

Court File No.: A-39-16

**IN THE FEDERAL COURT OF APPEAL**

**BETWEEN:**

**DR. GABOR LUKACS**

Applicant

**-and-**

**CANADIAN TRANSPORTATION AGENCY**

Respondent

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**REPLY OF THE RESPONDENT/MOVING PARTY  
CANADIAN TRANSPORTATION AGENCY  
(MOTION FOR CONFIDENTIALITY)**

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April 26, 2016

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WRITTEN REPRESENTATIONS IN REPLY OF THE  
RESPONDENT/MOVING PARTY  
CANADIAN TRANSPORTATION AGENCY

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**INTRODUCTION**

1. The Applicant challenges the Canadian Transportation Agency's (the Agency) jurisdiction to make a decision that has the effect of exempting Indirect Air Service Providers (IASP) from the statutory requirement of holding a licence. The Applicant requests under Rule 317 of the *Federal Court Rules* that the Agency provide "the complete unredacted version of the "detailed reasons for the Agency decision" in the case of WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. (1996 Greyhound decisions), which were provided in confidence on or around April 16, 1996.
2. The Agency objected to this request and in its motion argued that it had determined that the reasons include confidential financial and commercial information and that was irrelevant to the issues raised in the Application. In his response to the Agency's motion, the Applicant

asserts: that the Agency's motion is improper; that public disclosure of the confidential reasons will not negatively impact the Agency and that the full Confidential reasons are relevant to the issues raised in the application. In addition, the Applicant asks for costs in relation to this motion and provides submissions on the remaining steps of this application. In this reply, the Agency will address each of these points.

## **SUBMISSIONS**

### **The Agency's Motion is Properly Made**

3. The Applicant challenges the propriety of the Agency's motion, on the basis that in seeking a confidentiality order, the Agency has referenced Kelowna's position communicated to the Agency on April 12, 2016, that it does not consent to the release of the confidential 1996 Greyhound decisions. In the Agency's respectful submission, this motion was properly made. The Agency determined that the financial and commercial information provided by Kelowna and Greyhound in its 1996 proceeding is confidential in nature. The Agency issued public and confidential letter decisions.
  
4. On April 12, 2016, Daniel Cardoso, Acting Manager within the Determination's and Compliance Branch of the Agency contacted Kelowna in order to determine if it would have "any objection to the disclosure of the entire contents of these letters in connection with an ongoing legal proceeding".

**Agency's Motion Record, Affidavit of Daniel Cardoso,  
Exhibit "A", Tab 2-A, p. 7**

5. Tracy Medve, PRESIDENT of KFAEROSPACE (formerly Kelowna Flightcraft) responded:  
"Please accept this email as confirmation of our refusal to grant permission to release the Confidential documents, copies of which were provided by you in your email earlier today:
  - Complaint by WestJet Airlines Ltd. against Kelowna Flightcraft Air Charter Ltd. and Greyhound Lines of Canada Ltd. - Confidential Letter - 1996-04-16-1
  - Applications for Review by Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. Decision No. 232-A-1996 - Confidential Letter - 1996-05-10-1.

The reason for refusal to grant permission to release is that these documents contain sensitive commercial information the release of which could result in commercial harm to Kelowna Flightcraft Air Charter Ltd."

**Agency's Motion Record, Affidavit of Daniel Cardozo,  
Exhibit "B", Tab 2-B, p. 9**

6. In the Agency's respectful submission, it was prudent for the Agency to ask Kelowna whether it would consent to the release of the confidential 1996 Greyhound decisions, given that the Agency's determination of confidentiality was made in 1996. Kelowna's interest in maintaining the confidentiality of its own information is relevant to the issue raised in this motion.

**The Agency's Confidential Record**

7. On April 12, 1996, the Agency issued its determination that the information it had obtained from Kelowna Flightcraft Air Charter Ltd. / Greyhound Lines of Canada Ltd. in the complaint filed by WestJet Airlines Ltd. was confidential. The Agency stated:

The Agency has reviewed the submissions of the parties and the documents and is of the opinion that specific direct harm would likely result to Greyhound and Kelowna from public disclosure of the documents filed on April 3, 1996. Therefore, these documents will not be disclosed and will be maintained by the Agency in confidence.

The documents concerning the proposed operations contain commercially sensitive information that if disclosed could be prejudicial to the commercial interest of Kelowna and Greyhound and could provide a competitive advantage to any competitor. In addition, the financial information and arrangements, if disclosed, could cause specific direct harm and monetary loss to Kelowna and Greyhound. Therefore, the request for disclosure or access by WestJet to the documents filed by Kelowna and Greyhound on April 3, 1996 is denied.

**Agency's Motion Record, Affidavit of Daniel Cardozo,  
Exhibit "C", Tab 2-C, p. 13**

8. The Agency's April 12, 1996 determination created a confidential record, and resulted in confidential decisions. The open court principle in the case of the confidential information was respected by the Agency.

9. The integrity of the Agency's confidential record is of great significance to the Agency. While the Agency has powers to compel production of documents, the efficiency and effectiveness of its proceedings rely on the faith that participants have in the Agency's ability to maintain its confidential record. The concern is broader than this Application. The willingness that parties will have to participate in proceedings before the Agency, including complaints which the Agency may hear in respect of all modes of transportation, will be negatively impacted if there is uncertainty about whether confidential information provided to the Agency will remain confidential throughout all related proceedings.

**The Redacted Reasons are Irrelevant to the Application**

10. The relevancy to the proceeding of the information requested under Rule 317 of the Federal Court Rules must be assessed.

***Maax Bath Inc. v. Almag Aluminum Inc.* 2009 FCA 204  
Reply Submissions of the Respondent/Moving Party, Tab 3**

11. In his application for judicial review, the Applicant seeks in respect of the "Approach under consideration,": (a) a declaration that the Agency has no jurisdiction to make a decision or order that has the effect of exempting and/or excluding IASPs from the statutory requirement of holding a licence; and (b) a prohibition enjoining the Agency from making such a decision or order.

**Applicant's Record, Notice of Motion, Tab1, p. 3**

12. In the Agency's respectful submission, the confidential information in the 1996 Greyhound decisions is irrelevant to these issues.

13. In its Decision No. 100-A-2016, the Agency interpreted the expression 'operate an air service' as found in the licensing provisions of the CTA. The Agency is not bound by its 1996 Greyhound decisions. It is further noted that the 1996 Greyhound decisions were varied or rescinded by the Governor-in-Council on petition.

14. In his response to this motion, the Applicant asserts the importance to his Application of the "analytical framework" provided in the 1996 Greyhound decisions. The Agency has, in the context of this motion, provided a further public version of the 1996 Greyhound decisions. This public version discloses the Agency's analytical framework in the 1996 Greyhound decisions that the Applicant requests.

**Agency's Motion Record, Affidavit of Daniel Cardozo,  
Exhibit "C", Tab 2-C, p. 13**

15. It is noted that the "analytical framework" consists of four factors that the Agency considered in determining who operates an air service (when more than one person is involved in the provision of that air service). These four factors have been disclosed in public Agency decisions since 1996, and, in fact, are identified in paragraph 33 of the Applicant's record:

It is not uncommon for an air service to be delivered with the participation of multiple entities. The Agency established four factors for determining which of the participants is the one who operates an air service and thus is required to hold a licence in such situations:

1. Risks and benefits associated with the operation of the proposed air service;
2. Performance of key functions and decision-making authority with respect to the operation of the proposed air service;
3. Exclusivity and non-competition provisions; and
4. Use of firm name and style.

The "operator" of an air service is the participant who assumes the majority of the risks, is entitled to most of the benefits, and has decision-making authority.

**Applicant's Record, Memorandum of Fact and Law,  
Tab. 4, Para. 33, p. 70.**

16. The Agency maintains that the remaining confidential information in the 1996 Greyhound decisions, which indicates the manner in which the Agency applied that analytical framework to the confidential record in that case, is irrelevant to the jurisdictional issues raised in this application.

**Costs**

17. In making his request for costs, the Applicant refers to the fact that the Agency has, in the context of this motion, accepted that at least portions of the document can be publicly

disclosed, and those portions should have been disclosed in February 2016. However, the Applicant has rejected this effort as satisfying his Rule 317 request such that no costs have been incurred as a result of any delay that may be asserted.

18. Further, the Applicant argues that the Agency's objection to disclosure of its confidential reasons in the 1996 Greyhound decisions on the basis of confidentiality is "unreasonable and unnecessary". In the Agency's respectful submission, it is entirely appropriate for the Agency to bring to this Honourable Court's attention the fact that the Agency found, in its April 12, 1996 letter decision, the information contained in these reasons to be confidential. It is not unreasonable or unnecessary for the Agency to do so. The Agency must exercise the greatest diligence in maintaining the integrity of its confidential record.
19. The Agency has reached out to Kelowna to determine whether it would consent to the disclosure of its confidential information. While Kelowna has refused to grant its consent to release the confidential information, it was not inappropriate for the Agency to seek Kelowna's consent to the release for the purposes of this Application.
20. For these reasons, the Agency asks that the request for costs be dismissed.

#### **Remaining steps in the Application**

21. The Agency has agreed that, given that the Agency issued its Decision No. 100-A-2016 after his Application record was filed, that the Applicant should be entitled to file a supplementary brief. The Applicant has agreed that the Agency should be entitled to file a supplementary respondent's brief.
22. Since the Agency filed its motion, the Applicant has also sought leave to appeal Decision 100-A-2016 to the Federal Court of Appeal pursuant to section 41 of the CTA. The Applicant accepts that there could be overlap between the issues raised in the supplementary filings and those to which the Applicant has sought leave to appeal. The Agency is of the





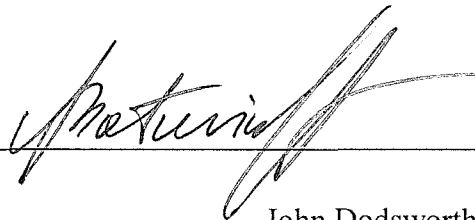
view that the parties would benefit from the Court's Direction on the nature of the issues that may be addressed in the supplementary filings, if this Honourable Court permits them to be made.

**ORDER SOUGHT**

23. The Agency respectfully requests that this Honourable court deny the Applicant's request pursuant to Rule 317 for the complete, unredacted version of the "detailed reasons for the Agency decision" in the case of WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd.
24. The Agency seeks an order pursuant to Rules 151 and 152 of the *Federal Courts Rules* granting confidentiality over confidential reasons in letter decisions dated April 16, 1996 and May 10, 1996.

ALL OF WHICH IS RESPECTFULLY SUBMITTED. Dated at the City of Gatineau, in the Province of Quebec, this 26<sup>th</sup> day of April, 2016.

Alexei Batouin for



John Dodsworth  
Senior Counsel  
Legal, Secretariat and Registrar Services Branch  
Canadian Transportation Agency



CANADA

CONSOLIDATION

CODIFICATION

# Canada Transportation Act

# Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to June 12, 2014

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## Canada Transportation — June 12, 2014

Appeal from Agency	41. (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.	41. (1) Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.	Appel
Time for making appeal	(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.	(2) Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.	Délai
Powers of Court	(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.	(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.	Pouvoirs de la cour
Agency may be heard	(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.	(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.	Plaidoirie de l'Office
<i>Report of Agency</i>		<i>Rapport de l'Office</i>	
Agency's report	42. (1) Each year the Agency shall, before the end of July, make a report on its activities for the preceding year and submit it, through the Minister, to the Governor in Council describing briefly, in respect of that year,  (a) applications to the Agency and the findings on them; and  (b) the findings of the Agency in regard to any matter or thing respecting which the Agency has acted on the request of the Minister.	42. (1) Chaque année, avant la fin du mois de juillet, l'Office présente au gouverneur en conseil, par l'intermédiaire du ministre, un rapport de ses activités de l'année précédente résumant :  a) les demandes qui lui ont été présentées et ses conclusions à leur égard;  b) ses conclusions concernant les questions ou les objets à l'égard desquels il a agi à la demande du ministre.	Rapport de l'Office
Assessment of Act	(2) The Agency shall include in every report referred to in subsection (1) the Agency's assessment of the operation of this Act and any difficulties observed in the administration of this Act.	(2) L'Office joint à ce rapport son évaluation de l'effet de la présente loi et des difficultés rencontrées dans l'application de celle-ci.	Évaluation de la loi
Tabling of report	(3) The Minister shall have a copy of each report made under this section laid before each House of Parliament on any of the first thirty	(3) Dans les trente jours de séance de chaque chambre du Parlement suivant la réception du rapport par le ministre, celui-ci le fait déposer devant elle.	Dépôt

1996, ch. 10, art. 42; 2013, ch. 31, art. 2.

*Case Name:*

**Maax Bath Inc. v. Almag Aluminum Inc.**

**Between**

**Maax Bath Inc., Applicant, and**

**Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum Extrusion Inc., Metra Aluminum Inc., Signature Aluminum Canada Inc., Spectra Aluminum Products Ltd., Spectra Anodizing Inc., Extrudex Aluminum, Artopex Inc., Asia Aluminum Holdings Ltd., Blinds To Go Inc., Extrude-A-Trim Inc., Garaventa (Canada) Ltd., Kam Kiu Aluminium Products (NA) Ltd., Kam Kiu Aluminium Products Sdn. Bhd., Kromet International Inc., Loxcreen Canada, Mallory Industries, Panasia Aluminium (China) Limited, Panasia Aluminum (Calgary) Limited, Panasia Aluminum (Macao Commercial Offshore) Limited, Panasia Aluminum (Toronto) Limited, Pingguo Asia Aluminum Co. Ltd., R-Theta Thermal Solutions Inc., Railcraft International Inc., Regal Aluminum Products Inc., Shining Metal Trading Inc., Sinobec Trading Inc., Tag Hardware Systems Ltd., Taishan City Kam Kium Aluminium Extrusion Co. Ltd., Vitre-Art C.A.B. (1988) Inc., ZMC Metal Coating Inc., Alfa Mega Inc., Aluminart Products Limited, Aluminum Curtainwall Systems Inc., C.R. Lawrence Co. of Canada, China Square Industrial Ltd., Concord West Distribution Ltd., Digi-Key Corporation, Home-Rail Ltd., Hunter-Douglas Canada, Independent Contractors and Businesses Association of British Columbia, Knoll North America Corp., Levelor/Kirsch Window Fashions (a division of Newell Rubbermaid/Newell Window Furnishings Inc.), Milward Alloys Inc., Morse Industries, New Zhongya Aluminum Factory Ltd., Newell Industries Canada Inc., Newell Window Furnishings Inc., Opus Framing Ltd., Pacific Shower Doors (1995) Ltd., Proforma Interiors Ltd. dba Aluglass, Rahul Glass Ltd., Ruhlamat North America Ltd., Ryerson Canada, Silvia Rose Industries, Soniplastics Inc., Vancouver Framer Cash & Carry Ltd., VAP Global Industries Inc., Zhaoqing China Square Industry Limited, Canadian International Trade Tribunal**

**and Attorney General of Canada, Respondents**

[2009] F.C.J. No. 725

[2009] A.C.F. no 725

**2009 FCA 204**

392 N.R. 219

Docket A-174-09

Federal Court of Appeal  
Toronto, Ontario**Trudel J.A.**

Heard: In writing.

Judgment: June 15, 2009.

(15 paras.)

*Administrative law -- Judicial review and statutory appeal -- Practice and procedure -- Discovery and disclosure -- Production and inspection of documents -- Motion by applicant for production dismissed -- The applicant sought judicial review of a decision by the Canadian International Trade Tribunal -- In conjunction with its application, it sought the release of the internal reports, memoranda, and other materials prepared by the Tribunal's non-legal staff for use by Tribunal members in determination of the case -- The court found that the applicant failed to establish relevance or necessity, as the Tribunal had already made public and protected exhibits available to the applicant -- In addition, the material sought was protected by deliberative privilege -- Federal Courts Rules, Rule 317.*

Motion by the applicant, Maax Bath Incorporated, for an order directing the respondent, the Canadian International Trade Tribunal, to produce certain material. In 2009, the Tribunal issued a determination regarding aluminum extrusions originating in or exported from the People's Republic of China. The Tribunal determined that the dumping and subsidizing in Canada of aluminum extrusions from China caused injury to domestic producers of like products, and denied the exclusion request made by the applicant. The applicant sought judicial review of the Tribunal's decision. In conjunction with its application, the applicant sought the release of the internal reports, memoranda, and other materials prepared by the Tribunal's non-legal staff for use by Tribunal members in determination of the case. The applicant submitted that such materials were relevant and necessary, as they possibly affected the outcome of the Tribunal's inquiry. The applicant further submitted that the materials were properly part of the Tribunal record, or constituted a staff memorandum, and thus should be disclosed. The Tribunal submitted that the applicant failed to establish the relevance of the documents. The Tribunal further submitted that the requested documents were subject to the deliberative secrecy privilege.

HELD: Motion dismissed. The applicant failed to establish that the requested documents were relevant and necessary. The request lacked proper specificity. All of the public exhibits in the Tribunal's record were made available to the applicant. All of the protected exhibits were made available to those, like the applicant, that had provided a confidentiality undertaking. The applicant made no reference to anything in the Tribunal's reasons from which it could

be reasonably inferred that the decision was based on material not already available to the parties. There was no question that the applicant sought access to documents protected by privilege, as they were prepared for Tribunal members engaged in their deliberative role.

**Statutes, Regulations and Rules Cited:**

Federal Courts Rules, SOR/98-106, Rule 317, Rule 318, Rule 318(1), Rule 318(2), Rule 318(4)

**Counsel:**

**Written representations by:**

Gordon LaFortune, for the Applicant.

Georges Bujold, for the Canadian International Trade Tribunal.

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**REASONS FOR ORDER AND ORDER**

**1 TRUDEL J.A.:**-- This motion was made by the applicant for orders pursuant to Rule 318(4) of the *Federal Courts* Rules, SOR/98-106:

1. Directing the Canadian International Trade Tribunal (CITT or Tribunal) to provide a copy of the material in the possession of the Tribunal prepared by the Tribunal's non-legal staff for use by the Tribunal members in making their determinations in Aluminum Extrusions from China, NQ-2008-003;
2. Dispensing with the Tribunal's objections to disclosure of these materials to the applicant for use in the judicial review through a supplementary affidavit;
3. Granting the applicant 30 days from the date that the Tribunal provide these materials to review these materials and to file a supplementary affidavit with the Court; and
4. Setting out such other directions and making such other orders concerning the production of these documents by the Tribunal as this Honourable Court considers appropriate.

**2** Upon reading the written submissions of the parties and the material contained in the applicant's motion record and the response record of the Tribunal, I am of the view that the within motion should be dismissed.

**3** On March 17, 2009, the Tribunal issued its determination regarding aluminum extrusions originating in or exported from the People's Republic of China. In its statement of reasons issued on April 1, 2009, the Tribunal determined that the dumping and subsidizing in Canada of aluminium extrusions (subject goods) from China have caused injury to domestic producers of like products in Canada and denied the exclusion request made by the applicant (NQ-2008-003).

**4** By notice of application dated April 15, 2009, the applicant sought judicial review of the Tribunal's determination of injury, its determination of the scope of aluminium products included within the definition of subject goods, its determination of the scope of the domestic industry producing like goods and its decision to deny the exclusion request made by the applicant.

**5** By notice of motion dated May 11, 2009, the applicant sought the release of the internal reports, memoranda and other materials prepared by the Tribunal's non-legal staff for use by the Tribunal members as they considered their

determination in the case, alleging the documents to be relevant and necessary (applicant's motion record, tab 3 at paragraph 4; tab 1 at paragraph 1).

6 In its written representations, the applicant relies on the orders of this Court in *Telus Communications Inc. v. Attorney General of Canada*, 2004 FCA 317 [*Telus*] and *Canada (Human Rights Commission) v. Pathak*, [1995] F.C.J. No. 555 (C.A.) [*Pathak*] as supporting the conclusion that the materials at issue are properly part of the Tribunal record and should be disclosed. According to the applicant, the materials are clearly relevant because they may have affected the outcome of the Tribunal's inquiry. Further, regardless of how the materials are described, they are akin to the staff memorandum ordered to be disclosed in *Telus* (applicant's motion record, tab 4 at paragraph 18).

7 The respondent submits that the applicant has not established the relevance of the requested documents, that the decision in *Telus* is not an applicable precedent, that the applicant's request is general and vague and that the documents requested are subject to the deliberative secrecy privilege (respondent's motion record, tab 3 at paragraphs 30-46).

8 Rules 317 and 318 provide:

**Material from tribunal**

317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

...

**Material to be transmitted**

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

**Objection by tribunal**

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

...

**Order**



- (4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

\* \* \*

#### **Matériel en la possession de l'office fédéral**

**317.** (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

[...]

#### **Documents à transmettre**

**318.** (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

*a)* au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

*b)* au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

#### **Opposition de l'office fédéral**

- (2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

[...]

#### **Ordonnance**

- (4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

**9** The relevant documents for the purposes of Rules 317-318 are those documents that may have affected the decision of the Tribunal or that may affect the decision that this Court will make on the application for judicial review (*Telus, supra* at paragraph 5; *Pathak, supra* at paragraph 10).

10 The applicant has failed to persuade me that the documents sought to be produced are relevant and necessary. The request made under Rule 317 lacks proper specificity (*Atlantic Prudence Fund Corp. v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1156 (T.D.) at paragraph 10 [*Atlantic Prudence Fund Corp.*]). Here, the applicant requests "... a copy of the material in the possession of the CITT prepared by the CITT's non-legal staff for use by the CITT members in making their determinations" without reference to any specific documents (applicant's memorandum, tab 4 at paragraph 1).

11 This noticeable lack of specificity alone is sufficient to dispose of the motion. In any event, I note that in its 69-page decision, the Tribunal relied on a plethora of documents to support its reasoning. All public exhibits in the Tribunal's voluminous record were made available by the Tribunal to the parties. Protected exhibits were made available only to counsel who, as the applicant, had made a declaration and confidentiality undertaking with the Tribunal in respect of that protected information (respondent's motion record, tab 4B at paragraph 15; applicant's affidavit, vol. 1, affidavit of Jeannette Cowan at paragraph 3).

12 In its reply to the response of the Tribunal, the applicant refers to the "summaries and /or compilations of the information contained in the record and ... advice and /or analyses of market, financial or economic questions" in the Tribunal's internal documents (*ibid.* at paragraph 10). On the record, as it stands, and in the absence of any reference, by the applicant, to specific passages in the Tribunal's reasons from which it could reasonably be inferred that the Tribunal grounded its decision on material not available to the parties, or that inappropriate tampering with the decision occurred, one cannot assume that such information has been adopted by the Tribunal in its reasons, thereby making it relevant to the decision made by the Tribunal or to the decision that this Court will make (*Trans Québec & Maritime Pipeline v. Office National de l'Énergie*, [1984] 2 F.C. 432 (C.A.); *Telus, supra* at paragraph 3).

13 For these reasons, I agree with the respondent that the decision in *Telus*, where the material sought to be produced related to sufficiency of reasons and consideration of relevant matters by the decision-maker, is not applicable to the present case as no such grounds are raised by the applicant.

14 There can be little question here that the applicant is seeking access to documents consulted by or prepared for the Tribunal members as they were engaged in their deliberative role to determine how and why the members reached the impugned conclusions. I agree with the respondent that this is a matter of privilege going to judicial impartiality in adjudication (*Mackeigan v. Hickman*, [1989] 2 S.C.R. 796).

15 In the words of this Court, the applicant's request "betrays a misunderstanding of the purpose of section 317 ... [S]ection 317 does not serve the same purpose as documentary discovery in an action" (*Access to Information Agency Inc. v. Canada (Attorney General)*, 2007 FCA 224 at paragraph 17; *Atlantic Prudence Fund Corp., supra* at paragraph 11). It should not be open to the applicant to engage in a fishing expedition.

**THEREFORE, IT IS ORDERED THAT:**

1. the motion directing the Tribunal to provide a copy of the material in the possession of the Tribunal prepared by the Tribunal's non-legal staff for use by the Tribunal members in making their determinations in Aluminum Extrusions from China, NQ-2008-003 be dismissed; and
2. upon consent the Tribunal's name as a respondent party be struck and be removed in the style of cause;
3. the style of cause shall now be shown as:

TRUDEL J.A.