

Federal Court



Cour fédérale

Date: 20260108

Docket: T-996-24

Citation: 2026 FC 11

Ottawa, Ontario, January 8, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**CANADIAN PACIFIC RAILWAY
COMPANY**

Applicant

and

**CANADIAN TRANSPORTATION
ACCIDENT INVESTIGATION AND
SAFETY BOARD**

Respondent

PUBLIC JUDGMENT AND REASONS

I. Overview

[1] This decision addresses an application brought by the Applicant, Canadian Pacific Railway Company, under s 44 of the *Access to Information Act*, RSC 1985, c A-1 [the ATIA], seeking review of a decision made on April 12, 2024, by the Respondent, the Canadian Transportation Accident Investigation and Safety Board, ordering the disclosure of a third-party

record that the Applicant had provided to the Respondent [the Disputed Record]. The Disputed Record contains data collected from a train's locomotive event recorder [LER] that the Applicant provided to the Respondent to support the latter's investigation into a train occurrence involving the derailling of one of the Applicant's trains in February 2019.

[2] On January 8, 2026, the Court issued its Confidential Judgment and Reasons in this application, which decision afforded the parties an opportunity to provide submissions on any redactions proposed to be necessary to protect any confidential information contained therein when the public version of the Court's Judgment and Reasons was issued. Following receipt of such submissions and consideration of the importance of the open-Court principle and the nature of this decision, which itself addresses the Act's protection of certain information from disclosure, the Court is satisfied that the redactions jointly proposed by the parties are appropriate. As explained in greater detail below, I find that Comments (as defined later in these Reasons) that a representative of the Applicant inserted in the Disputed Record are exempted from disclosure by s 20(1)(b) of the ATIA. Otherwise, this application will be dismissed, as the remainder of the Disputed Record is not exempted by s 20(1)(b).

II. Background

[3] The Applicant, Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City) [CP], is a federally regulated corporation operating an interprovincial and international railway.

[4] The Respondent, the Canadian Transportation Accident Investigation and Safety Board [TSB], is an independent federal agency established under the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3 [the CTAISB Act], with a mandate to advance transportation safety in Canada. It does so by conducting investigations into select transportation occurrences, making findings as to their causes and contributing factors, identifying safety deficiencies, and making recommendations designed to eliminate or reduce those deficiencies.

[5] On February 4, 2019, a freight train of CP travelling in British Columbia made an emergency stop and later derailed due to an uncontrolled movement [the Occurrence]. Three locomotives were involved in the Occurrence. All three operating personnel aboard suffered fatal injuries.

[6] The TSB commenced an investigation into the Occurrence. On February 5, 2019, as part of that investigation and pursuant to its powers under s 19 of the CTAISB Act, the TSB required CP to provide, among other things, raw data from the LER for all three locomotives that were involved in the Occurrence. An LER is a device that captures the status of all safety-critical locomotive controls in real time. It records details related to the locomotive's movement, such as speed and brake performance, and with respect to other locomotive systems, such as ringing the locomotive's bell or turning the headlights on or off.

[7] On or about February 15, 2019, in response to the TSB's request for production, CP provided to the TSB an electronic download of the requested data. This production, which

represents the Disputed Record that is the subject of the within application, was sourced from the LER aboard the mid-train locomotive on the train that derailed and contains data about that train. The Disputed Record is presented in a table format, with a row for each second between 20:25:34 on February 3, 2019 and 00:51:12 on February 4, 2019, and columns that contain information as to date; time; miles; feet; speed; throttle; Dynamic Brake Call; Electronic Air Brake - Equalizing Reservoir [EAB ER]; Electronic Air Brake - Brake Pipe [EAB BP]; Electronic Air Brake - Brake Cylinder [EAC BC]; Tractive Effort; Pneumatic Control Switch Open [PCS Open]; Emergency Brake; Distributed Power Rear Front Communication; Distributed Power Remote A Valve; Distributed Power Remote B Valve; and Interoperable Electronic Train Management System Speed.

[8] The Disputed Record also contains approximately [REDACTED] comments from a representative of CP, inserted in relation to certain rows of the table, [REDACTED]
[REDACTED]
[REDACTED] [the Comments].

[9] On March 31, 2022, the TSB issued a public report regarding the Occurrence [the Report]. Appendix D of the Report [Appendix D] contains several tables of data excerpted from the Disputed Record, with linear adjustments applied to the “time” and “miles” columns (which will be explained in more detail later in these Reasons), but otherwise without adjustments to the data.

[10] On March 30, 2023, the TSB received an amended request under the ATIA [the Request], which the TSB describes as seeking access to: “(1) a copy of the Safety Hazard Report; (2) mid-train handling data from 21:49:33 to the time of derailment; and (3) inbound and relief crew hours of service from February 3, 2019, to February 4, 2019.” The TSB assembled the responsive record [the Responsive Record], which includes the Disputed Record, and pursuant to s 27(1) of the ATIA sent the Responsive Record to CP for submissions on whether all or part thereof was exempt from disclosure.

[11] On July 27, 2023, CP replied that the entirety of the Responsive Record was exempt from disclosure under s 20(1)(b) of the ATIA. CP also argued that s 30(2) of the CTAISB Act (which accords statutory privilege to witness statements given to the TSB) applied to all information that CP had shared with the TSB, thus exempting it from disclosure.

[12] On July 31, 2023, Ms. Jadie Zhang, the TSB analyst initially assigned to the Request, wrote to CP by email, inquiring as to CP’s position on the possibility of severance of certain information in part of the Responsive Record (i.e., disclosure of some, but not all, of the information contained in that part of the Responsive Record). CP replied that it would review the information and respond but, despite follow-up by the TSB, did not ultimately do so.

[13] On February 22, 2024, the TSB advised CP that it would release the Responsive Record, subject to severing personal information contained therein, if it did not receive a response by March 19, 2024. Having received no response, on April 12, 2024, in the Decision that is the

subject of the within application, the Respondent advised CP that the Responsive Record would be released.

III. Decision under Review

[14] The TSB's letter to CP, conveying the Decision, noted receipt of CP's representations concerning the release of documents pursuant to the Request. The TSB stated that, after considering the possible impact of disclosing these documents, it had concluded that the records for which access was being requested were not exempt from disclosure under s 20(1) of the ATIA. Therefore, pursuant to s 28(1)(b) of the ATIA, the TSB had decided to disclose some of the information. This reference to disclosing "some" of the information appears to reflect the fact that the TSB intended to redact personal information contained in the Responsive Record. The TSB's letter included a copy of the Responsive Record in the form in which the TSB intended to disclose it, showing the intended redactions.

[15] On May 1, 2024, CP filed a Notice of Application, commencing the within application seeking judicial review of the Decision pursuant to s 44(1) of the ATIA. As reflected in the evidence and Memorandum of Fact and Law in the Applicant's record, the subject of the application is the Disputed Record (a subset of the Responsive Record).

IV. Standard of Review

[16] There is no dispute between the parties as to the applicable standard of review. In an application under s 44 of the ATIA, the Federal Court must determine whether the exemptions

contemplated by the statute have been applied correctly to the contested records (*Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 [*Merck*] at para 53).

V. Issue

[17] The parties agree that the sole issue for the Court's determination is whether the Disputed Record is exempt from disclosure under s 20(1)(b) of the ATIA.

[18] I note that the parties characterize the Court's determination of this issue in the matter at hand as a case of first impression in that, while the legal principles relevant to the application of s 20(1)(b) are well established and there is little disagreement between the parties thereon, they submit that this Court has not previously considered the application of that subsection to a locomotive's LER or to a similar form of data recorder employed in another means of transportation.

VI. Law

[19] Section 20(1)(b) of the ATIA provides as follows:

Third party information

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains

....

Renseignements de tiers

20 (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

....

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

....

b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

....

[20] The party seeking to establish the application of a statutory exemption must do so on a balance of probabilities (*Merck* at para 94). As reflected in the language of the statute, in order to qualify for the exemption under s 20(1)(b) of the ATIA, the relevant information must be: (a) financial, commercial, scientific or technical information; (b) confidential; (c) consistently treated in a confidential manner by the third party; and (d) supplied to a government institution by a third party (*Merck* at para 133). In the case at hand, the parties agree that the fourth of these criteria is met but dispute the application of the first three criteria.

VII. Evidence

[21] The record before the Court in this application consists of the parties' respective application records, each of which includes affidavit evidence upon which the party relies. Pursuant to an Order issued on November 13, 2024, by Associate Judge Coughlan who has been case managing this matter [the Confidentiality Order], each of the parties has filed both a confidential version and a public version of its record.

[22] CP's record includes an affidavit sworn on June 26, 2024, by Ms. Lori Kennedy, the Managing Director Regulatory Affairs in the Regulatory Affairs - Operations Safety & Security department of CP. Ms. Kennedy's affidavit canvases CP's interactions with the TSB in the course of its investigation into the Occurrence and attaches copies of certain communications between the parties. Ms. Kennedy also provides evidence intended to support CP's assertion that the information in the Disputed Record is confidential.

[23] The TSB's record includes two affidavits. The first was affirmed on August 21, 2024, by Mr. André Lapointe, the Chief Operating Officer of the TSB, and provides context regarding the TSB's role in investigating transportation occurrences, explains the role of documentary production in the TSB's fulfilment of its mandate, and explains the nature of the records involved in the present application. The second affidavit was affirmed on August 21, 2024, by Ms. Jadie Zhang who, as noted earlier in these Reasons, is the analyst who was initially assigned to the Request. Ms. Zhang explains her communications with CP, referencing exhibits to her affidavit and to the affidavit of Ms. Kennedy.

[24] None of the parties' affiants has been cross-examined in this proceeding, and I do not understand either of the parties to challenge the credibility of the other's witnesses, although they do advance arguments as to the weight that should be afforded to their evidence.

VIII. Analysis

[25] The following analysis engages with each of the three disputed criteria that must be met for information to qualify for an exemption from disclosure under s 20(1)(b) of the ATIA.

A. *Financial, commercial, scientific or technical information*

[26] CP argues that the information in the Disputed Record is both technical and scientific in nature. CP submits that it is technical in nature as it contains numerical, mathematically precise, raw data about the operation of train controls, the performance of the train in response to those controls, and the operation of associated control systems from the locomotive's event recorder system. CP also submits that the information is scientific in nature, as it depicts the application of physics and locomotive engineering.

[27] In *Merck* at paragraph 139, the Supreme Court of Canada confirmed that the terms “financial, commercial, scientific or technical” employed in s 20(1)(b) of the ATIA should be given their ordinary dictionary meanings. The Supreme Court adopted Justice MacKay's explanation at paragraph 36 of *Air Atonabee Ltd v Canada (Minister of Transport)*, [1989] FCJ No 453, 1989 CarswellNat 585 [*Air Atonabee*], that it is sufficient for purposes of s 20(1)(b) that the information relate or pertain to matters of finance, commerce, science or technical matters as those terms are commonly understood.

[28] Consistent with that guidance, the TSB notes that, in *Samsung Electronics Canada Inc v Canada (Health)*, 2020 FC 1103 at paragraph 67, the Court identified relevant dictionary definition as follows:

67. Common online dictionary definitions of the word “technical” include: “[a person] having knowledge of or expertise in a particular art, science, or other subject; skilled in the formal and practical techniques of a particular field” (Oxford English Dictionary online: <www.oed.com/view/Entry/198447>); information relating to “the sort of machines, processes, and materials that are used in industry, transport, and communications” (Collins Dictionary online:

<www.collinsdictionary.com/dictionary/english/technical>); “to the practical use of machines or science in industry, medicine, etc.,” and “having special knowledge especially of how machines work or of how a particular kind of work is done” (Merriam-Webster Dictionary online: <www.merriam-webster.com/dictionary/technical>).

[29] Relying on the online version of the Merriam-Webster Dictionary, the TSB also submits that information is “scientific” when it “relat[es] to, or exhibit[s] the methods or principles of science” or is “[c]onducted in the manner of science or according to the results of investigation by science” (Merriam-Webster Dictionary online: <www.merriam-webster.com/dictionary/scientific>).

[30] Against the background of those definitions, the TSB observes that, in *Canada (Information Commissioner) v Canada (Transportation Accident Investigation and Safety Board)*, 2006 FCA 157 [*Information Commissioner*], the Federal Court of Appeal cautioned against applying too broad a brush when defining “technical” information in the context of transportation safety. In that case, which addressed the application of s 20(1)(b) to verbal air traffic control communications recorded by NAV CANADA, the Court concluded that it would be incorrect to characterize the entire record collected during an air navigation flight as being technical information when only a specific part might be, for instance when precise flight instructions are given (at para 70).

[31] The TSB also encourages the Court to adopt the conclusion of the Office of the Information Commissioner [IC] in the report issued in *Employment and Social Development Canada (Re)*, 2023 OIC 20 (CanLII) [*ESDC*], that LER downloads do not constitute technical information (at para 24).

That matter involved a complaint that Employment and Social Development Canada had improperly withheld under s 20(1)(b) information concerning an Occupational Health and Safety Tribunal decision related to the death of a Canadian National Railway [CN] employee. That information included the data downloaded from an LER. While the IC concluded that some of the disputed information related to third-party specific procedures, equipment and processes, making it technical information (at para 23), the IC then stated the following (at para 24):

24. I am not convinced that other portions, such as train/assignment numbers, titles of charts/work orders, locomotive event recorder downloads, images from the accident site and certain information in witness statements constitute commercial or technical information. CN disagrees. Rather, they assert that train/assignment numbers, charts and work orders are the basis of CN's commercial rail operations.

[My emphasis]

[32] While clearly not binding on this Court, I accept that decisions of the IC may be persuasive. However, I have difficulty relying on the conclusion in *ESDC*, as it does not provide any analysis supporting the conclusion that LER downloads do not constitute technical information. Following the statement reproduced above at paragraph 24, the IC addressed the CN argument that certain of the withheld information was the basis of CN's commercial rail operations. The IC observed that the fact that operations have a commercial purpose does not render all information related to those operations commercial information. The IC concluded that various categories of information including LER downloads did not constitute financial, commercial, scientific or technical information, because it did not pertain to trade or commerce, but rather involved regulatory inspectors' observations and findings regarding a fatality (at paras 25-26).

[33] As such, while the IC's conclusion is expressed more broadly, employing the statutory language "financial, commercial, scientific or technical information", it appears that CN's argument, and therefore IC's analysis, focused on whether certain of the withheld information constituted commercial information.

[34] Turning to the definitions canvassed above, I am not persuaded by CP's argument that the Disputed Record is scientific in nature, as depicting the application of physics and locomotive engineering. Of course, the laws of physics are at play in the context of locomotion, but this fact does not support a conclusion that the generation of data in the operation of a locomotive represents the results of scientific investigation or otherwise fits within the definition of "scientific" identified above.

[35] However, I find more compelling CP's argument surrounding the term "technical". In support of CP's argument, Ms. Kennedy's affidavit explains the nature of the data captured by the LER. She states that an event recorder system records precise data about the operation of train controls, the performance of the train in response to those controls, and the operation of associated control systems. After providing the list of categories of data recorded in the LER (as detailed earlier in these Reasons), Ms. Kennedy states that this data provides a technical breakdown of the train handling control actions made to the locomotive. By way of examples, she notes that speed depicts the acceleration and deceleration of the train; tractive effort depicts transitions from a pulling force to a retarding force; the EAB BP, EAB BC, and EAB ER depict train and locomotive brake activity as reflected by changes in air pressure; and the PCS Open depicts the activity of the

pneumatic control switch that is opened automatically in response to an emergency brake application.

[36] The TSB has not taken issue with any of these explanations. Rather, the TSB argues that the information captured by the LER is simply raw data and, absent further analysis, does not demonstrate, for instance, “the practical use of machines” as contemplated by the definition of “technical” information.

[37] I do not find the TSB’s position persuasive. I accept that some degree of understanding or analysis of the data may be required to translate the raw data into conclusions as to the operation of the locomotive. However, accepting Ms. Kennedy’s evidence as to the nature of the data and what it depicts, it is nevertheless apparent that the data represents information related to the operation of the locomotive and therefore to the practical use of that machine. In my view, characterizing such data as technical information is also consistent with the observation in *Information Commissioner* that information identifying when flight instructions are given may be characterized as technical information (at para 70).

[38] I therefore conclude that the Disputed Record represents technical information for purposes of s 20(1)(b) of the ATIA.

B. *Information consistently treated in a confidential manner by the third party*

[39] I will next address the requirement that, in order to invoke the protection of s 20(1)(b) of the ATIA, the relevant information must be consistently treated in a confidential manner by the third party.

[40] Relying on the evidence of Ms. Kennedy, to which I will return in more detail shortly, CP argues that it safeguards the confidentiality of LER data such as the Disputed Record and has implemented numerous internally and externally facing practices to accomplish that objective.

[41] The TSB takes the position that Ms. Kennedy's evidence represents nothing beyond a series of bare assertions that are insufficient to meet this requirement of s 20(1)(b). As explained in *Toronto Sun Wah Trading Inc v Canada (Attorney General)*, 2007 FC 1091 [*Toronto Sun*] at paragraph 25, in assessing whether a party has treated information as confidential, the Court must consider the party's statements and perform an objective assessment, and the party's evidence must go beyond mere assertions. In *Toronto Sun*, the Court observed that, while the applicant's chief executive officer [CEO] stated that the relevant information was treated in a confidential manner, there was no indication of how this was done. There was no reference to "confidential" on any of the relevant documents, and the CEO's affidavit did not indicate how the applicant was consistently treating the information as confidential.

[42] In my view, Ms. Kennedy's evidence does not suffer from these deficiencies. In addition to asserting that the Applicant consistently treats the information contained in the Disputed Record as confidential and does not make it available to the public, Ms. Kennedy explains that, internally

within CP, information in the Disputed Record is not readily available to all employees. Rather, the information is stored securely on CP's servers, and only approximately five employees in leadership positions, in particular departments referenced in the affidavit, have the ability to access and share this information. Ms. Kennedy also references and attaches the Applicant's Code of Business Ethics [the Code] that requires CP's employees to keep CP information confidential.

[43] Ms. Kennedy also notes that, when the Disputed Record was supplied to the TSB, this was done under cover of correspondence expressly stating that the information was intended to be confidential and privileged and with each page of the Disputed Record bearing a confidentiality watermark and annotation. Copies of this documentation, consistent with this assertion, is exhibited to Ms. Kennedy's affidavit.

[44] The TSB argues that the Code is a document of generic application that does not apply specifically to the Disputed Record. I accept the accuracy of this submission. Nevertheless, Ms. Kennedy's evidence extends significantly beyond bare assertions. It identifies both how the asserted confidentiality of the Disputed Record was protected internally and how it was intended to be protected externally when provided to the TSB. Considering CP's evidence objectively and as a whole, I am satisfied that CP has met its burden to demonstrate that it consistently treated the Disputed Record as confidential.

C. *Confidential information*

[45] Notwithstanding the above conclusion that CP treated the Disputed Record as confidential, s 20(1)(b) of the ATIA does not apply unless CP can also demonstrate that the Disputed Record is

objectively confidential. In *Information Commissioner* at paragraph 72, the Federal Court of Appeal explained this requirement as follows:

72. The jurisprudence establishes that confidentiality must be judged according to an objective standard: the information itself must be “confidential by its intrinsic nature” (*Société Gamma Inc. v. Canada (Secretary of State)* (1994), 1994 CanLII 19529 (FC), 27 Admin. L.R. (2d) 102 (F.C.T.D.), at paragraph 8 (*Société Gamma*); *Air Atonabee*; *Cyanamid Canada Inc. v. Canada (Minister of National Health and Welfare)* (1992), 1992 CanLII 15386 (FC), 41 C.P.R. (3d) 512 (F.C.T.D.); affd (1992), 1992 CanLII 15456 (FCA), 9 Admin. L.R. (2d) 161 (F.C.A.); *Merck Frosst Canada & Co. v. Canada (Minister of Health)*, 2005 FCA 215 (CanLII), [2006] 1 F.C.R. 379 (F.C.A.)). In *Air Atonabee*, Mackay J. suggested the following approach to determine whether a particular record contained “confidential information” (at page 272):

... whether information is confidential will depend upon its content, its purpose and the circumstances in which it is compiled and communicated, namely:

- (a) that the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on his own,
- (b) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and
- (c) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

[46] For purposes of these Reasons, I will refer to the three factors identified in this passage above as the *Air Atonabee* factors. I understand the parties to agree that these factors are not to be treated as a conjunctive tripartite test (the applicable test being as set out in s 20(1)(b)), but rather represent indicators of confidentiality, i.e., considerations to be taken into account in assessing whether a party asserting confidentiality can establish that the relevant information is confidential by its intrinsic nature.

[47] *Information Commissioner* also explained that the burden of persuasion with respect to the confidential nature of the information rests upon the party asserting its confidentiality and requires “actual direct evidence” of the confidential nature of the information at issue. Evidence that is vague or speculative in nature cannot be relied upon to justify protection from disclosure (at para 73).

[48] In relation to the first *Air Atonabee* factor, CP relies on the record before the Court, and in particular a comparison of the Disputed Record with Appendix D to the TSB’s Report, to argue that the Disputed Record has not been publicly disclosed. In relation to the latter two factors, CP has not adduced evidence in support of the asserted objective confidentiality of the Disputed Record or a public interest in protecting its confidentiality. Rather, CP relies principally on the role of the Disputed Record (and therefore the LER) within the relevant regulatory regime, including evidence from the TSB’s affiant, Mr. Lapointe, surrounding the operation of that regime. I will address below the parties’ arguments in relation to each of the three *Air Atonabee* factors.

(1) Public disclosure

[49] The parties' arguments related to the first factor (whether the information contained in the Disputed Record is available from sources accessible by the public) surround whether the information in the Disputed Record has been disclosed to the public in Appendix D of the Report.

[50] Appendix D, entitled "Itemized list of train handling events", includes 20 tables, described by the introductory language of the appendix as capturing train handling events compiled from LER data. Each of these tables consists of a number of rows, with each row representing a particular time in the sequence of events and setting out data in a number of columns bearing the headings (with the applicable units): Time; H/E Mile; Speed; Throttle position; TE/DB; DB; ER; BPP; Airflow; and IND. The tables are distinguishable from one another in that each captures a different stage in the sequence of events representing the Occurrence and each is preceded by a heading that summarizes what is happening during that stage [the Headings].

[51] The TSB argues that, to the extent information in the Disputed Record is found in Appendix D, it has already been publicly disclosed and therefore cannot be considered objectively confidential.

[52] It is not in dispute that the information found in Appendix D was derived from the Disputed Record. In most of the columns in Appendix D, the data is identical to that contained in comparable columns of the Disputed Record. However, CP notes (and, again, the TSB does not dispute) that in the Appendix D columns capturing time and distance, the TSB made certain adjustments to the data from the Disputed Record before inserting it in Appendix D. As Mr. Lapointe explains in his

affidavit, these adjustments were made in order to make the data in Appendix D coincide exactly with the actual location and time of the derailment and were necessary for two reasons:

- A. because the LER recorded time in Pacific Standard Time, while the train's journey from Calgary to the point of the derailment occurred in Mountain Standard Time, it was necessary to add 60 minutes to the LER time data to bring it into Mountain Standard Time; and
- B. a two-second adjustment was made to the mid-train locomotive's LER time so that it better aligned with the tail end locomotive's LER time data.

[53] The TSB argues that these minor adjustments have no substantive impact on the data's meaning. In contrast, CP argues that, as a result of these adjustments, the Appendix D data differs from that in the Disputed Record. CP refers the Court to the explanation in *Canadian Imperial Bank of Commerce v Canada (Chief Commissioner, Human Rights Commission)*, 2007 FCA 272, [2008] 2 FCR 509 [*CIBC*] at paragraph 61, that the test for purposes of the first *Air Atonabee* factor is not whether information of the same kind is available in the public record but whether the specific information can be found there.

[54] The parties also disagree on whether Appendix D discloses the Comments that a representative of CP inserted in the Disputed Record [REDACTED]. The TSB argues that the information in the Comments is captured in the Headings. CP disputes this assertion.

[55] More importantly, CP emphasizes that Appendix D discloses only a portion of the information in the Disputed Record. Temporally, the Disputed Record contains data for each second between 20:25:34 on February 3, 2019, and 00:51:12 on February 4, 2019, representing approximately 5596 separate temporal entries. In contrast, Appendix D contains only 93 distinct temporal entries. Also, in relation to the scope of the data, CP notes that Appendix D discloses information contained in only 10 of the 16 columns of the Disputed Record.

[56] While I am not convinced that the principle explained in *CIBC* favours CP, this point is not particularly material, as it is clear that the vast majority of the data points found in the Disputed Record are not disclosed in Appendix D. As such, in relation to most of the data in the Disputed Record, the first *Air Atonabee* factor supports a conclusion that the data is confidential.

[57] In relation to the Comments, a meaningful analysis is precluded by the fact that neither of the parties has adduced evidence or provided any detailed argument, in support of their respective positions, that would assist the Court in comparing the content of the Comments and that of the Headings. As I am unable to conclude with any confidence that the information in the Comments was disclosed in the Headings in Appendix D, the first *Air Atonabee* factor supports a conclusion that this information is confidential as well.

(2) Reasonable expectation of confidence

[58] In relation to the second *Air Atonabee* factor (whether the information originated and was communicated in a reasonable expectation of confidence), CP places particular emphasis on the role

of s 30 of the CTAISB Act, which creates as follows a privilege applicable to a “statement” (as defined in subsection 30(1)) made to the TSB in relation to a transportation occurrence:

Interpretation

30 (1) For the purposes of this section and section 19,

(a) *statement* means

(i) the whole or any part of an oral, written or recorded statement relating to a transportation occurrence and given, by the author of the statement, to the Board, an investigator or any person acting for the Board or for an investigator,

(ii) a transcription or substantial summary of a statement referred to in subparagraph (i), or

(iii) conduct that could reasonably be taken to be intended as such a statement; and

(b) where a statement is privileged, the identity of its author is privileged to the same extent.

Statement privileged

(2) A statement is privileged, and no person, including any person to whom access is provided under this section, shall knowingly communicate it or permit it to be communicated to any person except as provided by this Act or as authorized in writing by

Définition de déclaration

30 (1) Au présent article et à l'article 19, *déclaration* s'entend de tout ou partie d'une déclaration verbale, écrite ou enregistrée, faite ou remise au Bureau, à l'enquêteur ou à leur délégué par son auteur et se rapportant à un accident de transport, ainsi que de la transcription ou d'un résumé substantiel de celle-ci. La présente définition vise également un comportement qui peut être assimilé à une pareille déclaration. Lorsqu'une déclaration est protégée, l'identité de son auteur l'est dans la même mesure.

Protection des déclarations

(2) Les déclarations sont protégées. Sous réserve des autres dispositions de la présente loi ou d'une autorisation écrite de leur auteur, nul ne peut sciemment, notamment s'il s'agit de

the person who made the statement.

Use by Board

(3) The Board may make such use of any statement as it considers necessary in the interests of transportation safety.

Access by peace officers, coroners and other investigators

(4) The Board shall make statements available to

(a) [Repealed, 1998, c. 20, s. 19]

(b) a coroner who requests access thereto for the purpose of an investigation that the coroner is conducting; or

(c) any person carrying out a coordinated investigation under section 18.

Power of court or coroner

(5) Notwithstanding anything in this section, where, in any proceedings before a court or coroner, a request for the production and discovery of a statement is contested on the ground that it is privileged, the court or coroner shall

(a) *in camera*, examine the statement; and

personnes qui y ont accès au titre du présent article, les communiquer ou les laisser communiquer.

Utilisation par le Bureau

(3) Le Bureau peut utiliser les déclarations comme il l'estime nécessaire dans l'intérêt de la sécurité des transports.

Mise à la disposition des agents de la paix, coroners et autres enquêteurs

(4) Le Bureau est tenu de mettre les déclarations à la disposition :

a) [Abrogé, 1998, ch. 20, art. 19]

b) des coroners qui en font la demande pour leurs enquêtes;

c) des personnes qui participent aux enquêtes coordonnées visées à l'article 18.

Pouvoir du tribunal ou du coroner

(5) Par dérogation aux autres dispositions du présent article, le tribunal ou le coroner qui, dans le cours de procédures devant lui, est saisi d'une demande de production et d'examen d'une déclaration examine celle-ci à huis clos lorsque la demande est contestée au motif que la

(b) if the court or coroner concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs in importance the privilege attached to the statement by virtue of this section, order the production and discovery of the statement, subject to such restrictions or conditions as the court or coroner deems appropriate, and may require any person to give evidence that relates to the statement.

Definition of *court*

(6) For the purposes of subsection (5), *court* includes a person or persons appointed or designated to conduct a public inquiry into a transportation occurrence pursuant to this Act or the *Inquiries Act*.

Use prohibited

(7) A statement shall not be used against the person who made it in any legal or other proceedings except in a prosecution for perjury or for giving contradictory evidence or a prosecution under section 35.

déclaration est protégée. S'il conclut, dans les circonstances de l'espèce, que l'intérêt public d'une bonne administration de la justice a prépondérance sur la protection conférée à la déclaration par le présent article, le tribunal ou le coroner en ordonne la production et l'examen, sous réserve des conditions ou restrictions qu'il juge indiquées; il peut en outre enjoindre à toute personne de témoigner au sujet de cette déclaration.

Qualité de tribunal

(6) Pour l'application du paragraphe (5), ont pouvoirs et qualité de tribunal les personnes nommées ou désignées pour mener une enquête publique sur un accident de transport conformément à la présente loi ou à la *Loi sur les enquêtes*

Interdiction

(7) Il ne peut être fait usage des déclarations contre leur auteur dans une procédure judiciaire ou autre, sauf dans une poursuite pour parjure ou témoignage contradictoire, ou s'il s'agit d'une poursuite intentée sous le régime de l'article 35.

[59] CP argues that the Disputed Record, which it provided to the TSB in support of an on-going transportation investigation into the Occurrence, constitutes a statement that is subject to

privilege under s 30. CP also notes that, consistent with that position, CP's February 15, 2019 email communication with the TSB, which attached the Disputed Record, described it as privileged.

[60] To be clear, CP is not asserting this privilege as a distinct ground to oppose disclosure. Section 24 of the ATIA expressly protects from disclosure any record containing information the disclosure of which is restricted pursuant to a list of statutory provisions set out in this Schedule II to the ATIA. Section 30 of the CTAISB Act is not included in Schedule II. However, CP argues that the existence of the statutory privilege under s 30 supports the objective reasonableness of its expectation that the TSB would treat the Disputed Record as confidential.

[61] In support of its position that the Disputed Record constitutes a statement for purposes of s 30, CP notes that s 30(1) defines "statement" broadly to include: an oral, written or recorded statement; a transcript or a substantial summary of a statement; or conduct that could be taken to be intended as a statement. Similarly, the TSB's "Policy on the Protection and Use of Witness Statements" (30 September 2018, online: <https://tsb.gc.ca/eng/lois-acts/temoin-witness.html>) [the Policy] at para 2.1(d) states that "statement", as defined in the CTAISB Act, should be interpreted broadly to include, *inter alia*:

... other information received by the TSB that could reasonably be taken to be intended as a statement, such as communications that convey technical information requested by the TSB as part of its investigation.

[62] CP also emphasizes that neither the CTAISB Act nor the Policy confines the meaning of a witness statement to include only those that are provided voluntarily to the TSB.

[63] At the hearing of this application, the TSB's counsel advised the Court that the component of the Policy upon which CP relies reflects the decision the Alberta Court of Queen's Bench in *Chernetz v Eagle Copters Ltd*, 2003 ABQB 331 [*Chernetz*], at paragraph 84 of which the Court held that the term "statement" in s 30 of the CTAISB Act includes statements not only from witnesses, but also from interested parties, and may include communications that convey technical information requested by the TSB as part of its investigative process.

[64] In addition to s 30 of the CTAISB Act and the Policy, CP relies on the following explanation in Mr. Lapointe's affidavit of the manner in which the TSB assesses written statements given by an individual to the TSB, as well as records that a witness may provide to the TSB, to assess whether an exemption from production under the ATIA may apply:

28. While the TSB's policy does not differentiate between the written version of an individual's statement to the TSB about a transportation occurrence and the records that a witness may provide to the TSB, it is important to note that records provided by witnesses are assessed by the TSB's access to information team on a case-by-case basis. This case-by-case review occurs because the CTAISB Act's statutory privilege related to witness statements is not included in the list of provisions prohibiting disclosure contained in Schedule II to the ATIA. Where a record provided to the TSB does not contain personal information, the TSB's case-by-case review nonetheless considers other exemptions from production contained in the ATIA. The TSB acknowledges that the quasi-constitutional ATIA governs over its internal policies.

[65] CP asserts that, through the operation of its business, it is necessarily acquainted with the applicable regulatory regime (including the CTAISB Act and the ATIA), the Policy, and TSB's practice as described in Mr. Lapointe's affidavit, all of which give rise to a reasonable expectation on its part that information such as the Disputed Record would be treated by the TSB as confidential.

[66] Finally, CP relies on the correspondence from the TSB's analyst, Ms. Zhang, on July 31, 2023, inquiring as to CP's position on the possibility of severance of part of the Responsive Record. In her affidavit filed in this application, Ms. Zhang asserts that she was seeking to better understand CP's position on disclosure and did not intend through her correspondence to concede that any part of the Disputed Record was exempt from disclosure. CP is not arguing that Ms. Zhang's correspondence represents a formal admission to which CP must be held. Rather CP submits that this correspondence contributed to, or is at least consistent with, CP having a reasonable expectation that the Disputed Record would be treated confidentially.

[67] I will address this latter submission first. In my view, it is not possible to derive from a review of the correspondence issued by Ms. Zhang any definitive conclusion as to whether or how she (or, more broadly, the TSB) may have regarded s 20(1)(b) to apply to the Disputed Record. Moreover, her communication postdates CP's provision of the Disputed Record to the TSB and therefore could not have logically contributed to CP's expectation of confidentiality when the information was provided.

[68] Turning to CP's principal submissions on the reasonableness of an expectation of confidence, the TSB disagrees with CP's position that the Disputed Record (or the LER from which it was downloaded) constitutes a statement for purposes of s 30. The TSB emphasizes that railway companies are statutorily obliged to record this information and provide it to the TSB when requested. The obligation to record the information is imposed by s 12 of the *Railway Locomotive Inspection and Safety Rules*, approved by the Minister of Transport pursuant to the *Railway Safety Act*, RSC 1985, c 32 (4th Supp), and s 19(1) of the CTAISB Act entitles a TSB

inspector to search for and seize any thing relevant to the conduct of an investigation of a transportation occurrence, which necessarily includes an LER. In short, the TSB takes the position that transportation records that a third party is mandated by statute to collect for safety purposes are not “statements” within the meaning of s 30.

[69] In reply to the TSB’s position, CP notes that the third *Air Atonabee* factor (which these Reasons will address shortly) expressly contemplates that information may be objectively confidential regardless of whether its supply to a government institution was gratuitous or required by law. Moreover, in *Porter Airlines Inc v Canada (Attorney General)*, 2014 FC 392 [*Porter*] at paragraphs 21 to 23, this Court drew a distinction between information reported to a regulator and the regulator’s resulting conclusions. *Porter* commented that the jurisprudence has consistently held that, while regulatory conclusions are generally not subject to exemptions from disclosure under the ATIA, information supplied to the regulator generally does benefit from such protection.

[70] I accept that the fact that information was supplied to a regulator under legal compulsion does not in itself lead to a conclusion that the information does not represent a statement for purposes of s 30 the CTAISB Act and/or that the information is not confidential for purposes of by s 20(1)(b) of the ATIA. Clearly, witnesses have obligations to cooperate with the TSB in the provision of statements and relevant information (ss 19(9) and (10) of the CTAISB Act) and yet their statements benefit from the protection of s 30.

[71] However, the TSB's argument does not focus solely upon the fact that the provision to the TSB of an LER or the data downloaded therefrom is done under regulatory compulsion, but rather upon the nature of this information and how it is generated. Focusing on the definition of "statement" in s 30(1) as including that it be given by the author to the TSB, the TSB submits that the data in an LER has no author. Rather, the data is collected by a machine without human intervention other than by those who furnish and enable the machine in compliance with statutory obligations.

[72] In my view, this point is material, both in examining the express language of s 30 (i.e. the requirement for an author) and in considering that section's purpose. In *Canadian National Railway Co v Canada*, 2002 BCSC 1562 [CNR] (application for leave dismissed 2002 BCCA 689), the Court explained that the purpose of s 30 is to enhance the willingness of people to speak fully and freely to the TSB, accomplished by preventing disclosure of statements to those who might have the ability to affect adversely the interests of the person giving the statement (at para 12). However, as the TSB submits, the objective of encouraging forthrightness that applies when TSB is taking a witness statement from an individual does not apply when it seeks production of LER data that a railway company is statutorily required to record and provide.

[73] As the TSB expresses the point, a recording device cannot be either more or less forthcoming about objectively measurable properties, such as whether a brake is on or off. Nor can a railway company withhold this information from the TSB or disclose only part thereof.

[74] Indeed, in my view, the analysis in *Chernetz*, which lead to the Court's conclusion that the term "statement" in s 30 of the CTAISB Act may include communications that convey technical information to the TSB, supports the TSB's position. That conclusion was based on the Court's consideration of the purpose of s 30 as expressed in *CNR* (upon which *Chernetz* relied at para 70). Against the backdrop of that purpose of encouraging candour and cooperation by people with information relevant to TSB investigations (as further described in *Webber v Canadian Aviation Insurance Managers Ltd*, 2002 BCSC 1414, upon which *Chernetz* relied at para 72), the Court observed that information regarding transportation occurrences can come in many forms. Investigators can ask for that information in the form of a statement, or they can simply ask that records containing the information be produced (at para 74). I interpret the reasoning in *Chernetz* to be that s 30 should be interpreted such that the objective of candour and cooperation would be achieved regardless of the form in which the information is sought or produced.

[75] In other words, if a TSB investigator asks a representative of a railway company to retrieve and provide company records (rather than taking a statement informed by those records), the application of the s 30 privilege encourages the representative to be diligent and comprehensive in their efforts. However, if pursuant to and solely for the purpose of satisfying safety-oriented regulatory requirements, the information required by the TSB has already been objectively and mechanically captured by an LER, then the purpose of s 30 is not engaged.

[76] The TSB is entitled to search for and seize an LER pursuant to its powers under s 19 of the CTAISB Act. In the absence of an author as required by the language of s 30, it is difficult to

conceive how the LER unit and the data therein could then be characterized as a statement within the meaning of s 30. In the case at hand, CP instead furnished a download of the data from the LER, under cover of email correspondence. However, given the nature of the information and the manner in which it was collected, which do not engage the purpose of s 30, I would not regard this communication from CP to the TSB as falling within the type of communication of technical information to which the reasoning and conclusion in *Chernetz* (and the portion of the Policy based thereon) applies.

[77] Neither party seeks from the Court a formal finding on whether the Disputed Record represents a statement for purposes of s 30 of the CTAISB Act. However, based on the foregoing analysis, I find that (subject to further consideration of the Comments, to which I will turn shortly) CP's submissions based on the application of s 30, the Policy, and the TSB's practice of analysing the application of s 30 on a case-by-case basis (presumably applying s 30 and the Policy) have not satisfied CP's burden to demonstrate a reasonable expectation of confidentiality in relation to the Disputed Record.

[78] In so finding, I reiterate that CP's arguments as to the reasonable expectation of confidentiality in relation to the Disputed Record were based principally upon the surrounding regulatory regime, and in particular s 30 of CTAISB Act, not upon evidence adduced to support a conclusion that this information is confidential by its intrinsic nature. As such, my finding should not be interpreted as a conclusion that the information captured in an LER or similar recording device is necessarily in all cases without the benefit of protection under s 20(1)(b) of the ATIA. As emphasized in *Merck*, conclusions on the application of s 20(1)(b) are primarily

questions of fact, to be made in light of the evidence adduced in each individual case (at para 150).

[79] Finally, returning to the Comments, the nature of the information therein differs significantly from the rest of the data in the Dispute Record. The Comments do not represent mechanically collected data downloaded from the LER but rather [REDACTED]. In my view, the Comments do have the character of a s 30 statement, representing communication of technical information of the sort contemplated by the Policy and *Chernetz*, the protection from disclosure of which is consistent with the purpose of s 30. In relation to the Comments only, the second *Air Atonabee* factor supports a conclusion that the information is confidential.

(3) Relationship being fostered for the public benefit by confidential communication

[80] CP's submissions in relation to the third *Air Atonabee* factor also rely significantly on the relevant regulatory regime. CP argues that exempting the Disputed Record from disclosure, given that it was provided to the TSB as a measure of cooperation with their investigation, would serve the public interest by fostering full and frank disclosure from persons with information relevant to TSB investigations, thus increasing the efficacy and accuracy of these investigations. My above analysis of the *Air Atonabee* second factor, taking into account the nature of the Disputed Record, is largely dispositive of this argument.

[81] However, CP also submits that, in applying the third factor, it is necessary to focus upon not only the incentive for full and frank disclosure of the particular information at issue, but also upon

the salutary effect upon the larger relationship between the regulated party and its regulator. CP notes that the language of the third *Air Atonabee* factor speaks to the benefit to the relationship between the government and the party supplying it with information, as opposed to the benefit in achieving full and frank disclosure. CP also draws the Court's attention to *Canada (Information Commissioner) v Canada (Minister of External Affairs)*, 1990 CanLII 13058 (FC), [1990] 3 FC 665 [*External Affairs*], in which the Court referred to a public interest in maintaining good relations *per se* with law-abiding persons, that is, a public interest in ensuring that the government act in good faith regarding confidential information that is received by it (at 675).

[82] CP submits that, in focusing upon the fact that an assurance of confidentiality is not necessary to achieve full and frank disclosure of LER data, the TSB's position overlooks this broader public interest and suggests that the third *Air Atonabee* factor can be satisfied only in circumstances where harm would result in the absence of confidentiality. CP argues that the TSB's position conflicts with *Air Atonabee*'s rejection of what Justice MacKay described as United States jurisprudence defining confidentiality as arising where disclosure would be likely to cause harm, such as impairment of the government's ability to obtain necessary information in the future (at para 38).

[83] *External Affairs* expanded upon *Air Atonabee*'s rejection of that jurisprudence, explaining that the public interest in fostering confidential communication is merely an indicia of the confidential nature of information and not a condition thereof (at 674). Significantly, it is clear from *External Affairs* that, applying the second *Air Atonabee* factor, the Court had accepted that the information in dispute in that matter had been communicated to the government with a reasonable

expectation of confidentiality (at 673). The Court referred to the need to determine objectively whether the information was obtained in exchange for an explicit or implicit promise that it would be treated confidentially (at 674). It was in that context that the Court referred to the public interest in the government maintaining good relations with law-abiding persons by protecting confidential information (at 675).

[84] As I interpret this aspect of the jurisprudence, demonstration of harm resulting from disclosure is neither a necessary nor a sufficient condition for establishing confidentiality. However, I do not read the jurisprudence as suggesting that, where the asserted public interest is that of generally maintaining good relations between a regulator and a regulated party, this is likely to support a finding of objective confidentiality where no reasonable expectation of confidence has been established.

[85] In my view, as CP has not established a reasonable expectation of confidence, its submissions under the third *Air Atonabee* factor do not support a finding that the Disputed Record (other than the Comments) is confidential.

IX. Conclusion

[86] As previously explained, in order to be treated as confidential under s 20(1)(b) of the ATIA, the Disputed Record must satisfy all four criteria identified in that subsection. As will be apparent from these Reasons, the determinative criterion in this application is the requirement to demonstrate objective confidentiality. In connection with that criterion, the above analysis of the

Air Atonabee factors leads to a conclusion that the Comments are protected from disclosure by s 20(1)(b) but otherwise the Disputed Record is not.

[87] I further conclude that the remainder of the Disputed Record can reasonably be severed from the Comments, as contemplated by s 25 of the ATIA, as the Comments are a [REDACTED]

[88] As a result, my Judgment will declare that s 20(1)(b) applies to the Comments, which are therefore exempt from disclosure, and, pursuant to the authority of s 51 of the ATIA, will order the TSB not to disclose the Comments. Otherwise, the application will be dismissed.

[89] Finally, I note that these Reasons and Judgment are being issued on a confidential basis, because the parties' records included information protected during the pre-hearing process pursuant to the Confidentiality Order, and some of that information is necessarily included in these Reasons. Given that my conclusion in this application is that the Disputed Record (with the exception of the Comments) is not confidential pursuant to s 20(1)(b) of the ATIA, I suspect that there may be little or no information that requires redaction when the Court issues a public version of these Reasons and Judgment. However, particularly given my conclusion that s 20(1)(b) does apply to the Comments, my Judgment will afford the parties an opportunity to provide submissions on any proposed redactions.

X. Costs

[90] Each of the parties has claimed costs in the event of its success. The parties also agree that it is appropriate that the Court award costs on a lump sum basis. However, they disagree on how a lump sum should be calculated.

[91] CP argues that costs should be awarded on a lump sum basis, calculated in accordance with the mid-range of Column III of Tariff B of the *Federal Court Rules*, SOR/98-106 [the Rules] and has submitted a Bill of Costs calculated on that basis that, with the addition of nominal disbursements, totals \$5388.40. CP refers the Court to relatively recent authorities in which Column III of Tariff B has been employed to calculate costs awarded to the successful party in ATIA matters (*Dehkissia v Sustainable Development Technology Canada*, 2024 FCA 164 at para 7; *Actial Farmaceutica SRL v Canada (Minister of Health)*, 2022 FC 971 at para 63; *Elanco Canada Limited v Canada (Minister of Health)*, 2020 FC 65 at para 9).

[92] The TSB has not contested this calculation but, noting that it is becoming increasingly common to award lump-sum costs calculated as a percentage of a party's actual legal fees (*Barnes v Canada (Prime Minister)*, 2025 FC 1559 [*Barnes*] at para 15), the TSB seeks costs of approximately \$18,000, representing 25% of its legal fees incurred in connection with this application (plus an amount related to a motion in this application, to which I will turn shortly).

[93] Subsection 400(4) of the Rules provides that the Court may fix costs by reference to Tariff B and/or as a lump sum. Subsection 400(1) provides that the Court has full discretion over the amount of costs, and subsection 400(3) sets out factors that the Court may consider in

exercising that discretion. However, the parties have not advanced submissions on particular factors in support of their respective positions.

[94] As the TSB submits, *Barnes* represents a precedent for awarding costs on a lump sum basis, calculated as a percentage of the successful party's legal fees, in a proceeding under the ATIA. However, *Barnes* also notes that the burden is on the party seeking increased costs to demonstrate why their particular circumstances warrant such an award (at para 15). In that case, referencing the factors detailed in s 400(3) of the Rules, the Court awarded a lump sum of 25% of the applicant's legal fees based on conclusions including the following: (a) the applicant should never have had to bring his application; (b) the applicant was entirely successful on the application; and (c) there was a significant resource imbalance between the parties, such that a heightened costs award was consistent with the objective of facilitating access to justice. No comparable conclusions are available in the case at hand to support the TSB's claim for elevated costs.

[95] While the TSB was not entirely successful on this application, it was largely so and is therefore entitled to costs. However, I find no basis to depart from a calculation under Column III of Tariff B. While the only Bill of Costs submitted to the Court is that of CP, I adopt the figures therein for purposes of fixing a lump sum of \$5400.

[96] As noted above, the TSB also seeks costs in connection with a contested motion that it filed to resolve disputes between the parties surrounding the redaction of confidential information in their respective motion records. According to the parties' submissions at the

hearing of this application, the motion was ultimately resolved and did not proceed to a hearing. However, the TSB argues that CP dragged its feet in resolving the motion and should therefore pay the TSB's thrown-away costs. CP disputes the TSB's characterization of the events leading to resolution of the motion.

[97] Neither of the parties relied on evidence in support of their respective characterizations of these events. In the absence thereof, the Court declines to award any costs related to the motion.

JUDGMENT in T-996-24

THIS COURT'S JUDGMENT is that:

1. Subsection 20(1)(b) of the *Access to Information Act*, RC 1985, c A-1 applies to the Comments (as defined in the Court's Reasons), which are therefore exempt from disclosure.
2. The Respondent shall not disclose the Comments.
3. Otherwise, this application is dismissed.
4. The Applicant shall pay the Respondent costs of this application in the all-inclusive lump sum amount of \$5400.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-996-24

STYLE OF CAUSE: CANADIAN PACIFIC RAILWAY COMPANY v
CANADIAN TRANSPORTATION ACCIDENT
INVESTIGATION AND SAFETY BOARD

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 19, 2025

**PUBLIC JUDGMENT AND
REASONS:** SOUTHCOTT J.

DATED: JANUARY 8, 2026

APPEARANCES:

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David P. Taylor Siobhan Morris	FOR THE RESPONDENT
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