l'équipe de Gestion de l'information, conformément à la loi. Les publications sont souvent visées par des initiatives à l'échelle gouvernementale comme des programmes de recyclage internationaux.

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

3. PASSEZ À L'ACTION en conservant ou en éliminant l'information

Mythe à déboulonner!

Mythe : Je peux numériser et détruire toutes mes informations papier.

Vérité : Les RDVO peuvent être numérisées, mais cela implique beaucoup plus qu'une simple copie digitale ou électronique. Les imprimantes-scanners du réseau de l'Office ont été configurées pour respecter les lignes directrices du gouvernement fédéral afin de s'assurer que les normes sont respectées en ce qui a trait à la qualité et à l'admissibilité des documents numériques. Suivez les instructions pour numériser vos documents et les enregistrer dans le SGDDI. Si numérisé, SVP informer la GI.

Faites le ménage dans vos papiers en fonction de la valeur et du niveau de confidentialité de l'information.

Information Ephémère	Action
Non classifié ou protégé A	<ul style="list-style-type: none"> Mettre en boîtes et identifiez la boîte: Éphémère Apportez à la GI en personne
Protégé B ou Classifié	<ul style="list-style-type: none"> Mettre en boîtes et identifiez la boîte: Éphémère sécurisé Apportez à la GI en personne

Ressources documentaires à valeur opérationnelle (RDVO)	Action
Dossiers avec ou sans code-barres	<ul style="list-style-type: none"> Rassembler les dossiers officiels ensemble (avec code-barres) Rassembler les dossiers non officiels (sans code-barres) ensemble et, si possible, ajoutez une note sur le dessus identifiant le numéro de dossier / sujet. Mettre en boîte <u>tous les dossiers</u> et identifiez la boîte: RDVO Apportez à la GI en personne

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

RDVO éparpillées	<ul style="list-style-type: none">• Rassembler les RDVO qui se rapporte à un même dossier (officiel ou non) et identifier le dossier auquel il doivent appartenir soit par le titre soit par le numéro de dossier.• Mettre en boîte <u>tous les RDVO éparpillées</u> et identifiez la boîte: RDVO• Apportez à la GI en personne
------------------	---

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

Myth buster!

Myth: I have so much paper it's pointless to try and clean it up!

Truth: Some studies suggest we lose 1–2 hours each work day hunting for information. Cleaning up your paper files will make it easier to store, find and share information going forward.

1. Three steps to clean up your paper:

4. KNOW the value of your information
5. SORT your information
6. ACT to keep or destroy information

KNOW the value of your information

No matter what kind of information you have or where it is stored, its value determines how you should clean it up.

INFORMATION OF BUSINESS VALUE

Information resources of business value (IRBVs) are corporate records in any form that:

- **support the delivery of programs and services** (e.g. policies, guidelines, client records, planning documents)
- **capture business activities** (e.g. task assignments, project and process documentation, employment offers, contracts, transactions)
- **record the evidence and rationale for decisions or actions** (e.g. records of decision, authorizations, briefing notes, legal advice, meeting documents)
- support departmental reporting, performance and accountability (e.g. strategic plans, corporate reports, statistics)

This kind of information you must keep.

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

TRANSITORY INFORMATION

Transitory information includes information that:

- **supports the creation of information of business value but is only needed only for a limited time** (e.g. convenience copies of presentations or documents, FYI emails, newsletters, training material, and working drafts where major changes were documented in a later version)
- **does not support the creation of information of business value** (e.g. junk mail, meeting notices, holiday and vacation notices, personal information)

This information you must destroy* when it is no longer needed.

*Exception: If the transitory information is the subject of an open ATIP, legal case (e-Discovery), or audit, you must keep it. When in doubt, contact Information Management.

2. SORT your information

Did you know? Paper includes printed documents, notebooks, Post-it notes, files and faxes.

Keepers	Trash	Unknown
Information of Business Value	Transitory Information	Information you're not sure of*

*If you're aren't sure whether your information is an IRBV or transitory, or whether to digitize your paper, contact your manager.

What about reference books? All public publication must be sent to the Information Management team as per legislation. Publications are often part of government-wide initiatives such as international recycling programs.

Conseils de nettoyage de documents papiers

Paper Documents Clean-up Tips

3. ACT to keep or destroy information

Myth buster!

Myth: I can scan and destroy all my paper records.

Truth: IRBVs can be digitized, but this involves much more than simply scanning. The Agency network printers/scanners have been configured to meet federal government guidelines to ensure standards are met for the quality and admissibility of digital records. Follow these instructions to digitize and save to RDIMS. If digitized, please inform IM.

Clean up your paper information based on its value.

Transitory Information	Action
Unclassified or Protected A	<ul style="list-style-type: none"> Put in boxes and mark as: Transitory Bring to IM in person
Protected B or above	<ul style="list-style-type: none"> Put in boxes and mark as: Secured Transitory Bring to IM in person

Information of Business Value (IRBV)	Action
Files folders with or without bar codes	<ul style="list-style-type: none"> Keep official files (with bar codes) together Keep un-official files together (without bar codes) and if possible, add note on top identifying file # / subject. Box all files and mark as: IRBV Files Bring to IM in person
Loose IRBV	<ul style="list-style-type: none"> Keep all IRBV that relate to a file or subject (official file or not) together and identify the file to which it belongs using either the file number or file subject. Box all records and mark as: IRBV Bring to IM in person

Exhibit C of the affidavit of Barbara Cuber
affirmed before me on April 21, 2022

A handwritten signature in blue ink, appearing to be 'K. BF', is written above a horizontal line.

Signature

Conseils pour le nettoyage des comptes de courriel dans MS Outlook 2016

MS Outlook 2016 Email Clean-up Tips

[English text starts on page 5](#)

Contenu / Contents

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1. Qu'est-ce qui est inclus dans votre boîte aux lettres?

Il est important de prendre conscience que la taille d'une boîte aux lettres dépend de l'ensemble de ses éléments, à savoir :

- La boîte de réception
- Le dossier des éléments envoyés
- Tous les dossiers (qu'ils soient générés par le système ou créés par l'utilisateur)

- Tous les éléments du calendrier
- Etc.

2. Comprendre ce que représente la taille d'un dossier

Les octets sont des données, et un **fichier** est composé d'octets.

1 kilo-octet (Ko) = 1000 octets

1 mégaoctet (Mo) = 1000 Ko

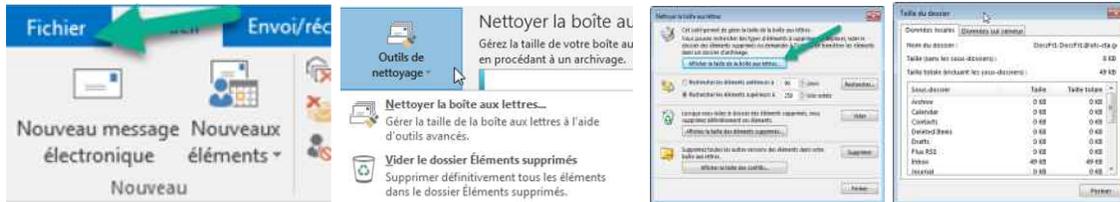
1 gigaoctet (Go) = 1000 Mo

1 téraoctet (To) = 1000 Go

3. Prioriser le nettoyage selon la taille des dossiers

Un coup d'œil à la taille de dossiers vous permettra de décider lesquels devraient être nettoyés en premier :

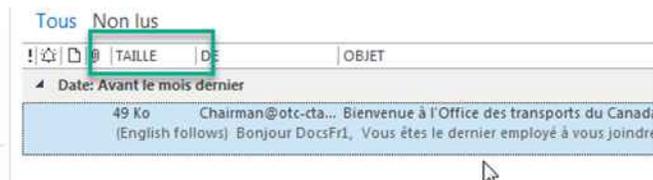
- Cliquez sur l'onglet « Fichier ».
- Sous « Outils de nettoyage », cliquez sur « Nettoyer la boîte aux lettres... ».
- Cliquez sur « Afficher la taille de la boîte aux lettres... ».



4. Filtrer les courriels par taille

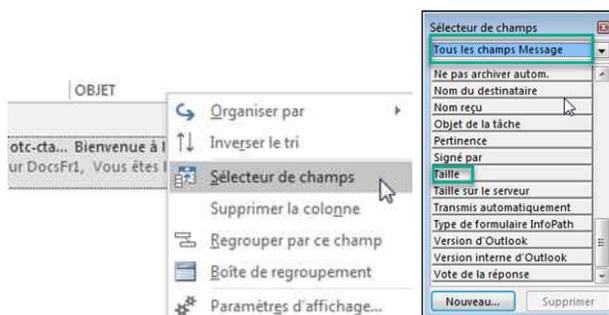
Une fois que vous avez choisi les dossiers à nettoyer en premier, vous pouvez filtrer les courriels par taille afin de supprimer ceux qui ont des pièces jointes volumineuses :

- Repérez le dossier.
- Cliquez sur la colonne « Taille ».



Si la colonne « Taille » n'apparaît pas, voici la marche à suivre pour l'ajouter :

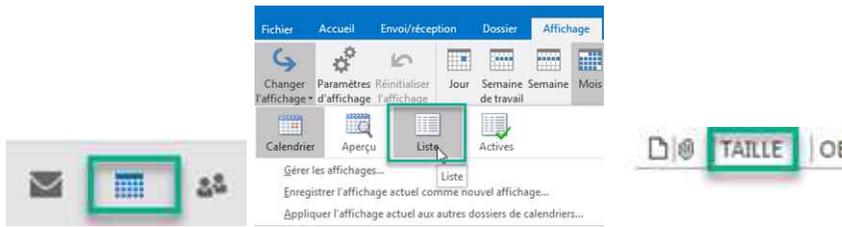
- Cliquez à droite sur n'importe quelle colonne, puis choisissez « Sélecteur de champs ».
- Glissez le champ « Taille », à partir de la liste des « Champs souvent utilisés » ou de « Tous les champs Message », vers la zone des colonnes.



5. Nettoyage du calendrier

Pour nettoyer votre calendrier en fonction de la taille de ses éléments, procédez comme suit :

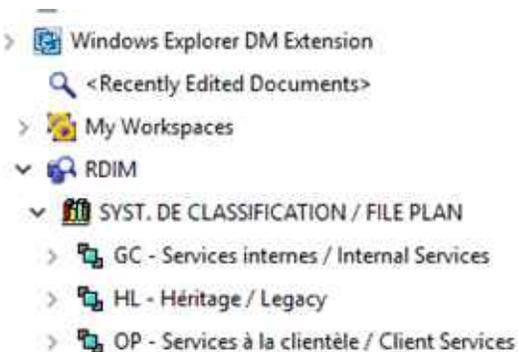
- Cliquez sur l'icône « Calendrier ».
- Sous l'onglet « Affichage », cliquez sur « Changer l'affichage » et sélectionnez « Liste ».
- Cliquez sur la colonne « Taille ». Si la colonne « Taille » n'apparaît pas, [suivre la démarche décrite à l'étape numéro 4](#).
- Examinez les éléments pour supprimer ceux dont vous n'avez plus besoin.



6. Déplacer les ressources documentaires à valeur opérationnelle (RDVO) dans le SGDDI

Après avoir supprimé les courriels et les éléments du calendrier en fonction de leur taille, il vous faut maintenant déplacer les RDVO dans le SGDDI et supprimer les courriels éphémères (utiles pour une durée limitée).

La première étape recommandée consiste à localiser dans le système de classement de l'Office le numéro de dossier correspondant à chaque dossier Outlook. Vous pourrez ainsi enregistrer en bloc une série de courriels dans le SGDDI. Dans Windows Explorer, le système de classement de l'Office se trouve sous le SGDDI (Windows Explorer DM Extension)



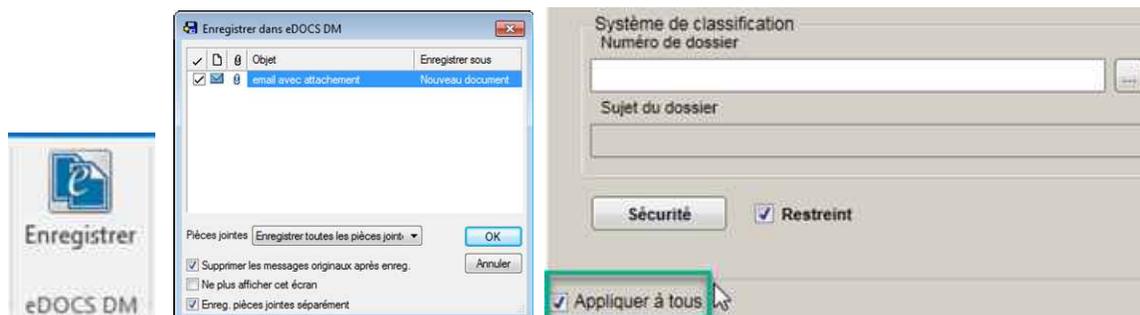
Ouvrir les différentes fonctions du système de classement jusqu'à ce que vous trouviez le numéro de dossier correspondant à chaque dossier Outlook. Si le dossier voulu ne se trouve pas dans le système de classement de l'Office, vous pouvez demander à votre gestionnaire si quelqu'un de votre groupe dispose des droits d'accès nécessaires pour y ajouter de nouveaux dossiers. Si ce n'est pas le cas, n'hésitez pas à envoyer une demande à Services-GI-IM@otc-cta.gc.ca. Veuillez fournir le plus de détails possible; précisez, par exemple, où le dossier devrait se trouver dans le système de classement de l'Office.

Une fois que vous avez trouvé, le numéro de dossier particulier correspondant à un dossier Outlook, vous pouvez déplacer en bloc des courriels vers le SGDDI. Il est recommandé de déplacer environ 30 courriels à la fois. Au-delà de ce nombre, le système risque de figer.

Une fois les courriels sélectionnés, cliquez sur l'icône « Enregistrer eDOCS DM ». Assurez-vous ensuite que les options suivantes sont sélectionnées dans l'écran « Enregistrer dans eDOCS DM » :

- Pièces jointes : Enregistrer toutes les pièces jointes
- Supprimer les messages originaux après enreg.
- Enreg. pièces jointes séparément

Après avoir cliqué sur OK, il reste à remplir le profil. Assurez-vous de cocher la case « Appliquer à tous ».



Même si vous avez l'impression que le système est figé, donner lui le temps nécessaires pour compléter les sauvegardes. C'est le temps d'un café? :)

MS Outlook 2016 Email Clean-up Tips

1. What is included in your mailbox?

It's important to realize that the mailbox size includes everything related to the mailbox, which contains:

- In-box
- Sent folder
- All folders (system and user created)
- All calendar items
- Etc.

2. Understanding file size

Bytes are pieces of information and a **file** is made up of bytes.

1 kilobyte (KB) = 1000 bytes

1 megabyte (MB) = 1000 KB

1 gigabyte (GB) = 1000 MB

1 terabyte (TB) = 1000 GB

3. Prioritize clean-up based on size

Looking at the folder size of folders will allow you to decide which folders to cleanup first.

- Click on the File tab.
- Under Cleanup Tools, click on Mailbox Cleanup...
 - Click on View Mailbox Size...



4.Filter by size

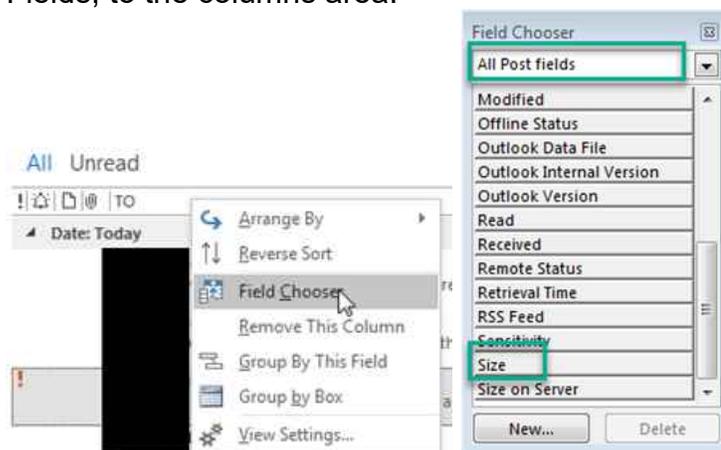
Once you have decided on the folder(s) to clean-up first, you can filter by size and delete emails that have large attachments:

- Locate the folder.
- Click on the Size column.



If the size column is not present, you can add it by:

- Right clicking on any column and selecting Field Chooser.
- Dragging the Size field, from either the Frequently used Fields or the All Post Fields, to the columns area.



5. Calendar clean-up

To clean-up your calendar based on size, follow the following steps.

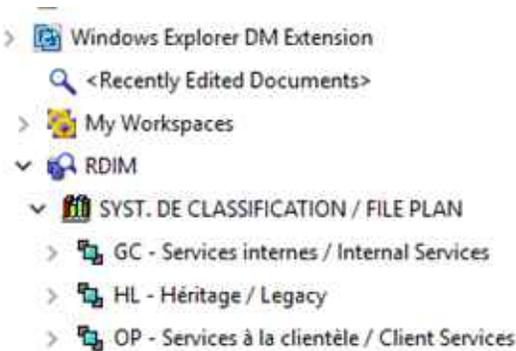
- Click on the Calendar icon.
- Under the View tab, click on Change View and select List.
- Click on the size column. If the size column is not present, you can add it by following the steps described in step number 4.
- Review and delete items you no longer need.



6. Move information resources of business value (IRBV) to RDIMS

Once you have deleted emails and calendars items based on size, you now need to move IRBVs to RDIMS and delete transitory (required for a limited time) emails.

The recommend first step is to identify each file (file #) from the Agency File Plan (AFP) that relates to each Outlook folder. This will allow you to mass save emails to RDIMS. In Windows Explorer the AFP is located under the RDIMS (Windows Explorer DM Extension)



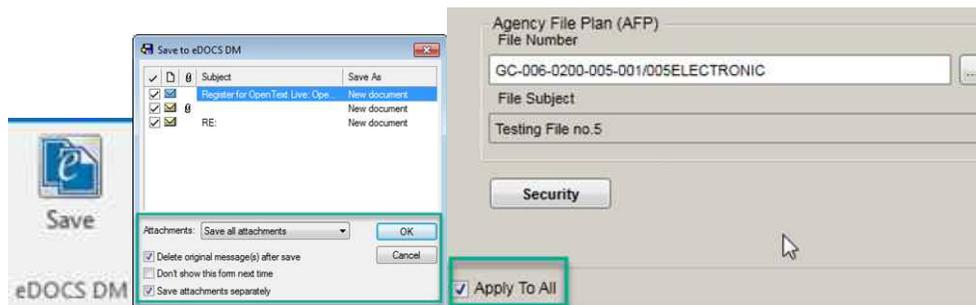
Expand the various functions of the AFP until you locate a specific file # for each Outlook folder. If a file does not exist in the AFP, you can ask your manager if someone within your group has access to add new files in the AFP. If your group does not have such a person, you can send a request to Services-GI-IM@otc-cta.gc.ca. Please provide as much details as possible such as where in the AFP the file should be located.

Once you have identified a specific AFP file # for a specific Outlook folder, you can mass move emails to RDIMS. It is recommend to move about 30 emails at a time. Anything more will cause performance issues (freeze).

Once emails have been selected, click on the Save to eDOCS DM icon. The Save to eDOCS DM screen should have the following selected:

- Attachments: Save all attachments
- Delete original messages(s) after save
- Save attachments separately

After clicking OK, the profile needs to be completed. Make sure to select the Apply To All checkbox.



Even if it appears frozen, give it time to complete the saves. Time for a coffee? :)

Exhibit **D** of the affidavit of Barbara Cuber
affirmed before me on April 21, 2022

A handwritten signature in blue ink, appearing to be 'K. B. C.', is written above a horizontal line.

Signature

Reminder

Importance of managing your emails

Properly managing your emails ensures you meet your information management responsibilities and that you adhere to Government of Canada policies such as the [Standard on Email management](#).

It's important to realize that the mailbox includes:

- Inbox folder
- Sent Items folder
- All folders (system and user created)
- All calendar items

The quickest way to free up space in your mailbox is to sort your emails by size, and save information of corporate value to RDIMS and delete any transitory or duplicate information.

You will find the following tools on the Hub [Information Management](#) page to assist you: [Managing your Emails Against the Clock](#) (RDIMS# 2124835), [MS Outlook 2016 Email Clean-up Tips](#) (RDIMS# 1630226), [What to Keep! What NOT to Keep!](#) (RDIMS# 1313103).

Best practices:

- Take 5-10 minutes to review all emails you have sent and received in a day, either at the beginning or end of your day, delete the transitory and/or emails strings. Then save information of corporate value to RDIMS.
- Avoid duplication. Email sender is responsible for saving information of corporate value to RDIMS. Save the last email string that captures the complete story and delete any previous strings, as they are transitory, using the conversation cleanup feature in Outlook. Redundant messages throughout a Conversation (email thread) are moved to the Deleted Items folder. This feature is most useful on Conversations with many responses back and forth, and many recipients. On the Home tab, in the Delete group, click Clean Up. Click Clean Up Conversation. The current Conversation of the email you selected is reviewed, and redundant messages are deleted.
- Send RDIMS document references instead of attachments as they take up less space in mailboxes.
- Use the expire function in Outlook. When sending an email click Options tab; in the More Options group, click the Message Options dialog box launcher. Under Delivery options, check Expires after and select the date and time. When the expiration date passes, the message remains visible in the message list with a strikethrough. It can still be opened, but provides a visual cue that the message is out of date and no longer needed.

Once you've deleted the items, don't forget to empty your Deleted items folder!

Need help? [Contact the Information Management team](#)

Court File No.: **A-102-20****FEDERAL COURT OF APPEAL**

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

CANADIAN TRANSPORTATION AGENCY

Intervener

AFFIDAVIT OF JONATHAN GUINDON
AFFIRMED NOVEMBER 24, 2022

I, Jonathan Guindon, of the City of Gatineau, in the Province of Québec, AFFIRM THAT:

1. I am the Manager of Information Technology Operations in the Information Management and Technology Services Directorate in the Internal Service Branch of the Canadian Transportation Agency ("Agency") and, as such, have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief, in which case I believe such information to be true.
2. It is my understanding that in this litigation, Air Passenger Rights is seeking an order from the Court that would require the Agency to conduct a specific search and/or recovery for encrypted e-mails, using the steps endorsed by both the Information Commissioner and Treasury Board.
3. I am aware that the "steps endorsed by both the Information Commissioner and Treasury

Board" refers to two documents: "9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner" ("9 Tips guide") and the Treasury Board Secretariat's "Guideline on searching encrypted e-mails in response to information requests." ("TBS Guideline on encrypted e-mails"). Copies of these documents appear at Exhibits C and D of the affidavit of Gabor Lukacs, affirmed on November 14, 2022 in the Applicant's Motion to Compel Answers and Documents and Document Preservation Order dated November 14, 2022.

4. At the Agency, as at any government department, searching encrypted e-mails is possible, if the information still exists, but it cannot be done in a centralized way.
5. A search for encrypted e-mails must be conducted from the client side, which means by the custodian of the e-mail(s) in question. The server side can only search the content within the envelope of the message. Furthermore, the e-mail in question needs to exist within a mailbox to generate a hit.
6. Furthermore, as required by government policies related to information management which the Agency follows, records of business value should never only exist in e-mails in Outlook accounts; they should always be stored in a corporate repository.

Information management in the federal government

7. The Agency follows the guidelines as described in the "9 Tips guide" and "TBS Guideline on encrypted e-mails".
8. The Agency also follows the guideline cited at section 4 of the "TBS Guideline on encrypted e-mails" Section 4 is titled "Additional guidance". The additional guidance consists of the

"Guideline for Employees of the Government of Canada: Information Management (IM) Basics" ("IM Basics Guideline"). A copy of this Guideline is attached as **Exhibit A** to this affidavit.

9. The "IM Basics Guideline" defines what constitute information resources of business value (IRBV) and transitory information.
10. Information resources of business value are published and unpublished materials, regardless of medium or form that are created or acquired because they enable and document decision-making in support of programs, services and ongoing operations, and support departmental reporting, performance and accountability requirements.
11. The Agency disposes of records that are not of business value in accordance with the "Disposition Authorization #2016/001 for Transitory Records" ("Disposition Authorization"). A copy of this document can be found at **Exhibit B** to this affidavit.
12. According to Section A.2 of the "Disposition Authorization", transitory records are not of business value. They may include records that serve solely as convenience copies of records held in a government institution repository, but do not include any records that are required to control, support, or document the delivery of programs, to carry out operations, to make decisions, or to provide evidence to account for the activities of government at any time.
13. This means that transitory information, such as brainstorming sessions, discussions or exchanges of ideas that have not resulted in a formal business decision are not typically records of business value. Once a given subject is concluded with a decision, has an impact or value to the business, the policies state that the record is to be saved in a corporate repository.

14. Every employee that has joined the Agency since 2018 must attend mandatory information management training in the first month. In this training, employee responsibilities are explained as well as record keeping policies and best practices. There have also been Information Management awareness periods to remind users of these principles.

Encrypted e-mails

15. The same information management principle applies whether the message requires encryption or not. If the content of a given e-mail has business value, the employee is required to store the content in a corporate repository, which is RDIMS in the Agency's environment.

16. The Agency's RDIMS repository supports Protected B information without encryption. The e-mail is therefore unencrypted and saved in RDIMS. The Agency's internal network has sufficient security controls in place to work with Protected B data to allow Protected B conversations via e-mail between Agency personnel without further encryption.

17. There are instances respecting internal communications where encryption can be utilized such as with sensitive human resources matters, any future announcements that may impact the business, or any other sensitive messages that should only be seen by the sender/recipients. It is common to have mailboxes delegated to staff and some conversation may need to be protected or be announced in a controlled fashion. Encryption is however rarely used internally.

18. When exchanging Protected B information via e-mail with other government departments, it is required to use encryption as the message can transit via multiple providers and networks to reach the recipient. Encryption is therefore required to protect the integrity of the message and ensure only the intended recipient may read the message.

Information Management requirements upon employee departure

19. As part of the of the employee departure process, there is a requirement as set out in the Agency's Departure Form that the departing employee is to save any and all records of business value in the corporate record-keeping repository prior to submitting the official Departure Form. A copy of the Departure Form that was in place at the time that Agency personnel Marcia Jones and Scott Streiner departed the Agency is appended as **Exhibit C** to this affidavit.
20. The Departure Form also requires departing personnel to certify that information that will be deleted after their departure has no business value and/or does not include information related to a litigation hold and/or an active access to information request.
21. The IT service desk receives the off-boarding request once the employee submits the Departure Form. When received, the employee has completed the required IM clean-up and the relevant data has been moved outside the mailbox. The mailbox and its residual content is then deleted from the server, because it does not contain any record of business value. The user account and any access to CTA data or system is revoked.

Mailbox searches

22. As described in the documents referred by Air Passenger Rights, there is a process in place to find documents, even encrypted in a mailbox. However, this is a manual process. In most federal organizations, including the Agency, the employees (Offices of Primary Interest or OPI) targeted by an Access to Information and Privacy request or court litigation are requested to conduct searches directly in their mailbox and return results.

23. In addition to that process, the Agency has implemented a centralized mailbox search (compliance management) on the server side in order to facilitate the process and find additional documents that may not have been found or reported by the manual search by the OPI.
24. Knowing that the mailboxes of interest no longer existed at the time the Agency was required to produce documents in this proceeding, the Agency used the centralized mailbox search approach, hoping to find a copy of e-mails of interest in an active mailbox.
25. Generally speaking, the OPIs are responsible to provide relevant information when requested and have the ability to decrypt messages contained in their mailbox. Based on the "Disposition Authorization", transitory information can be disposed of and IRBVs are moved to the corporate repository.
26. It is normal and even essential to manage information this way to ensure continuity and operational manageability of information.
27. In addition, the mailbox search can only return results that exist at the time of the search.
28. In the context of email encryption, the Centralized mailbox search (Compliance Management) cannot decrypt and search the body content of an encrypted e-mail because only the intended recipients hold the key to decrypt the message. This is by design of encryption; administrators or other privileged accounts are unable to decrypt the information.
29. The centralized mailbox search will however be able to search the envelope of the e-mail, which includes the sent date, Sender e-mail address, recipients(s) e-mail address(es) and subject. If the executed query matches information from within the envelope of an encrypted e-mail, the

message will show as a result. We would be unable to see the content from this system, but would have enough information to contact the employee to gain access to the decrypted e-mail.

30. In this specific case, we would be unable to search the accounts of CTA personnel that left the Agency in 2021. For those personnel, there are no mailboxes to search from.

The Agency searched for emails in existing, active mailboxes in November 2021 in the event that there were copies of the e-mails of departed personnel in the accounts of remaining personnel.

Data recovery

31. The Agency has a data recovery solution in place for which we keep 10 daily restore points onsite and 12 weeks of weekly snapshots offsite.

32. In November 2021, the Agency was transitioning to a cloud solution for office backups and we exceptionally still had tape backups allowing us to go further back than 12 weeks in our possession.

33. I made a verification to see whether the relevant mailboxes could be restored but unfortunately, the tapes were not old enough to restore the relevant mailboxes.

34. Furthermore, had the mailboxes been recoverable at the time, we would not have been able to read encrypted data. We would have seen the message envelope, but we would not be able to not decrypt the body of the message since we do not have access to the encryption keys used to encrypt information.

35. This affidavit is made in support of the Agency's Response to the Applicant's Motion to Compel Answers and Documents and Document Preservation Order and for no other or improper purpose.

DATED at the City of Gatineau, in the Province of Québec, this 24th day of November, 2022.

AFFIRMED BEFORE ME
at the City of Gatineau,
in the Province of Québec,
this 24th day of November, 2022.

2022-11-24

X 

Patrice Bellerose #225403
Commissioner of Oaths
Signed by: Bellerose, Patrice

11/24/2022

X 

Jonathan Guindon
Manager of Information Technology Operations
Signed by: Guindon, Jonathan

Exhibit A of the affidavit of Jonathan Guindon
affirmed before me on November 24, 2022

2022-11-24

X 

Patrice Bellerose (#225403)
Commissioner of Oaths
Signed by: Bellerose, Patrice



Guideline for Employees of the Government of Canada: Information Management (IM) Basics

i Note to reader

The Standard on Email Management, along with other Treasury Board policy instruments under the Policy on Service and Digital, are being reviewed. More specifically, this Standard will be updated to reflect current information management practices and technology, including configurations resulting from the implementation of Microsoft Office 365.

Overview of Contents

- **The Value of Managing Information**

Introduction to the purpose and value of information management (IM), the related responsibilities, and key IM practices.

- Part of our daily work
- Managing Information - Who is Responsible?
- Key principles for managing information in all media

- **Managing Information—In Practice**

Key basic practices and activities for managing government information, essentially organized according to the stages of the information life cycle but presented informally.

- Plan for your information needs
- Create and collect information
- Organize your information
- Reuse and share information
- Maintain and protect information
- Transfer or destroy the right information at the right time

- **Manage Information Based on Its Value**

The value of information and the related retention and disposition issues for employees.

- Document your business activities and decisions
- Keep information for as long as it is needed, then transfer or destroy it
- Penalties for unauthorized destruction

- **Managing Electronic Information**

How to manage, file, and share electronic information, along with tools that may be

available within the institution.

- Managing information on shared drives
 - Filing electronic information
 - What about email messages?
 - A word about wikis, blogs, and collaborative spaces
- **Job Change Can Affect Information Management Practices**
What an employee should know and do when arriving at or leaving a job.
 - When leaving a job
 - When starting a new job
- **Where You Can Find More Help**
Other sources of information.
 - The experts
 - Enquiries

Who Should Read These Guidelines

With the introduction of the *Policy on Information Management* (2007), the *Directive on Information Management Roles and Responsibilities* (2007), and the *Directive on Recordkeeping* (2009) and related standards as published by the Treasury Board of Canada Secretariat, these guidelines have been designed to help all Government of Canada employees understand their roles and responsibilities in managing information resources effectively.

As you come to appreciate your contribution to the management of government information, discuss with your manager any ideas or issues you may have. Then, as needed, consult any one of the various IM specialists or experts who can help you learn about the practices and procedures that apply to your organization.

These guidelines are designed for all Government of Canada employees and are relevant to a wide variety of environments. Institutions are encouraged to use these guidelines as a base that can be added to and customized to reflect institutional policies, procedures, directives, guidelines, tools, and best practices.

Notes:

- For the purposes of this document, the term "Government of Canada employees" includes employees of federal institutions as defined in Schedule 2 of the *Financial Administration Act*. The advice contained in this guideline, however, could be beneficial to employees of institutions outside of this definition.
- For the purposes of this guideline, "information" is equivalent to "information resource(s)" and these are the broadest of all terms - including any documentary material produced both in published and unpublished form regardless of communications source, information format, production mode or recording medium. The term "information resource" is introduced through the *Directive on Recordkeeping*.

The Value of Managing Information

Part of our daily work

Employees have a duty to document their decisions and activities. Recognizing the value of information and managing it well is pivotal to our success, both as individuals and as an organization.

Every day, we create, collect, use and share information resources that provide evidence of our business activities. These information resources help us to make informed decisions that support our managers, our peers, and our clients and ultimately provide results for Canadians. Information resources come in many different published and unpublished forms and must be managed regardless of communications source, information format, production mode or recording medium. Information resources include textual records (memos, reports, invoices, contracts, etc.), electronic records (e-mails, databases, web pages, data, etc.), communication media (telephone conversations, instant messages, wikis, blogs, podcasts, etc.), publications (reports, books, magazines), films, sound recordings, photographs, documentary art, graphics, maps, and artefacts. By properly managing information, we demonstrate that we understand our responsibility to both our colleagues and to Canadians and that we take this responsibility seriously.

But what does it mean to manage information resources properly?

This guide is designed to help you gain a basic understanding of information and records management concepts and show you how you can start applying them today. As these concepts begin to shape the way you work with information, you'll quickly discover both immediate and long-term benefits.

Managing information - Who is responsible?

We're all responsible

Because we all create, collect, use, and share information resources as part of our day-to-day work, we are all responsible for effectively managing those information resources while they are under our control.

As per the *Policy on Information Management* and related policy instruments, employees of the Government of Canada (GC) must do the following:

- document business activities and decisions;
- comply with institutional information management (IM) policies, directives, and standards, using approved tools, systems, and procedures;
- organize, file, and store information resources within the corporate repository, ensuring easy access when needed to make decisions, and to support program

- and service delivery;
- share and reuse information resources to support collaboration and facilitate business operations, respecting all legal and policy requirements;
- protect sensitive information, providing or restricting its access in accordance with law, regulation, and policy;
- be informed of and apply retention periods for information resources;
- protect and preserve information resources of business value critical to business resumption; and
- comply with the requirements of policies on official languages and privacy.

Your IM specialists are available to help you with these responsibilities, as needed.

Key principles for managing information in all media

The same principles apply to paper and electronic information

Support your business by applying these principles to the way you manage information resources. These principles promote the efficient use of institutional resources, make information easier to find in the future, and ensure its protection and preservation—all in accordance with business, legal, and policy requirements.

- Create or acquire information resources that support programs, services, and ongoing operations.
- Capture those information resources of business value by saving them within the corporate repository.
- Avoid collecting duplicate information resources.
- Share and reuse information resources, respecting legal restrictions.
- Ensure that information resources of business value are complete, accurate, current, relevant, and understandable.
- Support information access and retrieval, respecting privacy, policy, and legal requirements.
- Safeguard information resources of business value against unlawful access, loss, and damage.
- Ensure information resources of enduring business value are properly preserved.

The following sections of this guide offer simple and practical guidelines for applying these principles to both paper and electronic information. These guidelines help you to standardize the information management and recordkeeping techniques you already use on a regular basis, thereby saving you time right now and in the future when you have a need to find and access information.

Managing Information - In Practice

Throughout its life, information will need to be managed in different ways. The following is an overview of some of the practices recommended for you to apply to all information while it's in your care and control. While this guideline has been developed to be as complete as possible for a general audience, there may be additional practices and procedures in place in your institution, so we encourage you to consult your manager and IM specialists, as needed.

If you make a habit of applying these practices along with those specific to your institution, you will see a difference in the way you work. The information you need will be at your fingertips and it will be easy to share with your colleagues and managers. This alone can have a dramatic effect on the quality of your work life and the success of your organization.

Plan for your information needs

Think about the information you and your colleagues will need to accomplish your objectives and to make sound decisions. For example, ask yourself questions such as the following:

- What type of information will I need to support my work requirements, and who will need to access it?
- Will I need published information resources (e.g. books, magazines, databases, subscriptions, and online resources)? Do they already exist elsewhere, and can I use these resources to reduce duplication and costs?
- What volume of information will I need to manage on a regular basis?
- Will any information require security classification? If so, at what levels?
- Has a Privacy Impact Assessment been performed, or is it needed to address any privacy issues?

The answers to these questions can be used in developing a sound IM plan. Discuss these questions with your manager and then consult your IM specialists for further assistance.

For more information, see the section on [“Where You Can Find More Help”](#).

Create and collect information

As you create and collect information, identify its value to your institution and manage it accordingly, making sure that it's accessible to those who need it. Some recommended practices are listed below:

- Whenever possible, use electronic systems to create, collect, use, and manage information resources.
- Follow institutional naming conventions when identifying, filing, and storing information resources.
- File or save information resources in a corporate repository (e.g. electronic

- records management system).
- Do not forget to include email and instant messages of business value when saving information resources into the corporate repository. These should not be stored on your mobile device or in your email account as these locations do not meet the requirements for sharing, using, safeguarding and storing information resources of business value.
 - Preserve the integrity and value of information resources of business value by keeping the structure, context, and content intact to facilitate future searching and use.
 - Respect information security and privacy requirements.
 - Respect official languages policies and guidelines.

Structure, context, and content

An information resource's structure (format and links to other documents or attachments), its context (information about the sender, recipient or recipients, and the time and date of creation), and its content (identified in the subject line) represent key metadata elements—often referred to as "profile fields"—that preserve the value of the information resource in any medium, provided the elements remain intact. Failing to complete this information or removing or separating the associations of any one of these elements from an information resource compromises its authenticity, usefulness, and reliability.

Speak to your IM specialists to obtain more detailed advice on how you can put these practices to work in your own organization.

Organize your information

It is recommended that you organize your information in a logical and systematic way so that it's easy to find and share. Where possible, use standards, rules, and procedures established or adopted by your institution. For example:

- Organize all information resources according to your institution's classification system or taxonomies.
- Organize all published material according to the classification system of your institution's library.

Information that is well organized will help you to work better and also supports your need to respond efficiently and effectively to requests regarding access to information, privacy, and legal discovery. Classification systems are designed to manage information resources according to their business value, ensuring their proper retention and disposition.

For more information, see the "[Manage Information Based on its Value](#)" section.

The system you use to manage the information you work with will depend on the

standards and tools available in your institution. Consult your IM specialists for more information or advice.

Reuse and share information

Once you have organized your information resources, you will be able to quickly find and reuse them to make work life easier for you and others. While using and sharing information, please consider the following business rules:

- Comply with privacy, security, and legal restrictions.
- Whenever possible, use electronic media to share information resources (business systems, email, shared drives, corporate repositories, websites, and so on).
- Ensure that information remains complete, accurate, current, relevant, and understandable.
- Verify the accuracy and reliability of information, especially when conducting Web-related research.
- Implement version control protocols when editing electronic documents.
- Take advantage of institutional investments in information resources (magazine and journal subscriptions, databases, content management systems, online library services, and so on), while respecting copyright, licensing, and intellectual property rights.
- When retaining information that has been copied, indicate the source (and locator information), whether it is from an information resource already saved in a corporate repository, from a publication, or from a website.

Managing information to the way you work has many advantages. It saves you time and enables you to share information with others, reducing the duplication of effort and improving service delivery.

If you notice ways that these practices can help your organization to be more effective, communicate them to your manager. As always, your IM specialists are available to provide you with the advice you need.

Maintain and protect information

While protecting information includes guarding against unauthorized access, disclosure, or destruction, it also involves preserving the integrity and authenticity of the information. To accomplish this it is recommended that you do the following:

- Store all information in a manner that preserves its form and status, keeping its structure, context, and content intact.
- Protect information against loss, damage, unauthorized access, alteration, or

destruction. This includes informing contractors of their responsibility to protect information that has been entrusted to them.

- Mark each information resource according to its proper security classification, either on the paper document or in the appropriate metadata field in the electronic document profile. Avoid applying a label at higher or lower security level than it deserves.
- Protect classified and protected information by ensuring it isn't left in waste or recycle containers and by storing it in locked desks or cabinets after work hours and during extended periods of absence.
- Store classified information in approved locked cabinets. Only store it on open shelves if the room has been constructed according to the Secure Room "B" standards of the Royal Canadian Mounted Police.
- Avoid sending or storing any information above the security level for which your institutional network has been rated (normally Protected A or B).
- Avoid populating fields or subject lines with personal information or with words that imply the disclosure of personal details or legal or disciplinary actions against an individual, unless this relates to your main line of business (i.e. security).
- Implement effective access control procedures, ensuring that classified and protected information is only made available on a need-to-know basis to those who are authorized to access it. A security clearance does not automatically provide someone the right to see all information.

By taking these steps, we not only ensure access to the most reliable information today; we also preserve the value of information for future generations of Canadians.

All government information resources require some level of protection. There is a particular need, however, to properly mark and adequately protect and secure classified and protected information, in all media, as its compromise could bring injury to individuals or to the national interest as a whole.

If you notice areas that need improvement or think you need more help, speak to your manager. Then, contact your IM specialists, your security office representatives, or both to help you implement these practices.

For more information, refer to the *Directive on Departmental Security Management*. In addition, consult your organization's security manual to confirm the specific procedures that apply within your work environment, or contact your security office representative.

Transfer or destroy the right information at the right time

Not all information has the same value. While some will need to be kept long-term to support your institution's operational needs or to preserve information of enduring value, other information can be disposed of when it has outlived its usefulness.

To ensure that you are always working with relevant and reliable information, it is recommended you do the following:

- regularly destroy transitory records as soon as they are no longer needed, complying with your institution's IM and security procedures; and
- cooperate with IM specialists to properly transfer digital or paper copies of information resources of business value through the Library and Archives Canada (LAC) regulations and disposition authorities.

Applying these practices will make it much easier to quickly access the information you really need and will help to reduce storage and maintenance costs. However, please follow the guidelines of your institution, the GC, or both, as strict rules govern the disposal of government information.

For more information, see the section "[Manage Information Based on Its Value](#)".

If you see the need to dispose of information in your area, speak to your manager and consult with the appropriate IM specialist (e.g. the records or library IM specialist). For more information, see the "[Where You Can Find More Help](#)" section.

Manage Information Based on Its Value

Generally, as you go about your normal business activities each day, you generate and collect paper and electronic information resources. These information resources provide an important record of the actions you've taken, the decisions you've made, and the reasons for both, allowing for transparency and accountability.

Because of their value, it is vital that you ensure that such information resources exist for all of your business activities and decisions, whether they are generated naturally in the execution of a business process or specifically created to document that process. This requirement comes from the *[Directive on Information Management Roles and Responsibilities](#)*.

In order to ensure the ongoing value of these information resources of business value, capture them along with any relevant metadata (e.g. subject, author, transmittal data) to ensure that they are complete, authentic, and reliable. Retain information resources of business value in accordance with institutional records management standards and procedures, stored or profiled within a corporate repository, if available, and protected against damage and loss.

For more information, see the section on "[Managing Information - In Practice](#)." Your IM specialists can also provide extensive advice and support.

Document your business activities and decisions

The following are examples of the types of information resources that are of business

value and which you might create, acquire or collect to document business functions and activities:

- transactions – orders, receipts, requests, confirmations;
- interactions between clients, vendors, partners;
- planning documents – budgets, forecasts, work plans, blueprints (technical or engineering designs), information architecture schematics;
- reports, policy, briefing notes, memoranda, or other papers supporting business activities – all significant versions (those that were circulated for comment or that contain comments related to the substance of the content and provide evidence of the document's evolution), the final product, distribution information;
- meeting documents – agendas, official minutes, records of decision;
- records of contact with lobbyists (This supports the Lobbying Act that requires designated public office-holders to retain information about contact with lobbyists);
- committee documents – terms of reference, list of members;
- form letters or templates used to collect responses, related instructions, completed responses in any format;
- client records – applications, evaluations, emails, assessments;
- records of discussions, deliberations, or any situation related to any of the above that further documents the decisions made along with the logic used; and,
- information resources which could provide additional information for auditing and monitoring activities and programs.

Keep information only for as long as it is needed, then transfer or destroy it

The value of information doesn't only determine how it's used and protected but also when and how you can dispose of it. Many factors, including laws, regulations and information policies, and business needs affect how long information should be kept and what its ultimate outcome will be, e.g. in compliance with the Privacy Act, personal information must be kept for two years after the last administrative use, unless the individual consents to earlier disposal. Information resources of enduring value will be transferred to LAC. Still other information, such as transitory records, might only be needed for a very short period of time and can then be destroyed.

Transitory records are those information resources that are required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. They do not include records required by government institutions or Ministers to control, support, or document the delivery of programs, to carry out operations, to make decisions, or to account for activities of government.

– Source : [Multi-Institutional Disposition Authorities - Authority for the Destruction of Transitory Records](#)

Examples of transitory information resources include the following:

- working drafts of no particular significance that were never formally circulated;
- annotated drafts where annotations become part of a subsequent version and do not provide evidence of decisions related to the evolution of the final document;
- a copy of a document kept for ease of reference or convenience only;
- information that lacks logical or coherent organization and therefore does not have context; and
- data that has been used for an update process (including batch processing) and that is no longer needed to serve as backup or to support reconstruction of the master file or database.

Other information that should be deleted when no longer required:

- casual communications such as invitations to lunch; and
- personal documents stored on your computer or in your work area.

LAC authorizes the destruction of transitory records when they are no longer required for business purposes. You should consult, however, with your manager and IM specialists to know if there are specific institutional rules in place that provides guidance for transitory records.

Caution!

Transitory records, like all other information resources under the care and control of the institution are subject to Access to Information and Privacy (ATIP) legislation.

An exact copy of any information resources relevant to an ATIP request is made and retained for two years after the last administrative action by the ATIP office for the purpose of responding to an access or privacy request. This does not, however, remove the IM requirements of the original. Once the ATIP office has received an exact and complete copy of all information resources responsive to a request under the [Access to Information Act](#) or [Privacy Act](#), the information resource may continue to be managed according to its normal life cycle. The same applies to information resources that have to be retained

during any legal discovery process relating to the subject of the information resources.

Note: Your personal documents are not under control of the institution and are not subject to ATIP legislation or legal discovery processes. (Examples of personal documents include records accumulated before assuming a federal government position; materials pertaining to an individual's private affairs outside government services; and diaries, journals, or other personal notes prepared for other reasons than carrying on the work of the institution). If, however, you used personal removable devices to transport business related information resources, those information resources on the devices are subject to ATIP or legal discovery processes. Similarly, if you copy or create information resources on your home computer or other personal devices, these information resources are deemed to be under the care and control of the institution and are subject to the acts.

Storage of inactive information resources of business value

When information resources have not been consulted for an extended period of time, they are considered inactive. However, they may not yet have reached the end of their retention period. When this happens, inactive information resources of business value are sometimes transferred to more economical off-site storage facilities until the time comes to finally dispose of them, either by destroying them or transferring them to LAC. While they are in storage, you will still be able to access these information resources, whether for business purposes or to respond to ATIP or legal discovery requests. If you need to arrange for the storage of your inactive information resources, speak to your manager and to your institutional IM specialists.

The retention period is the period of time that information resources should be kept before they can be legally disposed. This period is as follows:

- established by the business managers in consultation with IM specialists;
- counted from the last administrative action performed on or using the information resource; and
- usually identified in years.

For example, financial records usually have a retention period that ends six fiscal years after the last administrative use.

Penalties for unauthorized destruction

Legislation stipulates that government information resources must be protected against unauthorized destruction.

The *Access to Information Act* criminalizes the intent to deny a right of access through destruction, mutilation, alteration, falsification, or concealment of a government record as well as directing or counseling an individual to do those things. Individuals who are found

guilty could face criminal charges, financial penalties, or both.

Managing Electronic Information

As more and more information is created and transmitted electronically, it's important to recognize that both electronic and paper-based information resources should be managed according to sound information management principles. Identify, capture, retain, protect, and preserve electronic information (including instant messages, email, and attachments) so that it continues to be available and accessible to support decision-making as well as program and service delivery.

Because electronic information is so easy to create and delete, managing it effectively becomes an issue of personal accountability. File current or frequently referenced information in a way that permits efficient and authorized access, while also disposing of transitory information as soon as it's no longer needed.

For more information, see the "[Manage Information Based on Its Value](#)" section.

Managing information on shared drives

Where there are no established procedures in an institution to manage electronic information or if you have electronic information resources that cannot be managed using the established procedures, your organization's shared drive can be used to store your electronic information resources. It is recommended that you have procedures in place to properly manage it. Name, inventory, and organize the electronic documents according to, or linking to, the institutional classification system if one is in place. Associating electronically stored information with the institutional classification structure facilitates locating and retrieving related information and applying life-cycle management procedures, including planned transfer or deletion. Keep in mind, however, that access to classified and protected material is restricted to authorized employees. Also, when using a shared drive, it is advised that file permissions are set to "read only" to ensure documents are not altered or easily destroyed.

If you don't have an institutional classification structure, your IM specialists can suggest effective alternate methods for organizing your shared drive.

Filing electronic information

The method you use to file information will depend on the policies, procedures, and tools available in your organization. Many institutions have deployed an Electronic Document and Record Management System (EDRMS) such as GCDOCS or Records, Document and Information Management System (RDIMS) or a comparable electronic business system to

capture these information resources. In most cases, these types of systems allow electronic documents, email messages and attachments, and digital images to be filed directly into a corporate repository according to an institutional classification structure. Once filed, they are managed according to established IM and recordkeeping policies, standards, and rules, ensuring their proper retention and disposition. Anyone with authorized access can search for and retrieve these information resources when they're needed.

If your organization doesn't have an electronic records and document management system speak to your manager and consult with the appropriate specialist (e.g. the records or library functional specialist) to find out more about your internal policies on filing electronic information. For more information, see the "[Where You Can Find More Help](#)" section.

What about email messages?

Emails and instant messages can also be of business value

Email messages that document decisions or actions pertaining to GC business are considered information resources of business value which are to be retained and managed accordingly, along with any attachments or metadata that contribute to their structure, context, and content. The same applies to instant messages, such as pin-to-pin, Blackberry Messenger, text messages, desktop chat, etc. For more information, see the section on "[Filing electronic information](#)."

Generally, the originator of an email or instant message will be responsible for retaining and filing the message (along with attachments). Sometimes, however, emails or instant messages will be received from private citizens or from people in other government institutions who don't have access to the institutional filing system. In these cases, the receiver usually has the responsibility for properly storing and retaining the message. Seek advice from your manager or IM specialists about who has the responsibility to retain and file the message.

File your email and instant messages

Properly file email messages and instant messages. Information of business value must be stored in the institution's corporate repository. It should not be stored indefinitely in your email application or on your hard drive as these do not meet the requirements for storing, safeguarding, sharing and protecting government information resources of business value. Nor should you simply rely on backup processes to store your email records. Information stored in backups is not identified, organized, or inventoried to facilitate access and retrieval or timely disposition. Additionally, there is no mechanism to ensure the information is current, relevant, or accurate, and you have no control over how long the

backup is retained. The volume and random nature of information in backups makes retrieval laborious and imprecise. Therefore, it is recommended to follow the procedures outlined in the section on "Filing electronic information."

A word about wikis, blogs, and collaborative spaces

Records are created in all media and through many different applications

Collaborative environments created or used by a federal institution to conduct business-related activities with either internal or external audiences are advised to have business rules and codes of conduct established for participants. The information contained in these environments comprise information resources that are subject to ATIP requests. Respecting to the extent possible the recommendations in this guideline, will enhance IM in collaborative environments.

Employees may contribute to externally hosted sites for social networking or collaborative activities. The information contained on these sites may or may not be considered information resources of business value but may nonetheless be subject to federal or provincial access to information legislation. In this light, it is worth remembering the following:

- Under the Values and Ethics Code for the Public Sector, public service employees are required to act at all times in such a way as to uphold the public trust and to perform their duties and arrange their private affairs such that public confidence and trust in the integrity, objectivity, and impartiality of government are conserved and enhanced; and,
- The Communications Policy of the Government of Canada stipulates that only ministers and designated spokespersons who receive appropriate instruction may represent the institution.

The Guideline to Acceptable Use of Internal Wikis and Blogs Within the Government of Canada provides practical advice and guidance on the acceptable use of wikis and blogs within the Government of Canada in the context of relevant policies and legislation.

Job Change Can Affect Information Management Practices

In today's work environment, it's not unusual for employees to change jobs quite often during their career. This trend can actually have a significant effect on how well we manage our information resources.

When leaving a job

When leaving your job, good information management practices as outlined below ensure that your colleagues can continue to access and manage the information and resources they need to do their jobs well. Regular attention to these activities (rather than waiting until you leave) will also help to minimize the stress often associated with a job change. It is recommended that you:

- Follow the internal policies for administrative closure for your business processes and discuss your responsibilities with your manager when leaving a job.
- Provide pertinent information about everything you leave for your successor, explaining why it will be needed.
- Remove all information resources not related to institutional business from any shared and personal drives.
- Transcribe any business-related information of business value contained in diaries, notebooks, or black books and place it into the corporate repository.
- Properly destroy or delete all transitory records, remembering that they cannot be destroyed during a related access or privacy request until an exact and complete copy has been provided to the ATIP office or during a legal discovery proceeding.
- Ensure that information resources of business value, in all media, are organized and filed according to the policies, standards, and procedures established or adopted by your institution so that the information continues to be accessible to other employees. Consult your manager and IM specialists to confirm the procedures in your organization. For more information, see the section on "[Managing Electronic Information](#)".
- Consult your IM specialists to ensure that files in your custody are transferred to the custody of another employee or to the appropriate repository.
- Create a list of job-related website addresses, a summary of ongoing projects and related contact information, and an inventory of information resources (including file or locator numbers) that will help your successor make the transition to his or her new job.
- Return material that has been borrowed from the library or records office.
- Cancel or forward subscriptions.
- Remove your name from distribution lists.

Contact your IM specialists for any supporting advice or assistance. For more information, see the "[Where You Can Find More Help](#)" section.

When starting a new job

Starting a new job provides you with an ideal opportunity to establish good practices for managing government information resources right from the start. The following are some recommended examples:

- See if any electronic and paper information resources of business value have

been transferred to your custody. Speak to your IM specialists to find out if there is a list of these that can be provided to you.

- Take note of any instructions or messages you receive regarding access to electronic tools such as a shared drive, business system or corporate repository(ies).
- Familiarize yourself with your IM responsibilities and practices by reviewing the information in this guide. Also, take advantage of any IM and recordkeeping awareness and training sessions that may be available. Contact your manager and IM specialists to obtain more information.

IM specialists are available to help you make the transition to your new job.

Where You Can Find More Help

This guide has been designed to provide a basic overview of the guidelines and practices associated with managing information within the GC. It does not, however, contain specific procedures for your particular work environment. Therefore, we encourage you to contact the following experts to confirm the information and records management responsibilities, procedures, and work tools that apply within your organization.

The experts

Information management (IM) specialists, in IM policy, records offices, the library, forms management, and mail services, are available to answer your IM questions. They can help you plan your information needs, determine the best way to organize the information you work with, learn how long to keep information, and find out what can be deleted or destroyed, along with many other important IM practices.

Your IM specialists also provide training on the use of various IM tools, and procedures, including document management, records and information management systems, classification structures, and library reference and research instruments.

Note: Members of this group (along with the ATIP specialists and others) are called "IM functional specialists" in the *Directive on Information Management Roles and Responsibilities*, where their responsibilities are defined.

The Access to Information and Access to Privacy (ATIP) office advises on requests received under the *Access to Information Act* or the *Privacy Act*, Privacy Impact Assessments, Info Source updates, and privacy issues (collection, use, disclosure, protection, retention, and disposal of personal information).

Security office representatives can help you understand the requirements pertaining to security classification, business continuity planning, and public key infrastructure (PKI).

Official languages office staff outline language requirements for distributing information to internal and external audiences.

The communications, public relations, or public affairs office can help you communicate effectively with the public, such as how to acknowledge receipt of a letter from the public.

The system administrator or help desk helps you to troubleshoot problems with software for electronic information management systems.

Legal services offers interpretation and advice pertaining to all legal matters, including ATIP and contract matters.

Enquiries

For more information on this guideline, please contact [TBS Public Enquiries](#).

Appendix A - Definitions

Note: This glossary forms an appendix to all information management guidelines and will be continuously updated as guidelines are developed.

access to information (*accès à l'information*)

Provides a right of access to information in records under the control of a government institution on the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of government information should be reviewed independently of government.

Source: *Access to Information Act, subsection 2(1)*

disposition authorities (*Autorisations de disposer*)

Disposition authorities are the instruments that enable government institutions to dispose of records which no longer have operational value, either by permitting their destruction (at the discretion of institutions), by requiring their transfer to Library and Archives of Canada, or by agreeing to their alienation from the control of the Government of Canada.

Source: *Directive on Recordkeeping*

Corporate Repository (ies) (*dépôt(s) ministériel (s)*)

A corporate repository is one in which information resources of business value are captured, preserved and managed through the lifecycle. It contains both specified physical or digital storage space and the associated IM infrastructure required for its maintenance, including policies, procedures, business rules, etc.

Source: *Directive on Recordkeeping*

functional specialist (*spécialiste fonctionnel*)

An employee who carries out a role and responsibilities that require function-specific knowledge, skills, and attributes, such as in one of the following priority areas: finance, human resources, internal audit, procurement, materiel management, real property, or information management.

Source: *Policy on Information Management*

information architecture(*architecture d'information*)

The structure of the information components of an enterprise, their interrelationships, and the principles and guidelines governing their design and evolution over time. Information architecture enables the sharing, reuse, horizontal aggregation, and analysis of information.

Source: *Policy on Information Management*

information life cycle (*cycle de vie de l'information*)

The life cycle of information management encompasses the following: planning; the collection, creation, receipt, and capture of information; its organization, use, and dissemination; its maintenance, protection, and preservation; its disposition; and evaluation.

Source: *Directive on Information Management Roles and Responsibilities*

information management (*gestion de l'information*)

A discipline that directs and supports effective and efficient management of information in an organization, from planning and systems development to disposal or long-term preservation.

Source: *Policy on Information Management*

information management functional specialist (*spécialiste fonctionnel en gestion de l'information*)

An employee who carries out roles and responsibilities that require function-specific knowledge, skills and attributes related to managing information such as those found in records and document management, library services, archiving, data management, content management, business intelligence and decision support, information access, information protection and information privacy.

The roles and responsibilities of information management functional specialists support departmental objectives and programs with planning, tools or services which provide accurate, reliable, current, and complete information to the appropriate people, in the appropriate format, at the appropriate time.

Source: *Directive on Information Management Roles and Responsibilities*

information resources (*ressources documentaires*)

Any documentary material produced in published and unpublished form regardless of communications source, information format, production mode or recording medium. Information resources include textual records (memos, reports, invoices, contracts, etc.), electronic records (e-mails, databases, internet, intranet, data etc.), new communication media (instant messages, wikis, blogs, podcasts, etc.), publications (reports, books, magazines), films, sound recordings, photographs, documentary art, graphics, maps, and artefacts.

Source: *Directive on Recordkeeping*

information resources of business value (*ressources documentaires à valeur opérationnelle*)

Are published and unpublished materials, regardless of medium or form that are created or acquired because they enable and document decision-making in support of programs, services and ongoing operations, and support departmental reporting, performance and accountability requirements.

Source: *Library and Archives Canada: Business Value - Concepts*

publication (*publication*)

Any library matter that is made available in multiple copies or at multiple locations, whether without charge or otherwise, to the public generally or to qualifying members of the public by subscription or otherwise.

Publications may be made available through any medium and may be in any form, including printed material, online items, or recordings.

Source: *Policy on Information Management*

record (*document*)

Records are information created, received, and maintained by an organization or person for business purposes, legal obligations, or both, regardless of medium or form.

Source: *Directive on Recordkeeping*

recordkeeping (*tenue des documents*)

A framework of accountability and stewardship in which records are created, captured, and managed as a vital business asset and knowledge resource to support effective decision-making and, within the GC, achieve results for Canadians.

Source: *Policy on Information Management*

Records, Document and Information Management System (RDIMS)(*Le Système de gestion des dossiers, des documents et de l'information (SGDDI)*)

An electronic enterprise records and document management solution that increases efficiency in organizing, structuring and sharing information in a corporate repository. RDIMS gives

departments and agencies the ability to manage the information life cycle and fulfill their Information Management policy obligations.

Source: *Public Works and Government Services Canada - Information Technology Services - Product Catalogue*

retention period (*délais de conservation*)

The period of time information resources are kept before they can be legally disposed. This period is negotiated between business managers and IM specialists, counted from the final action performed on or with the record, and usually identified in years. For example, financial records usually have a retention period that ends six fiscal years after the final action.

Source: *A Guideline for Employees of the Government of Canada: Information Management Basics*

senior executive (*Cadre supérieur*)

An executive-level manager designated by the deputy head of the institution to provide a department-wide focus on the management of information.

Source: *Directive on Information Management Roles and Responsibilities*

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Exhibit B of the affidavit of Jonathan Guindon
affirmed before me on November 24, 2022

2022-11-24

X 

Patrice Bellerose (#225403)
Commissioner of Oaths
Signed by: Bellerose, Patrice



File No. 6240-10-2016/001

DISPOSITION AUTHORIZATION # 2016/001 FOR TRANSITORY RECORDS

Authorization

Pursuant to Section 12 of the *Library and Archives of Canada Act* (the Act), the Librarian and Archivist of Canada (LA) consents to the disposition of transitory records, including their destruction, by government institutions in accordance with the following terms and conditions.

A. SCOPE OF THE DISPOSITION AUTHORIZATION (DA)

A.1 This DA covers all transitory records under the control of any government institution subject to the Act. The following supplements the terms and definitions provided in the Act for the interpretation of this DA:

- “control” means the decision-making authority over the records.

A.2 **Transitory records are not of business value.** They may include records that serve solely as convenience copies of records held in a government institution repository, **but do not include any records** that are required to control, support, or document the delivery of programs, to carry out operations, to make decisions, or to provide evidence to account for the activities of government at any time.

B. IMPACT ON EXISTING DISPOSITION AUTHORIZATIONS

B.1 Disposition authorizations 90/000 (Transitory Records) and 2010/003 (Disposal of Transitory Information Resources of government institutions) are hereby revoked and of no effect.

C. DISPOSITION AUTHORIZATION

C.1 Government institutions may destroy transitory records without further reference to LAC.

C.2 Nothing in this DA shall be taken or deemed to authorize the retention, the transfer, destruction or other disposition of any government record in contravention of a rule or order of a court or tribunal or in contravention of an express provision in any other Act (e.g., *Canadian International Trade Tribunal Act*, *Federal Court Rules*, *Access to Information Act*, *Privacy Act*).

C.3 To ensure the integrity of its application, government institutions shall convey the provisions of this DA to all those responsible for its application.

C.4 A government institution’s disposition of transitory records pursuant to this DA constitutes its undertaking to comply with all the DA’s terms and conditions.

C.5 This DA comes into effect on the date it is signed by the Chief Operating Officer of Library and Archives Canada.

Signed on 2016/02/03



Chief Operating Officer, Library and Archives Canada

Exhibit C of the affidavit of Jonathan Guindon
affirmed before me on November 24, 2022

2022-11-24

X 

Patrice Bellerose (#225403)
Commissioner of Oaths
Signed by: Bellerose, Patrice

Departure Checklist

Cette liste de vérification s'adresse à tous les employés qui quittent l'Office définitivement ou pour une période prolongée, par exemple pour un détachement, un congé de maladie prolongé ou un congé de maternité.

Mesures à prendre immédiatement

Remplissez et enregistrez ce document dans le SGDDI avec:

- Nom: (votre nom) – Formulaire de départ
- Numéro de dossier GC-007-0245-001-03/EDP-03ELECTRONIC (copier-coller dans le profil)
- Accorder les droits d'accès Normaux à:
 - ESB_ISG_WWSD
 - ESB_ISG_FSAM
 - ESB_ISG_ITSD
 - ESB_SRSIM_IM
 - Votre gestionnaire
 - Professionnel de l'administration

Envoyez sous forme de référence SGDDI, le formulaire à votre gestionnaire, votre professionnel de l'administration et à Services-TI-IT@otc-cta.gc.ca pour les informer de votre départ.

Remarque : si la date de départ change, informez-en votre gestionnaire, mettez à jour le formulaire et répondez au courriel de confirmation Track-IT que vous avez reçu.

Si vous êtes muté(e) ou en situation de détachement à un autre ministère, enregistrez la lettre d'offre numérisée-la au besoin) dans le SGDDI comme décrit ci-dessus, et annexe-la à votre courriel initial à Services-TI-IT@otc-cta.gc.ca

Vos dernières semaines

GÉNÉRALITÉS

Transfert des connaissances – Lisez [notre guide pour vous savoir comment procéder](#).

Annulez toutes les demandes que vous avez présentées (Track-It, évaluations ergonomiques, etc.).

Mettez à jour vos coordonnées sur les pages [GCpédia où votre nom apparaît à titre de personne-ressource du ministère](#).

Si vous siégez à un comité, informez le président du comité de votre départ prochain.

Informez votre adjoint administratif si vous devez faire transférer de l'équipement ergonomique, ou encore du matériel ou des logiciels adaptés ou accessibles à votre nouvelle organisation.

SERVICES DU PERSONNEL ET DU MILIEU DE TRAVAIL

Entrez toutes les demandes de congé et d'heures supplémentaires en suspens et assurez-vous que votre gestionnaire les approuve.

Si vous êtes gestionnaire, approuvez les demandes de congé de vos employés dans [Mes RHGC](#).

Mettez à jour vos coordonnées dans [Phénix et Mes RHGC](#).

Avec votre gestionnaire, mettez à jour votre entente de gestion du rendement dans l'[application GRFP](#).

Si vous êtes gestionnaire, mettez à jour toutes les ententes de gestion du rendement de vos employés dans l'[application GRFP et libérez-les](#).

Mettez à jour les renseignements de votre compte [GCcampus](#).

This checklist is for all employees that are leaving the Agency permanently or for an extended period of time such as a secondment, extended sick leave, or maternity leave.

Steps to complete immediately

Complete and save this document to RDIMS with:

- Name: (your name) - Departure Form
- File number: GC-007-0245-001-03/EDP-03ELECTRONIC (you can copy/paste to profile)
- Give normal access rights to:
 - ESB_ISG_WWSD
 - ESB_ISG_FSAM
 - ESB_ISG_ITSD
 - ESB_SRSIM_IM
 - Your Manager
 - Administrative Professional

As an RDIMS reference, send the form to your manager, administrative professional and Services-TI-IT@otc-cta.gc.ca to inform them of your departure.

Note: if the departure date changes, inform your manager, update the form and reply to the Track-IT email confirmation you received.

If you're transferring or on a secondment to another government department, save the letter of offer (digitize if needed) to RDIMS as described above and include it to your initial email to Services-TI-IT@otc-cta.gc.ca

Your Final Weeks

GENERAL

Knowledge transfer – read [our guide](#) to help you through this process.

Cancel any requests you submitted (Track-Its, ergonomic assessments, Information Management etc.).

Update contact information on any [GCpedia](#) pages where you are listed as a departmental contact.

If you are on a committee, inform the committee chair(s) of your upcoming departure.

Inform your administrative assistant if you need to transfer any ergonomic equipment or adaptive/accessibility hardware or software to your new organization.

Start cleaning up your desk (return office supplies to supplies cabinets, bring home personal belongings).

WORKPLACE AND WORKFORCE SERVICES

Input all outstanding leave and overtime requests, and ensure your manager approves them.

If you are a manager, approve employees' leave requests in [MyGCHR](#).

Update your contact information in [Phoenix](#) and [MyGCHR](#).

With your manager, update your performance management agreement in the [PSPM Application](#).

If you are a manager, update all employees' performance agreements in [PSPM Application](#) and release them.

Update your [GCcampus](#) account information.

Annulez toute formation, y compris la formation linguistique (à l'exclusion des cours gratuits offerts par l'École de la fonction publique du Canada).

Examinez les [obligations liées aux conflits d'intérêts et à l'après-mandat](#).

Si vous participez à une action en matière de relations de travail, communiquez avec le conseiller en relations de travail au sujet du cas.

Remplissez un [questionnaire confidentiel de fin d'emploi ou prévoyez une entrevue en personne \(facultatif\)](#)

GESTION DE L'INFORMATION

Retournez tous les fichiers physiques à l'équipe de la gestion de l'information*.

Transférer toute ressources électronique à valeur opérationnelle au SGDDI. Reportez-vous aux [SGDDI-@2088199-Conseils de nettoyage du papier](#).

Numérisez et enregistrez dans le SGDDI toute ressources papier à valeur opérationnelle.

Jeter toute information transitoire papier ou électronique. Reportez-vous aux [SGDDI-@2088199-Conseils de nettoyage du papier](#).

Identifiez dans le formulaire ci-dessous le nouveau dépositaire des documents SGDDI.

SERVICES FINANCIERS ET APPROVISIONNEMENT

Retournez les cartes d'achat et les cartes de voyage aux Finances (le cas échéant). (1702, 1749 or 1750)

Retournez tout le matériel prêté aux services d'approvisionnement (le cas échéant). (1721H or 1721G)

Votre dernière journée

GÉNÉRALITÉS

Assurez-vous que votre bureau est vide (c.-à-d. exempt d'effets personnels ou de dossiers physiques) et propre.

Préparez un message d'absence pour vos courriels et votre boîte vocale pour annoncer votre départ et donner les coordonnées de votre remplaçant.

SERVICES DU PERSONNEL ET DU MILIEU DE TRAVAIL

[Prenez une saisie d'écran de votre solde de congés et de vos demandes de congés en attente dans Mes RHGC, ou imprimez-les.](#)

Imprimez une copie de votre dernier talon de chèque de paye et de vos relevés d'impôt à partir de [Phénix](#).

SERVICES DE LA TECHNOLOGIE DE L'INFORMATION ET ACCOMODATION ET SÉCURITÉ

Retournez tout l'équipement au service de dépannage de GI-TI (ordinateur portatif, téléphone cellulaire, clés USB). (1716)*.

Déposez la carte d'accès, les clés et les serrures dans la boîte située au 1716*.

*** En raison de la situation actuelle, vous serez contacté pour fixer un rendez-vous pour le retour de tous les équipements, dossiers physiques, cartes d'achat et les cartes de voyage. Si des restrictions de voyage sont en place (ex. traverser des frontières provinciales), une lettre d'autorisation peut être fournie.**

Cancel any training, including language training (does not include free courses through the Canada School of Public Service).

Review [conflict of interest and post-employment obligations](#).

If you are involved in a labour relations action, contact the labour relations advisor regarding the case.

Complete a [confidential exit questionnaire](#) or schedule an in-person interview (optional)

INFORMATION MANAGEMENT

Return all physical files to the Information Management team*.

Transfer any e-information of business value to RDIMS. Refer to the [RDIM-#2088199-CTA Paper Clean-up Tips](#).

Digitize and save to RDIMS any paper information of business value.

Dispose of any paper or electronic transitory information. Refer to the [RDIM-#2088199-CTA Paper Clean-up Tips](#).

Identify in the form below, the new custodian of RDIMS documents.

FINANCE AND PROCUREMENT

Return acquisition cards and travel cards to Finance (if applicable)*.

Return any loaned equipment to Procurement (if applicable)*.

Your Final Day

GENERAL

Ensure your office is empty (e.g. no personal belongings or physical files) and clean.

Leave an out-of-office message on your e-mail and voicemail notifying of your departure and your alternate contact's information.

WORKPLACE AND WORKFORCE SERVICES

Take a screen shot or print your leave balance and pending leave requests in [MyGCHR](#)

Print a copy of your last pay stub and tax slips from [Phoenix](#).

Information

INFORMATION TECHNOLOGY SERVICES AND ACCOMMODATION AND SECURITY

Return all IT equipment (laptop, cell phone, USB keys) to IT Services. (1716)*.

Drop access card, keys and any locks in the box located at 1716*.

*** Due to the current situation, you will be contacted to setup an appointment for the return of all possible equipment, physical files, acquisition cards and travel cards. If travel restrictions are in place (i.e. crossing provincial borders) a letter of authorization can be provided.**

Formulaire de départ / Departure Form

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Nom de l'employé(e) – Name of Employee Click or tap here to enter text.		Type de départ / Type of departure Choose an item.		Date du départ – Departure Date Click or tap to enter a date.	
Direction générale – Branch Click or tap here to enter text.		Division ou Centre de responsabilité Division or Responsibility Centre Click or tap here to enter text.		Num. de bureau / Office Number Click or tap here to enter text.	
Avant son départ, l'employé(e) doit s'assurer que les actions de la liste de vérification ci-haut ont été complétés et les sections ici-bas ont été signés électroniquement .			Prior to departure, the employee must ensure that all actions from the above check-list have been completed and that the sections below have been e-signed .		
Employé(e) et gestionnaire / Employee and Manager					
Aux termes de la <i>Directive sur la tenue de documents</i> , je confirme par les présentes que toute l'information à valeur opérationnelle (papier ou électronique) que j'ai reçue ou créée pendant la période de mon emploi est gérée au moyen du système officiel de gestion de l'information de l'Office (SGDDI) . J'atteste par les présentes qu'il reste seulement à supprimer l'information transitoire et personnelle qui a été sauvegardée ou créée sur le réseau ou le ou les lecteurs locaux (C:\, H:\, U:\, etc.). Je suis conscient que ce processus est assujéti à une vérification, et une fois que l'information est supprimée, elle ne peut pas être récupérée. J'atteste que l'information qui sera supprimée n'a aucune valeur opérationnelle ou ne comprend aucune information relative à une demande de conservation liée à un litige ou à une demande active d'accès à l'information. J'ai été informé de l'occasion de participer, sur base volontaire, à une entrevue de sortie confidentielle avec les Services du personnel et du milieu de travail.			As defined by the <i>Directive on Recordkeeping</i> , I hereby certify that all information of business value (paper or electronic) received or created during the term of my employment are managed via the Agency's official information management system (RDIMS) . I hereby certify that only transitory and personal information that I have saved or created on the network or local drive(s) (C:\, H:\, U:\, etc.) remains to be deleted. I am aware that this process is subject to audit, and once the information is deleted, it cannot be recovered. I certify that the information to be deleted has no business value and/or does not include information related to a litigation hold and/or an active access to information request. I have been informed of the opportunity to participate, on a voluntary basis, in a confidential exit interview with Workplace and Workforce Services.		
1	Nouveau dépositaire des documents dans le SGDDI New custodian of RDIMS documents		Name / Nom Click or tap here to enter text.		
2	Employé(e) Employee		Instructions pour signature électronique / E-Signature instructions <div style="text-align: center; font-size: 2em; font-weight: bold;">X</div> <hr style="border: 1px solid black; margin-top: 5px;"/>		
3	Gestionnaire Manager		Instructions pour signature électronique / E-Signature instructions <div style="text-align: center; font-size: 2em; font-weight: bold;">X</div> <hr style="border: 1px solid black; margin-top: 5px;"/>		

Court File No.: **A-102-20**

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Appellant

- and -

ATTORNEY GENERAL OF CANADA

- and -

Respondent

CANADIAN TRANSPORTATION AGENCY

Intervener
(Responding Party)

**WRITTEN REPRESENTATIONS OF THE INTERVENER,
CANADIAN TRANSPORTATION AGENCY**

(Pursuant to Rule 365 of *Federal Courts Rules*)

INTRODUCTION

1. These are the written representations of the Intervener, Canadian Transportation Agency ("Agency") in response to the Motion to Compel Answers and Documents and Document Preservation Order of Air Passenger Rights in its judicial Review of the Agency's Statement on Vouchers.
2. The following material that is not included in the moving party's motion record will be relied upon by the Agency:

- 1) Notice of Application, filed on April 9, 2020.

- 2) Affidavit of Barbara Cuber, affirmed on April 21, 2022.
- 3) Affidavit of Jonathan Guindon, affirmed on November 24, 2022.

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

3. The Applicant claims that the Agency has been playing a game of "hide and seek". However, the Agency's constant efforts to respond to the Applicant's repeated requests for production more closely resembles a game of "whack- A –mole": the response to one only yields another popping up elsewhere.
4. In the present instance, the Applicant was supposed to bring any motions regarding objections or refusals subsequent to the cross-examination on affidavit of Ms. Cuber. With one exception, none of the documents now being sought were objected to or refused during the 6.5 hour long cross-examination. Instead, the Applicant has brought yet another motion seeking another search for documents and another round of production.
5. To justify this most recent request for another search and further production, the Applicant claims, without evidence, that the Agency failed to search for encrypted emails, and that contrary to the evidence, the Agency failed to make inquiries regarding the Outlook accounts of employees who have since left the Agency. Both of these assertions are false.
6. The Applicant also claims that some documents may have been deleted because the Agency failed to ensure preservation of documents when the Application was filed. A closer look at what was actually requested by the Applicant at the time, as well as the steps that were taken by the Agency to preserve and search for documents, both in relation to the

Application and in response to Access to Information Requests, demonstrates clearly that this is not the case.

B. Statement of Facts

Original Rule 317 Request

7. The Applicant served and filed the Notice of Application on April 9, 2020. Included in the Notice of Application was a request pursuant to Rule 317. The Rule 317 request sought: copies of all correspondences, meetings, notes, and/or documents involving the appointed members of the Agency; copies of all correspondences, meetings, notes, and/or documents between the Agency and the travel industry; and copies of all correspondences, e-mails, and/or complaints that the Agency received from passengers. The request did not include all third party correspondence.¹
8. On April 14, 2020, Allan Matte, counsel of record at the time, sent a notification to relevant Agency personnel, including members. He informed them of the Notice of Application and the request for material pursuant to Rule 317. He notified personnel of the need to identify and preserve documents responsive to this request.²
9. Ms. Jones was not included in the list of recipients.³

Access to Information Requests

10. On or around May 5, 2020, the Agency received a first Access to Information request in relation to the Statement on Vouchers (A-2020-00002). It sought unpublished notes and exchanges that led to the Statement on Vouchers and subsequent FAQ answers on vouchers

¹ Notice of Application, filed on April 9, 2020 [**Notice of Application**], at para. 35 [Tab 1, p. 14].

² Affidavit of Ms. Barbara Cuber (Apr. 21, 2022) [**Cuber Affidavit**], at para. 8 [Tab 2, p. 18].

³ Transcript of Cross-Examination of Ms. Barbara Cuber (Sept. 16, 2022) [**Cuber Cross-Examination**], Applicant's Motion Record, at Q65-Q81 and Q118-Q122 [Tab 9, pp. 308-312 and 322-323].

and refunds.⁴

11. A second Access to Information request (A-2020-00029) was received by the Agency on or around August 25, 2020. The request was made by Gabor Lukacs, President and Director of Air Passenger Rights. That Request sought all documents relating to the drafting, review, approval and/or publication of the Statement on Vouchers between March 11 and April 9, 2020.⁵

Applicant' Rule 318 Motion

12. On January 3, 2021, the Applicant brought a motion pursuant to Rule 318 of the Federal Court Rules expanding from its original Rule 317 request for materials to include "all CTA records" from March 9 to April 8, 2020 in respect of the Statement on Vouchers.⁶

October Order

13. On October 15, 2021, the first order for the disclosure of documents was issued by the Court (October Order).⁷ It included, *inter alia*, that the Agency shall disclose to the Applicant "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".⁸

14. In response to the October Order, the Agency's search consisted of a review of search results from the two Access to Information requests in 2020 for documents concerning the development and publication of the Statement on Vouchers; a review of search results

⁴ Cuber Affidavit, at para. 17[Tab 2, p. 20].

⁵ Cuber Affidavit, at paras. 21-22 [Tab 2, p. 21].

⁶ Reasons for Order of Gleason, J.A. (Oct. 15, 2021) at para. 10, Applicant's Motion Record [Tab 4, p. 214].

⁷ Order and Reasons for Order of Gleason J.A. (Oct. 15, 2021), Applicant's Motion Record [Tab 3, p. 205] and [Tab 4, p. 209].

⁸ Order of Gleason, J.A. (Oct. 15, 2021) at para. 3, Applicant's Motion Record [Tab 3, p. 206].

collected by Transport Canada and sent to the Agency in response to a request in March 2021 by the Standing Committee on Transport, Infrastructure and Communities for the disclosure of communications between the Agency and Transport Canada, including the Minister of Transport's office, concerning cancelled plane tickets; an electronic search of the Outlook accounts of all Agency personnel in November 2021; manual searches by Agency personnel in Outlook accounts and the Agency's corporate repository called RDIMS; and various discussions with Agency staff, including Information Management and Information Technology staff.⁹

April Order

15. On April 11, 2022, the Court rendered the second document production order (April Order), requiring the disclosure of certain specific documents and that the Agency serve and file an affidavit detailing what has been done to ensure the required disclosure was made.¹⁰

16. In order to comply with the April Order, the Agency conducted an additional search of documents, this time by contacting invitees to the meetings that were identified in the April Order and asking for responsive documents.¹¹

17. On April 21, 2022, again in compliance with the April Order, the Agency produced an affidavit from Barbara Cuber, Senior Counsel for the Agency, on the steps that were taken to comply with the October Order.¹²

July Order

⁹ Cuber Affidavit, at paras. 16-46 [Tab 2, pp. 19-24].

¹⁰ Order of Gleason, J.A. (April 11, 2022), Applicant's Motion Record [Tab 5, p. 227].

¹¹ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, pp. 357-358 and 403].

¹² Cuber Affidavit, at para. 5 [Tab 2, p. 17].

18. On July 19, 2022, the Court issued an Order (July Order) dismissing a motion brought by the Applicant respecting Ms. Cuber's alleged failure to attend a cross-examination, and ordering Ms. Cuber to produce 3 of the 25 categories of documents listed in the Direction to Attend at her cross-examination. The Order also clarified numerous points related to document disclosure, specifically with respect to privilege claims, the disclosure of Twitter and info@ messages, and required the Agency to state whether any other documents related to a meeting of Agency Members on March 24, 2020 exist.¹³

Cross-Examination and Adviselements

19. On September 16, 2022, the Applicant cross-examined Ms. Cuber for 6.5 hours on the issue of document disclosure. The Agency took a number of requests for undertakings under advisement during the cross-examination.¹⁴

20. Following the cross-examination, the Agency performed several additional document searches in Agency personnel Outlook accounts as requested by the Applicant during cross-examination. Specifically, the Agency re-performed an electronic search of its Outlook accounts for the period of March 9 to March 25, 2020 inclusive with the search terms "refund* OR voucher* OR reimburse* OR crédit*"¹⁵.

21. The Agency performed a search of RDIMS for the period March 9 to March 25, 2020 for the same search terms.¹⁶

22. On October 14, 2022, the Agency responded to the Applicant's request for undertakings. As part of this response, the Agency provided a detailed explanation of the additional

¹³ Order of Gleason, J.A. (July 19, 2022), Applicant's Motion Record [Tab 7, p. 254].

¹⁴ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, p. 283].

¹⁵ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, pp. 370-371].

¹⁶ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, p. 377].

searches it conducted following cross-examination. Of these additional searches in Outlook and RDIMS, one previously undisclosed document was produced.¹⁷

Additional Requests

23. On November 1, 2022, the Applicant wrote to Agency counsel, requesting two documents.

The first was a document whose disclosure was the subject of an Agency objection in its October 14, 2022 response, namely an e-mail exchange between Marcia Jones and Ms. Cuber on January 5, 2021. The second was an email exchange between Agency staff and Transport Canada staff in March 2020.¹⁸

24. On November 7, 2022, the Applicant wrote again to Agency counsel, requesting disclosure of an additional document, which it received in redacted form in connection with an Access to Information request to the Agency in 2020, namely an exchange between Agency staff after a meeting on March 22, 2020.¹⁹

25. On November 10, 2022, Agency counsel responded to the Applicant's November 1 and 7 letters by repeating its objection to the production of the exchange between Ms. Jones and Ms. Cuber as irrelevant and privileged; providing the exchange between Agency and Transport Canada staff with the proviso that the contents of the exchange were not responsive to any disclosure orders by the Court; and objecting to the production of the Agency staff exchange after March 22, 2020 on the basis that they are excluded from production under the October Order, do not concern the Statement on Vouchers and are

¹⁷ Exhibit S of the affidavit of Gabor Lukacs, affirmed on November 14, 2022 [**Lukacs Affidavit**], Applicant's Motion Record [Tab S, p. 97].

¹⁸ Exhibit AG of the Lukacs Affidavit, Applicant's Motion Record [Tab AG, p. 176].

¹⁹ Exhibit AH of the Lukacs Affidavit, Applicant's Motion Record [Tab AH, p. 179].

privileged.²⁰

PART II - STATEMENT OF THE POINTS IN ISSUE

26. Whether an Order should be issued for the Agency to conduct a search and/or recovery for the TC-CTA Documents.

27. Whether an Order should be issued for the Agency to produce the following two sets of documents:

- (a) C5 Urgent Debrief Call Documents; and
- (b) Jones-Cuber Email

PART III - STATEMENT OF SUBMISSIONS

A. Applicant's Misrepresentations

28. Before responding to the Applicants submissions, it is necessary address at least two misrepresentations in order to set the record straight:

- (a) The Applicant's characterization of the communications between Agency and Transport Canada staff as a "backchannel"; and
- (b) The alleged "gap" relating to the preservation of documents.

"Backchannel" Characterization

29. The Applicant's characterization of the communications between Agency and Transport Canada staff as a "backchannel" (TC-CTA Documents) is misleading.²¹ Both the Agency and Transport Canada have a role to play in the regulation of the air industry. There is

²⁰ Exhibit AI of the Lukacs Affidavit, Applicant's Motion Record [Tab AI, p. 183].

²¹ Notice of Motion, at para. 1, Applicant's Motion Record [Tab 1, p. 1].

nothing irregular about staff from both institutions exchanging information during what has widely been accepted as the worst crisis in the air industry's history. To properly fulfill its regulatory functions, the Agency must consult and engage government officials and other external parties, including the air industry and other interested groups.

Alleged "Gap" Relating to the Preservation of Documents

30. The Applicant claims that Ms. Cuber's cross-examination revealed that some documents, in particular the TC-CTA Documents discussed above, may have been deleted because the Agency failed to ensure preservation of documents when the Application was filed. In support of this claim, the Applicant cites the fact that Ms. Jones was not included in the notice to preserve documents sent by Agency counsel on April 14, 2020.²²

31. However, a close look at what was requested at the time the Application was filed on April 9, 2020 demonstrates that the TC-CTA Documents would not have been included in any of the categories of materials requested. The Applicant requested a copy of the following material:

1. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents involving the appointed members of the Agency relating to the Statement and/or issuance of vouchers or credits in relation to the COVID-19 incident, including both before and after publication of the Statement;
2. The number of times the URLs for the Statements were accessed (French: <https://otc-cta.gc.ca/fra/message-concernant-credits>; English: <https://otc-cta.gc.ca/eng/statementvouchers>) from March 24, 2020 onward;
3. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents between the Canadian Transportation Agency and the travel industry (including but not limited to any travel agencies, commercial airlines, industry groups, etc.) from February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected by COVID-19; and

²² Written Representations of the Moving Party, at para. 3, Applicant's Motion Record [Tab 10, p. 470].

4. Complete and unredacted copies of all correspondences, e-mails, and/or complaints that the Agency received from passengers between February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected by COVID-19.²³ [**Emphasis added**]

32. As shown above, the correspondences that were requested at the time the Application was filed were limited to those involving appointed members of the Agency, the travel industry and received from passengers. The notice to preserve documents would have been drafted and sent out accordingly.

33. In fact, it was not until January 3, 2021, 9 months after the Application was filed, that the Applicant brought a motion pursuant to Rule 318 of the *Federal Courts Rules* expanding the request for materials to include "all CTA records"²⁴ and resulting in the October 2021 Order, which required the disclosure of "all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA".²⁵ Prior to this, the Agency cannot be faulted for only including in the notice to preserve documents those that were identified and requested by the Applicant at the time the Application was filed.

34. This does not mean, however, that the TC-CTA Documents or any other relevant documents were freely deleted by Agency personnel in the manner described by the Applicant prior to the October 2021 Order.²⁶ By this time, the Agency had received two Access to Information requests in relation to the Statement on Vouchers.²⁷

35. The first Access to Information request was received by the Agency on May 5, 2020, only

²³ Notice of Application, at para. 35, [Tab 1, p. 14].

²⁴ Reasons for Order of Gleason, J.A. (Oct. 15, 2021) at para. 10, Applicant's Motion Record [Tab 4, p. 214].

²⁵ Order of Gleason, J.A. (Oct. 15, 2021), at para. 5, Applicant's Motion Record [Tab 3, p. 207].

²⁶ Written Representation of the Moving Party, at para. 13, Applicant's Motion Record [Tab 10, p. 473].

²⁷ Cuber Affidavit, at paras. 16, [Tab 2, p. 19].

1 month after the Application was filed and 8 months prior to the Applicant's motion under Rule 318.²⁸ The second Access to Information request, made by the Applicant's President and Director, was received by the Agency on August 25, 2020.²⁹

36. Any relevant documents from Ms. Jones and her team, including any TC-CTA Documents, would have been captured and preserved within the search results of the two access to information requests.³⁰

B. Order to Search for Documents is Neither Necessary, Nor Possible

37. The Applicant is requesting that the Court issue an Order requiring the Agency to perform another search for the TC-CTA Documents.³¹ The Agency submits that the requested Order is neither necessary, nor possible.

38. To support the request for such an Order, the Applicant alleges that the Agency's previous searches were fundamentally flawed in two respects. First, the Applicant claims, without evidence, that the Agency's searches did not include encrypted emails.³² Second, the Applicant claims, contrary to the evidence, that minimal efforts were made to inquire with the IT Department as to whether the Outlook accounts of former employees could be searched after they had left the Agency.³³ Both of these assertions are false.

Agency's Search for Documents Included Encrypted Emails

39. The Agency's search for documents included both a general search for encrypted emails, within the context of the Access Information requests, and a specific search for emails

²⁸ Cuber Affidavit, at paras. 17, [Tab 2, p. 20].

²⁹ Cuber Affidavit, at para. 21, [Tab 2, p. 21].

³⁰ Cuber Affidavit, at paras. 16 and 23, [Tab 2, pp. 19 and 21].

³¹ Written Representations of the Moving Party, at paras. 27-44, Applicant's Motion Record [Tab 10, pp. 480-485].

³² Written Representations of the Moving Party, at para. 31, Applicant's Motion Record [Tab 10, p. 482].

³³ Written Representations of the Moving Party, at para. 42, Applicant's Motion Record [Tab 10, pp. 485].

whose subject line contained the words "From MinO". The search requested by the Applicant is therefore not necessary.

40. As discussed above, the categories of documents requested by the Applicant at the time the Application was filed would not have included the TC-CTA Documents. This is however of little or no consequence because the documents themselves, had they still been in the Agency's possession, would have been captured by the Agency's search for documents responsive to the Access to Information request received by the Agency on May 5, 2020. This search was performed in accordance with Government of Canada Treasury Board policy, including the steps required to ensure that encrypted emails are searched.³⁴

41. Using as a reference the 4 recommendations in the Guideline on searching encrypted e-mails in response to information requests cited by the Applicant:³⁵

1. The Agency has in place a process for transferring emails of business value, including encrypted emails, to its corporate repository;³⁶
2. The Agency has in place a process for searching the content of encrypted emails;³⁷
3. Training and support is provided to users.³⁸
4. The Agency has in place proper IM exit protocols for email management when employees depart.³⁹

42. In addition to the general search, the Agency also conducted a specific search for emails whose subject line contained the words " From MinO".⁴⁰ The search produced no results.

³⁴ Affidavit of Jonathan Guidon, Affirmed November 24, 2022 [**Guidon Affidavit**], at paras. 7-8 [Tab 3, p. 52-53].

³⁵ Exhibit "D" of Lukács Affidavit, Applicant's Motion Record, [Tab 2D, p. 38];

³⁶ Guidon Affidavit, at paras. 15-18 [Tab 3, p. 54-55].

³⁷ Guidon Affidavit, at paras. 22-31 [Tab 3, p. 56-57].

³⁸ Guidon Affidavit, at para. 14 [Tab 3, p. 54].

³⁹ Guidon Affidavit, at paras. 19-21 [Tab 3, p. 55].

⁴⁰ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, pp. 360-361].

43. The Applicant's assumption that the Agency failed to search for encrypted documents seems to be premised on the fact that, during cross-examination, Ms. Cuber stated she was unaware of the distinction between encrypted and unencrypted emails.⁴¹ This however does not mean that encrypted emails were not searched. Ms. Cuber's affidavit makes reference to the fact that she was assisted in her search for documents by the Director of Registrar, Secretariat and Information Management, the Access to Information and Privacy Division, and the Information Technology Services Division, amongst others.⁴²

44. The Applicant requested several undertakings during the cross examination of Ms. Cuber, which were taken under advisement and the majority responded to. Instead of bringing the current motion in the absence of any evidence regarding encrypted emails, the Applicant could have sought an undertaking and the Agency would have provided an answer.⁴³

Existence of Encrypted Emails Between CTA and Transport Canada

45. The Agency does not deny that encrypted emails between the CTA and Transport Canada may have existed. However, they were most likely deleted sometime before the Access to Information request received by the Agency on March 5, 2020, because they would not be considered of business value and there was no reason for them to be transferred to the Agency's corporate repository.⁴⁴ The unencrypted segments of the CTA-TC Documents that have been disclosed or obtained through access to information requests, would certainly suggest that this was the case.⁴⁵

⁴¹ Cuber Cross-Examination, at Q295, Applicant's Motion Record [Tab 9, p. 366].

⁴² Cuber Affidavit, at para. 4 [Tab 2, p. 17].

⁴³ Exhibit S of Lukacs Affidavit, Applicant's Motion Record [Tab S, p. 97].

⁴⁴ Guidon Affidavit, at paras. 9-13 [Tab 3, pp. 53-54].

⁴⁵ Exhibit "I" of Lukács Affidavit [Tab 2I, p. 65] and Exhibit "AJ" [Tab 2AJ, p. 189].

The Accounts of Departed CTA Personnel

46. The Applicant seeks an order from the Court requiring the Agency to search and/or recover the Outlook accounts for Mr. Streiner, Ms. Jones and Ms. Hurcomb.⁴⁶ As Ms. Cuber explained during her cross examination, the accounts of former Agency personnel are closed and cannot be searched.⁴⁷ This means that they have been permanently deleted and cannot be recovered.⁴⁸ The order sought by the Applicant is therefore not possible.
47. To support the request for such an Order, the Applicant claims, contrary to the evidence, that minimal efforts were made to inquire with the IT Department as to whether the Outlook accounts of former employees could be searched after they had left the Agency.⁴⁹ This is false.
48. It is clear from Ms. Cuber's cross-examination that such inquiries were made.⁵⁰ Ms. Cuber's affidavit also makes reference to the fact that she was assisted in her search for documents by the Director of Registrar, Secretariat and Information Management, the Access to Information and Privacy Division, and the Information Technology Services Division, amongst others.⁵¹
49. In fact, recovery tapes, which are kept for the sole purpose of disaster recovery, were checked by IT personnel in the hopes of being able to search for the deleted emails. They could not.⁵²

⁴⁶ Written Representations of the Moving Party, at paras. 41-44, Applicant's Motion Record [Tab 10, pp. 464-485].

⁴⁷ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, pp. 296-298 and 328 -331].

⁴⁸ Guidon Affidavit, paras. 21 and 32-35 [Tab 3, p. X].

⁴⁹ Written Representations of the Moving Party, at para. 42, Applicant's Motion Record [Tab 10, p. 485].

⁵⁰ Cuber Cross-Examination, Applicant's Motion Record [Tab 9, pp. 296-298 and 328 -331].

⁵¹ Cuber Affidavit, at para. 4 [Tab 2, p. 17].

⁵² Cuber Affidavit, at paras. 51-54 [Tab 2, p. 26]; Guidon Affidavit, at para. 34 [Tab 3, p. 58].

50. This does not mean that the Agency allowed to freely “dispossess” itself of relevant documents when there is clear notice of pending litigation, as claimed by the Applicant.⁵³

As discussed above, the Agency has in place proper IM exit protocols for email management when employees depart, including the requirement that departing personnel certify that information that will be deleted after their departure has no business value and/or does not include information related to a litigation hold and/or an active access to information request.⁵⁴

51. Finally, as was the case for encrypted emails, the Outlook accounts of the employees in question would have been searched and relevant documents preserved in the context of the two Access to Information requests in 2020, which occurred prior to their departure.⁵⁵

52. Again, the Applicant requested several undertakings during the cross examination of Ms. Cuber, which were taken under advisement and the majority responded to. If there could be any doubt left after Ms. Cuber's cross-examination as to whether the accounts of former Agency personnel could be searched, the Applicant could have asked for an undertaking instead of bringing the present motion. The Agency would have provided an answer.⁵⁶

C. Order for the CTA to Disclose Two Sets of Existing Documents

53. The Applicant also seeks the production of two email exchanges. The Agency submits that neither exchange is relevant to the Application.

C5 Urgent Debrief Call Documents

54. The documents, which consist of an email exchange between staff that occurred after the

⁵³ Written Representations of the Moving Party, at para. 43, Applicant's Motion Record [Tab 10, p. 485].

⁵⁴ Affidavit of Jonathan Guidon, at paras. 19-21 [Tab 3, p. 55-56].

⁵⁵ Cuber Affidavit, at paras. 16-26 [Tab 2, pp. 19-21].

⁵⁶ Exhibit S of Lukacs affidavit, Applicant's Motion Record [Tab S, p. 97].

March 22, 2020 call, were purely internal to the Agency and were not shared with its members. The Agency is of the view that the documents are not relevant and they were therefore not disclosed. As stated by the Court at paragraph 27 of the October Order:

[T]he 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.⁵⁷

55. That there is no basis to suggest that these documents would contain information about whether CTA members or third parties were involved, is further evidenced here by who the participants are in the exchange, which is clearly visible in the redacted copy that the Applicant received in the Access to Information disclosure package.⁵⁸ Tom Oommen, Martin Dalpé, and John Touliopolos were, during the relevant period, all employees of the Determinations and Compliance Branch at the Agency, and there is no evidence that they had anything to do with the Statement on Vouchers.

56. In fact, the redacted portions of the exchange makes no mention of the Statement of Vouchers. Rather, the discussion pertains to the granting of an exemption under section 64 of the CTA, which sets out notice requirements for the discontinuance of certain air services. The only mention of the Statement of Vouchers, that it is likely that a statement will be issued, appears unredacted at the bottom of the document and is already in the Applicant's possession.⁵⁹

⁵⁷ Reasons for Order of Gleason, J.A. (Oct. 15, 2021) at para. 27 [Tab 4, p. 219].

⁵⁸ Exhibit "AE" of Lukács Affidavit, Applicant's Motion Record [Tab 2AE, pp. 167 -172].

⁵⁹ Exhibit "AE of Lukács Affidavit, Applicant's Motion Record [Tab 2AE, p. 172].

57. The other participants, Valerie Lagacé, who is in CC, and John Dodsworth, who actively participates in the exchange, are respectively Senior General Counsel and Senior Counsel at the Agency.

58. Should the Court find that the document is relevant to the Applicant's allegation of bias, the Agency is also of the view that the exchange is protected by solicitor-client and deliberative privilege. The Respondent, the Attorney General of Canada, has brought a motion respecting privilege, as has been directed by the Court.

Jones-Cuber Email

59. During the cross-examination, Ms. Cuber made reference to an email she had received from Ms. Jones on January 5, 2021, inquiring about the Applicant's Rule 317 motion.⁶⁰ The Agency submits that the email is not relevant.

60. The Applicant claims that the email is relevant for two reasons: first, that it is relevant to the "(in)adequacy of the CTA's document search and is within the scope of the cross-examination";⁶¹ and second, that it is also relevant to two issues the panel hearing the Application would need to consider, namely "whether there was spoliation of evidence and whether an adverse inference should be drawn".⁶² It is difficult to understand, based on Ms. Cuber's statements regarding the email during the cross-examination, how the Applicant came to these conclusions.

61. Nothing Ms. Cuber said suggests that the email would assist in explaining the alleged "gap" in the preservation of documents, if there is one, nor that it contains a discussion regarding

⁶⁰ Cuber Cross-Examination, at Q48-Q52, Q77, Q146, and Q390, Applicant's Motion Record [Tab 9, pp. 303-305, 311, 331-332, and 394].

⁶¹ Written Submissions of the Moving Party, at paras. 59-61, Applicants Motion Record [Tab 10, pp. 488-489].

⁶² Written Submissions of the Moving Party, at para. 62, Applicants Motion Record [Tab 10, p. 489].

deleted or encrypted emails.⁶³ The Jones-Cuber email does not address these issues and it will not be of any assistance to the Applicant in establishing spoliation of evidence or in arguing that an adverse inference should be drawn.

62. Should the Court find that the document is relevant, the Agency is also of the view that the exchange is protected by solicitor-client and/or litigation privilege. The Respondent, the Attorney General of Canada, has brought a motion respecting privilege, as has been directed by the Court.

D. Costs

63. The Agency does not seek costs and submits that in the circumstances it should not be ordered to pay costs.

PART IV - ORDER / RELIEF SOUGHT (HEADING 1)

64. For the foregoing reasons, the Agency respectfully requests that this Honourable Court:

- (a) Dismiss the Applicant's request for an Order that the Agency conduct a search and/or recovery for the TC-CTA Documents.
- (b) Dismiss the Applicant's request for an Order that the Agency to produce the following two sets of documents: (a) C5 Urgent Debrief Call Documents; and (b) Jones-Cuber Email.
- (c) Such further and other relief as this Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa / Gatineau, in the Province of Ontario / Quebec, this 24th day of November, 2022.

⁶³ Cuber Cross-Examination, at Q48-Q52, Q77, Q146, and Q390, Applicant's Motion Record [Tab 9, pp. 303-305, 311, 331-332, and 394].



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