

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH
AMERICAN FREE TRADE AGREEMENT AND THE 2010 UNCITRAL ARBITRATION
RULES**

- between -

WINDSTREAM ENERGY LLC

(the “Claimant”)

- and -

GOVERNMENT OF CANADA

(the “Respondent”)

PROCEDURAL ORDER NO. 3

**ARBITRAL TRIBUNAL:
Dr. Veijo Heiskanen (President)
Mr. R. Doak Bishop
Dr. Bernardo Cremades**

**REGISTRY:
Permanent Court of Arbitration**

21 January 2015

Pursuant to Sections 4.2 and 16.1 of Procedural Order No. 1 dated 16 September 2013 (as amended), the Tribunal issues the following Procedural Order.

1 Procedural background

- 1.1 On 7 November 2014, the Claimant wrote to the Tribunal seeking “assistance in connection with certain issues that have arisen among the parties during the document production process.” According to the Claimant, the issues related to (a) a lack of documents produced by Canada from the Premier’s Office of the Government of Ontario, and (b) discrepancies between the amount of documents produced by Canada from the Government of Ontario’s Ministry of Natural Resources, Ministry of the Environment and Ministry of Energy, as opposed to the amount of documents obtained by the Claimant from these Ministries through access to information requests. The Claimant requested the Tribunal to issue various procedural orders on this basis.
- 1.2 By letter dated 18 November 2014, the Respondent provided comments on the Claimant’s requests.
- 1.3 By letter dated 24 November 2014, the Claimant submitted a reply to the Respondent’s comments.
- 1.4 By letter dated 28 November 2014, the Respondent submitted its comments on the Claimant’s reply.
- 1.5 On 15 December 2015, the Tribunal wrote to the Parties, noting the Respondent’s statement that

there are no current staff members of Premier Wynne’s office that were also senior staff members or members of the policy division in Premier McGuinty’s office. As such, there is no individual at the current Premier’s Office who can speak to the deferral on onshore wind with direct knowledge of what happened in 2011.

The Tribunal requested that the Respondent clarify by 18 December 2014 whether it was in a position to identify the individual in the former Premier’s Office who was most directly involved in the decision on the deferral/moratorium on onshore wind development, whether or not she or he was a staff member in the current Premier’s Office.
- 1.6 On 18 December 2014, the Respondent wrote to the Tribunal stating that it was not in a position to identify at the time the individual concerned, but indicated that it would make relevant inquiries and would update the Tribunal on progress by 7 January 2015.
- 1.7 On 22 December 2014, the Claimant wrote to the Tribunal, stating that new information relevant to its request for discovery had been disclosed as a result of a legal proceeding in Ontario, and requesting an opportunity to submit this new information to the Tribunal.
- 1.8 On 23 December 2014, the Tribunal invited the Respondent to provide its comments on the Claimant’s communication of 22 December 2014 by 30 December 2014. The Tribunal subsequently extended this deadline until 7 January 2015, at the Respondent’s request.
- 1.9 On 7 January 2015, the Respondent submitted a response to the Tribunal’s query of 15 December 2014, as well as its comments on the Claimant’s communication of 22 December 2014.
- 1.10 On 8 January 2015, the Tribunal decided to allow the Claimant to submit the new information referred to in the Claimant’s email of 22 December 2014 by 9 January 2015, giving an opportunity to the Respondent to respond to any such new information by 14 January 2015.
- 1.11 On 9 January 2015, the Claimant submitted the new information referred to in its email of 22 December 2014.

- 1.12 On 14 January 2015, the Respondent submitted its comments on the Claimant's new information.
- 1.13 On 20 January 2015, the Respondent filed its Counter-Memorial, together with supporting evidence.

2 The issues disputed between the Parties

- 2.1 The Parties' positions on the disputed issues that are addressed in this Procedural Order can be summarized as follows.

a) The position of the Claimant

- 2.2 According to the Claimant, two issues have arisen in the context of the document production process, relating to "(a) a lack of documents produced by Canada from the Premier's Office of the Government of Ontario; and (b) discrepancies between the amount of documents produced by Canada from the Government of Ontario's Ministry of Natural Resources ('MNR'), Ministry of the Environment ('MOE') and Ministry of Energy ('MEI') as opposed to the amount of documents obtained by Windstream from these Ministries through access to information requests."
- 2.3 As to the first issue, the Claimant points out that in its Request to Produce dated 16 October 2013, at #25, it had requested from the Respondent

[a]ll documents in the possession, power or control of the Premier's Office related to the consideration and implementation of the moratorium on the development of offshore wind projects, announced on February 11, 2011, including documents of Dalton McGuinty, Jameson Steeve, Dave Gene, Sean Mullin and Chris Morley.
- 2.4 The Claimant points out that the Respondent had agreed "to have the Premier's Office search for all relevant and material documents" falling under the Claimant's request.
- 2.5 The Claimant contends that the Respondent in the course of its document production "has produced no documents emanating from the Premier's Office from the period leading up to the February 11, 2011 moratorium or from the period immediately following the imposition of the moratorium that are responsive to document request #25." The Claimant argues that, since "the decision to implement the moratorium emanated from the Premier's Office," it is "implausible that no documents were ever created by Premier's Office staff, and that no emails were ever exchanged amongst Premier's Office staff concerning the decision to implement the moratorium."
- 2.6 The Claimant states that the Respondent "has advised that the e-mail accounts for Mr. Mullin, Mr. Morley and Mr. Steeve were decommissioned following their departure from the Premier's Office" and "are therefore not available to be searched for documents responsive to the Claimant's document requests." The Claimant further explains that the Respondent has advised that any restoration of back-up tapes that might include documents from the e-mail accounts of Mr. Mullin and Mr. Morley would be "an extremely costly, time-consuming and uncertain process."
- 2.7 In the circumstances, the Claimant requests that, "in lieu of documentary discovery, the Premier's Office staff member who was the most closely involved with the decision to implement the moratorium be compelled to attend an examination for discovery in Toronto to answer questions about that decision, and the decision to apply the moratorium to Windstream." According to the Claimant, under Article 4(9) of the IBA Rules on the Taking of Evidence in International Arbitration, "the Tribunal may take whatever steps are legally available to it ... to obtain the testimony of a witness who will not appear voluntarily, if the Tribunal determines that the testimony of that witness would be relevant to the case and

material to its outcome.” The Claimant refers to the proceedings in *Champion Trading Company Ameritrade International, Inc. v. Arab Republic of Egypt* as an example of a case where a tribunal granted the claimant’s motion “for permission to conduct limited discovery and for the production of documents.”¹

- 2.8 The Claimant further submits that, during the Procedural Hearing in the present arbitration held on 5 September 2013, “[t]he Tribunal did not reach a decision on whether or not it would be permissible to call a witness for discovery,” but rather left the issue open for a later decision in case it was raised by one of the parties in the course of the proceedings. The Claimant adds that “[i]f required, the assistance of Canadian courts may be sought by the Tribunal, or by Windstream with the approval of the Tribunal, to compel the witness’ attendance at an examination for discovery” pursuant to Article 27 of Canada’s Commercial Arbitration Code.
- 2.9 As to the second issue, the Claimant alleges that it has received through two requests made under Ontario’s Freedom of Information and Protection of Privacy Act (“FIPPA”) “a large number of documents” from the Government of Ontario’s Ministry of Natural Resources that “(1) are responsive to Windstream’s document requests, and (2) were not included in Canada’s productions.” The Claimant specifically lists a number of documents received through this process and submitted with its Memorial, which it says are responsive to some of the document production requests included in its Request to Produce dated 16 October 2013. In addition, the Claimant contends that “there are ... hundreds of other responsive documents received through the Claimant’s FIPPA requests and not included in Canada’s productions that the Claimant has not filed as exhibits to the Memorial.”
- 2.10 The Claimant further alleges that FIPPA requests made to the Government of Ontario’s Ministry of Energy and the Government of Ontario’s Ministry of the Environment that are “substantially similar” to the requests contained in the Claimant’s Request to Produce dated 16 October 2013, at #28 and #29, yielded over 60,000 and 70,000 pages of responsive records, respectively. The Claimant points out that this is “significantly more” than the 3,357 pages and 6,684 pages produced by the Respondent in response to the Claimant’s corresponding requests in its Request to Produce. While acknowledging that the difference in page numbers might partly be explained by differences in time frames and the wording of the relevant requests, the Claimant sees a “substantial discrepancy,” which it says suggests “that responsive documents were not produced.”
- 2.11 The Claimant submits that the fact that “documents were not produced by Canada, although responsive to Windstream’s document requests, calls into question the comprehensiveness of Canada’s searches for documents that are relevant and responsive to Windstream’s document requests.” As a consequence, the Claimant submits that the Tribunal should order the Respondent to “conduct further and better searches,” using its power under Article 27(3) of the UNCITRAL Rules.
- 2.11 As to the first issue, the Claimant requests the Tribunal to order as follows:
1. “Canada shall disclose the identity of the individual from the Premier’s Office who was most directly involved with the decision to implement the moratorium on offshore wind development (whether it is Mr. Mullin, Mr. Steeve, Mr. Morley or another individual);”
 2. “The individual identified by Canada shall appear before a certified court reporter in Toronto, Ontario to be examined for discovery by counsel for Windstream to answer questions relating to the decision to implement the moratorium on offshore wind development;”

¹ *Champion Trading Company Ameritrade International, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, para. 15.

3. "If that individual will not appear voluntarily to be examined for discovery, the Tribunal grants Windstream its approval to seek an order from the Ontario Superior Court of Justice for assistance in compelling the attendance of the individual;" and
 4. Alternatively to the above requests, "the Premier's Office [shall] restore the available back-up tapes and search the resulting restored documents for documents responsive to Claimant's document request #25."
- 2.12 As to the second issue, the Claimant requests the Tribunal to order the Respondent to:
1. "Disclose to Windstream and to the Tribunal the search processes it used to identify documents responsive to document requests #22, 27, 28, 29 and 56;"
 2. "Identify, and disclose to Windstream and to the Tribunal, the lacunae in its search processes that led to the above documents not being produced in response to document requests #22, 27, 28, 29 and 56;" and
 3. "Conduct any further and better searches for documents responsive to requests #22, 27, 28, 29 and 56 as may be agreed with Windstream, or ordered by the Tribunal failing such agreement."

b) The position of the Respondent

- 2.13 In response to the first issue raised by the Claimant, the Respondent submits that it has in fact "produced dozens of emails involving the Premier's Office that are responsive to the Claimant's document requests." The Respondent points out that "the culture within the Premier's Office was predominantly verbal," that this "is typical for high-level government deliberations," and that, as a consequence, "the number of documents produced is more than reasonable." According to the Respondent, therefore, "there is no basis for the Claimant's request for further discovery from the Premier's Office," which "should be dismissed on that basis alone." In addition, the Respondent also considers the Claimant's request to be "outside of the jurisdiction of this Tribunal, premature, unreasonably burdensome and unlikely to yield any information of value."
- 2.14 In particular, as to the Claimant's request for the Respondent to identify "the individual from the Premier's Office who was most directly involved with the decision to implement the moratorium on offshore wind development," the Respondent points out that "[t]here is no individual at the current Premier's Office who can speak to the deferral on offshore wind with direct knowledge of what happened in 2011." The Respondent states that all the individuals who could have direct knowledge, including those identified by the Claimant, are now "private citizen[s] outside of the control of Canada or Ontario."
- 2.15 According to the Respondent, "[t]he Tribunal has no authority to order these third parties to appear for oral examination" as "they have not consented to the jurisdiction of the Tribunal." The Claimant's reference to the decision of the tribunal in *Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt* would appear inappropriate, as the respondent in that case was instructed "to produce public officials for oral examination for discovery, not independent third parties."
- 2.16 The Respondent also submits that allowing the Claimant to seek an order from the Ontario Superior Court of Justice compelling the attendance of an identified individual at an oral examination would be premature at this stage of the arbitration. The Respondent states that it "is not aware of any NAFTA tribunal that has ordered oral testimony to be provided during the discovery phase of an arbitration," and points out that the tribunals in *Bilcon of Delaware et al. v. Government of Canada*² and *Methanex Corporation v. United States of America*³

² *Bilcon of Delaware et al. v. Government of Canada*, UNCITRAL (1976), PCA Case No. 2009-4, Letter from the tribunal to the parties dated 30 Dec. 2010.

refused to do so. The Respondent explains that it envisages to address the Claimant's allegations about the role of the Premier's Office in its upcoming written submissions, and takes the view that the Claimant's request for the Tribunal to "abandon the normal process of obtaining and presenting evidence ... should be rejected."

- 2.17 Addressing the Claimant's alternative request that the back-up tapes be restored, the Respondent points out that it is "highly unlikely" that the tapes contain "any relevant information for the period December 2010 to February 2011," and that requesting the Respondent to go through what "would be an extremely costly, time-consuming and complicated process for uncertain and likely very limited gain" would place an "unreasonable burden" on the Respondent. For that reason, the Claimant's alternative request should also be denied.
- 2.18 As to the second issue raised by the Claimant, the Respondent takes the view that "the fact that there are discrepancies between the documents produced within this arbitration and those responsive to a FIPPA request is neither remarkable nor problematic." The Respondent suggests that "the Claimant inadvertently misled the Tribunal when it suggested that their outstanding FIPPA requests would lead to the production of 70,000 pages from the Ministry of the Environment and Climate Change and 60,000 pages from the Ministry of Energy." According to the Respondent, the page estimates relate to "records that need to be reviewed, not the number of pages that are actually responsive to the Claimant's requests."
- 2.19 The Respondent further claims that any actual discrepancies identified by the Claimant "are *de minimis*" when compared against the volume of documents produced by the Respondent. The Respondent claims that, given the voluminous case record, "it is impossible to guarantee that some documents will not be inadvertently overlooked," and that the fact that some documents "were inadvertently not produced does not provide evidence of any systematic deficiencies ... that would warrant the granting of any relief by the Tribunal."
- 2.20 As to the Claimant's request that the Respondent disclose "the search processes it used to identify" responsive documents and "the lacunae in its search processes that led to the above documents not being produced," the Respondent notes that these communications are "protected by both solicitor-client privilege and litigation privilege," pointing to Article 9(2)(b) of the IBA Rules on the Taking of Evidence in International Arbitration, Article 7.4 of Procedural Order No. 1, and the *Bilcon* case.
- 2.21 As to the Claimant's request for the Respondent to "re-do its document search and production," the Respondent claims that it "would place an unreasonable burden" with "significant costs" on the Respondent and "disrupt the whole arbitration." According to the Respondent, such consequences could not be justified by the mere "fact that ten additional documents were discovered, ... especially since the Claimant has already obtained ... these additional documents as a result of the FIPPA process." The Respondent submits that, even if the number of documents that were inadvertently not provided through the document production process were higher, this would not alter "the conclusion that there are only minor differences" between the documents obtained by the Claimant through its FIPPA request and the documents produced within this arbitration.
- 2.22 As a consequence, according to the Respondent, all of the Claimant's requests should be denied.

3 Reasons

- a) **The Claimant's request that the Respondent be ordered to disclose the identity of the individual from the Premier's Office who was most directly involved with the decision to**

³ *Methanex Corporation v. United States of America*, UNCITRAL (1976), Final Award of the Tribunal on Jurisdiction and Merits, part II, Chapter G, pp. 10-12.

implement the moratorium on offshore wind development (whether it is Mr. Mullin, Mr. Steeve, Mr. Morley or another individual)

- 3.11 The Claimant initially made this request in its submission of 7 November 2014.
- 3.12 The Respondent argued, in response, that the request should be denied as none of the three individuals mentioned is any longer working with the Government, and there are no current staff members that were also senior staff members or members of the policy division in the previous Premier's Office. Consequently, "there is no individual at the current Premier's Office who can speak to the deferral on offshore wind with direct knowledge of what happened in 2011."
- 3.13 The Claimant subsequently developed its position, stating that as a result of its review of the documents described in its 7 November 2014 letter, it had identified Mr. Sean Mullin "as being one of the people at the former Premier's Office most involved in the decision to impose the moratorium on onshore wind development."
- 3.14 The Respondent in its letter of 14 January 2015 did not comment on whether Mr. Mullin was the relevant individual, noting that "[t]he decision to defer offshore wind development was a ministry level decision, which Canada will explain in detail in its Counter-Memorial."
- 3.15 Given that the Claimant has been able to identify the relevant individual on the basis of the documents produced, the Tribunal considers that the Claimant's request to order the Respondent to identify the relevant individual has become moot.
- b) The Claimant's request that the individual identified by the Respondent shall appear before a certified court reporter in Toronto, Ontario, to be examined for discovery by counsel for the Claimant to answer questions relating to decision to implement the moratorium on offshore wind development**
- 3.16 The Claimant initially made this request in its submission of 7 November 2014.
- 3.17 The Respondent initially argued that the request should be denied as none of the three individuals mentioned is any longer working with the Government, and there are no current staff members that were also senior staff members or members of the policy division in previous Premier's Office. All relevant individuals, including Messrs. Mullin, Steeve and Morley, are now private individuals.
- 3.18 As noted above, the Claimant in its letter of 9 January 2015 indicated that it had identified the relevant individual as Mr. Mullin. The Claimant requested that, should the Tribunal decide to make the order requested by the Claimant in its 7 November 2014 letter, the order should name Mr. Mullin "as the appropriate witness to appear for discovery voluntarily or, if necessary, by being compelled to do so." The Claimant argued that the new information submitted with the 9 January 2015 letter "further supports the Claimant's request that it be given the opportunity to examine for discovery a witness from Premier McGuinty's office."
- 3.19 The Respondent subsequently argued, in response to the Claimant's letter of 9 January 2015 and the new information submitted with the letter, that the Claimant's request is based on "flawed logic" as the new documentation produced by the Claimant does not support the request. The Respondent also reiterated that the Claimant's request fell outside the jurisdiction of the Tribunal and was premature as the Respondent's Counter-Memorial had not yet been delivered.
- 3.20 The Tribunal notes that there is no dispute between the Parties that none of the relevant individuals, including Mr. Mullin, are currently employed by the Government of Canada. Consequently, since the individuals concerned cannot be considered to be under the control of the Respondent, the Claimant's request must be denied. The Tribunal does not have

jurisdiction to order private individuals who are not under the control of the Respondent to appear for questioning.

c) The Claimant's request that if that individual will not appear voluntarily to be examined for discovery, the Tribunal grants the Claimant its approval to seek an order from the Ontario Superior Court of Justice for assistance in compelling the attendance of the individual

3.21 The Claimant's request was initially set out in its letter of 7 November 2014, as summarized above.

3.22 The Respondent argues that it would be premature for the Tribunal to grant the Claimant's request at this stage of the arbitration, as the Respondent has not yet had the opportunity to file its Counter-Memorial and the accompanying witness statements and expert reports. The Respondent indicated that the role of the Premier's Office in the establishment of the moratorium/deferral would be addressed in its upcoming submissions.

3.23 As noted above in Section 1, the Respondent filed its Counter-Memorial on 20 January 2015, together with supporting evidence, including witness statements. The Tribunal notes that there is no witness statement from Mr. Mullin among these materials. In the circumstances, the Tribunal grants its approval to the Claimant to seek an order from the competent Canadian Court for assistance in compelling the attendance of Mr. Mullin, should he not voluntarily appear for questioning when requested by the Claimant.

d) The Claimant's alternative request that the Tribunal order the Premier's Office to restore the available back-up tapes and search the restored documents for documents responsive to the Claimant's document request #25

3.24 The Claimant's request was initially set out in its letter of 7 November 2014, as summarized above.

3.25 The Respondent argues that the back-up tapes are not archival tapes but disaster relief tapes, and that their restoration would be too costly, time-consuming and uncertain.

3.26 The Claimant's request is denied. The Tribunal's decision is without prejudice to the Claimant's right to make a fresh request after the filing by the Respondent of its Counter-Memorial, subject to an offer to pay the cost of the search, should the Claimant consider that there is still a need for such a request, in view of the evidence submitted in support of the Counter-Memorial.

e) The Claimant's request that the Tribunal order the Respondent to disclose to the Claimant and to the Tribunal the search processes it used to identify the documents responsive to documents requests #22, 27, 28, 29, and 56

3.27 The Claimant's request was initially set out in its letter of 7 November 2014, as summarized above, and was further developed in its letter of 24 November 2014.

3.28 The Respondent argues that there has been no serious deficiency in the Respondent's production as there is no substantial discrepancy between the number of documents produced by the Respondent and the number of documents identified as responsive to Claimant's FIPPA requests; the latter numbers relate to the number of documents to be reviewed, not responsive documents as such. The Respondent also submits that the Claimant's request relates to privileged information.

3.29 The Claimant's request is denied as it would appear to cover privileged information, and in any event would not assist the Claimant in obtaining the relevant documents. The Tribunal

also notes that the Claimant already appears to have all the relevant documents in its possession, as a result of the FIPPA process.

f) The Claimant's request that the Respondent identify and disclose to the Claimant and to the Tribunal the lacunae in its search processes that led to the above documents not being produced in response to document requests #22, 27, 28, 29, and 56

3.30 The Claimant's request was initially set out in its letter of 7 November 2014, as summarized above, and was further developed in its letter of 24 November 2014.

3.31 The Respondent objects to the Claimant's request on the same basis as it objects to the Claimant's request referred to in section e) above.

3.32 The Claimant's request is denied for the same reasons and on the same basis as the request discussed in section e) above.

g) The Claimant's request that the Respondent conduct further and better searches for documents responsive to requests #22, 27, 28, 29, and 56 as may be agreed with the Claimant, or ordered by the Tribunal failing such agreement

3.33 The Claimant's request was initially set out in its letter of 7 November 2014, as summarized above, and was further developed in its letter of 24 November 2014.

3.34 The Respondent argues that only ten of the fourteen documents identified by the Claimant as responsive but not produced by the Respondent were inadvertently not produced; but this does not call into question the comprehensiveness of the Respondent's searches. The discrepancies are *de minimis*, given the number of documents produced by the Respondent (over 8,500 in response to the identified requests, *i.e.* the missing documents represent 0.12 per cent of the total number of documents produced).

3.35 The Claimant in its comments of 24 November 2014 states that the fourteen documents were provided as an example and are not an exhaustive list of all documents that the Claimant has received through the FIPPA process. According to the Claimant, there are 33 additional responsive documents that were included as exhibits to the Memorial received through the FIPPA process, but that were not included in the Respondent's productions, as well as hundreds of other responsive documents that were not exhibited by the Claimant and a large number of further potentially responsive documents that have recently been identified through the FIPPA process but not yet provided to the Claimant.

3.36 The Respondent in its comments of 28 November 2014 states that there are only 28 additional documents identified by the Claimant (as five of the 33 mentioned by the Claimant appear to have been listed twice), and only nineteen of these were responsive. Moreover, according to the Respondent, the fact that the Claimant has not relied on any of these documents in its Memorial shows they are not relevant to its claims.

3.37 The Tribunal notes that the Claimant already has in its possession, or will have as a result of the FIPPA process, any relevant documents that may not have been produced. In the circumstances, and in the absence of any evidence of systematic withholding of evidence or lack of good faith on the part of the Respondent, further and better searches would not appear to serve a purpose. Accordingly, the Claimant's request is denied.

4 The Tribunal's decision

4.1 In light of the above, the Tribunal decides as follows:

- a) The Claimant's request that the Respondent be ordered to disclose the identity of the individual from the Premier's Office who was most directly involved with the decision to implement the moratorium on offshore wind development is dismissed as moot;
- b) The Claimant's request that the individual identified by the Claimant shall appear before a certified court reporter in Toronto, Ontario, to be examined for discovery by counsel for the Claimant to answer questions relating to the decision to implement the moratorium on offshore wind development, is dismissed for lack of jurisdiction;
- c) The Claimant's request that if the individual identified by the Claimant will not appear voluntarily to be examined for discovery, the Tribunal grants the Claimant its approval to seek an order from the Ontario Superior Court of Justice for assistance in compelling the attendance of the individual, is granted;
- d) The Claimant's alternative request that the Tribunal order the Respondent to restore the available back-up tapes and search the restored documents for documents responsive to the Claimant's document request #25 is denied. The Tribunal's decision is without prejudice to the Claimant's right to make a fresh request after the filing by the Respondent of its Counter-Memorial, subject to an offer to pay the cost of the search, should the Claimant consider that there is still a need for such a request, in view of the evidence submitted in support of the Counter-Memorial;
- e) The Claimant's request that the Tribunal order the Respondent to disclose to the Claimant and to the Tribunal the search processes it used to identify the documents responsive to documents requests #22, 27, 28, 29, and 56 is denied;
- f) The Claimant's request that the Respondent identify and disclose to the Claimant and to the Tribunal the lacunae in its search processes that led to the documents not being produced in response to document requests #22, 27, 28, 29, and 56 is denied; and
- g) The Claimant's request that the Respondent conduct further and better searches for documents responsive to requests #22, 27, 28, 29, and 56, as may be agreed with the Claimant, or ordered by the Tribunal failing such agreement, is denied.

Seat of arbitration: Toronto, Ontario, Canada

Date: 21 January 2015



Dr. Veijo Heiskanen
(Presiding Arbitrator)

On behalf of the Tribunal