

Annex 1: Disputed Designations Schedule

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|--|---------------------|--|--|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| CHALLENGES TO RESPONDENTS' CONFIDENTIALITY DESIGNATIONS IN SUBMISSIONS RELATING TO R-21 & R-22 | | | | | | |
| INVESTOR'S LETTER OF OCTOBER 29, 2019 | | | | | | |
| 1. | ¶ 3 | ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020, during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada maintains its proposed confidentiality designations, which are made in accordance with the Confidentiality Order and the Tribunal's previous decisions on this issue.</p> <p>Specifically, in Procedural Order No.3, the Tribunal upheld Canada's designation of the information in these exhibits, including any references to them and to Canada's limited waiver of privilege over these documents, as confidential information in this arbitration, on the grounds that the "information [is] otherwise protected from disclosure under the applicable domestic law of the disputing State party including, but not limited to, ... Ontario's <i>Freedom of Information and Protection of Privacy Act</i>" ("FIPPA").¹</p> <p>The inadvertent disclosure of this information during the January 14-15, 2020 hearing does not waive the confidential designation of this</p> | <p>The Tribunal accepts Canada's proposed redaction.</p> <p>The Tribunal has upheld Canada's confidential designation of the information in ██████████ ██████████, in Procedural Order No. 3. The Tribunal sees no reason to depart from its decision.</p> <p>The Tribunal agrees with Canada that the inadvertent disclosure of the existence of ██████████ in ██████████ in open session during the</p> |

¹ See Procedural Order No. 3, Annex pp. 2-4.

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---------------------------|---------|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | | | <p>information. The term ██████████ was referred to by the Tribunal on two occasions on the first day of the procedural hearing.² On both occasions, there was no opportunity for Canada to object prior to the reference to these documents being made, such that the public feed could be cut. As Canada noted at the hearing, putting an onus on Canada to interrupt when these documents were going to be discussed could lead to unnecessary disclosure.³ Indeed, the Tribunal agreed that the onus was on the party speaking to prevent disclosure so as to avoid a “situation where some things may have already been said and then one Party will be unhappy about it.”⁴</p> <p>The Tribunal, however, recognized the possibility that inadvertent disclosures may still have occurred and noted that:</p> <p style="padding-left: 40px;">After the Hearing, a transcript obviously will be produced, and Parties will have an opportunity to designate things as confidential. So, if the discussion or parts of the discussion do not turn out to be confidential, then the transcript of</p> | <p>14-15 January hearing does not waive the confidential designation of this information. Canada could not have raised any objections prior to the reference to these documents being made, such that the public feed could be cut in time. Further, Canada requested that the 14-15 January hearing go into closed session before it referred to ██████████</p> <p>While Canada could have objected to the publication of the public portions of the video recordings of the 14-15 January hearing by the stipulated deadline of 17 January 2020, the Tribunal notes that the delay in</p> |

² Hearing Transcript Day 1, pp. 10:19; 80:24.

³ Hearing Transcript Day 1, p. 12: 6-11.

⁴ Hearing Transcript Day 1, p. 12: 12-17.

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---------------------------|---------|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | | | <p>those portions will be made available to the public at that stage, and the Tribunal feels that that would be an appropriate middle ground, balancing all the concerns. So, we will proceed in that fashion.⁵</p> <p>As such, any inadvertent discussion of the documents in question did not result in a waiver of Canada's confidential information. Rather, it triggered the process outlined by the Tribunal whereby each disputing party would have an opportunity to designate information as confidential <i>after</i> the hearing. The Tribunal confirmed this process with the disputing parties following the hearing as well.⁶</p> <p>Further, the fact that the PCA uploaded the video of the procedural hearing to its website does not result in a waiver of Canada's confidential information. Canada wrote to the PCA requesting the recording be removed from the website given the public reference to [REDACTED] and requested the PCA observe the timelines for designation outlined in the Confidentiality Order.⁷ Canada therefore</p> | <p>Canada's objection, which was only made on 20 January 2020, was a short one (ie. one business day). The Tribunal would not go so far as to find that Canada's short delay in raising an objection constituted a waiver of confidentiality of the information to the general public.</p> |

⁵ Hearing Transcript Day 1, p. 81:1-8.

⁶ E-mail from the Tribunal to the Parties, dated January 27, 2020.

⁷ Canada's E-mail to the PCA, dated January 20, 2020.

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|--|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | | | <p>took necessary steps to ensure the information remained confidential.</p> <p>Based on the foregoing, the Claimant's objections to Canada's designations must be rejected.</p> | |
| 2. | ¶ 4 | <p>"referring to the existence of ██████████, as well to references to ██████████ ██████████..."</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection, and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "██████████" and "██████████".</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to "██████████" and "██████████".</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 3. | ¶ 5 | <p>"A reference to the existence of ██████████..."</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "██████████".</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to ██████████."</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 4. | ¶ 6 | <p>"the actual substance of ██████████..."</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "██████████."</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to "██████████".</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | The proposed redaction does not redact confidential information and must be rejected. | | | |
| 5. | ¶ 8 | <i>“However, assuming the solicitor-client privilege or litigation privilege applied, ██████████ have already been filed (in an un-redacted manner) as part of the record,..”</i> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. However, Canada agrees narrow its designation to “██████████”. | <p>The Tribunal notes Canada’s agreement to narrow its designation to ██████████.</p> <p>The Tribunal accepts Canada’s proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|---|---------------------|--|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| CANADA'S LETTER OF NOVEMBER 12, 2019 | | | | | | |
| 6. | ¶ 2 | <i>"referring to the existence of ██████████, as well as to references to ██████████..."</i> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "██████████" and "██████████".</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to "██████████" and "██████████".</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| EMAIL CHAIN OF DECEMBER 5, 2019 (Investor's Email of December 3, 2019) | | | | | | |
| 7. | ¶ 1 | ██████████" | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the</p> | | <p>Canada repeats its response to line #1 above.</p> | <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| 8. | ¶ 2 | ██████████ ██████████ ██████████.” | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 9. | ¶ 2 | ██████████ ██████████ ██████████” | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |
| 10. | ¶ 3 | <p>“Canada fully disclosed the contents of these ██████████ to the Tribunal and the Investor in this case as they are materially relevant to the issue before the Tribunal.”</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to “██████████”. | <p>The Tribunal notes Canada's agreement to narrow its designation to “██████████”.</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|---|---------------------|--|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| INVESTOR'S LETTER OF DECEMBER 12, 2019 | | | | | | |
| 11. | ¶ 2 | ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. This quote, which is taken directly from Canada's Response to the Claimant's Request for Interim Measures, is designated confidential in the final public version of the submission.</p> | <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|--|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 12. | ¶ 9 | ██████████ ██████████ ██████████ ██████████ | <p>Nothing in the section referenced above contains confidential information. The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |
| 13. | ¶ 16 | <i>"it made a strategic choice to mention those ██████████ and bring them into this action"</i> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to ██████████. | <p>The Tribunal notes Canada's agreement to narrow its designation to ██████████.</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|---|---------------------|--|---|-----------------------|--|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| CANADA'S LETTER OF DECEMBER 19, 2019 | | | | | | |
| 14. | ¶ 8 | <p><i>"Canada did not need to disclose ██████████ ██████████. However, it determined it was critical to do so to provide the Tribunal with the information it needs to resolve the Claimant's Motion for Interim Measures, in which the Claimant made serious and inaccurate representations of Canada's conduct in this arbitration. In effect, the Claimant's suggestion that information in this arbitration should automatically be made</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to ██████████"</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to "██████████"</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <i>public simply because it is "voluntarily" disclosed would mean that Canada would need to waive the protections under the CO in order to present its case in response to the Claimant's motion."</i> | | | | |
| 15. | ¶ 9 | ██████████" | <p>The existence of ██████████ and thus █ ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 16. | ¶ 9 | <i>"the Government of Ontario and the IESO (respectively)"</i> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada agrees to withdraw this proposed designation. | Canada has agreed to withdraw this proposed designation. No ruling is required by the Tribunal. |
| 17. | ¶ 9 | ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation by removing the designation of the last sentence ("This disclosure does not imply that the Government of Ontario and IESO may no longer rely on Ontario law to refuse to disclose documents pursuant to the FIPPA, nor does it permit the Tribunal to override those protections by forcing Canada to disclose to the public documents protected under the FIPPA."). | The Tribunal notes Canada's agreement to narrow its designation by removing the designation of the last sentence ("This disclosure does not imply that the Government of Ontario and IESO may no longer rely on Ontario law to refuse to disclose documents pursuant to the |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|--|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <i>protected under the FIPPA.</i> | | | | |
| 18. | ¶ 10 | ██████████ | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |
| 19. | ¶ 10 | <i>"Government of Ontario and IESO have waived any privilege that attached to these documents. As noted above, Canada maintains that the issue of waiver is</i> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the</p> | | Canada agrees to withdraw this proposed designation. | Canada has agreed to withdraw this proposed designation. No ruling is required by the Tribunal. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <i>irrelevant for the purposes of the application of the CO in these proceedings."</i> | <p>public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| 20. | P. 4 (fn 5) | "fn 24" | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected</p> | | Canada agrees to withdraw this proposed designation. | Canada has agreed to withdraw this proposed designation. No ruling is required by the Tribunal. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 21. | ¶ 15 | <p>██████████ ██████████ ██████████ ██████████ ██████████ ██████████</p> <p><i>(particularly given that the Claimant has raised serious allegations of spoliation of documents against Ontario)."</i></p> | <p>No confidential information is referenced here. A criminal conviction has taken place regarding the spoliation of evidence. This is a public decision of Canadian Criminal Courts.</p> <p>Canada's actions may be embarrassing to it, but nothing here meets the definition of confidential information. Canada cannot suppress them.</p> | | Canada repeats its response to line #1 above. | <p>The Tribunal rejects Canada's proposed redaction ("<i>particularly given that the Claimant has raised serious allegations of spoliation of documents against Ontario</i>"). In the Tribunal's view, nothing in Canada's proposed redaction contains confidential information. Canada has also not explained why this information which it seeks to redact is confidential.</p> <p>Save as aforesaid, the Tribunal accepts the remaining of Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 22. | ¶ 17 | <p><i>"and on the understanding that any waiver of privilege did not further constitute a waiver of confidentiality since such information is</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection</p> | | Canada agrees to withdraw this proposed designation. | Canada has agreed to withdraw this proposed designation. No ruling is required by the Tribunal. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|---------------------|---------------------|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <p><i>otherwise protected under domestic law. If the Tribunal were to require Canada to publicly disclose documents that are otherwise protected from disclosure under domestic law, Canada may have no choice but to withdraw these documents from the record."</i></p> | <p>and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|--|---------------------|---|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| ANNEX A: PROCEDURAL ORDER NO. 3 | | | | | | |
| 23. | P. 1 | <p><u>Reasons column</u></p> <p><i>“A reference to the existence of a ██████████”</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to ██████████.</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to ██████████.</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 24. | P. 1 | <p><u>Reasons column</u></p> <p><i>“At most, the actual substance of a ██████████.”</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to “█████████”.</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to “█████████”.</p> <p>The Tribunal accepts Canada's proposed redaction for the same</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | <p>reasons as set out at No. 1 above.</p> |
| 25. | P. 1 | <p><u>Reasons column</u></p> <p><i>“However, assuming the solicitor-client privilege or litigation privilege applied, ██████████ have already been filed (in an un-redacted manner) as part of the record”</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above.</p> <p>However, Canada agrees to narrow its designation to “██████████”.</p> | <p>The Tribunal notes Canada’s agreement to narrow its designation to “██████████”.</p> <p>The Tribunal accepts Canada’s proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 26. | P. 1 | <p><u>Tribunal's Decision column</u></p> <p><i>"the [REDACTED] have already been filed in an unredacted manner as part of the record and that accordingly, any such privileges have been waived by Canada."</i></p> | <p>The existence of [REDACTED] (and thus a [REDACTED] by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding [REDACTED] is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "[REDACTED]".</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to [REDACTED].</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 27. | P. 1 | <p><u>Tribunal's Decision column</u></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>The existence of [REDACTED] (and thus [REDACTED] by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | <p>Canada repeats its response to line #1 above.</p> | <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <p>██████████ ██████████ ██████████ ██████████ ██████████</p> | <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| 28. | P. 2 | <p><u>Reply to objections column</u></p> <p>██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████</p> | <p>The existence of ██████████ (and thus ■ ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 29. | P. 2 | <p><u>Reply to objections column</u></p> <p>[REDACTED]</p> | <p>The existence of [REDACTED] (and thus [REDACTED] by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding [REDACTED] is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|--|--|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <p>██████████ ██████████ ██████████ ██████████ ██████████”</p> | <p>concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| 32. | P. 3 | <p><u>Tribunal's Decision column</u></p> <p><i>“that the ██████████ are subject to solicitor-client privilege, or litigation privilege.”</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to “██████████”.</p> | <p>The Tribunal notes Canada's agreement to narrow its designation to “██████████”.</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|---|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | The proposed redaction does not redact confidential information and must be rejected. | | | |
| 33. | P. 5 | <u>Reasons column</u> "A reference to the existence of ██████████" | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to "██████████". | <p>The Tribunal notes Canada's agreement to narrow its designation to ██████████.</p> <p>The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above.</p> |
| 34. | P. 5 | <u>Tribunal's Decision column</u> ██████████" | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|--|---|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | | <p>public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | | |
| 35. | P.6 | <p><u>Reasons column</u></p> <p><i>“However, assuming the solicitor-client privilege or litigation privilege applied, ██████████ have already been filed (in an un-redacted manner) as part of the record,”</i></p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | <p>Canada repeats its response to line #1 above. However, Canada agrees to narrow its designation to “██████████”.</p> | <p>The Tribunal notes Canada’s agreement to narrow its designation to “██████████”.</p> <p>The Tribunal accepts Canada’s proposed redaction for the same reasons as set out at No. 1 above.</p> |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| 36. | P.6 | <p><u>Reply to objections column</u></p> <p>████████████████████ ██████████████████████ ██████████████████████ ██████████████████████ ██████████████████████”</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |
| 37. | P. 7 | <p><u>Reply to Objections column</u></p> <p>████████████████████ ██████████”</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |

| No. | Ref. to Designation | Objections to Designation | | | Reply to Objections | Tribunal's Decision |
|-----|---------------------|---|---|-----------------------|---|--|
| | | Proposed Redaction | Reasons | Designation Requested | | |
| | | <p>██████████ ██████████ ██████"</p> | | | | |
| 39. | P. 7 | <p><u>Reply to Objections column</u> ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████"</p> | <p>The existence of ██████████ (and thus ██████████ by Ontario and its state entities) was publicly disclosed on January 14, 2020 during the hearing. Despite an agreement to notify the Tribunal immediately of any confidentiality concerns, Canada failed to make a timely objection and the information was further disseminated to the public on the internet as well as to those in the public watching the hearing.</p> <p>Confidential Information in the Confidentiality Order only applies to information that is confidential. The information regarding ██████████ is not confidential and thus cannot meet the definition of confidential information in the Confidentiality Order.</p> <p>The proposed redaction does not redact confidential information and must be rejected.</p> | | Canada repeats its response to line #1 above. | The Tribunal accepts Canada's proposed redaction for the same reasons as set out at No. 1 above. |