

September 12, 2022

**VIA EMAIL AND URGENT**Judicial Administrator, Federal Court of Appeal  
90 Sparks Street, 5th floor  
Ottawa, Ontario K1A 0H9

Dear Madam or Sir,

**RE: Air Passenger Rights v. AGC and CTA (A-102-20)**

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We are counsel for the Applicant. Please bring this letter to Gleason J.A.'s attention on an **urgent** basis. Her Ladyship is seized of all pre-hearing issues, pursuant to the Order of July 19, 2022. This letter relates to the CTA's disclosure before the cross-examination scheduled for this Friday.

On August 5, 2022, the CTA and its counsel provided an undertaking to disclose the three sets of documents in para. 7 of the Order of July 19, 2022 (i.e., items 9, 12, and 13 on the Direction to Attend), without any conditions or reservations.<sup>1</sup> The undertaking indicated that the disclosure would be made five days in advance (i.e., by September 11, 2022). The Applicant regrets to inform the Court that the CTA has refused to honour the undertaking, and instead, unilaterally applied redactions to pertinent portions of item 9 and refused to disclose item 12.

At para. 51 of the Reasons for Order of July 19, 2022, the Court provided that issues arising from the disclosure in advance of the cross-examination can be addressed by way of informal motion made by letter. The Applicant is writing to seek the Court's assistance to enforce the undertaking the CTA provided and para. 7 of the Order of July 19, 2022 for disclosure. Before writing to the Court, the CTA was provided a draft of this letter, with a request that the CTA forthwith rectify the failures to honour the undertaking. The CTA had refused to do so and the CTA's letter is enclosed.

**CTA's Breach of the Undertaking Relating to Item 9**

Near the close of business Ottawa time on Friday, September 9, 2022, the CTA sent the Applicant a two-page letter enclosing six-pages of documents that were purportedly responsive to items 9, 12, and 13 of the Direction to Attend.<sup>2</sup> With respect to item 9, the CTA's undertaking (and this Court's order of July 19, 2022) never permitted the CTA to unilaterally decide what can be redacted from the documents. However, the CTA applied a redaction on the basis that:

*The latter document contains a line with sensitive technical information about the Canadian Transportation Agency's ("Agency") infrastructure exchange. That line has been redacted.*

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<sup>1</sup> **Schedule A:** Email from CTA on August 5, 2022. **Schedule B:** Applicant's letter on August 29, 2022.

<sup>2</sup> See **Schedule C:** Letter from CTA on September 9, 2022 and six pages of enclosures.

The Applicant offered the CTA to produce item 9 on a “counsel’s eyes only basis” but was refused.

The line that has been redacted is the “Results:” field and, presumably, would contain the conclusions/results from the search, including any provisos to the search results. The (in)adequacy of the CTA’s search for pertinent emails is at the heart of the cross-examination, and hotly contested. Allowing the CTA to unilaterally withhold the “Results:” of its Microsoft Outlook search would seriously hamper the truth-seeking function of cross-examination.

The Applicant requests that the Court issue an Order that item 9 be produced forthwith, without any redactions.

### **CTA’s Breach of the Undertaking Relating to Item 12**

With respect to item 12, the CTA refused to produce the documents, claiming they do not exist and citing their previous written representations. It is unclear whether the CTA is claiming that those documents never existed, or that they “no longer exist” (i.e., have now been deleted). The circumstances here are rather concerning because the Court ordered item 12 to be disclosed so that the Court, and the Applicant, can inquire why two pertinent emails (below) were deleted.

Item 12 deals with Microsoft Outlook system logs showing when two pertinent emails (one email between Ms. Jones and Transport Canada before the Statement on Vouchers was issued; and one email announcing the Statement on Vouchers to third-parties) were deleted from the Outlook account of Ms. Jones (the CTA’s former Chief Strategy Officer).

The CTA’s excuse for refusing to produce is simply para. 62 of its May 12, 2022 representations:

*62. The Direction to Attend seeks documents which, in addition to being irrelevant, do not exist or have otherwise not been identified:<sup>3</sup> [item 12, amongst other items]*

The CTA’s reliance on its own May 12, 2022 submissions is baseless for two reasons:

Firstly, Courts have held that after an undertaking was given, the party giving the undertaking cannot unilaterally renege on it by claiming the subject-matter was improper or irrelevant.<sup>4</sup> The same reasoning should apply to reneging on undertakings based on “non-existence” of the documents that are subject of the undertaking, after having ample time to verify their existence.

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<sup>3</sup> [emphasis added]

<sup>4</sup> [RE/MAX, LLC v. Save Max Real Estate, Inc.](#), 2021 CanLII 53761 (FC) at paras. 11-15.

After the Court issued the July 19, 2022 Order for disclosure of items 9, 12, and 13, the Applicant corresponded with the CTA requesting disclosure in advance of the cross-examination. In that regard, the CTA stated the following on August 5, 2022:<sup>5</sup>

...  
The Agency is willing to provide in advance of the cross-examination the documents that are responsive to the 3 categories mentioned in the Court's July 19, 2022 Order. We undertake to provide those documents 5 days prior to the cross-examination.

*As for the remaining steps and schedule, we agree with the AGC's manner of proceeding as set out below.....*

The CTA had a substantial amount of time to verify if documents for item 12 existed **before** giving the undertaking on August 5, 2022. It seems highly unusual for an officer of this Court to provide an undertaking to produce documents, if that document does not exist (or no longer exist). To the extent the documents for item 12 existed at the time the undertaking was given on August 5, 2022, it is unclear why they now ceased to exist just one month later.

After the CTA's undertaking on August 5, 2022, the Applicant and the CTA also exchanged numerous correspondences regarding the cross-examination. However, the CTA never raised the prospect that "no such documents exist" for item 12.

Secondly, the May 12 submission was not supported by any affidavit and is, in any event, ambiguous on whether the CTA was claiming that item 12 "do[es] not exist" or "otherwise ha[s] not been identified."

Respectfully, this appears to be a further attempt by the CTA to relitigate the July 19, 2022 Order at the last minute. The Court had already ordered disclosure of item 12, and the CTA never sought a reconsideration or correction of that Order. The issue of disclosing item 12 is *res judicata*.

The Applicant is seeking Directions from the Court on addressing the CTA's failure to produce item 12, when this Court had issued a specific Order on July 19, 2022. The Applicant submits it would be appropriate for a senior employee of the CTA, who is responsible for managing its Microsoft Outlook, to provide a detailed affidavit on why the Microsoft Outlook logs do not exist (or no longer exist). The Applicant should also be permitted to cross-examine that affiant.

The CTA has, thus far, provided no explanation regarding item 12 except bald assertions of "non-existence." Throughout this file, there have been numerous instances of the CTA asserting that documents did not exist, but later revealing that there were responsive documents.

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<sup>5</sup> See **Schedule A**, with emphasis added.

**Conclusion**

The Applicant requests that the Court issue a Direction or Order regarding item 9 in advance of the cross-examination, if possible. With respect to item 12, the Applicant requests that the Court issue a Direction or Order on the manner of addressing the CTA's "non-existence" assertions, including the provision of the affidavit referred to above, with a right to cross-examination.

Although the CTA had introduced these issues at the last-minute, the Applicant fully intends to proceed with the cross-examination on September 16, 2022, as scheduled. In the event that the CTA does not produce the aforementioned documents (i.e., item 12 and unredacted item 9) before the cross-examination, the Applicant also requests that it be permitted to reconvene the cross-examination, at the CTA's cost, to ask questions relating to the aforementioned documents.

Should the Court have any directions, we would be pleased to comply.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN  
Barrister & Solicitor

**Cc:** (1) Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada, and (2) Mr. Kevin Shaar, counsel for the Canadian Transportation Agency



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VIA EMAIL: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

September 12, 2022

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

Dear Mr. Lin:

**Re: *Air Passenger Rights v Attorney General of Canada***  
**Court File No.: A-102-20**

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On August 5, 2022, the Agency made the undertaking to disclose the documents that are responsive to the three categories mentioned in the Court's July 19, 2022 Order, five days prior to the cross-examination (by September 11, 2022). This is exactly what was done on September 9, 2022.

It should come as no surprise to the Applicant that there are no responsive documents in relation to item 12. As stated in our letter of September 9, 2022, the Agency's written representations contained in its Motion for Relief from Production, dated May 12, 2022, made it clear that no such documents exist or otherwise have not been identified. Should any questions remain regarding the search for such documents, either prior to May 12, 2022 or since the Court's July 19, 2022 Order, they can be put to the Agency's affiant during the upcoming cross-examination.

As for item 9, the Agency explained in its letter of September 9, 2022, that the single line was redacted because it contains sensitive technical information about the Agency's infrastructure exchange. In short, it is a pathway. It does not contain "conclusions/results from the search, including any provisos to the search results". It is in not in anyway relevant to the "(in)adequacy of the CTA's search for pertinent emails". In the normal course of things, this should not require the Court's intervention. That being said, should any questions remain regarding the single line redaction, they can be put to the Agency's affiant during the upcoming cross-examination.

Finally, the suggestion in your draft letter to the Court that the Agency and its counsel have acted with some sort of malfeasance is inappropriate. We trust that you will make the necessary adjustments. The Agency will, of course, respond in due course.

Sincerely,

Kevin Shaar  
Counsel  
Legal Services Directorate  
Canadian Transportation Agency  
15 Eddy Street, 19th Floor

Gatineau, Quebec K1A 0N9

Tel: 613-894-4260

Fax: 819-953-9269

Email: [Kevin.Shaar@otc-cta.gc.ca](mailto:Kevin.Shaar@otc-cta.gc.ca)

Email: [Servicesjuridiques.LegalServices@otc-cta.gc.ca](mailto:Servicesjuridiques.LegalServices@otc-cta.gc.ca)

c.c.: Sandy Graham and Lorne Ptack, Counsel for the Attorney General of Canada,  
via email: [sandy.graham@justice.gc.ca](mailto:sandy.graham@justice.gc.ca), [Lorne.Ptack@justice.gc.ca](mailto:Lorne.Ptack@justice.gc.ca)

# **Schedule A**



Simon Lin <simonlin@evolinklaw.com>

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## A-102-20 -- Availability for Cross-Examination and Timetable for the Application

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Kevin Shaar <Kevin.Shaar@otc-cta.gc.ca>

Fri, Aug 5, 2022 at 12:16 PM

To: "Ptack, Lorne" <Lorne.Ptack@justice.gc.ca>, Simon Lin <simonlin@evolinklaw.com>

Cc: "Graham, Sandy" <Sandy.Graham@justice.gc.ca>, "Services Juridiques / Legal Services (OTC/CTA)" <Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca>, "Schmidt, Elizabeth" <Elizabeth.Schmidt@justice.gc.ca>

Dear Mr. Lin

Counsel and the Agency's affiant are not available for cross-examination on the following dates:

August: 8-31

September: 1, 8, 9, 30

October: 10, 14, 26

November: 15

The Agency is willing to provide in advance of the cross-examination the documents that are responsive to the 3 categories mentioned in the Court's July 19, 2022 Order. We undertake to provide those documents 5 days prior to the cross-examination.

As for the remaining steps and schedule, we agree with the AGC's manner of proceeding as set out below.

Regards,

[Quoted text hidden]

[Quoted text hidden]

Thank you.

[Quoted text hidden]



**Evolink Law Group**

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: 604-620-2666

F: 888-509-8168



[www.evolinklaw.com](http://www.evolinklaw.com)

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On Wed, Jul 27, 2022 at 6:47 AM Kevin Shaar <[Kevin.Shaar@otc-cta.gc.ca](mailto:Kevin.Shaar@otc-cta.gc.ca)> wrote:

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]



**Evolink Law Group**

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: 604-620-2666

F: 888-509-8168

[www.evolinklaw.com](http://www.evolinklaw.com)

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On Tue, Jul 26, 2022 at 1:52 PM Kevin Shaar <[Kevin.Shaar@otc-cta.gc.ca](mailto:Kevin.Shaar@otc-cta.gc.ca)> wrote:

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]



[Quoted text hidden]

[Quoted text hidden]

# **Schedule B**

August 29, 2022

**VIA EMAIL**

Canadian Transportation Agency  
**ATTN : Mr. Kevin Shaar**  
15 Eddy Street  
Gatineau, Québec K1A 0N9

Dear Mr. Shaar,

**RE: Air Passenger Rights v. AGC and CTA (A-102-20)**

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Enclosed for service please find the Direction to Attend for the cross-examination on Ms. Cuber's affidavit on September 16, 2022 at 10AM EST, as agreed by the parties and the CTA.

**The Scope of the Cross-Examination**

As the Court confirmed in the Reasons for Order of July 19, 2022 [**July 19 Reasons for Order**], "it is open to the applicant to ask relevant questions regarding steps taken to comply with **all** the disclosure Orders."<sup>1</sup> The disclosure Orders include the October 15, 2021 Order, the April 11, 2022 Order, and the Order of July 19, 2022.

In light of the Court's clear statement on the permissible scope of the cross-examination, we trust that Ms. Cuber will ensure that she is duly informed about steps taken to comply with **all** the disclosure Orders (i.e., the October 15, 2021 Order, the April 11, 2022 Order, and the Order of July 19, 2022), and not simply the October 15, 2021 Order.

**Documents that Ms. Cuber Must Bring with Her**

With respect to the Direction to Attend, the enclosed Direction to Attend is identical to the one dated April 22, 2022, with the exception of the attendance date/information and items 26-30. Items 26-30 arise from correspondences sent by, or documents disclosed by, the CTA after the original April 22, 2022 Direction to Attend was served.

The Court decided in the July 19 Reasons for Order that items 9, 12, and 13 are to be disclosed. We greatly appreciate the CTA undertaking to providing these documents five (5) days prior to the cross-examination (i.e., by **September 11, 2022**).

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<sup>1</sup> [emphasis added] July 19 Reasons for Order at para. 47.

For items 1-8, 10-11, and 14-25, the Applicant is cognizant that the July 19 Reasons for Order stated that there was, at the time of the motion, an insufficient evidentiary foundation for their production.<sup>2</sup> The Court stated that it was “without prejudice to the right of the applicant to request further disclosure if answers given during the cross-examination establish that further disclosure must be ordered to ensure that all relevant documents are produced.”<sup>3</sup>

As we had previously advised, we are maintaining these items in the Direction to Attend solely because the case law indicates that production can only be enforced if it is in the Direction to Attend.<sup>4</sup> The Applicant had requested the CTA to waive this technicality, if the CTA wishes for the Direction to Attend to include items 9, 12, and 13 only. Unfortunately, the CTA refused to waive this technicality, which would put the Applicant (and the Court) in a catch-22 situation.

The CTA can state its objections to items 1-8, 10-11, and 14-25 on the record at the cross-examination. The Applicant does not intend to hold the affiant in default, if she does not bring items 1-8, 10-11, and 14-25 to the cross-examination. However, the Applicant reserves its right to seek production later on if a necessary evidentiary foundation has been established.

With respect to the newly added items 26-30, if the CTA has any objections, we invite the CTA to state them on the record at the cross-examination, as per the accepted practice.<sup>5</sup>

### **Conclusion**

As previously discussed, the cross-examination is presently scheduled for one-day. In the event that the cross-examination is prolonged due to unreasonable objections, we reserve the right to set a date for the continuation. We thank you in advance for your cooperation.

We look forward to receiving items 9, 12, and 13 by **September 11, 2022**.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN, Barrister & Solicitor

Cc: Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Respondent

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<sup>2</sup> July 19 Reasons for Order at para. 49.

<sup>3</sup> [emphasis added] July 19 Reasons for Order at para. 50.

<sup>4</sup> *Bruno v. Canada (Attorney General)*, 2003 FC 1281

<sup>5</sup> *Héneault et Gosselin Inc. v. Entreprises P.F. St-Laurent Inc.*, [1998] F.C.J. No. 281 at paras. 1-3, 4(4), 8

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

– and –

**ATTORNEY GENERAL OF CANADA**

Respondent

– and –

**CANADIAN TRANSPORTATION AGENCY**

Intervener

**DIRECTION TO ATTEND**

TO: Barbara Cuber

YOU ARE REQUIRED TO ATTEND A CROSS-EXAMINATION for your affidavit affirmed on April 21, 2022 on behalf the Canadian Transportation Agency [**Affidavit**], on **Friday, September 16, 2022 at 10:00 am (Eastern Time)** via Zoom:  
Meeting ID: 829 5447 1580      Passcode: 071979

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

- A. Notification of Agency Personnel on April 14, 2020 Regarding Application**
1. With reference to the Affidavit at paragraph 8, the original notification that was sent on April 14, 2020, including the names of the recipients.
  2. With reference to the Affidavit at paragraph 8, all the responses from the recipients in respect of the notification mentioned therein.
- B. Inquiries for Documents with Former Agency Personnel**
3. All written correspondences, between October 15, 2021 to April 22, 2022, between Ms. Cuber, and Ms. Marcia Jones (former Chief Strategy Officer) or Mr. Scott Streiner (former Chairperson), in respect of compliance with the October Order (as defined in the Affidavit) and/or April Order (as defined in the Affidavit), including any requests to Ms. Jones and/or Mr. Streiner to assist in providing and/or locating documents.

4. All written correspondences, between October 15, 2021 to April 22, 2022, between a member or staff of the Canadian Transportation Agency (other than Ms. Cuber), and Ms. Jones or Mr. Streiner, in respect of compliance with the October Order and/or April Order, including any requests to for assistance in providing and/or locating documents.
5. The Canadian Transportation Agency's policy on retaining of data on computer hard drives and mobile devices of departing personnel.

**C. Inquiry with Ms. Lesley Robertson, Office of the Chairperson**

6. With reference to the Affidavit at paragraph 33, all written correspondences with Ms. Lesley Robertson in respect of the inquiry and/or search for documents responsive to the October Order and/or the April Order.
7. With reference to the Affidavit at paragraph 34, copies of the five documents.

**D. Inquiry with Mr. Guindon and Other Information Technology Personnel**

8. With reference to the Affidavit at paragraphs 37-38, all written correspondences with Mr. Jonathan Guindon or personnel in the Information Technology Services Division [collectively, **Information Technology Personnel**] regarding the search for documents responsive to the October Order and/or the April Order.
9. With reference to the Affidavit at paragraph 38, all documents showing the search terms employed for the electronic search referred to therein.
10. With reference to the Affidavit at paragraphs 38-39, the list of Agency staff whose Outlook accounts returned documents in the 799 item search results.
11. With reference to the Affidavit at paragraph 38, documents showing if searches were made on the Outlook accounts of the former Chief Strategy Officer (Marcia Jones) and the former Chairperson (Scott Streiner).
12. The Outlook system logs showing when the following emails were deleted from Ms. Marcia Jones' Outlook account:
  - (a) Email received by Ms. Marcia Jones on March 18, 2020 from Mr. Colin Stacey with the subject line "FW: From MinO: Air Transat."
  - (b) Email sent by Ms. Marcia Jones on March 25, 2020 with the subject line "Update: CTA measures/Mise à jour: mesures prises par l'OTC."

**E. Searching the Canadian Transportation Agency's Corporate Repository**

13. With reference to paragraph 13 of the Affidavit, all documents showing the search terms that were employed for the search(es) made on RDIMS (the Canadian Transportation Agency's corporate repository) for documents responsive to the October Order and/or the April Order.

**F. Records of or Recordings of the March 9-25, 2020 Meetings**

14. With reference to paragraph 38 of the Affidavit, printouts from the Outlook calendars for Mr. Scott Streiner and Ms. Marcia Jones of the scheduled events between March 18-25, 2020, including the weekend of March 21-22, 2020.
15. With reference to the April 20, 2022 Documents, the first page of Appendix C1.pdf shows the meeting invite from Mr. Streiner with his dial-in code of 935311571, a printout from the teleconferencing platform showing all conferences that were hosted using this dial-in code between March 9 and 25, 2020, including the weekend of March 21-22, 2020.
16. With reference to paragraph 58 of the Affidavit, a printout from the teleconferencing platform listing all the meetings between March 9 and 25, 2020 that were recorded.

**G. Inquiries after Producing the Initial Documents on December 14, 2021**

17. With reference to paragraph 42 of the Affidavit, the written documents showing what "the existing search results" were.
18. With reference to the documents disclosed by the Canadian Transportation Agency on April 20, 2022 [**April 20, 2022 Documents**], a printout of the Outlook search results relied upon by Ms. Amanda Hamelin or other Information Technology Personnel to identify the April 20, 2022 Documents.

**H. Document Referred to in the April 20, 2022 Documents Package**

19. With reference to the April 20, 2022 Documents, page 47 of Appendix C1.pdf refers to a "Circulate updated Members Committee Agenda" for March 24, 2020. Please provide the Members Committee Agenda referred to therein.

**I. Microsoft Outlook Backups**

20. With reference to paragraph 53 of the Affidavit, the Canadian Transportation Agency's policy document on Outlook retention standards referred to in paragraph 53 of the Affidavit (i.e., periods of 10 days and 12 weeks).
21. With reference to paragraph 54 of the Affidavit, all written correspondences between Ms. Cuber and a member or staff of the Canadian Transportation Agency, regarding retrieving the Outlook backup tapes for searching.
22. With reference to paragraphs 53-54 of the Affidavit, a list of all the backup tapes for Outlook that are still being kept, including the dates covered by those backup tapes.
23. The Canadian Transportation Agency's policy on retaining backup of Outlook documents other than on backup tapes, such as backups on Amazon Cloud, Microsoft 365, or other cloud platforms.

**J. Inquiry Relating to ATI Requests A-2020-00002 and A-2020-00029**

24. With reference to the Affidavit at paragraphs 17-20 and 21-25, any index, table of contents, summary, and/or listings for:
  - (a) the 683 items for A-2020-00002; and/or
  - (b) the 1417 Outlook items, the 25 electronic documents, and/or the 5099-page working copy of the search results for A-2020-00029.

**K. Inquiry Relating to TRAN Committee Motion Documents**

25. With reference to the Affidavit at paragraph 29, any index, table of contents, summary, and/or listings of the collection of documents stemming from the motion from the Standing Committee on Transportation, Infrastructure and Communities on March 25, 2021 [**TRAN Committee Motion**].

**L. March 24, 2020 Executive Committee Meeting**

26. With reference to the letter sent by the Canadian Transportation Agency (Mr. Kevin Shaar) to the Federal Court of Appeal on August 8, 2022, the list of participants and attendees of that Executive Committee meeting on March 24, 2020.



27. With reference to the email Mr. Kevin Shaar sent to counsel for the Applicant on or about August 11, 2022 at 8:49AM PST, enclosing various screenshots of the Canadian Transportation Agency's RDIMs system, a list of any Microsoft One-Note documents "checked-in" by Ms. Alysia Lau that includes the following terms in the file name, or the title of a notebook within the Microsoft One-Note file:
28. (a) "Meeting - Mar. 24", or
- (b) "Meeting" as well as one of the terms "Mar. 24", "March 24" or any similar string to represent the date March 24, 2020.

**M. March 24, 2020 Special Members Committee Meeting(s)**

29. With reference to the email Mr. Kevin Shaar sent to counsel for the Applicant on or about August 2, 2022 at 12:10PM PST, enclosing an Outlook meeting invite for an In-Camera Members' Meeting at 11:00AM on March 24, 2020 (the "**March 24, 2020 11AM In-Camera Meeting Outlook Invite**"):
- (a) Documents from Ms. Lesley Robertson's Outlook account showing when the March 24, 2020 11AM In-Camera Meeting Outlook Invite was sent and "accepted" by the attendees, and in particular, a copy of the March 24, 2020 11AM In-Camera Meeting Outlook Invite that was received by Liz Barker, Heather Smith, Mary Tobin Oates, Mark MacKeigan, Lenore Duff, Gerald Dickie, and Sebastien Bergeron, showing the date they received said invite, and their "acceptance" thereto.
- (b) Printouts from the Outlook calendar for Ms. Lesley Robertson showing whether her calendar had any scheduled events on March 24, 2020 at 10:30AM EST.
30. A list of participants and attendees of the Members' Meetings that occurred on March 24, 2020 at 10:30AM EST and 11:00AM EST. Please note that this item refers to the one or more Members' Meetings that took place on March 24, 2020, which is different than the Executive Committee meeting on March 24, 2020 that is referred to in item 26 above.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Simon Lin (simonlin@evolinklaw.com).

August 29, 2022

*Simon Lin*

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**SIMON LIN**

Evolink Law Group

4388 Still Creek Drive, Suite 237

Burnaby, British Columbia, V5C 6C6

Tel: 604-620-2666

Fax: 888-509-8168

*simonlin@evolinklaw.com*

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

# **Schedule C**



VIA EMAIL

September 9, 2022

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

Attention: Simon Lin  
[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

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

Attention: Lorne Ptack  
J. Sanderson (Sandy) Graham  
[sandy.graham@justice.gc.ca](mailto:sandy.graham@justice.gc.ca),  
[Lorne.Ptack@justice.gc.ca](mailto:Lorne.Ptack@justice.gc.ca)

Dear Sirs:

**Re: *Air Passenger Rights v Attorney General of Canada***  
**Federal Court of Appeal Court File No.: A-102-20**

Pursuant to paragraph 7 of Justice Gleason's Order dated July 19, 2022, please find enclosed the documents responsive to items 9, 12 and 13 of Air Passenger Rights' Direction to Attend in respect of Barbara Cuber's cross-examination on September 16, 2022.

**Item 9: With reference to the Affidavit at paragraph 38, all documents showing the search terms employed for the electronic search referred to therein.**

Please find enclosed the following documents:

- IM-IT Retrieval Form for Air Passenger Rights v Attorney General
- Outlook-generated search results report, Case File (A-102-20)-2021-11-26.

The latter document contains a line with sensitive technical information about the Canadian Transportation Agency's ("Agency") infrastructure exchange. That line has been redacted.

**Item 12. The Outlook system logs showing when the following emails were deleted from Ms. Marcia Jones' Outlook account:**

**(a) Email received by Ms. Marcia Jones on March 18, 2020 from Mr. Colin Stacey with the subject line "FW: From MinO: Air Transat."**

**(b) Email sent by Ms. Marcia Jones on March 25, 2020 with the subject line "Update: CTA measures/Mise à jour: mesures prises par l'OTC."**

As the Agency stated at paragraph 62 of the written representations contained in its Motion for Relief from Production, no such documents exist.

**Item 13. With reference to paragraph 13 of the Affidavit, all documents showing the search terms that were employed for the search(es) made on RDIMS (the Canadian Transportation Agency's corporate repository) for documents responsive to the October Order and/or the April Order.**

Please find enclosed the following document:

- IM-IT Retrieval Form for A-2020-00029

Yours truly,



Kevin Shaar  
Counsel  
Legal Services Directorate  
Canadian Transportation Agency  
15 Eddy Street, 19th Floor  
Gatineau, Quebec  
K1A 0N9  
Tel: 613-894-4260  
Fax: 819-953-9269  
Email: [Kevin.Shaar@otc-cta.gc.ca](mailto:Kevin.Shaar@otc-cta.gc.ca)  
Email: [Servicesjuridiques.LegalServices@otc-cta.gc.ca](mailto:Servicesjuridiques.LegalServices@otc-cta.gc.ca)



**FORMULAIRE DE COLLECTE DE DOCUMENTS PAR LES SERVICES GI-TI AU TITRE DE L'AIPRP  
IM-IT ATIP RECORDS RETRIEVAL FORM**

<b>N° de la demande / Request #</b>	<b>Following Federal Court of Appeal Order in Court File No. A-102-20 which can be found <a href="#">here</a>.</b>	
<b>MS Outlook distribution list that represent the OPI group Members of this group will be included in the MS Outlook (MS Exchange) search</b>	<b>Agency-wide</b>	
<b>Doit être terminée au plus tard To be completed by</b>	<b>3/25/2020</b>	
<b>Texte complet de la demande / Full Request Wording</b>		
Insérez la réf <b>3. Within 60 days of the date of this Order, the CTA shall disclose to the applicant: a. all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and Page: 3 c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed;</b>		
<b>RECHERCHE DANS LE SGDDI ET MS OUTLOOK / SEARCH OF RDIMS AND MS OUTLOOK</b>		
Les Services de la GI et les Services de la TI sont responsables de la recherche dans le SGDDI et dans MS Outlook (MS Exchange) des documents demandés en fonction des mots-clés proposés ci-dessous.  The IM Services and the IT Services are responsible for searching the requested records in RDIMS and MS Outlook (MS Exchange) based on the keywords proposed below.		
Mots-clés <b>ET opérateurs</b> par le BPR OPI keywords <b>AND operators</b>  Exemple / Example  John Smith RDIMS AND Training Demande OR Formulaire OR Request	(Refund*OR Voucher*) AND (Covid* OR Corona* OR Pandemic)  (Rembourse* OU crédit*) ET (Covid* OU Corona* OU pandémie)  I am searching for messages "to" or "from" external parties. If it is possible to isolate external emails in this timeframe it would be helpful.  A search including "tc.gc.ca" would be useful.  A search ending of "to" and "from" ending in ".com" and "@gmail.com" could be helpful.	
<b>Plage de dates</b> <b>Date Range</b>  De / From    3/9/2020 À / To        3/25/2020	<b># du cas (si applicable)</b> <b>Case # (if applicable)</b> NA	NA
<b># de dossier (si applicable)</b> <b>File # (if applicable)</b> NA	NA	
<b>RÉSULTAT DE LA RECHERCHE DE DOCUMENTS DANS LE SGDDI ET MS OUTLOOK SEARCH RESULT OF THE RECORDS IN RDIMS AND MS OUTLOOK</b>		
<b>Les Services de la GI / The IM Services</b>		
<input type="checkbox"/>	Des documents ont été trouvés / Records were found	<input type="checkbox"/>
<input type="checkbox"/> Dossier SGDDI RDIMS Folder		<input type="checkbox"/> Aucun document n'a été trouvé No records were found
<input type="checkbox"/> OPI additional documents included		
<b>Les Services de la TI / The IT Services</b>		
<input checked="" type="checkbox"/>	Des courriels ont été trouvés Emails were found	<input type="checkbox"/>
		<input type="checkbox"/> Aucun document n'a été trouvé No records were found
<b>APPROBATION DE LA RECHERCHE DANS LES DOCUMENTS / APPROVAL OF THE SEARCH OF THE RECORDS</b>		
<b>Signature électronique</b> des représentants et des gestionnaires responsables de la recherche. <b>E-signature</b> of the representatives and managers responsible for the search.		
<b>Représentant de la GI / IM representative</b>	<b>Représentant de la TI / IT representative</b>	



<p>X</p> <hr/>	<p>X</p> <hr/>
----------------	----------------





Jordan.Doyle@otc-cta.gc.ca, John.Touliopoulos@otc-cta.gc.ca, John.Dodsworth@otc-cta.gc.ca, Isabelle.Coutu@otc-cta.gc.ca, Hung\_Kuen.Chan@otc-cta.gc.ca, Greg.Henry@otc-cta.gc.ca, Gerry.Nera@otc-cta.gc.ca, Maria.Maietta@otc-cta.gc.ca, Catherine.Pirie@otc-cta.gc.ca, Joseph.Olstad@otc-cta.gc.ca, Stephen.Karasmanis@otc-cta.gc.ca, Douglas.Smith@otc-cta.gc.ca, Diane.Fusco@otc-cta.gc.ca, Elspeth.McMurray@otc-cta.gc.ca, Dawn.Parker@otc-cta.gc.ca, Tom.Oommen@otc-cta.gc.ca, Claire.Lauzon@otc-cta.gc.ca, Christine.Solomon@otc-cta.gc.ca, Camille.Trudel@otc-cta.gc.ca, Brigitte.Lemieux@otc-cta.gc.ca, Vick.Chauret@otc-cta.gc.ca, Frederick.Pearson@otc-cta.gc.ca, Hugo.Ledoux@otc-cta.gc.ca, Ryan.Mulcock@otc-cta.gc.ca, Anne.Banks@otc-cta.gc.ca, Angela.Gaetano@otc-cta.gc.ca, Andri.Rakotoarivony@otc-cta.gc.ca, Agnes.Okoyere@otc-cta.gc.ca, Martin.Larocque@otc-cta.gc.ca, Mark.MacKeigan@otc-cta.gc.ca, Matt.Howe@otc-cta.gc.ca, Vincent.Turgeon@otc-cta.gc.ca, Julie.Rehaluk@otc-cta.gc.ca, Mireille.Drouin@otc-cta.gc.ca, Michael.Parsons@otc-cta.gc.ca, Christiane.Guindon@otc-cta.gc.ca, Tania.Perreault@otc-cta.gc.ca, Cynthia.Jolly@otc-cta.gc.ca, Dian.Hristev@otc-cta.gc.ca, Anthony.Sealey@otc-cta.gc.ca, Melissa.Welch@otc-cta.gc.ca, Jessica.Ivall@otc-cta.gc.ca, Antoine.Chevrette@otc-cta.gc.ca, Sylvie.Valiquette@otc-cta.gc.ca, Jenny.Smith@otc-cta.gc.ca, Glen.Nicholson@otc-cta.gc.ca, Alexe.Siebert@otc-cta.gc.ca, Timothy.Zarins@otc-cta.gc.ca, Amanda.Hamelin@otc-cta.gc.ca, Hortensia.Dammous@otc-cta.gc.ca, George.Ross@otc-cta.gc.ca, Heather.Smith@otc-cta.gc.ca, Calina.Ritchie@otc-cta.gc.ca, Ghislaine.Tossou@otc-cta.gc.ca, Maude.Cloutier@otc-cta.gc.ca, David.Dawson@otc-cta.gc.ca, Megan.GrandmaisonCarroll@otc-cta.gc.ca, Karine.Gravelle@otc-cta.gc.ca, Caitlin.Hurcomb@otc-cta.gc.ca, Mary.TobinOates@otc-cta.gc.ca, Victorhea.Rivilla-Biaoco@otc-cta.gc.ca, Nuno.Bellem@otc-cta.gc.ca

**Sources searched successfully:**

(96) web@otc-cta.gc.ca, Joelle.Cleroux@otc-cta.gc.ca, Marilene.Normand@otc-cta.gc.ca, surveillance-monitoring@otc-cta.gc.ca, Melissa.Loiselle@otc-cta.gc.ca, Julie.Levesque@otc-cta.gc.ca, Maxime.VezinaLaprise@otc-cta.gc.ca, Remi.Bachand@otc-cta.gc.ca, Andre.Brunet@otc-cta.gc.ca, Simon.FecteauLabbe@otc-cta.gc.ca, Martin.Dalpe@otc-cta.gc.ca, Moira.Reid@otc-cta.gc.ca, Guy.Vezina@otc-cta.gc.ca, Sebastien.Bergeron@otc-cta.gc.ca, Valerie.Lagace@otc-cta.gc.ca, traduction-translation@otc-cta.gc.ca, Terry.Kuny@otc-cta.gc.ca, Simona.Sasova@otc-cta.gc.ca, Paul.Kelly@otc-cta.gc.ca, Ousmane.Alkaly@otc-cta.gc.ca, Michelle.Croteau@otc-cta.gc.ca, media@otc-cta.gc.ca, Matilde.Perrusclet@otc-cta.gc.ca, Martine.Maltais@otc-cta.gc.ca, Marla.LeBlanc@otc-cta.gc.ca, Marc.Desnoyers@otc-cta.gc.ca, Mamta.Manhas@otc-cta.gc.ca, Lyne.Bouffard@otc-cta.gc.ca, Liz.Barker@otc-cta.gc.ca, Lesley.Robertson@otc-cta.gc.ca, Kizzy.Barrett@otc-cta.gc.ca, Kimberly.Vivarais@otc-cta.gc.ca, Katie.Fillmore@otc-cta.gc.ca, Juan.Gong@otc-cta.gc.ca, Jordan.Doyle@otc-cta.gc.ca, John.Touliopoulos@otc-cta.gc.ca, John.Dodsworth@otc-cta.gc.ca, Isabelle.Coutu@otc-cta.gc.ca, Hung\_Kuen.Chan@otc-cta.gc.ca, Greg.Henry@otc-cta.gc.ca, Gerry.Nera@otc-cta.gc.ca, Maria.Maietta@otc-cta.gc.ca, Catherine.Pirie@otc-cta.gc.ca, Joseph.Olstad@otc-cta.gc.ca, Stephen.Karasmanis@otc-cta.gc.ca, Douglas.Smith@otc-cta.gc.ca, Diane.Fusco@otc-cta.gc.ca, Elspeth.McMurray@otc-cta.gc.ca, Dawn.Parker@otc-cta.gc.ca, Tom.Oommen@otc-cta.gc.ca, Claire.Lauzon@otc-cta.gc.ca, Christine.Solomon@otc-cta.gc.ca, Camille.Trudel@otc-cta.gc.ca, Brigitte.Lemieux@otc-cta.gc.ca, Vick.Chauret@otc-cta.gc.ca, Frederick.Pearson@otc-cta.gc.ca, Hugo.Ledoux@otc-cta.gc.ca, Ryan.Mulcock@otc-cta.gc.ca, Anne.Banks@otc-cta.gc.ca, Angela.Gaetano@otc-cta.gc.ca, Andri.Rakotoarivony@otc-cta.gc.ca, Agnes.Okoyere@otc-cta.gc.ca, Martin.Larocque@otc-cta.gc.ca, Mark.MacKeigan@otc-cta.gc.ca, Matt.Howe@otc-cta.gc.ca, Vincent.Turgeon@otc-cta.gc.ca, Julie.Rehaluk@otc-cta.gc.ca, Mireille.Drouin@otc-cta.gc.ca, Michael.Parsons@otc-cta.gc.ca, Christiane.Guindon@otc-cta.gc.ca, Tania.Perreault@otc-cta.gc.ca, Cynthia.Jolly@otc-cta.gc.ca, Dian.Hristev@otc-cta.gc.ca, Anthony.Sealey@otc-cta.gc.ca, Melissa.Welch@otc-cta.gc.ca, Jessica.Ivall@otc-cta.gc.ca, Antoine.Chevrette@otc-cta.gc.ca, Sylvie.Valiquette@otc-cta.gc.ca, Jenny.Smith@otc-cta.gc.ca, Glen.Nicholson@otc-cta.gc.ca, Alexe.Siebert@otc-cta.gc.ca, Timothy.Zarins@otc-cta.gc.ca, Amanda.Hamelin@otc-cta.gc.ca, Hortensia.Dammous@otc-cta.gc.ca, George.Ross@otc-cta.gc.ca, Heather.Smith@otc-cta.gc.ca, Calina.Ritchie@otc-cta.gc.ca, Ghislaine.Tossou@otc-cta.gc.ca, Maude.Cloutier@otc-cta.gc.ca, David.Dawson@otc-cta.gc.ca, Megan.GrandmaisonCarroll@otc-cta.gc.ca, Karine.Gravelle@otc-cta.gc.ca, Caitlin.Hurcomb@otc-cta.gc.ca, Mary.TobinOates@otc-cta.gc.ca, Victorhea.Rivilla-Biaoco@otc-cta.gc.ca, Nuno.Bellem@otc-cta.gc.ca

**Sources not searched successfully:** (0) None

**Resume:** False

**Include Keyword Statistics:** False

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



**FORMULAIRE DE COLLECTE DE DOCUMENTS PAR LES SERVICES GI-TI AU TITRE DE L'AIPRP  
IM-IT ATIP RECORDS RETRIEVAL FORM**

Nom du ou des représentants de la GI/TI Name(s) of IM/IT representative(s)	Sue Brazeau	N° de la demande / Request #	A-2020-00029
	Cliquez ou tapez du texte ici Click or tap here to enter text	Doit être terminée au plus tard To be completed by	11/13/2020
MS Outlook distribution list that represent the OPI group Members of this group will be included in the MS Outlook (MS Exchange) search		AOB ESB LS OCC Doug Smith Tom Oomen	
<p><b>IMPORTANT :</b> Le personnel des Services de la gestion de l'information (GI) et des Services de la technologie de l'information (TI) est tenu de ne pas divulguer plus qu'il n'en faut sur l'identité de l'individu pour trouver les renseignements que ce dernier désire. La divulgation de renseignements personnels à quiconque n'ayant pas « besoin de savoir » constitue une infraction à la Loi sur la protection des renseignements personnels et peut donner lieu à des sanctions ou à des mesures disciplinaires ou aux deux, conformément au document de l'Office intitulé Politique de sécurité – Un guide. <a href="http://intranet/fra/securite">http://intranet/fra/securite</a></p> <p><b>IMPORTANT:</b> The Information Management (IM) Services and the Information Technology (IT) Services personnel cannot disclose the individual's identity further than required in order to find the information that the individual is seeking. Disclosure of personal information to those with no "need to know" is a contravention of the Privacy Act and can result in sanctions and/or discipline as detailed in the Agency Security Policy Handbook. <a href="http://intranet/eng/security">http://intranet/eng/security</a></p>			
Texte complet de la demande / Full Request Wording			
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 ( <a href="https://otc-cta.gc.ca/eng/statement-vouchers">https://otc-cta.gc.ca/eng/statement-vouchers</a> ). The time period we request is March 11, 2020 to April 9, 2020.			
<b>RECHERCHE DANS LE SGDDI ET MS OUTLOOK / SEARCH OF RDIMS AND MS OUTLOOK</b>			
Les Services de la GI et les Services de la TI sont responsables de la recherche dans le SGDDI et dans MS Outlook (MS Exchange) des documents demandés en fonction des mots-clés proposés ci-dessous.			
The IM Services and the IT Services are responsible for searching the requested records in RDIMS and MS Outlook (MS Exchange) based on the keywords proposed below.			
Mots-clés <b>ET opérateurs</b> par le BPR OPI keywords <b>AND operators</b>	Statement on vouchers OR Statement AND Vouchers		
Exemple / Example  John Smith RDIMS AND Training Demande OR Formulaire OR Request			
Plage de dates (si applicable) Date Range (if applicable)	# du cas (si applicable) Case # (if applicable)	20-02750	
De / From 3/11/2020 À / To 4/9/2020	# de dossier (si applicable) File # (if applicable)	OP-014-0377/20-02750ELECTRONIC; GC-003-0105/002ELECTRONIC; GC-001-0005-005/005ELECTRONIC	
<b>RÉSULTAT DE LA RECHERCHE DE DOCUMENTS DANS LE SGDDI ET MS OUTLOOK SEARCH RESULT OF THE RECORDS IN RDIMS AND MS OUTLOOK</b>			
<b>Les Services de la GI / The IM Services</b>			
<input checked="" type="checkbox"/>	Des documents ont été trouvés / Records were found		<input type="checkbox"/>
<input type="checkbox"/>	Dossier SGDDI RDIMS Folder	 RDIM-#2269171-A-20 20-00029_-Rdims_sea	Aucun document n'a été trouvé No records were found
<b>Les Services de la TI / The IT Services</b>			
<input checked="" type="checkbox"/>	Des courriels ont été trouvés Emails were found		<input type="checkbox"/>
<b>APPROBATION DE LA RECHERCHE DANS LES DOCUMENTS / APPROVAL OF THE SEARCH OF THE RECORDS</b>			
<b>Signature électronique des représentants et des gestionnaires responsables de la recherche. E-signature of the representatives and managers responsible for the search.</b>			
Représentant de la GI IM representative  11/12/2020	Gestionnaire de la GI IM Manager  11/12/2020	Représentant de la TI IT representative  11/10/2020	Gestionnaire de la TI IT Manager  11/10/2020
X Sue Brazeau MC	X Sue Brazeau MC	X Sylvain Dickey	X
Signed by: Brazeau, Suzanne MC	Signed by: Brazeau, Suzanne MC	Signed by: Dickey, Sylvain	Signed by: Guindon, Jonathan

2268746

Non-Classifié / Unclassified



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**GC-001-0055-002/2020-21/A-2020-00029ELECTRONIC**