CANADA / JUDGMENT

3412229 Canada Inc. v. Canada (Revenue Agency)

2020 FC 1156

COURT
Federal Court

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3412229 Canada Inc. v. Canada (Revenue Agency) Court (s) Database Federal Court Decisions Date 2020-12-16 Neutral citation 2020 FC 1156 File numbers T-902-13 Decision Content Date: 20201216 Docket: T-902-13 Citation: 2020 FC 1156 Ottawa, Ontario, December 16, 2020 PRESENT: The Honourable Mr. Justice Bell Docket: T-902-13 BETWEEN: 3412229 CANADA INC. 3421848 CANADA INC. 3488055 CANADA INC. 3488063 CANADA INC. 2534-2825 QUEBEC INC. 4077211 CANADA INC. Applicants and CANADA REVENUE AGENCY Respondent and THE INFORMATION COMMISSIONER OF CANADA Third Party JUDGMENT AND REASONS I. Nature of the Matter

[1] Between 2006 and 2012 the Canada Revenue Agency [CRA] conducted an audit, pursuant to the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) [ITA], of the Applicants' investments in St. Lawrence Trading Inc. [SLT], an offshore investment company. The Applicants are all numbered companies belonging to Mr. Irving Ludmer or his family members. Mr. Ludmer is the controlling shareholder of each of the Applicants.

[2] During and following the tax audit, the Applicants requested information pursuant to s. 6 of the Access to Information Act, R.S.C. 1985, c. A-1 [ATIA]. The CRA disclosed a large number of the requested documents to the Applicants; however, it claimed exemptions over others. The Applicants made numerous complaints pursuant to the ATIA to the Office of the Information Commissioner [OIC]. The Applicants, pursuant to s. 41 of the ATIA, seek judicial review of CRA's decision to exempt certain documents from disclosure. All applications have been consolidated under this court file number (T-902-13).

[3] To put matters in perspective I would point out the following regarding the efforts undertaken by the Applicants to gain access to records via access to information requests [ATIP Requests] and, by the Respondent to provide access. By April 30, 2014, the Respondent had located 19,212 pages and disclosed 10,815 of them to the Applicants. Additional disclosures made in the summer of 2014 resulted in the disclosure of more than 3000 additional documents. As at the present time the Respondent has identified 38,090 pages of documents responsive to the various access requests and has identified 8,041 pages that remain partially or fully exempt from disclosure.

[4] The Applicants seek orders from this Court granting the applications for judicial review, directing the CRA to conduct further investigation of its records in an effort to obtain additional documentation and awarding costs, payable to them, on a solicitor-client basis.

[5] For the reasons set out herein, I dismiss the applications for judicial review, decline the invitation to direct the CRA to conduct further investigation of its records and, consequentially, refuse to award costs to the Applicants. II. Facts and Decisions Under Review A. The Governmental Players

[6] For the next 79 paragraphs, I outline the facts almost entirely as set out in the affidavit of Mr. Mark Fidanza, dated August 9, 2019. I rely extensively upon Mr. Fidanza's affidavit, without apology, since both parties acknowledged the accuracy of his summary of the facts. I also find his affidavit methodically and chronologically sets out the procedural steps undertaken by the Applicants and the CRA.

[7] Employees from the CRA, the Department of Finance and the Department of Justice were involved in the audit. The audit was carried out by the Audit Division of the Montreal Tax Services Office, whose employees included the following: Montreal Tax Services Office — Audit Division Joseph Armanious Bernard Benedetti Patrice Chouinard Daniel Gariepy Hubert Dubois Marie-Josée Laporte Pierre Leduc Joe Oliverio Ginette Phisel

[8] The role of the Income Tax Rulings Directorate [Rulings], a division within the Legislative Policy and Regulatory Affairs Branch, is to establish CRA's interpretation of the ITA and the Income Tax Regulations, C.R.C., c. 945. During the audit, employees of Rulings provided income tax rulings and technical interpretations on various tax provisions and engaged in frequent discussions with the auditors. Those employees are listed below: Income Tax Rulings Directorate Wayne Adams Roberta Albert Annemarie Humenuk (later Department of Finance) Phil Jolie Olli Laurikainen Mark Symes Claude Tremblay Sherry Thomson

[9] The Aggressive Tax Planning Division, a division within the Compliance Programs Branch of CRA, which specializes in complex tax avoidance issues, provided technical assistance to the auditors and was involved in several aspects of the audit. Those employees were: Aggressive Tax Planning Division Stéphane Charette Nicole Cliche Lynda Gibson Patrice Mallet François Ranger Minh-Thi Truong

[10] By operation of various tax conventions and agreements, employees of the Competent Authority Services Division [CASD], a division within the Compliance Programs Branch of CRA, communicated with foreign tax authorities during the audit. Those employees were: Competent Authority Services Division Joanne Gagné-Pratt Manon Helie Anne Leroy Luc Rochefort Joanne O'Neill Sue Murray

[11] Members of the Access to Information and Privacy Directorate [ATIP Directorate], both at the Montreal Tax Services Office and at CRA Headquarters, were involved in the ATIP Requests and the investigations of the Applicants' complaints before the OIC. They were: ATIP Directorate Kimberly Ayres Mark Fidanza Marie-Claude Juneau Alain Lacoste Marie-Hélène Lebel Danielle Paquette Gilles Vallée

[12] CRA's Appeals Branch was in charge of the Applicants' objections to their tax assessments and appeals to the Tax Court of Canada following the issuance of the reassessments. Employees within that branch who figured in the various ATIP Requests were: Appeals Branch Suzanne Albert Chantal Faubert

[13] The CRA consulted with employees within the Department of Finance during the audit concerning the application of various tax provisions and questions of tax policy. Those employees were: Finance Annemarie Humenuk (formerly of Rulings) Grant Nash Ed Short Tobias Witteveen

[14] The CRA sought legal advice or legal representation from the Department of Justice on various occasions during the period covered by the ATIP Requests, or referred to legal opinions delivered to CRA, prior to those requests. The names of Department of Justice counsel who appear in the records are set out below: CRA Legal Services Litigation counsel Office of the Assistant Deputy Attorney General John Bentley Maria Bittichesu Deborah Horowitz Jake Blair Ian Demers Anick Pelletier Caroline Coderre Philippe Dupuis Sandra Phillips Patrick Dornier Richard Gobeil En blanc Jeanette Ettel Henry Gluch En blanc Amy Garson Yanück Houle En blanc Benoît Gravel Guy Laperrière En blanc Heather Hemphill Sophie-Lyne Lefebvre En blanc Alan Jane Marie-Andrée Legault En blanc Deen Olsen Marie Marmet En blanc Shauna Pittman Valerie Messore En blanc En blanc Margaret Nott En blanc En blanc Simon Petit En blanc En blanc Susan Shaughnessy En blanc En blanc Tamara Thermitus En blanc

[15] Some of the above-mentioned employees of CRA, the Department of Finance, and the Department of Justice participated in the GAAR Committee, which considers and approves reassessments invoking the General Anti-Avoidance Rule (s. 254 of the ITA). B. Chronology of ATIP Requests, Responses and Court Applications

[16] The Applicants filed their first access to information requests [Initial Requests] on August 19, 2009. Gilles Vallée, a senior consultant in the ATIP Directorate, was in charge of these requests until his departure from the CRA in 2011.

[17] In their Initial Requests, the Applicants sought information concerning the ongoing audit by the CRA of their investments in SLT. They formulated the requests as follows: All records, documents, correspondence, memoranda, forms, directives, reports, notes, opinions, working papers, and any other documentary material, including drafts, etc., regardless of physical form and characteristics, relating to the taxation years ending on [...], including, without restricting the generality of the foregoing, all Reports T20, Reports T2020, auditor's working papers, internal correspondence, notes of meetings and conversations between and

with Canada Revenue Agency personnel, memoranda copies of cases, interpretation bulletins, internal directives, communiqués, branch letters, and parts of operations manuals relating to and/or relied upon or considered by the Canada Revenue Agency in the course of its deliberations in respect of 2005, 2006 and 2007 taxation years. In addition, and without restricting the generality of the foregoing, all record, documents, correspondence, memoranda, forms, directives, reports, notes, opinions, working papers, and any other documentary material, including drafts, etc. regardless of physical form and characteristics, relating to or including any reference to any of the following: Irving Ludmer and St. Lawrence Trading Inc. ii. The application of section 94.1 of the Income Tax Act to an investment in St. Lawrence Trading Inc. iii. The application of proposed section 94.1, commonly referred to as the "foreign investment entity" rules or "FIE" rules, to an investment in St. Lawrence Trading Inc. iv. The application of subsection 12(3) and subsection 12(9) of the ITA or section 7000 of the Income Tax Regulations to an investment in St. Lawrence Trading Inc.

[18] The ATIP Directorate determined the Office of Primary Interest for the Initial Requests to be the Audit Division of the Montreal Tax Services Office. The Office of Primary Interest is the branch or department of the CRA where it believes records, responsive to an access to information request, are located. CRA considered Ginette Phisel, Pierre Leduc and Joseph Armanious, of the Montreal Tax Service Office, being the team of auditors leading the audit, to be the subject matter experts. As a result, the ATIP Directorate sent a request to the Audit Division in Montreal to obtain all records in response to the Initial Requests.

[19] The CRA made its initial disclosure, in response to the Initial Requests, on January 28, 2010. On February 18, 2010, the Applicants filed a complaint with the OIC in relation to this disclosure of records. The OIC began its investigation of this complaint in March 2010.

[20] Beginning in March 2011, the CRA assigned Mr. Fidanza as the person in charge of processing the Applicants' subsequent ATIP Requests. Following Gilles Vallée's departure from CRA in July 2011, the CRA assigned Mr. Fidanza to assist the ATIP Directorate during the OIC's investigation of the complaint regarding the Initial Requests.

[21] On February 18, 2011, the Applicants filed new access to information requests [First Updated Requests], which sought to obtain the same information mentioned in paragraph 17 "to the extent that such material have been gathered, received, produced, or added to" the Applicants' file since August 19, 2009.

[22] As with the Initial Requests, the ATIP Directorate of the CRA identified the Audit Division of the Montreal Tax Services Office as the Office of Primary Interest for the First Updated Requests. The ATIP Directorate forwarded a request to the Montreal Audit Division for all records responsive to the First Updated Requests. The ATIP Directorate tasked no other branches or individuals within CRA with that responsibility at that time. When asked whether other branches should be so tasked, the auditors advised the ATIP Directorate that that was not necessary, since all relevant records would be in the possession of the Montreal

Audit Division.

[23] On June 23, 2011, the Applicants filed new requests for access to information [Second Updated Requests], which sought to obtain similar information but designed to cover records created subsequent to the previous requests.

[24] The ATIP Directorate again identified the Audit Division of the Montreal Tax Services Office as the Office of Primary Interest for the Second Updated Requests, and requested that office provide all records responsive to the requests. At that time, the ATIP Directorate did not task any other departments or individuals within the CRA with that responsibility.

[25] The initial disclosure in response to the First Updated Requests, was communicated to the Applicants on September 26, 2011, and the initial disclosure in response to the Second Updated Requests was communicated to the Applicants on October 7, 2011. On November 16, 2011, the Applicants filed complaints with the OIC in relation to the disclosures of records in response to both of those requests.

[26] At the core of the Applicants' complaints regarding the Initial Requests, First Updated Requests and Second Updated Requests was a collection of documents known as the master file, which concerned the ongoing audit of the Applicants as well as several other investors in SLT. The documents from the master file had been exempted pursuant to s. 16(1)(c) of the ATIA due to the ongoing audit. Other exemptions were also applied to those records.

[27] Beginning in December 2011, the OIC conducted its investigation of the Applicants' complaints related to the First Updated Requests and Second Updated Requests along with its ongoing investigation concerning the Initial Requests. During the course of the investigation, the ATIP Directorate and the subject matter experts from the Audit Division responded to several questions, made representations to the OIC, and met with OIC investigators to explain and clarify the context in which the records were being exempted from disclosure.

[28] Prior to 2011, the ATIP Directorate in the Montreal Tax Services Office processed records manually by applying redactions by hand onto paper copies of documents, which were paginated manually. In early 2011, the Directorate acquired software, which enabled it to scan and paginate records electronically.

[29] On February 2, 2011, the OIC requested, for the first time, a scanned and paginated electronic copy of the documents contained in the master file. The ATIP Directorate provided this electronic copy to the OIC in May 2011. Over the following months, the ATIP Directorate continued to collaborate with the OIC as it proceeded with its investigation of the Applicants' complaints.

[30] On March 1, 2012, the CRA made a supplementary disclosure pursuant to the Initial Requests, which included many of the documents contained in the master file. Those records had been disclosed to the Applicants by the auditors in charge, pursuant to s. 241(4)(b) of the ITA.

[31] As the audit of the SLT investors came to an end in May 2012, further records were disclosed. The CRA made two (2) supplementary disclosures to the Applicants pursuant to the Initial Requests on May 1, 2012 and July 23, 2012. The documents from the master file were released, subject to exemptions applied pursuant to sections 16(1)(b), 19(1), 20(1)(b), 21(1)(a), 21(1)(b), 23 and 24(1) of the ATIA. Since the audit had then concluded, the CRA no longer relied upon the exemption claimed pursuant to s. 16(1)(c) of the ITA.

[32] On May 1, 2012, following its investigation, the OIC issued a report in relation to the complaint on the Initial Requests. The report found that the complaint was well founded, since the CRA had failed to provide the Applicants with all responsive records in its initial response on January 28, 2010. However, the OIC found that in view of the supplementary disclosures, the complaint was now resolved and all remaining exemptions had been properly applied.

[33] On June 8, 2012, the Applicants filed a notice of application in this Court concerning the responses to the Initial Requests (T-1105-12). The Applicants discontinued that application on July 31, 2012.

[34] With regard to the First Updated Requests and Second Updated Requests, the CRA made several supplementary disclosures to the Applicants between September 2012 and March 2013, subject to exemptions applied pursuant to sections 16(1)(b), 19(1), 21(1)(a), 21(1)(b), 23 and 24(1) of the ATIA. Since the audit had then concluded, the CRA no longer relied upon the exemption pursuant to s. 16(1)(c). Disclosures were also made further to ongoing discussions between the CRA and the OIC regarding the applicability of various exemptions.

[35] On March 28, 2013, following its investigations, the OIC issued two (2) reports in relation to the complaints on the First Updated Requests and Second Updated Requests.

[36] Regarding the First Updated Requests, the OIC found, inter alia, that: The Applicants' complaint had been "well-founded", but was now "resolved" in light of the supplementary disclosures made by the CRA during the course of the OIC's investigation; The CRA had been "authorized to withhold most of the requested information, at the time of its decision of September 26, 2011, pursuant to paragraph 16(1)(c) and subsection 24(1) of the Act." Those documents were contained in the audit "master file"; Pursuant to its duty to assist, the CRA had now provided the requestors with "all the information which, as of March 2013, would no longer fall within the scope of the exemptions invoked by the CRA in response to [their] requests"; Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions to the responsive records pursuant to sections 13(1)(a), 16(1)(b), 19(1), 21(l)(a), 21(1)(b), 23 and 24(1) of the ATIA.

[37] Regarding the Second Updated Requests, the OIC made, inter alia, the following conclusions: The Applicants' complaint had been "well founded" but was now "resolved" in light of the supplementary disclosures made by the CRA during the course of the OIC's investigation; The CRA had been "authorized to withhold most of the requested information, at the time of its decision of October 7, 2011, pursuant to paragraph 16(1)(c) and subsection 24(1) of the Act." Those documents were contained in the audit "master file"; Pursuant to its duty to assist, the CRA had now provided the requestors with "all the information which, as of March 2013, would no longer fall within the scope of the exemptions invoked by the CRA in response to [their] requests"; Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions to the responsive records pursuant to sections 13(1)(a), 19(1), 21(1)(a), 21(l)(b), 23 and 24(1) of the ATIA.

[38] On May 21, 2013, the Applicants filed notices of application (T-904-13 and T-902-13) concerning the First Updated Requests and Second Updated Requests.

[39] On July 31, 2012, the Applicants filed updated requests [Third Updated Requests] which sought to obtain similar information as in the previous requests but which was designed to cover records created subsequent to the previous requests.

[40] The ATIP Directorate of the CRA once again identified the Audit Division of the Montreal Tax Services Office as the Office of Primary Interest for the Third Updated Requests. The ATIP Directorate, once again, did not task any other departments or individuals within CRA to seek records responsive to those requests.

[41] The CRA communicated its initial disclosure in response to the Third Updated Requests to the Applicants on November 30, 2012. On December 6, 2012, the Applicants filed a complaint with the OIC in relation to this disclosure. The Applicants identified seven (7) specific pages, which they asked the OIC to review on a priority basis. Given that the Applicants severed the seven (7) pages from the remainder of the complaint, the OIC treated the complaint in relation to the Third Updated Requests as two (2) complaints.

[42] During the course of the OIC's investigation of the exemption complaints on the Third Updated Requests, the CRA made three (3) supplementary disclosures on January 7, 2013, June 25, 2013 and July 9, 2013. The CRA made those disclosures further to ongoing discussions between the CRA and the OIC regarding the applicability of various exemptions. [43] On April 29, 2013, following its investigation, the OIC issued a report regarding the complaint on the seven (7) pages reviewed on a priority basis in the Third Updated Requests. The report found that the Applicants' complaint was not well-founded, since the CRA had been "authorized to withhold the information at issue" having properly applied exemptions pursuant to sections 21(1)(a), 21(l)(b) and 24(1) of the ATIA.

[44] On July 11, 2013, following its investigation, the OIC issued a report on the remaining records released pursuant to the Third Updated Requests. The report states, inter alia, that: The Applicants' complaint had been well-founded, but it was now "resolved without the need to make recommendations to the head of the institution" in light of the supplementary

disclosures made by the CRA during the course of the OIC's investigation; The CRA "met its duty to assist by providing [the requestors] with an interim disclosure, keeping [them] informed and providing [them] with the final and complete release in accordance with the Act"; Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions to the responsive records pursuant to sections 16(1)(b), 19(1), 21(1)(b), 23 and 24(1) of the ATIA.

[45] On May 21, 2013, the Applicants filed a notice of application (T-903-13) concerning the seven (7) pages identified in the Third Updated Requests. On July 26, 2013, the Applicants filed another notice of application (T-1289-13) concerning the remaining pages of the Third Updated Requests.

[46] On December 11, 2012, the Applicants filed updated requests [Fourth Updated Requests], which sought to obtain information similar to that previously sought but designed to cover records created subsequent to the previous requests.

[47] The ATIP Directorate of the CRA once again identified the Audit Division of the Montreal Tax Services Office as the Office of Primary Interest for the Fourth Updated Requests. The ATIP Directorate did not task any other departments or individuals within the CRA to seek records responsive to those requests.

[48] The CRA communicated the disclosures in response to the Fourth Updated Requests to the Applicants on February 1 and February 6, 2013. On March 19, 2013, the Applicants filed a complaint with the OIC in relation to this disclosure.

[49] During the course of the OIC's investigation of the exemption complaints on the Fourth Updated Requests, the CRA made a supplementary disclosure on June 19, 2013. This additional disclosure was made further to ongoing discussions between the CRA and the OIC regarding the applicability of various exemptions.

[50] On July 3, 2013, following its investigation, the OIC issued a report in relation to the complaint on the Fourth Updated Requests. The report found, inter alia, that: The Applicants' complaint had been well-founded, but that the requestors "have now received all of the information to which [they] are entitled under the Act." Thus, the complaint was "resolved without the need to make recommendations to the head of the institution". Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions on the responsive records pursuant to sections 13(1)(a), 21(1)(b), 23 and 24(1) of the ATIA.

[51] On July 26, 2013, the Applicants filed a notice of application in this Court (T-1290-13) concerning the Fourth Updated Requests.

[52] On November 29, 2012, the Applicants filed access to information requests in relation to a request for information sent by the CRA's Competent Authority Services Division [CASD] to the Bermuda tax authorities in September 2012 [Bermuda Requests]. The Applicants sought the following information: All records, documents, correspondence (including all electronic

mail), memoranda, forms, directives, reports, notes, opinions, working papers, and any other documentary material, including drafts, etc., regardless of physical form and characteristics, relating to an information request sent by Ms. Sue Murray, Director, Competent Authority Services Division, International and Large Business Directorate, Compliance Branch, Canada Revenue Agency (the "CRA") to the Honourable Paula A. Cox, JP, MP, Minister of Finance of Bermuda (the "Minister"), pursuant to the Tax Information Exchange Agreement between the Government of Canada and the Government of Bermuda (the "Request"). The Request, sent during or before September 2012, was in respect of a criminal tax matter pertaining to the shareholders of St. Lawrence Trading Inc. ("SLT").[...] The CRA requested that the Minister obtain the following information from Harbour Fiduciary Services Limited ("Harbour"), the administrator of SLT: Shareholder names and addresses of SLT including the ultimate beneficial owner of the shares; Director names and addresses of SLT; Officer names and addresses of SL T; Financial statements of SLT, for the years January 1st 2008 to December 31st 2011.

[53] The ATIP Directorate determined that the Office of Primary Interest for the Bermuda Requests was the Compliance Program Branch, more specifically the CASD, which is responsible for the exchange of information with foreign jurisdictions pursuant to tax conventions and tax information exchange agreements. Accordingly, the ATIP Directorate sent a request to the Compliance Program Branch to obtain all records in response to the Bermuda Requests.

[54] The CRA communicated the initial disclosure in response to the Bermuda Requests to the Applicants on January 30, 2013. On February 12, 2013, the Applicants filed a complaint with the OIC with respect to this disclosure of records.

[55] During the course of the OIC's investigation of the exemption complaints on the Bermuda Requests, the CRA made a supplementary disclosure of records on May 13, 2013. This disclosure was made further to ongoing discussions between the CRA and the OIC regarding the applicability of various exemptions.

[56] On July 25, 2013, following its investigation, the OIC issued a report in relation to the complaint on the Bermuda Requests. The report found, inter alia, that: The Applicants' complaint had been well-founded, but following the release of additional records, was now "resolved without having made recommendations to the head of the institution"; The CRA "was authorized to withhold most of the requested information pursuant to the exemptions claimed"; The CRA had "carried out its duty to assist" and "made reasonable efforts to obtain consent to release information received from a foreign government"; The OIC concluded that the CRA had properly applied the remaining exemptions to the responsive records, pursuant to sections 13(1)(a), 19(1), 23 and 24(1) of the ATIA.

[57] On August 5, 2013, the Applicants filed a notice of application in this Court (T-1324-13) concerning the Bermuda Requests.

[58] On August 23, 2013, the Applicants' attorneys sent a letter to the Department of Justice counsel representing the CRA in the present applications. The letter stated, among other things, that the records received from the CRA in response to the Applicants' ATIP Requests did not appear to include correspondence originating from employees other than those from the Montreal Tax Services Office, despite the fact that other divisions of the CRA had been involved in the audit. The Applicants requested "disclosure of files and/or documents from Headquarters, Rulings and CASD that were omitted in previous responses to the access requests." The ATIP Directorate of the CRA treated this correspondence as a new ATIP request [Missing Records Request].

[59] On September 13, 2013, the ATIP Directorate tasked two (2) additional divisions, whose offices are located at CRA Headquarters, to assist in responding to the Missing Records Request. Those divisions were the Legislative Policy and Regulatory Affairs Branch, of which the Income Tax Rulings Directorate [Rulings] is a part, and the Compliance Program Branch, of which the Aggressive Tax Planning Division and the CASD are parts. These divisions were tasked with the responsibility of producing all existing records responsive to the ATIP Requests up to December 31, 2012, the date of the last request made by the Applicants.

[60] In October 2013, the ATIP Directorate received and processed records from the above-mentioned offices. The CRA communicated an initial disclosure of records arising from this request to the Applicants on November 8, 2013, following which it continued to search for additional records.

[61] In November 2013, the ATIP Directorate sent requests to the following additional branches of CRA for records responsive to the Missing Records Request. These branches were asked to produce all existing records in relation to the ATIP Requests up to December 31, 2012: Division of CRA Date records received Appeals Branch November 25, 2013 Assessment and Benefits Branch November 18, 2013 Audit, Evaluation, and Risk Branch No relevant records found Finance and Administration Branch November 15, 2013 Human Resources Branch No relevant records found Information Technology Branch No relevant records found Legal Services No relevant records found Public Affairs Branch November 26, 2013 Strategy and Integration Branch No relevant records found Taxpayer Services and Debt Management November 19, 2013 Office of the Commissioner No relevant records found Office of the Minister No relevant records found Montreal Tax Services Office: Special Investigation, Collections and Appeals Division November 26, 2013

[62] As a result of receiving records from some of the above divisions, the CRA communicated additional disclosures to the Applicants on November 21, 2013, November 29, 2013, December 16, 2013 and January 15, 2014.

[63] On January 7, 2014, the Applicants filed a complaint in relation to the abovementioned disclosures of records, asking the OIC to "investigat[e] the exemptions applied by the CRA" and asking, "whether or not the CRA has reviewed all relevant documents in replying to the access to information requests." The OIC treated this request as two (2) separate complaints filed by the Applicants: a "missing records" complaint and a complaint regarding the exemptions applied to the records disclosed since November 2013.

[64] On January 23, 2014, the Applicants' attorneys sent a letter to CRA's legal counsel, in which they stated, in part, "certain documents appear to be still missing." The Applicants requested that the CRA "confirm that the emails and all paper and electronic files of the following officials or former officials of the Respondent have been reviewed, and that disclosure of such material contained therein has been made." The letter listed the following CRA employees and former employees: Wayne Adams, Rulings (retired) Phil Jolie, Rulings (retired) François Ranger, Aggressive Tax Planning Division (retired) Lynda Gibson, Aggressive Tax Planning Division (retired) Lucie Bergevin, former Director General, International and Large Business Directorate Terrance McAuley, Assistant Commissioner, Compliance Programs Branch (retired) Bill Baker, Commissioner and Chief Executive Officer (retired) Stéphane Charette, Aggressive Tax Planning Division Luc Rochefort, Competent Authority Services Division Sue Murray, Competent Authority Services Division Joseph Armanious, Montreal Tax Services Office Pierre Leduc, Montreal Tax Services Office (retired) Ginette Phisel, Montreal Tax Services Office Hubert Dubois, Montreal Tax Services Office Marie-Josée Laporte, Montreal Tax Services Office Joe Oliverio, Montreal Tax Services Office (retired) Bernard Benedetti, Montreal Tax Services Office (retired) William Rosenberger, Montreal Tax Services Office (retired)

[65] On March 27, 2014, the Applicants' legal counsel sent a letter to the CRA's legal counsel, requesting that the CRA perform a search of the files of another former employee, Gilles Vallée.

[66] In response to the Applicants' letters dated January 23, 2014 and March 27, 2014, the CRA undertook further searches of the electronic files of the employees listed in the letter, many of whom had retired from CRA. The email accounts of retired employees Bill Baker, Wayne Adams, Phil Jolie and François Ranger had been deleted in accordance with information management policies and could not be searched. However, the CRA was capable of producing emails from those individuals by accessing other employees' email accounts. Pierre Leduc's email account had also been deleted following his retirement, but a "snapshot" of his electronic mailbox from December 2009 was available to be searched. As for the remaining retired employees, CRA searched their email accounts and produced any relevant documents.

[67] Further to the searches referred to in paragraph 66, the CRA communicated additional disclosures of records to the Applicants on March 24, 2014, April 30, 2014, June 27, 2014, July 11, 2014 and July 21, 2014.

[68] Mr. Fidanza described the process undertaken by the CRA in response to the Applicants' request for missing records in a document entitled "Explanatory Appendix", which he forwarded to the Applicants' attorneys on September 5, 2014. As part of this process, the ATIP Directorate obtained certifications from managers of the Montreal Tax Services Office, Rulings, and the International and Large Business Directorate (which includes the Aggressive Tax Planning Division and the CASD) which stated that all records had been produced.

[69] On August 22, 2014, the Applicants filed a complaint to the OIC in relation to the exemptions applied to the records disclosed by the CRA in June and July 2014.

[70] During the course of the OIC's investigation of the exemptions part of the complaint related to the Missing Records Request, the CRA made supplementary disclosures of records on January 27, 2015, April 23, 2015, May 27, 2015, and July 7, 2015.

[71] On March 6, 2016, following its investigation, the OIC issued a report in relation to the Missing Records Request complaint, which stated, inter alia, as follows: By tasking only the audit team responsible for the Applicants' audits and identifying no other departments or individuals as Offices of Primary Interest, the searches of records were restricted to the Montreal Tax Services Office. As a result of this error, the OIC found that the CRA had not performed an adequate search of records upon initially receiving the access to information requests; In response to the Applicants' queries to their legal counsel, the CRA conducted several searches throughout the organization, and additional records were found and processed; The OIC had requested certification from the CRA that it had located all existing records responsive to the requests, which the CRA provided on April 9, 2015; The OIC concluded in its report that it was "now satisfied that the CRA has made reasonable efforts to locate all records responsive to [the] requests."

[72] The OIC's report also addressed specific concerns that had been raised by the Applicants and investigated by the OIC. It stated, in part: Due to the tasking error mentioned in the previous paragraph, some electronic mailboxes of retired CRA officials were disactivated (sic) following their departure, in accordance with the Treasury Board's directive on information management; An income tax ruling dated July 8, 2007 that was unfavourable to the CRA's assessing position had not been part of the responses initially received. During the investigation, the CRA informed the OIC that the Ruling had been prepared in relation to another taxpayer and thus had not been part of the "master file" documents; The Applicants provided the OIC with examples of documents which they believed were records containing "corporate information" that had been deleted from the mailboxes of the audit team members. These examples were investigated by the OIC, which found that most either contained information specific to other taxpayers, or were transitory records that did not contain information of business value. Eight of these pages were, however, deemed by the OIC to be responsive to the original requests, to which the CRA agreed. The OIC was satisfied that there was no evidence that the CRA had intentionally withheld these eight pages; The Applicants had raised the fact that the April 30, 2014 disclosure of records contained copies

of emails from auditors Pierre Leduc, Ginette Phisel and Joseph Armanious that were limited to a timeframe ending in December 2009. The OIC explained that this disclosure of records was comprised of a "snapshot" of Pierre Leduc's electronic mailbox from December 2009, obtained from the Security and Internal Affairs Directorate in 2014. Moreover, subsequent emails originating from the three auditors had already been disclosed in the CRA's responses to the access to information requests.

[73] Based upon the above, the OIC concluded that the Applicants' complaint flowing from the Missing Records Request was "well-founded" but was now resolved.

[74] On April 28, 2016, the Applicants filed a notice of application in this Court concerning the missing records component of the Missing Records Request (T-676-16).

[75] On June 22, 2016, the OIC issued a follow-up to its report dated March 16, 2016, stating that a CRA employee had found five (5) additional pages that were responsive to the Bermuda Requests. These pages were disclosed on June 21, 2016, subject to exemptions applied pursuant to sections 13(1)(a), 19(2) and 24(1) of the ATIA.

[76] Mr. Fidanza deposed that to the best of his knowledge all records responsive to the Applicants' various ATIP Requests have now been disclosed, subject to any applicable exemptions.

[77] On January 30, 2019, the OIC issued a report regarding the Applicants' Missing Records Request complaint as it related to the exemptions applied to the records disclosed in June and July 2014. The report states, inter alia, that: The OIC had not been satisfied with the CRA's exercise of discretion in applying some of the exemptions. The CRA made further representations to the OIC justifying its exercise of discretion and also released additional information; In light of the supplementary disclosures made by the CRA during the course of the OIC's investigation, the OIC concluded that the Applicants' complaint had been well-founded, but it was now resolved; Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions on the responsive records pursuant to sections 16(1)(b), 21 (l)(a), 21 (l)(b), 23, and 24(1) of the ATIA.

[78] On February 1, 2019, the OIC issued a report regarding the Applicants' Missing Records Request complaint on the exemptions applied to the records disclosed between November 2013 and April 2014, as well as the five (5) additional pages disclosed on June 22, 2016. The report states, inter alia, that: The OIC had not been satisfied with the CRA's exercise of discretion in applying some of the exemptions. The CRA made further representations to the OIC justifying its exercise of discretion and also released additional information; In light of the supplementary disclosures made by the CRA during the course of the OIC's investigation, the OIC concluded that the Applicants' complaint had been well-founded, but it was now resolved; Further to its review of the records, the OIC was satisfied that the CRA had properly applied the remaining exemptions on the responsive records pursuant to sections 13(1)(a), 16(1)(b), 19(1), 21(1)(a), 21(1)(b), 23 and 24(1) of the ATIA.

[79] On March 15, 2019, the Applicants filed notices of application in this Court concerning the two (2) exemption complaints related to the Missing Records Request (T-467-19 and T-466-19).

[80] Attached hereto as Annex A is a summary of the various requests for access to information, the responses by the CRA, interventions by the OIC and the dates applications were made to this Court. C. Disclosure of ATIP Records in other litigation

[81] In March 2013, the Applicants, along with other plaintiffs, filed civil proceedings against the CRA in the Quebec Superior Court (file number 500-17076229-130). The trial took place over four (4) months between September and December 2016 and resulted in a judgment released on July 31, 2018 by the Honourable Stephen Hamilton J.C.S. (as he then was). That decision, now reported at 2018 QCCS 3381, concludes the CRA was, in some ways, at fault in its conduct of the SLT audit. This resulted in an award of damages against the CRA.

[82] The Plaintiffs appealed Justice Hamilton's decision to the Court of Appeal of Quebec. They appealed from the refusal to award punitive damages, the refusal to award certain damages as well as the failure of the trial judge to declare fault in relation to another audit of a different offshore company. The Defendants cross-appealed seeking a reduction of the damage award and a reduction of the costs awarded. On May 28, 2020, the Court of Appeal of Quebec in a decision reported at 2020 QCCA 697 dismissed both the appeal and the cross-appeal.

[83] During the Superior Court proceedings, the CRA disclosed numerous documents and produced exhibits, many of which were ATIP records over which the CRA had previously claimed exemptions under the ATIA.

[84] In 2012, the Applicants 3488063 Canada Inc. and 2534-2835 Québec Inc. filed notices of appeal in the Tax Court of Canada [TCC] in relation to their reassessments. In 2014, the Applicants 3488063 Canada Inc., 3488071 Canada Inc. and 3488055 Canada Inc. filed other appeals in the Tax Court. Numerous documents were disclosed to the Applicants in the context of these Tax Court proceedings, which included ATIP records over which the CRA had previously claimed exemptions under the ATIA.

[85] In April 2019, Mr. Fidanza was provided with a copy of the documents that were disclosed to the Applicants in the context of the above-noted Superior Court and Tax Court litigation. Mr. Fidanza performed a review of the ATIP records and removed, under the ATIA, any exemptions from the documents that had been disclosed during those proceedings. III. Relevant Provisions

[86] The relevant provisions are 13(1)(a), 13(2), 16(1)(b) and (c), 19(1) and (2), 21(1)(a) and (b), 23, 24(1), 41, 49 and 53 of the ATIA, paragraph 8(2)(f) of the Privacy Act, R.S.C., 1985, c. P-21 and s. 241(1) and (2) of the ITA, as set out in Annex B, below. IV. Issues

[87] This application raises the following issues: Does the Court have jurisdiction over proceedings as they relate to Court file T-1105-12? Is the issue of disclosure of documents provided to the Applicants in the litigation matters in the Quebec Superior Court and the Tax Court of Canada moot? Did the Respondent correctly interpret the exemptions and, where it exercised its discretion, did it do so reasonably? Should the Court order the Respondent to conduct further searches for records? Should the Court order solicitor-client costs? V. Analysis A. Does the Court have jurisdiction over proceedings as they relate to Court file T-1105-12?

[88] The Applicants' Memorandum of fact and law refers to documents provided in response to a series of access requests made on August 19, 2009. The Respondent quite rightly asserts that the Applicants discontinued Court file T-1105-12 in relation to those access requests on July 31, 2012. Consequently, the Respondent asserts that exemptions applied to records in respect of the discontinued application have no relevance to the present litigation. I agree. The Court has no jurisdiction to consider the matters raised in Court file T-1105-12. B. Is the issue of disclosure of documents provided to the Applicants in the litigation matters in the Quebec Superior Court and the Tax Court of Canada moot?

[89] The Applicants acknowledge that they have received many of the documents they were seeking pursuant to the access to information requests through the court-compelled processes of discovery during the Quebec Proceedings and the Tax Court Proceedings. However, they and the Intervenor, contend these disclosures are not a replacement for the access to information regime enacted by Parliament. Citing Lac d'Amiante du Quebec Ltee v. 2858-0702 Quebec Inc., 2001 SCC 51, [2001] 2 SCR 743, the Applicants contend that documents provided during discovery are subject to the "implied undertaking" rule of confidentiality and cannot be treated the same, or used in the same manner, as information obtained under the ATIA. Furthermore, they contend that the Respondent's failure to properly apply exemptions is relevant to the issue of solicitor-client costs.

[90] The Respondent submits that given the application is for an order requiring the CRA to disclose information requested under the ATIA, the application is moot with respect to records to which access has already been provided. The Respondent contends that once the requested information has been provided, "there is no other remedy for the Court to provide" (Frezza v. Canada (National Defence), 2014 FC 32 at para. 41, 445 F.T.R. 299). The Respondent submits that the Court's reviewing power in the context of s. 41 applications is restricted to ordering disclosure; therefore, the Court should decline to hear the issue of exemptions on documents that have now been disclosed.

[91] I see merit to the positions advanced by all parties. However, it is unnecessary for me to decide whether records disclosed in the discovery process must also be the subject of a separate disclosure under the ATIA. The reason is simple. I accept the evidence of Mr. Fidanza that the records eventually disclosed in the litigation before the Quebec Superior Court and the TCC, originally exempted from disclosure under the ATIA, were reviewed by him and, following that review, he, on behalf of the CRA, waived the exemptions. I am

satisfied the CRA addressed its mind to the documents at issue, claimed exemptions under the ATIA and, specifically waived those exemptions. That is a process that unfolds day in and day out in access to information complaints. I have no jurisdiction to deal with information already disclosed under the ATIA. C. Did the Respondent correctly interpret the exemptions and, where it exercised its discretion, did it do so reasonably?

[92] Both parties agree that the Respondent has the burden of establishing that the head of an institution is authorized to refuse to disclose a record requested under the ATIA.

[93] In Statham v. Canadian Broadcasting Corporation, 2010 FCA 315, at para. 64, [2012] 2 F.C.R. 421, the Court set out three (3) prerequisites that must be met before an application under s. 41 of the ATIA can be made: The applicant must have been refused access to a requested record;

2. The applicant must have complained to the Information Commissioner about the refusal; and

3. The applicant must have received a report of the Information Commissioner pursuant subsection 37(2) of the ATIA. The Applicants have met the prerequisites necessary to this Court's jurisdiction.

[94] The applicable standard of review will depend on the provision of the ATIA relied upon to refuse access. Where the issue is whether information falls within the exemptions a correctness standard applies. Where the exemption provides for discretion to refuse disclosure, the reasonableness standard of review applies. Where the reasonableness standard applies, the Court is required to "consider whether the discretion appears to have been exercised in good faith, and for some reason which is rationally connected to the purpose for which the discretion was granted" (See: Dagg v Minister of Finance, [1997] 2 SCR 403 at para. 110 [1997] S.C.J. No. 63 [Dagg], Canada (Information Commissioner v Toronto Port Authority, 2016 FC 683 at para. 45, 271 A.C.W.S. (3d) 680 [Toronto Port Authority] and 3430901 Canada Inc. v. Canada (Minister of Industry), 2001 FCA 254 at para. 47, [2001] F.C.J. No. 1327).

(1) Paragraph 13(1)(a) – Information obtained in confidence from the government of a foreign state

[95] The Applicants acknowledge that paragraph 13(1)(a) of the ATIA provides a mandatory exemption for information obtained in confidence from the government of a foreign state. They submit that that the Respondent applied an overly broad reading of the Tax Information Exchange Agreement [TIEA], which led to a broad application of the exemption. The Applicants submit that only communications that transmit information pursuant to the TIEA are confidential. Accordingly, exempt information captured by the TIEA constitutes only information regarding tax matters. The Applicants contend the Respondent should have determined whether there was evidence that the communication was made in confidence, and, whether it transmitted information pursuant to the TIEA. The

Applicants submit that if either of these questions is answered in the negative, the Respondent should have disclosed the communication.

[96] The Respondent agrees with the Applicants that paragraph 13(1)(a) contains a mandatory exemption which provides that the head of the institution shall refuse to disclose any records containing information obtained in confidence from the government of a foreign state. The Respondent contends, that while the information at issue must have been supplied by the foreign government, it need not originate from the foreign state in order to be exempt. Furthermore, subsection 13(2) of the ATIA grants the head of the institution with the discretion to disclose information described in subsection 13(1) of the ATIA, if the foreign government consents to the disclosure or makes the information public. The Respondent submits that the information exempted under s. 13(1)(a) consists of correspondence or documents obtained by CASD from the tax authorities of Bermuda pursuant to the TIEA or from the tax authorities of Ireland, the Netherlands or the United States pursuant to an income tax convention. The Respondent submits that any information obtained by the CRA pursuant to the tax convention or the TIEA is treated as confidential by both the CRA and the competent authorities of the foreign state and is therefore obtained "in confidence" and falls within the exemption at s. 13(1)(a). The Respondent submits that the ATIP Directorate sought consent to release information obtained from the governments of Bermuda and Ireland; however, both governments refused that consent. Moreover, they submit that the CRA's delegated authority had no discretion to disclose the information under s. 13(2) of the ATIA.

[97] In my view the Applicants are attempting to narrow the definition of "information" as that term is contemplated by Article 8 of the TIEA by relying upon the preamble of the TIEA, which reads as follows: Whereas the Government of the United Kingdom has issued a letter of entrustment to the Government of Bermuda (hereinafter "Bermuda") to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada (hereinafter "Canada"): [Emphasis Added]

[98] Article 4 of the TIEA defines "information" as follows: information means any fact, statement or record in any form whatever. Article 8 of the TIEA states that any information received by a party under this agreement shall be treated as confidential, and may only be disclosed under certain circumstances. I am of the view the ATIA and the TIEA purposely used broad language when referring to information obtained from a foreign government. I agree with the Respondent that any information obtained by the CRA pursuant to the TIEA is to be treated as confidential. In my view the Respondent correctly identified the exemption set out in paragraph 13(1)(a) of the ATIA and reasonably exercised its discretion pursuant to s. 13(2).

(2) Paragraph 16(1)(b) – Information regarding investigative techniques

[99] The Applicants acknowledge that the Respondent had the discretionary ability under paragraph 16(1)(b) of the ATIA to exempt records containing information relating to "investigative techniques or plans for specific lawful investigations". The Applicants contend, however, that the Respondent's reliance upon that section to exempt virtually all records flowing from an audit is contrary to the wording, spirit and intent of the ATIA. Relying upon R v. Jarvis, 2002 SCC 73, [2002] 3 SCR 757, the Applicants contend there is a stark distinction between an audit and an investigation. They say an audit's purpose is to determine tax liability, whereas, an investigation's purpose is to determine penal liability. Furthermore, the Applicants submit that the wording of s. 16.1 of the ATIA supports the distinction between the concepts of audit and investigation in the ATIA. The Applicants submit that Parliament could have, but did not, expand subsection 16(1) of the ATIA to include an "investigation or audit". Moreover, they say that where two (2) interpretations of the ATIA are possible, the one that supports the public's right to access should be preferred over that which limits it.

[100] The Respondent says that paragraph 16(1)(b) of the ATIA is a discretionary class exemption whose purpose is to protect information regarding investigative techniques or information relating to a specific investigation. The Respondent refers to subsection 16(4) of the ATIA which defines the term "investigation" as follows:

(4) For the purposes of paragraph (1)(b) and (c), investigation means an investigation that

(4) Pour l'application des alinéas (1)b) et c), enquête s'entend de celle qui :

(a) pertains to the administration or enforcement of an Act of Parliament;

a) se rapporte à l'application d'une loi fédérale;

(b) is authorized by or pursuant to an Act of Parliament; or

b) est autorisée sous le régime d'une loi fédérale;

(c) is within a class of investigations specified in the regulations.

c) fait partie d'une catégorie d'enquêtes précisée dans les règlements.

[101] The Respondent says that the term "investigation" includes tax audits since they pertain to the administration and enforcement of the ITA. It says that most of the information exempted under paragraph 16(1)(b) consisted of audit techniques, including a risk assessment tool, used by the CRA to identify taxpayers or guide its auditors in applying s. 94.1 of the ITA. The Respondent submits those records contained information relating to investigative techniques and the specific ongoing tax audit, both of which fall within the exemption at 16(1)(b). The Respondent submits that when reviewing the exercise of discretion, the court should examine the totality of the evidence to determine whether it is satisfied, on a balance of probabilities, that the decision-maker understood that there was discretion to disclose and then exercised that discretion reasonably : Attaran v. Canada (Foreign Affairs), 2011 FCA 182 at para. 18, 337 D.L.R. (4th) 552. It contends that the exercise

of discretion to invoke an exemption in access legislation constitutes a weighing of the public interest in favour of disclosure against the public interest in non-disclosure embodied by the exemption. The Respondent submits that the CRA reasonably exercised its discretion not to disclose the information given that the investigative techniques could be used in future audits of offshore investment funds and could impair the CRA's ability to administer the ITA. Furthermore, the disclosure of the risk assessment tool would make plans for a specific ongoing audit publicly available.

[102] I agree with the Respondent that the term "investigation", in these circumstances, includes tax audits. Such audits pertain to the administration and enforcement of the ITA. Furthermore, in this case the exempt information consists of either audit techniques used by the CRA to identify or guide its auditors in applying s. 94.1 of the ITA or a risk assessment tool used to evaluate and manage the risks of an ongoing audit. Such information falls within the two (2) categories identified at s. 16(1)(b). Finally, it is my opinion that the Respondent reasonably exercised its discretion not to disclose the information. The negative consequences of disclosure outweigh the public interest in disclosing the information.

(3) Paragraph 16(1)(c)

[103] The Applicants object to the fact that the Respondent applied a blanket exemption under paragraph 16(1)(c) while the SLT audit was ongoing, such that all Master File records were excluded from disclosure, until such time as the audit was concluded. The Applicants' submit that the ATIA favours disclosure and transparency and enacts a regime where exemptions are the exception. Moreover, s. 25 of the ATIA specifically provides that severance, where possible, is required. The Applicants submit that the Respondents had no reason to believe that the disclosure of any of these documents would have compromised the audit.

[104] The Respondent says that any findings regarding the merits of the paragraph 16(1)(c) exemptions are outside the scope of this application for judicial review, since none of the records received by the Applicants is now the subject of this exemption. I agree.

(4) Subsection 19(1) – Personal Information

[105] The Applicants submit that, in the test documents, the Respondent redacted the names of the individuals from Bermuda with whom CRA officials were interacting. The Applicants submit that s. 19(1) of the ATIA is expressly subject to s. 8 of the Privacy Act, RSC 1985, c P-21 [Privacy Act], which, at paragraph 2(f), states that personal information may be disclosed pursuant to an agreement between Canada and a foreign government. The Applicants submit that the TIEA is such an agreement and therefore displaces s. 19(1) of the ATIA, allowing for the disclosure as long as the conditions of s. 13(1)(a) of the ATIA are not met.

[106] The Respondents submit that subsection 19(1) of the ATIA is a mandatory class exemption, the purpose of which is to protect personal information as defined by s. 3 of the Privacy Act. The Respondent submits that the language used to define personal information is deliberately broad in order to capture any information about a specific person, subject only to certain exemptions (see, Dagg). The Respondent submits that the legislative scheme established by the ATIA and the Privacy Act contemplates that where the personal information of an individual is concerned, the right to privacy is paramount to the right of access to information: H.J. Heinz Co. of Canada Ltd v. Canada (Attorney General), 2006 SCC 13 at para. 26, [2006] 1 SCR 441 [Heinz]. Subsection 19(2) provides the head of the institution with the discretionary authority to disclose information described in subsection 19(1), if the individual to whom it relates consents to the disclosure, the information is publicly available, or the disclosure is in accordance with s. 8 of the Privacy Act. The Respondent submits that the exempted records meet the definition of personal information. Moreover, the CRA exercised its discretion not to seek consent to disclose the personal information pursuant to s. 19(2) of the ATIA, having concluded that the public interest in disclosing such information did not outweigh any invasion of privacy that would result from the disclosure.

[107] Subsection 19(1) is a mandatory class exemption, whose purpose is to protect “personal information” In my opinion, the Respondent correctly applied the exemption not to disclose the personal information under s. 19(1) and was reasonable in choosing not to disclose the information under s. 19(2). I agree with the Respondent’s positon regarding the subsection 19(1) exemptions.

(5) Paragraphs 21(1)(a) and (b) – advice and recommendations; consultations and deliberations

[108] The Applicants contend that the section 21 exemptions are intended to provide the government with a sphere of privacy for internal communications, in order not to stifle independent thought and free debate. They contend the Respondent has applied s. 21 of the ATIA in a broad and strategic manner to give the impression that its position on the audits was stronger than was actually the case. They provide an example of this behaviour under paragraph 21(1)(a) of the ATIA. The Applicants submit that a letter written by the then-general director of the Department of Finance, Len Farber, was redacted in a manner to mislead them. A portion of the letter favourable to their position had been redacted and the document, as redacted, left the opposite impression of that communicated by Mr. Farber. The Applicants suggest that the remainder of the s. 21(1)(a) test documents further demonstrate the Respondent was intent on limiting the amount of information available to the Applicants to defend themselves against the CRA’s reassessments.

[109] The Applicants contend that CRA’s use of exemptions under s. 21(1)(b) mirrored the themes that were apparent in the context of paragraphs 16(1)(c) and 21(1)(a) of the ATIA; namely, to withhold information helpful to the Applicants and disclose information which bolstered its own reassessment position. They submit that the ATIA must compel government actors to disclose records on an objective basis, even if such records are unhelpful to them.

[110] The Respondent contends that section 21 offers a discretionary class exemption aimed at maintaining confidentiality in the decision-making process of government institutions. They contend that the protection of advice and recommendations developed by or for a government institution and the protection of consultations and deliberations involving officials or employees of government institutions are essential to the preservation of an effective and neutral public service. While the ATIA does not define "account", "consultation" or "deliberations" in paragraph 21(1)(b), the Respondent contends those terms should be given their ordinary meaning. The CRA relies upon Toronto Port Authority at para. 84.

[111] Similarly, the ATIA does not define the terms "advice" or "recommendations" in paragraph 21(1)(a). The Respondent notes that in John Doe v. Ontario (Finance), 2014 SCC 36, [2014] 2 SCR 3, the Court defined "recommendation" as a course of action that may or may not be accepted; and "advice" as a broader meaning that may include a public servant's identification and consideration of a range of alternative solutions. The CRA contends the records exempted under this category were generated: a) during the ongoing audit of the Applicants as employees considered and analyzed the application of different tax provisions under the ITA; (b) in relation to objections and appeals to the TCC filed by the Applicants regarding reassessments issued following the audits; and, (c) in relation to the OIC's ongoing investigation of complaints.

[112] The Respondent submits that in exercising its discretion to rely on the s. 21 exemption, it considered whether disclosure of information containing advice, recommendations, consultations or deliberations on these matters would compromise its internal decision-making process. That is to say, would employees be reluctant to fully examine, and frankly communicate about, all aspects of sensitive and difficult questions. Furthermore, the CRA was of the view that disclosure of various employees' interpretations of tax provisions and potential assessment positions, prior to the CRA arriving at a final position, would negatively impact the ongoing audits of all SLT shareholders. The Respondent submits that the above factors outweighed the public interest in access to information and government transparency and was reasonable.

[113] Section 21 of the ATIA is a discretionary class exemption aimed at maintaining confidentially in the decision-making process of a government institution. In Canadian Council of Christian Charities v. Canada (Minister of Finance), [1999] 4 FC 245 at para. 30, 168 F.T.R. 49 [Canadian Council], the Court acknowledges the "importance of governmental openness as a safeguard against the abuse of power, and a necessary condition for democratic accountability". However, it notes that it is "equally clear that governments must be allowed a measure of confidentiality in the policy-making process". The Court, in Canadian Council, goes on at paragraph 39 to state "[...] most internal documents that analyse a problem, starting with an initial identification of a problem, then canvassing a range of solutions, and ending with specific recommendations for change, are likely to be caught within paragraph (a) or (b) of subsection 21(1)". In my opinion, the Respondent

reasonably exercised its discretion not to disclose the records.

(6) Section 23 - solicitor-client privilege

[114] The Applicants admit that the “privilege” exemption at s. 23 of the ATIA applies to both solicitor-client communications and documents subject to litigation privilege. They contend that the test documents reveal that the Respondent applied the s. 23 exemption in an overly broad manner. They provide, as examples, test documents 2 and 3, which constitute correspondence between an attorney for the Bank of Nova Scotia and an attorney for the CRA. The Applicants note that the documents were created two (2) years before the reassessments were issued and appear to have been redacted because there was ongoing litigation at that point.

[115] The Respondent contends that the solicitor-client privilege is broad in scope. Citing the decision in Ontario (Public Safety and Security) v. Criminal Lawyers’ Associations, 2010 SCC 23, [2010] 1 SCR 815, the Respondent says that the court held that in circumstances involving information protected by solicitor-client privilege, it would be an exceptional case where the exercise of discretion would support disclosure. The Respondent asserts that as long as there is evidence of the exercise of discretion, a refusal to disclose is not subject to further inquiry.

[116] While I disagree with the Respondent’s assertion that evidence of the exercise of discretion concludes the debate with respect to the solicitor-client exemption, I am satisfied the CRA reasonably exercised that discretion in the circumstances. I would not interfere with its determination in that regard.

(7) Subsection 24(1) – Restricted information under Schedule II

[117] Pursuant to subsection 24(1), the Respondent is not permitted to disclose third-party taxpayer information. The Applicants contend the Respondent used the s. 24(1) exemption as a ruse to avoid disclosing weaknesses in its case. The Applicants say that the test documents concerning s. 24(1) reveal a failure by the Respondent to properly apply severance pursuant to s. 25 of the ATIA.

[118] The Respondent contends that subsection 24(1) is a mandatory class exemption, which imposes an unqualified duty on the head of the government institution to refuse to disclose any record containing information, the disclosure of which is restricted pursuant to a provision set out in Schedule II of the ATIA. Section 241 of the ITA is listed in Schedule II of the ATIA. Subsections 241(1) and (2) of the ITA restrict the provision or disclosure of taxpayer information.

[119] Subsection 24(1) of the ATIA is a mandatory exemption. The Supreme Court of Canada in Slattery (Trustee of) v. Slattery, [1993] 3 SCR 430 at para. 22, 1993 CanLII 73 (SCC) sets out when this information can be disclosed: Section 241 reflects the importance of ensuring respect for a taxpayer's privacy interests, particularly as that interest relates to a taxpayer's finances. Therefore, access to financial and related information about taxpayers is to be

taken seriously, and such information can only be disclosed in prescribed situations. Only in those exceptional situations does the privacy interest give way to the interest of the state.

[120] I agree with the Respondents. There is no basis upon which to interfere with CRA's decision regarding this exemption. D. Should the Court order the Respondent to conduct further searches for records?

[121] The Applicants contend the Respondent has not yet disclosed all records in this matter. They specifically refer to the "archived" email boxes of retired employees which were referred to by Mr. Fidanza during his testimony in the Quebec proceedings. He testified that the email boxes were deleted 60 days after the retirement date of the employee. The Applicants submit that the fact that the Respondent does not have backups is dubious as it would constitute a violation of rules regarding document conservation under the Library and Archives Canada Act, S.C. 2004, c. 11 [LACA]. The Applicants submit that this court should order the Respondent to conduct full and complete searches of all available government records, including those that have been archived, in order to satisfy the ATIP Requests. Furthermore, the Applicant requests this Court order the Respondent provide positive confirmation that it has conducted such searches of the archives.

[122] The Respondent contests this Court's authority to order further searches. It contends the Court's reviewing authority under sections 41 and 49 of the ATIA does not include an order to compel a further search for unidentified records unless there is some evidence, beyond mere suspicion, that records exist and have been withheld. Relying upon Blank v. Canada (Justice), 2016 FCA 189, at para. 36 [2016] FCJ No 694 (QL) the Respondent says that it is not for the Court to order and supervise the gathering of records in the possession of the head of a government institution or review the manner in which government institutions respond to access requests, "except perhaps in the most egregious circumstances of bad faith". The Respondent also asserts that the Court lacks the authority to consider "the wisdom of government document retention policies" Friesen v. Canada (Health), 2017 FC 1152 at para. 12, 287 A.C.W.S. (3d) 204. The Respondent submits that to the extent that the emails consisted of transitory records, the CRA was authorized to destroy them pursuant to the LACA.

[123] Based upon the evidence before me, I am satisfied the CRA has already conducted a thorough search of all records requested. My conclusion is based on Mr. Fridanza's affidavit and on his cross-examination on September 27, 2019 where he stated "Any available electronic mailbox information, any type of electronic formatted documents, wherever they would be, any type of server, mailbox, anything that was available, I asked that it be searched". Additionally, on March 16, 2016, the OIC issued a report in relation to the second complaint arising from the Missing Documents Request. It stated that it was "now satisfied that the CRA had made reasonable efforts to locate all records responsive to [the] requests". In the circumstances, I reject the Applicants' request that the Court order further searches by the CRA. E. Should the Court order solicitor-client costs?

[124] The Applicants contend the Respondent manipulated the access process into a tool of abuse, waging a strategic battle in order to defend indefensible reassessments. The Applicants submit that the Respondent's conduct is a suitable one for an award of costs on solicitor-client basis. They are supported in this assertion by some of the findings in the Quebec Superior Court. The Applicants acknowledge that they have been reimbursed for some of their legal fees associated with the access process through the proceedings in the Quebec Superior Court.

[125] Section 53 of the ATIA governs costs in judicial review proceedings under the ATIA. Citing Dagg, the Respondent submits that solicitor-client costs are only granted in exceptional circumstances where there has been "reprehensible, scandalous or outrageous conduct" on the part of one of the parties. Furthermore, in Apotex Inc. v. Canada (Minister of National Health and Welfare), 2000 CanLII 16483, 194 D.L.R. (4th) 483 and similarly in Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc., 2011 FC 776, [2013] 1 F.C.R. 413, the courts declared that solicitor-client costs are to be awarded only on grounds of misconduct connected with the litigation.

[126] The Respondent acknowledges the errors it made during the process of responding to the Applicants' requests. It notes that those errors have cost it $3,097,436.00 in damages in the proceedings in the Quebec Superior Court for professional fees incurred.

[127] The CRA undoubtedly committed errors in the process of responding to the Applicants' access to information requests. This is evidenced by the decision in the Quebec Superior Court proceedings reported at 2018 QCCS 3381 and by the numerous "additional" disclosures wrought from the CRA by the OIC. However, the system worked. The OIC, as the arbiter, was able to perform its role, in large measure due to the tenacity of the Applicants' counsel and the co-operation of the CRA. There is no basis to award solicitor-client costs to the Applicants. VI. Conclusion

[128] Given my conclusions on the application before me, and my observations in paragraphs 123 to 125 herein, there is no basis to award solicitor-client costs to the Applicants, nor is there any basis to award costs to the Applicants. That said, given CRA's lengthy delays in providing the necessary access to information, the ongoing efforts of the Applicants to obtain access and the repeated need for involvement of the OIC in facilitating access, I am unwilling to award costs to the Respondent.

[129] I dismiss the within application for judicial review without costs. JUDGMENT in T-902-13 THIS COURT'S JUDGMENT is that the within application for judicial review is dismissed without costs. "B. Richard Bell" Judge ANNEX A ATIP REQUEST FILE NUMBER DATE OF REQUEST CRA DECISIONS COMPLAINTS TO OIC OIC REPORT RELEASE DATE FEDERAL COURT NOTICES OF APPLI-CATION FILED Initial Requests File numbers: A-046895 A-046896 A-046897 A-046898 A-046899 A-046900 A-046901 Request made: August 19, 2009 Request received: August 24, 2009 Initial: January 28, 2010 Supplementary March 1, 2012 May 1, 2012 July 23, 2012 Exemption complaint: February 18, 2010 File numbers: 3209-1249

to 3209-01255 May 1, 2012 June 8, 2012 (T-1105-12) Discontinued on July 31, 2012 First Updated Requests File numbers: A-054739 A-054740 A-054741 A-054742 A-054743 A-054744 A-054745 Request made: February 18, 2011 Initial: September 26, 2011 Supplementary: September 14, 2012 January 28, 2013 March 6, 2013 March 15, 2013 March 19, 2013 March 20, 2013 Exemption complaint: November 16, 2011 File Numbers: 3211-00862 to 3211-00686 March 28, 2013 May 21, 2013 (T-904-13*) *Consolidated under Court file T-902-13 Second Updated Requests File numbers: A-056067 A-056068 A-056069 A-056070 A-056071 A-056072 A-056073 Request made: June 23, 2011 Request received: June 28, 2011 Initial: October 7, 2011 Supplementary: September 14, 2012 March 8, 2013 Exemption complaint: November 16, 2011 File numbers: 3211-00869 to 3211-00875 March 28, 2013 May 21, 2013 (T-902-13*) *Consolidated under Court file T-902-13 Third Updated Requests File numbers: A-060534 A-060535 A-060536 A-060537 A-060538 A-060539 A-060540 Request made: July 31, 2012 Request received: July 31, 2012 Initial: November 30, 2012 Supplementary: January 7, 2013 June 25, 2013 July 9, 2013 Exemption complaint: December 6, 2012 File numbers: 3212-01137 to 3212-01143 April 29, 2013 (selected docs) July 11, 2013 (remaining docs) May 21, 2013 (T-903-13*) (selected documents) July 26, 2013 (T-1289-13*) (remaining documents) *Consolidated under Court file T-902-13 Bermuda Requests File numbers: A-062984 A-062985 A-062986 A-062987 A-062988 A-062989 A-062990 Request made: November 29, 2012 Initial: January 30, 2013 Supplementary: May 13, 2013 Exemption complaint: February 12, 2013 File numbers: 3212-01475 to 3212-01481 July 25, 2013 August 5, 2013 (T-1324-13*) *Consolidated under Court file T-902-13 Fourth Updated Requests File numbers: A-063130 A-063131 A-063132 A-063133 A-063134 A-063135 A-063136 Request made: Dec. 11, 2012 Request received: December 13, 2012 Initial: February 1, 2013 February 6, 2013 Supplementary: June 19, 2013 Exemption complaint: March 19, 2013 File numbers: 3213-00005 to 3213-00011 July 3, 2013 July 26, 2013 (T-1290-13*) *Consolidated under Court file T-902-13 Missing Records Request File number: A-063130 from the Fourth Updated Requests was used August 23, 2013 letter November 8, 2013 November 21, 2013 November 29, 2013 December 16, 2013 January 15, 2014 March 24, 2014 April 30, 2014 June 27, 2014 July 11, 2014 July 21, 2014 Further to OIC investigation: January 27, 2015 April 23, 2015 May27, 2015 July 7, 2015 June 21, 2016 Exemption complaint: January 7, 2014 File number: 3213-01720 Missing records complaint: January 7, 2014 File number: 3213-01721 Exemption complaint: August 22, 2014 File number: 3214-00862 Missing records complain: March 16, 2016 Exemption complaint (June/July 2014 disclosures): January 30, 2019 April 28, 2016 (T-678-16*) March 15, 2019 (T-466-19*) March 15, 2019 (T-467-19*) *Consolidated under Court file T-902-13 ANNEX B Access to Information Act, R.S.C., 1985, c. A-1 Loi sur l’accès à l’information, L.R.C. (1985), ch. A-1 Information obtained in confidence Renseignements obtenus à titre confidentiel 13 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains information that was obtained in confidence from 13 (1) Sous réserve du paragraphe (2), le responsable d’une institution fédérale est tenu de refuser la communication de documents contenant des renseignements obtenus à titre confidentiel :

(a) the government of a foreign state or an institution thereof;

a) des gouvernements des États étrangers ou de leurs organismes; Where disclosure authorized Cas où la divulgation est autorisée

(2) The head of a government institution may disclose record requested under this Part that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements visés au paragraphe (1) si le gouvernement, l'organisation, l'administration ou l'organisme qui les a fournis :

(a) consent to the disclosure; or

a) consent à la communication;

(b) makes the information public.

b) rend les renseignements publics. Law enforcement and investigations Enquêtes 16 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains 16(1) Le responsable d'une institution fédérale peut refuser la communication de documents :

(b) information relating to investigative techniques or plans for specific lawful investigations;

b) contenant des renseignements relatifs à des techniques d'enquêtes ou à des projets d'enquêtes licites déterminées;

(c) information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

c) contenant des renseignements dont la divulgation risquerait vraisemblablement de nuire aux activités destinées à faire respecter les lois fédérales ou provinciales ou au déroulement d'enquêtes licites, notamment :

(i) relating to the existence or nature of a particular investigation,

(i) des renseignements relatifs à l'existence ou à la nature d'une enquête déterminée, (ii) that would reveal the identity of a confidential source of information, or (ii) des renseignements qui permettraient de remonter à une source de renseignements confidentielle, (iii) that was obtained or prepared in the course of an investigation; or (iii) des renseignements obtenus ou préparés au cours d'une enquête; Personal information Renseignements personnels 19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information. 19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels. Where disclosure

authorized Cas où la divulgation est autorisée

(2) The head of a government institution may disclose any record requested under this Part that contains personal information if

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

(a) the individual to whom it relates consents to the disclosure;

a) l'individu qu'ils concernent y consent;

(b) the information is publicly available; or

b) le public y a accès;

(c) the disclosure is in accordance with section 8 of the Privacy Act.

c) la communication est conforme à l'article 8 de la Loi sur la protection des renseignements personnels. Advice, etc. Avis, etc. 21 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains 21 (1) Le responsable d'une institution fédérale peut refuser la communication de documents datés de moins de vingt ans lors de la demande et contenant :

(a) advice or recommendations developed by or for a government institution or a minister of the Crown,

a) des avis ou recommandations élaborés par ou pour une institution fédérale ou un ministre;

(b) an account of consultations or deliberations in which directors, officers or employees of a government institution, a minister of the Crown or the staff of a minister participate,

b) des comptes rendus de consultations ou délibérations auxquelles ont participé des administrateurs, dirigeants ou employés d'une institution fédérale, un ministre ou son personnel; Protected information — solicitors, advocates and notaries Renseignements protégés : avocats et notaires 23 The head of a government institution may refuse to disclose any record requested under this Part that contains information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege. 23 Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements protégés par le secret professionnel de l'avocat ou du notaire ou par le privilège relatif au litige. Statutory prohibitions against disclosure Interdictions fondées sur d'autres lois 24 (1) The head of a government institution shall refuse to disclose any record requested under this Part that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II. 24 (1) Le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements dont la communication est restreinte en vertu d'une disposition figurant à l'annexe II. Review by Federal Court — complainant Révision par la Cour fédérale : plaignant 41 (1) A person who makes a complaint described in any of

paragraphs 30(1)(a) to (e) and who receives a report under subsection 37(2) in respect of the complaint may, within 30 business days after the day on which the head of the government institution receives the report, apply to the Court for a review of the matter that is the subject of the complaint. 41 (1) Le plaignant dont la plainte est visée à l'un des alinéas 30(1)a) à e) et qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les trente jours ouvrables suivant la réception par le responsable de l'institution fédérale du compte rendu, exercer devant la Cour un recours en révision des questions qui font l'objet de sa plainte. Order of Court where no authorization to refuse disclosure found Ordonnance de la Cour dans les cas où le refus n'est pas autorisé 49 Where the head of a government institution refuses to disclose a record requested under this Part or a part thereof on the basis of a provision of this Part not referred to in section 50, the Court shall, if it determines that the head of the institution is not authorized to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate. 49 La Cour, dans les cas où elle conclut au bon droit de la personne qui a exercé un recours en révision d'une décision de refus de communication totale ou partielle d'un document fondée sur des dispositions de la présente partie autres que celles mentionnées à l'article 50, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner à cette personne communication totale ou partielle; la Cour rend une autre ordonnance si elle l'estime indiqué. Costs Frais et dépens 53 (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Part shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise. 53 (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal. Privacy Act, R.C.S., 1985, c. P-21 Loi sur la protection des renseignements personnels, L.R.C. 1985 c. P-21 Where personal information may be disclosed Cas d'autorisation 8(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed 8(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

(f) under an agreement or arrangement between the Government of Canada or any of its institutions and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act, the council of a participating First Nation as defined in section 2 of the Anishinabek Nation Education Agreement Act, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

f) communication aux termes d'accords ou d'ententes conclus d'une part entre le gouvernement du Canada ou l'un de ses organismes et, d'autre part, le gouvernement d'une province ou d'un État étranger, une organisation internationale d'États ou de gouvernements, le conseil de la première nation de Westbank, le conseil de la première nation participante — au sens du paragraphe 2(1) de la Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique —, le conseil de la première nation participante — au sens de l'article 2 de la Loi sur l'accord en matière d'éducation conclu avec la Nation des Anishinabes — ou l'un de leurs organismes, en vue de l'application des lois ou pour la tenue d'enquêtes licites; Income Tax Act, R.C.S., 1985, c. 1 (5th Supp.) Loi de l'impôt sur le revenu, L.R.C., 1985, ch. 1 (5e suppl.) Provision of information Communication de renseignements 241 (1) Except as authorized by this section, no official or other representative of a government entity shall 241 (1) Sauf autorisation prévue au présent article, il est interdit à un fonctionnaire ou autre représentant d'une entité gouvernementale :

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

a) de fournir sciemment à quiconque un renseignement confidentiel ou d'en permettre sciemment la prestation;

(b) knowingly allow any person to have access to any taxpayer information; or

b) de permettre sciemment à quiconque d'avoir accès à un renseignement confidentiel;

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.

c) d'utiliser sciemment un renseignement confidentiel en dehors du cadre de l'application ou de l'exécution de la présente loi, du Régime de pensions du Canada, de la Loi sur l'assurance-chômage ou de la Loi sur l'assurance-emploi, ou à une autre fin que celle pour laquelle il a été fourni en application du présent article. FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-902-13 STYLE OF CAUSE: 3412229 CANADA INC., 3421848 CAANDA INC., 3488055 CANADA INC., 3488063 CANADA INC., 2534-2825 QUEBEC INC., 4077211 CANADA INC. v CANADA REVENUE AGENCY AND THE INFORMATION COMMISSIONER OF CANADA PLACE OF HEARING: Montréal, Quebec DATE OF HEARING: September 8, 9 AND 10, 2020 REASONS FOR JUDGMENT AND JUDGMENT: BELL J. DATED: DECEMBER 16, 2020 APPEARANCES: David Grossman Miriam Clouthier For The Applicants Sarom Bahk David Lucas For The Respondent Aditya Ramachandran For The Third Party SOLICITORS OF RECORD: IMK LLP Montreal, Quebec For The Applicants Attorney General of Canada Montreal, Quebec For The Respondent Office of the Information Commissioner of Canada Gatineau, Quebec For The Third Party

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