Federal Court Cour fédérale

Date: 20260508

Docket: T-2744-23

Saint-Sauveur, Québec, May 8, 2026

PRESENT: Associate Judge Trent Horne

BETWEEN:

UNIVERSAL PROTECTION SERVICE OF CANADA CORPORATION

Applicant

and

PALADIN AIRPORT SECURITY SERVICES LTD., CANADIAN AIR TRANSPORT SECURITY AUTHORITY, AND GARDAWORLD SECURITY SCREENING INC.

Respondents

REASONS AND ORDER

I. Overview

[1] This is a motion for production of documents in an application for judicial review.

[2] The applicant submits that documents to be included in a certified tribunal record can fall into three categories: i) documents that were before the decision-maker; ii) documents that were not before the decision-maker but may otherwise affect the Court's decision; and iii) documents that were not before the decision-maker but are relevant to allegations of maladministration.

[3] The second category, documents that were not before the decision-maker but may otherwise affect the Court's decision, are a central part the applicant's request. Compelling further production on this basis would be contrary to consistent jurisprudence from the Federal Court of Appeal. Document production in an application for judicial review is limited to what was before the decision-maker unless an exception, such as maladministration, can be demonstrated. The motion in this respect must be dismissed. For most of the documents sought, granting the order requested would result in a production obligation that would more closely resemble documentary discovery in an action.

[4] The applicant has set out an allegation of maladministration that is sufficiently defined to warrant an order that certain further documents be included in the certified tribunal record. The motion is therefore granted in part.

II. Background

[5] This application for judicial review challenges a decision of the Canadian Air Transport Security Authority [CATSA]. CATSA is a Crown corporation that oversees security screening for airline passengers.

[6] CATSA employees do not screen passengers at airports. The screening is done by contractors who have been engaged for that purpose.

[7] On January 31, 2023, CATSA issued a request for proposal [RFP] to establish four contracts for the delivery of aviation screening services in each of four regions, defined as

Central, Eastern, Prairies, and Pacific. The successful bidder would be awarded an Airport Screening Services Agreement [ASSA].

[8] The applicant [Universal] was the incumbent service provider in the Pacific region. In response to the RFP, Universal submitted a bid to be awarded an ASSA for the Prairies and Pacific regions. Paladin Airport Security Services Ltd [Paladin] and GardaWorld Security Screening Inc [GardaWorld] also submitted bids for the Prairies and Pacific Regions.

[9] The RFP was conducted in two stages. Stage 1 was a prequalification or screening process. Bidders who met a certain points threshold in Stage 1 were invited to participate in Stage 2 and submit a proposal to be awarded an ASSA.

[10] Paladin was the successful bidder for the Prairies and Pacific regions. Universal was advised that its bids were not selected. The results of the RFP process were publicly announced on November 23, 2023.

[11] Universal commenced this application for judicial review on December 27, 2023 (Universal was granted an extension of time to commence the proceeding by order dated April 2, 2024). It challenges CATSA's decision to accept Paladin's proposals for the Prairies and Pacific regions.

[12] The notice of application includes a broad request under Rule 317 of the *Federal Courts Rules*, SOR/98-106 [Rules] for production of material that is in the possession of the tribunal.

[13] Particularly in light of the sensitive commercial information that would be included in the certified tribunal record [CTR], and the confidential nature of a competitive bidding process, the parties came to an agreement on the terms of a confidentiality order.

[14] CATSA served a CTR on Universal on November 6, 2024. After reviewing the CTR, Universal requested additional documents, and the removal of certain redactions. Universal also amended its notice of application twice, filing amended versions on June 26, 2025 and August 7, 2025.

[15] CATSA served a supplementary CTR on Universal on October 17, 2025 that included further documents and removed certain redactions.

[16] Universal brings this motion to compel CATSA to conduct an additional search of its records, produce further documents, and serve and file an affidavit from a senior official to list documents that were withheld from the CTR. In response to the motion, CATSA produced a second supplementary CTR with further documents. In these reasons, I will refer to the collective certified tribunal record as the "CTR" unless there is a need to specifically address one of the tranches that comprise it.

III. Rule 317 – General Principles

[17] The principles guiding Rule 317 disclosure were summarized by Justice Pentney in *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2021 FC 624:

[21] Rule 317 provides a means by which a party can request a record to support its application for judicial review, and Rule 318 sets out the process for objecting to such a request. The relevant portions of these rules for the purposes of this decision are:

Material from tribunal	**Matériel en la possession de l'office fédéral**
317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.	**317 (1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.
…	[…]
Objection by tribunal	**Opposition de l'office fédéral**
318 (2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.	**318 (2)** Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.
Directions as to procedure	**Directives de la Cour**
(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).	**(3)** La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.
Order	**Ordonnance**
(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or	**(4)** La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient

part of the material requested be forwarded to the Registry.

transmis, en totalité ou en partie, au greffe.

[22] The general principles governing the extent of the decision-maker's obligation to disclose under Rule 317 are well-established. These were summarized by the Federal Court of Appeal in *Tsleil-Waututh First Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 86-115 [*Tsleil-Waututh*], and more recently in *Lukács v Swoop Inc*, 2019 FCA 145 [*Lukács*] and *Canadian National Railway Company v Canada (Transportation Agency)*, 2019 FCA 257 [*Canadian National*].

[23] Decisions of the Federal Court of Appeal confirm four core elements of the disclosure obligation set out in Rule 317:

> (i) it only requires disclosure of material that is "relevant to an application" defined with reference to the wording of the application for judicial review (Tsleil-Waututh at paras 106-10; Canadian National at para 14);
>
> (ii) it only requires disclosure of material that is "in the possession" of the administrative decision-maker, not others (Tsleil-Waututh at para 111);
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> (iii) in most cases, it is limited to material that was before the decision-maker when it made the decision under review. There are certain exceptions to this, including where a party claims a denial of procedural fairness or bias, which may require greater disclosure to enable a court to assess the merits of the claim (Humane Society of Canada Foundation v Canada (National Revenue), 2018 FCA 66 at paras 4-6 [Humane Society]); and
>
> (iv) it does not serve the same purpose as documentary discovery in an action and cannot be used on a fishing expedition (Tsleil-Waututh at para 115).

[24] The decision in *Canadian National* reminds us that the interpretation of Rule 317 must be grounded in the fundamental role that the evidentiary record plays in ensuring that courts can conduct meaningful review of administrative decision-makers:

> [12] Rule 317 embodies the principle that judicial review is premised on review of the record before the tribunal; certiorari means to bring forth the record. It entitles a party

> to receive everything that the decision maker had before it when it made its decision. The requirement that a tribunal produce, without hesitation, the entire record has long been central to judicial review. This is tempered by the pragmatic consideration that frequently large portions of the tribunal record, particularly in the case of standing, highly specialized agencies, may not be pertinent to the disposition of the issues on appeal.
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> [Citations omitted.]

[25] The Court of Appeal in *Tsleil-Waututh* sets the rule regarding disclosure of the record into the wider context of the constitutional foundations of judicial review:

> [78] In judicial review, the reviewing courts are in the business of enforcing the rule of law, one aspect of which is "executive accountability to legal authority" and protecting "individuals from arbitrary [executive] action". Put another way, all holders of public power are to be accountable for their exercises of power, something that rests at the heart of our democratic governance and the rule of law. Subject to any concerns about justiciability, when a judicial review of executive action is brought the courts are institutionally and practically capable of assessing whether or not the executive has acted reasonably, *i.e.*, within a range of acceptability and defensibility. That assessment is the proper, constitutionally guaranteed role of the courts within the constitutional separation of powers. But, at least in the situation where the evidentiary record of the administrative decision-maker is not before the reviewing court in any way whatsoever—*i.e.*, there is not even a summary or hint of what was before the administrative decision-maker—or the record is completely lacking on an essential element, concerns about immunization of administrative decision-making can come to the fore.
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> [Citations omitted.]

[26] The overarching consideration is whether the disclosure will permit meaningful judicial review of the decision, and "[i]t is important that neither party's ability to advance arguments… be constrained or prejudiced by an inadequate record. There is also an interest in ensuring that the Court has the necessary evidence, or

> lack of evidence, to decide the matter" (*Canadian National* at para 23). This will generally tip the balance in favour of production, if the material is relevant to a ground of review.
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> [27] In reviewing an objection to disclosure under Rule 318, a court must seek to balance, as much as possible, three objectives: (i) providing meaningful review of administrative decisions, which the reviewing court will be unable to engage in without being satisfied that the record before it is sufficient to proceed with the review; (ii) procedural fairness; and (iii) the protection of any legitimate confidentiality interests while ensuring that court proceedings are as open as possible (*Girouard v Canadian Judicial Council*, 2019 FCA 252 at para 18, citing *Lukács* at para 15 [*Girouard*]).

IV. Rule 317 – Allegations of Maladministration

[18] Particularly in respect of the "shift rate" issue discussed below, Universal submits that even if certain documents requested in its notice of motion were not relied on by CATSA in making the decision, disclosure is necessary to establish a breach of procedural fairness.

[19] Very recently, the Federal Court of Appeal provided extensive guidance on this issue in *Jewish National Fund of Canada Inc v Canada (National Revenue)*, 2026 FCA 63 [*JNF*].

[20] To put *JNF* into context, the appellant in that proceeding challenged a decision of the Minister of National Revenue to revoke its status as a registered charity. Among other things, the appellant asserted that the Minister's decision was fatally tainted by bias. More particularly, the appellant asserted that the Minister acted in response to significant public pressure from the public and the media. This included commentary, petitions, letters, emails, and press releases. The appellant brought a motion for further production, which resulted in the decision in *Jewish National Fund of Canada Inc v Canada (National Revenue)*, 2025 FCA 114. In that first

decision, the Federal Court of Appeal was satisfied that the appellant's allegation of bias constituted a tenable ground of appeal, and that it was explained in some detail in the pleadings (para 17). An order was made compelling the Minister to disclose any further materials relating to the allegations of bias (para 18).

[21] The appellant was unsatisfied with what it received and brought a further motion for production of documents. On the second motion, Justice Stratas provided guidance to litigants and the courts as to the scope of document production where there are allegations of "maladministration," a term used to broadly describe misconduct in administrative proceedings.

[22] The decision struck a balance. Denying parties search and production orders can keep maladministration hidden and unexposed, immunizing administrative decision-makers from meaningful review and accountability (para 12). A mere allegation of maladministration is not enough. Bare allegations of maladministration do not warrant consideration (para 23). A party seeking a search and production order must go beyond the allegations and give the Court something more (para 26). The "something more" requires that there be an "air of reality" to the allegations of maladministration *and* that the order is a proportionate measure (para 27). An air of reality is not suspicions, speculations, conjectures, imaginings, hunches, theories, beliefs or opinions, rather is a tangible concern supported by some circumstantial or direct evidence that is capable of being believed (or is not unbelievable) from the outset (paras 30-31). Proportionality must also be considered, including the time and expense associated with carrying out the search (para 32).

V. Analysis

[23] Universal's notice of motion includes a request for five categories of documents.

A. *Scores and Scoring Discrepancies*

[24] Universal's notice of motion asks for:

> 1. Additional documents substantiating scores, reaching consensus on scores, and discussing or addressing scoring discrepancies, including:
>
> (a) All documents (including handwritten and typed notes, analysis, meeting minutes, memos and correspondence (email or otherwise) setting out the reasons of the evaluators for scores given, and discussing or addressing discrepancies in scoring, in the RFP Stage 1 and Stage 2 evaluation processes in the Prairies and Pacific Regions; and
>
> (b) All documents relating to the analysis and calculation of the Stage 1 and 2 consensus scoring in the Prairies and Pacific Regions, including handwritten and typed notes, evaluators' worksheets and other evaluation working documents, meeting minutes, memos and correspondence (email or otherwise);

[25] CATSA's consideration of the competing bids proceeded in stages. After bids were filed, Stage 1 involved CATSA personnel evaluating those bids on an individual basis, and then as a group at a consensus meeting. Bidders who met a defined points threshold were advised that they were eligible to submit bids for Stage 2. The Stage 2 review proceeded in generally the same way - individual evaluations, followed by a group consensus meeting.

[26] Scoring is raised in the notice of application in a single paragraph – 37(g)(vi):

> 37. Without limiting the foregoing, the grounds for this Application consist of reviewable errors of jurisdiction, law and fact, and an unreasonable, incoherent and unjustifiable decision being made, by the authorized officials at CATSA relating to the Decision in the Prairies and Pacific Regions as follows:
>
> […..]

> (g) Failing to carry out the procurement process in a manner that provided equitable treatment amongst the Eligible Bidders, in a manner that provided value for money, or a manner that facilitated a fair outcome, as follows:
>
> […..]
>
> > (vi) Conducting a bid evaluation process that arrived at consensus scoring for the bidders in an unfair manner by failing to detect and remedy mathematical errors and inconsistencies in the consensus scoring;
> >
> > […..]

[27] Scoring documents relating to both individual assessments and consensus meetings have been included in the CTR.

[28] The starting point for production in an application for judicial review is the evidentiary record that was before the administrative decision-maker. This record is indispensable to the reviewing court's fulfilment of its responsibility to engage in meaningful review (*Tsleil-Waututh Nation v Canada (Attorney General),* 2017 FCA 128 [*Tsleil*] at para 71). Universal does not assert that personal notes, emails, or memoranda made by the individual evaluators were before the decision-maker, CATSA's board.

[29] In its request for further production, Universal places significant reliance on *Rapiscan Systems, Inc v Canada (Attorney General* 2014 FC 68, aff'd 2015 FCA 96 [*Rapiscan*], another procurement case involving CATSA. In *Rapiscan*, the board (the decision-maker) adopted a resolution based on a recommendation from management and awarded a contract for X-ray screening equipment to one of Rapiscan's competitors. The board meeting was held by

conference call, and the reasoning supporting the decision was a single paragraph (para 42). The Court found that the advice to the board was fundamentally flawed because management failed to advise the board that it had derogated drastically from the contracting procedures during the procurement process (para 64). The determination that the board's decision was unfair, unreasonable, arbitrary, or made in bad faith was dependent on the primary conclusion that management did not provide the board with accurate information upon which to base its decision (para 129).

[30] *Rapiscan* was a final decision on the merits, and did not expressly consider the scope of document production in an application for judicial review. I am not satisfied that it stands for a broad proposition that documents in addition to those that were before the decision-maker must be included in a certified tribunal record as a matter of routine. Such a conclusion would be directly contrary to the teaching in *Tsleil*.

[31] *Rapiscan* may fall into a category of cases where a preliminary recommendation is subsumed in a final decision. In such cases, production may not be limited to what was before the decision-maker, rather may extend to what was considered by the persons that made the recommendation (see, for example, *Pacific Coast Terminals Co Ltd v Vancouver Fraser Port Authority*, 2024 FC 119 at paras 38-43, rev'd in part 2024 FC 1531; further appeal pending A-324-24). That is not the case here. CATSA employees did not make a recommendation that was then approved by the board on a very limited record. The board was a participant in the decision-making process.

[32] Universal also relies on *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204 [*Maax Bath*] at para 9 for the proposition that relevant documents for the purposes of Rules 317-318 are those documents that may have affected the decision of the Tribunal or that may affect the decision that this Court will make on the application for judicial review.

[33] Authorities applying *Maax Bath* have not used it to create two distinct categories of documents that must be produced – those that were before the decision-maker, and a separate tranche of documents that were not before the decision-maker but may otherwise affect the Court's decision. In *Rouet v Canada (Attorney General)*, 2024 FC 1315, Justice St-Louis (as she then was) concluded:

> [51] The Court notes that for the purposes of Rules 317 and 318, a document is relevant if it "may have affected the decision of the [t]ribunal or . . . may affect the decision that this Court will make on the application for judicial review" (*Jolivet v Canada*, 2011 FC 806 at para 26 [*Jolivet*], citing *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204 at para 9). In other words, if a document was before the decision-maker when he or she made the decision, this document must be presumed relevant and should be produced by the tribunal, unless an exception applies (*Jolivet* at para 27). (Emphasis added)

[34] In *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 the Federal Court of Appeal stated that, "as a general rule, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the Board. In other words, evidence that was not before the Board and that goes to the merits of the matter before the Board is not admissible in an application for judicial review in this Court" (para 19). This decision recognized that there were certain recognized exceptions for document production (para 20) but did not contemplate production of documents

on the basis that they were not before the decision-maker but may otherwise affect the Court's decision. It is difficult to see how the Court could have done to when it stated that the essential purpose of judicial review is the review of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed by the tribunal (para 19).

[35] The more recent *Tsleil* decision does not open the door to broader categories of document production. If anything, it says the opposite. At paragraph 115, the Court of Appeal reminds us that that Rule 317 does not *in any way* serve the same purpose as documentary discovery in an action. I therefore do not accept Universal's argument that, in order to evaluate the decision under review, the Court must look beyond what was before the decision maker and examine the rest of the process. To accept this argument would conflate the Court's role in a judicial review and in an action, and result in a standard for document production that is more aligned with discovery obligations in an action.

[36] There are limited circumstances where more expansive document production may be required, and a respondent obliged to produce more than what was before the decision-maker. This includes cases where there are allegations of maladministration. Universal does not rely on allegations of maladministration for this category of documents, therefore the motion in this respect must dismissed because the documents in this category were not before the decision-maker.

[37] Universal argues that the requirement of procedural fairness runs all the way through the RFP process and should therefore inform the way the Court analyzes and considers the first four

categories of documents in the notice of motion. Production of documents beyond what was before the decision-maker can be ordered where an exception has been demonstrated, such as maladministration. It must therefore be clear whether a document request is based on maladministration or not, and the allegations of maladministration supporting such a request must be specifically identified. Even if this portion of the document request had been grounded in maladministration, the result would have been the same.

[38] Beginning with the notice of application, it is alleged that the bid evaluation process that arrived at consensus scoring for the bidders was conducted in an unfair manner because it failed to detect and remedy mathematical errors and inconsistencies in the consensus scoring.

[39] The document request in the notice of motion goes far beyond that. Universal has not demonstrated, in the notice of application or otherwise, the relevance of any further documents relating to the Stage 1 scoring process.

[40] Even if I was to read down the notice of motion to those documents created in Stage 2, Universal has not established that these documents exist. The RFP Evaluation Guidelines state, among other things, that evaluators must not discuss the evaluation with anyone, and must not discuss proposals with other evaluators other than during consensus sessions. The request for emails or other correspondence among evaluators is speculative.

[41] In support of its request for further documents relating to individual scores, Universal points to CATSA’s evaluation procedures, which require team members to record the strengths,

weaknesses and missing information of each proposal, provide comments to substantiate their score, identify why/where marks were deducted, and identify areas where clarifications are required.

[42] During the decision-making process, CATSA used a document management system called SharePoint, also referred to as Connexions. Individual evaluators were required to upload their scoring sheets to SharePoint. There was also a positive obligation on evaluators to upload handwritten notes.

[43] CATSA's responding motion materials include an affidavit of Jenny Doucet, CATSA's Director of Procurement and Contracting. Ms Doucet was cross-examined. On the issue of handwritten evaluators' notes, she stated "I have no awareness of any such documents existing. The instructions that were provided were that any such notes be handed over to me, and none were." Ms Doucet admitted that, in preparing the CTR, she did not reach out to the individual evaluators to ask if they prepared handwritten notes that were not uploaded to SharePoint. But even if I assume that an evaluator made private notes and failed to upload them to an electronic document repository in contravention of the RFP Evaluation Guidelines, such notes were not before the decision-maker, and it is not apparent how any such documents would inform allegations of procedural unfairness or other allegations of maladministration.

[44] For this category, Universal's written submissions point to two examples to justify its request for further production. The first is an individual evaluator's Stage 2 evaluation where almost no comments were provided to substantiate the scores, and other evaluators who provided

only high-level comments. It is submitted that any additional reasons substantiating such scores, "if they exist," are part of the record. The second example is alleged discrepancies between the individual and consensus scoring sheets. In one instance, an evaluator provided no score on an individual scoring sheet, yet there was a corresponding score in the final consensus scoring chart.

[45] I agree with CATSA's submissions that the fact that the level of commentary set out in some of the scoring documents may not satisfy Universal's expectations does not mean that the CTR is deficient, or that a broad production order is justified. The instance where an evaluator provided no score on an individual scoring sheet, yet there was a corresponding score in the final consensus scoring chart, was canvassed during Ms Doucet's cross-examination. She testified that the evaluator verbally provided their score at the consensus meeting, and that "I'm telling you that there is no additional document on this issue; that the score was communicated to me at the consensus meeting." Even if there was an oversight in the way an individual scoring document was completed, I am not satisfied that this individual error can be used as a ticket of entry for an extremely broad production request that would apply to 19 evaluators across the entire RFP process.

[46] Universal argues that the documents produced are sparse, and that evaluators must have gone into the consensus meetings with something further. Again, even if I assume that the evaluators have the notes and working papers requested, the sweeping request for document production in the notice of motion is not proportionate to the limited allegations of scoring discrepancies in the notice of application. It gives the impression that Universal is looking for production of broad categories of documents in the hopes that something useful will emerge. To

make the requested order would be contrary to the guidance in *JNF* and put fuel in the boat for a fishing expedition (paras 21-22).

[47] I recognize that this is not a routine application for judicial review where the administrative decision-maker had a limited record. This proceeding involves a sophisticated, multi-step, procurement process in a highly competitive market. A team at CATSA considered and ranked the bids over a lengthy period. The ASSAs are worth hundreds of millions of dollars. That said, the fundamental principles of Rule 317 have been consistently articulated in the jurisprudence. The scope of documentary production does not expand when there is more money at stake. One of the leading cases on Rule 317, *Tsleil*, which emphasizes that document production in an application is narrower than in an action, was in the context of a pipeline project with a capital cost of $7.4 billion (para 3).

B. *Kick-Off Meetings, Consensus Meetings, and Other Meetings*

[48] Universal's notice of motion asks for:

> 2. Materials relating to the Evaluation Kick-Off Meeting and Consensus Meeting (the "Meetings), including:
>
> > (a) Meeting minutes, agendas, hand-written or typed notes, presentations, documents prepared in preparation for the Meetings, and documents circulated to facilitate discussions at the Meetings; and
> >
> > (b) CATSA is also to confirm whether additional relevant meetings occurred in respect of the RFP, and if such additional relevant meetings occurred, CATSA is to disclose the same materials ordered to be disclosed in respect of the Meetings at paragraph 2(a).

[49] Universal seeks further production of documents associated with kickoff meetings, consensus meetings, and other meetings that may be relevant. At the hearing, Universal referred

specifically to a financial viability meeting as well. Universal submits that it first learned of the financial viability meeting after receipt of the second supplementary CTR, which was served after its moving motion record.

[50] A "kickoff meeting" was an initial meeting with the evaluation team to, among other things, review the evaluation process. There were three kickoff meetings. The first was at the outset of the Stage 1, before the individual evaluations; the second was before the Stage 2 individual evaluations; the third was part of the financial evaluation – what is described as a "viability assessment score evaluation kickoff meeting." At a consensus meeting, the evaluation team members reviewed, discussed, and agreed on a score.

[51] Universal says that these documents are relevant for understanding what information was conveyed to evaluators regarding how they were to evaluate the bids submitted. Universal also argues it is likely that the evaluators would have created notes for the purposes of these meetings, that there is a requirement to upload such notes to SharePoint, and none have been disclosed in the CTR. Universal submits that it is therefore logical for CATSA to ask the 19 evaluators if they have any notes or other documents, and this has not occurred. In argument, Universal described the request as basically production of the file that each of the evaluators would have had.

[52] As with the previous category, Universal does not rely on allegations of maladministration for a broader scope of production, rather argues that these documents may affect the decision that this Court will make on the application for judicial review. For the

reasons set out above, I do not agree that *Rapiscan* and *Maax Bath* open the door to production of documents beyond those that were before the decision-maker. Universal's request extends beyond documents that were before the board, therefore no order for further production will be made.

[53] As for documents that were before the board, CATSA does not dispute that documents relating to these meetings are relevant. Documents in this respect have been included in the CTR. We know from the Doucet affidavit that, as part of responding to Universal's motion, she considered appendix A to the notice of motion and conducted an additional search for documents. This resulted in the second supplemental CTR. The second supplemental CTR included meeting invitations.

[54] In its written representations, CATSA states that "no additional relevant documentation" exists.

[55] Ms Doucet's evidence indicates when the consensus meetings were held but does not state what documents were created before or during these meetings and were before the board. There is no explanation in the affidavit as to what parameters were used to determine if a document was relevant or not. At this point, I would be inclined to order a search for additional documents to ensure that the CTR is complete.

[56] Ms Doucet was, however, cross-examined on this point. The following excerpt is in the context of consensus meetings:

> 253 Q. Yes, we'll come to that one in a second. So looking at this group of meetings, and we've talked about how they were scheduled as two days, full-day meetings, CATSA has not produced any notes, memos, spreadsheets, presentations, Word documents, any of those things. To the extent they exist, they have not been produced in the CTR, correct?
>
> A. The related documents are the individual evaluators' evaluation matrices. And the consensus document. Those were the documents that formed the basis of discussion, and those have been produced.
>
> 254 Q. I understand that, but to the extent that any of the other documents I just mentioned exist, you have not made inquiries about whether they exist and you have not produced them, correct?
>
> A. I have not produced additional documents. I am not aware of any such other documents and I have not inquired as to if they exist.

[57] Ms Doucet is CATSA's Director of Procurement and Contracting. She was directly involved in the RFP process and has personal knowledge as to what was circulated for these meetings. Universal had the opportunity to ask about what documents, if any, were before the board and not included in the CTR. I am not satisfied that Universal has demonstrated that there may be other documents related to the kickoff meeting and consensus meetings that were before the board but excluded from the CTR.

[58] For the third category of documents and meetings, Universal asserts that CATSA's decision to omit documents relating to the kickoff and consensus meetings calls into question whether other meetings occurred as part of the RFP evaluative process. I find this argument to be speculative, particularly in light of the size of the CTR and the documents in it that describe the RFP process. As for the financial viability meeting on October 5, 2023, documents relating to it were disclosed in the second supplementary CTR. I am not satisfied that the cross-examination

of Ms Doucet establishes that there are more documents arising from this meeting that were before the board and were excluded from the CTR. I am also not satisfied that Universal has established that there are other financial viability meetings, or meetings generally, for which a production order should be made.

[59] Even if the request for this category of documents had been grounded in allegations of maladministration, I would not have ordered production.

[60] I begin with Rule 301, which requires a precise statement of the relief sought and a complete and concise statement of the grounds intended to be argued. The purpose in clearly setting out the relief sought and grounds to be argued is not only that the other parties will know the case to be met and not be caught by surprise, but also so that the Court hearing the matter will know what issues it will have to consider and determine. The Court does not wish to be confronted at the hearing with a new argument or different relief to be sought (*Air Canada v Toronto Port Authority*, 2010 FC 774 at para 80). A party may not advance an argument that was not raised as a ground for judicial review in its notice of application (*Apotex Inc v Canada (Health)*, 2019 FCA 97 at paras 7-9).

[61] Universal asserts that the relevant parts of the notice of application grounding this request are paragraph 37(g)(vi), reproduced above, and paragraph 37(g)(xi).

[62] Paragraph 37(g)(vi) is directed to an alleged failure to detect and remedy mathematical errors and inconsistencies in the consensus scoring, not the conduct of meetings generally. I am

not satisfied that a specific and focused allegation in the notice of application can be used to compel broad production relating to any and all meetings.

[63] Paragraph 37(g)(xi) alleges that CATSA "conduct[ed] an unfair and deficient evaluation process in RFP23-1695." This kind of broad and open-ended language is insufficient to create an "air of reality" to allegations of maladministration and compel production beyond what was before the decision-maker. As set out in *JNF*, bare allegations do not warrant consideration (para 23).

C. *Viability of Paladin's Bids*

[64] Universal's notice of motion asks for:

> 3. Further documents relating to the evaluation of the viability of Paladin's bids, including:
>
> > (a) All documents including correspondence (email or otherwise), analyses, meeting minutes, memos, and handwritten or typed notes regarding (i) the shift rate error contained in Paladin's bid (and including any materials pertaining to dealing with the shift rate error post contract award), and (ii) its impact on the viability of Paladin's bids (if any); and
> >
> > (b) Any documents relating to CATSA's viability analysis of Paladin's bids, and any other viability concerns that CATSA had respecting Paladin's bids.

[65] A particular focus for Universal on this motion is what it describes as a "shift rate error." Universal asserts that Paladin made a mistake in its bid, and used an 8 hour shift rate for screening personnel at certain airports when it should have used a 16 hour shift rate.

[66] There is no dispute that there was a shift rate issue in the Paladin bid. The parties are, however, sharply divided on whether any consequences flow from it. Universal says that, had

Paladin used an accurate shift rate in its bid, the amount of the bid would have been substantially higher. Universal argues that this supports its position that the Paladin bid, as presented, was not financially viable.

[67] Ms Doucet was cross-examined on this point. Her evidence was that she noted the issue during the evaluation process and created a spreadsheet with separate calculations for the overall price with the respective shift rates. This was done "outside of the evaluation. This was done as a due diligence measure to ensure that this apparent error did not have any impact on the rankings."

[68] My role on a document production motion is not to resolve this contested issue or predict how the Court will resolve it at the hearing on the merits. The question before me is whether the CTR needs to be supplemented.

[69] The notice of application states:

> 37. Without limiting the foregoing, the grounds for this Application consist of reviewable errors of jurisdiction, law and fact, and an unreasonable, incoherent and unjustifiable decision being made, by the authorized officials at CATSA relating to the Decision in the Prairies and Pacific Regions as follows:
>
> […..]
>
> (g) Failing to carry out the procurement process in a manner that provided equitable treatment amongst the Eligible Bidders, in a manner that provided value for money, or a manner that facilitated a fair outcome, as follows:
>
> […..]

> (viii) Including an additional contingency and other considerations that were not provided for in the RFP23-1695 document (collectively the "Contingency"), which undermined the Viability Assessment and also the fairness of the RFP process as a whole;
>
> (ix) Operationalizing the Contingency during the implementation and administration of the contracts entered into with Paladin, by making changes to the contracts that reflected the improper inclusion of the Contingency during the evaluation process; and
>
> […..]

[70] Even though the notice of application does not specifically refer to the shift rate issue, there is a pleading that CATSA had a contingency plan during the bidding process that favoured Paladin. That is the essential nature of Universal's shift rate position – that CATSA identified a problem with the Paladin bid, decided to award the ASSA to Paladin, and at the same time decided to address the problem post-award. Universal says this is fundamentally contrary to the way the procurement process was supposed to work.

[71] *JNF* instructs that allegations of maladministration must go beyond bare allegations, have an air of reality, and that the order sought is a proportionate measure (para 27). I am satisfied that the test is met here. The contingency allegations as they relate to shift rates are defined. There are contemporaneous emails within CATSA discussing this issue, and stating "we can freely address post award." Ms Doucet was asked on cross-examination whether there was any communication with Paladin about the shift rate error. Her answer was "we did not prior to contract award." Universal says this is a careful answer and strongly suggests there were discussions between CATSA and Paladin post award. This is a reasonable inference.

[72] Overall, there is an air of reality to the allegation. Again, I make no prediction as to how this will be resolved at the hearing on the merits, only conclude that there should be complete document production to ensure that the issue is fully and fairly litigated. This is a discrete issue, and the identification and disclosure of any further documents relating to the shift rate issue is proportionate. In this respect, Universal is looking through a telescope to focus on documents relating to a defined issue.

[73] As for the balance of the documents requested in this category, the request cannot be granted because it is too broad. It looks through the telescope the other way. The request for any documents relating to CATSA's viability analysis of Paladin's bids, and any other viability concerns that CATSA had respecting Paladin's bids is not sufficiently defined. To the extent this request is grounded in maladministration, it is not based on allegations in the notice of application, does not present an air of reality, and is disproportionate.

[74] One of the documents mentioned in Universal's written argument is a spreadsheet containing evaluator's notes. Not all of the text was legible; certain words were cut off. Universal argues that this raises red flags. In response to the motion, CATSA produced a further version of the document which reveals the five words that were cut off. I agree with CATSA that this is the kind of issue that could have been resolved between counsel. If anything, it reinforces my overall view that, beyond the shift rate issue, Universal is relying on minor irregularities in the CTR in the hopes of compelling a search for substantially more documents in the hope that something will be revealed.

D. *Internal CATSA Emails*

[75] Universal's notice of motion asks for:

> 4. Additional internal CATSA email correspondence, specifically:
>
> (a) Any additional relevant email correspondence (and documentary attachments) relating to the evaluation of Paladin's bids which may have impacted the Decision between September 2021 and November 2023.

[76] Universal's written submissions in support of this request are brief – one paragraph. It is asserted that CATSA has produced 10 internal emails sent between August 3 and October 17, 2023, and two emails to the Board in respect of the RFP. Universal submits that CATSA should not be permitted to selectively disclose a small number of emails from a narrow period, and should be obliged to disclose any additional relevant email correspondence (and documentary attachments) relating to the evaluation of Paladin's bids which may have impacted the Decision between September 2021 and November 2023.

[77] The motion in this respect cannot be granted because the request is overly broad. The request, which spans more than two years, is not limited to an issue defined in the notice of application and does not identify specific individuals or groups of individuals. It is not limited to emails that were before the decision-maker.

[78] The fact that some emails were produced in the CTR does not mean that every email that somehow relates to the evaluation of the Paladin bid becomes relevant and subject to production, particularly if those emails were not before the decision-maker. Even if this was an action, I would have reservations as to whether this would be a proper document production request.

[79] Universal does not rely on allegations of maladministration in support of this category. Even if it did, I would not grant the relief requested on the grounds of proportionality.

[80] It may be that what Universal is really looking for here is a further search of CATSA's email archives and disclosure of the search terms that were used. The difficulty I have in this respect is that the targets of this search include the individual evaluators, and I have otherwise concluded that the individual evaluator's documents that were not before the board are not subject to production. Also, this kind of relief is not set out in the notice of motion.

E. *Change Documents*

[81] Universal's notice of motion asks for:

> 5. Change requests, change orders, or related correspondence or documents exchanged between CATSA and Paladin, both (i) after the selection of Paladin as the winning bidder but before the execution of the ASSAs, and (ii) for a period of one year after the execution of the ASSAs.

[82] CATSA correctly notes that, in an application for judicial review, the general rule is that only the evidence that was before the administrative decision-maker is relevant and, thus, admissible. As a result, post-decision evidence is normally irrelevant and, thus, inadmissible. This general rule is subject to exceptions. One exception is where post-decision evidence is relevant to a ground for setting aside a decision (*Coldwater First Nation v Canada (Attorney General)*, 2019 FCA 292 at paras 23-24).

[83] The request for change documents is based on the same contingency and shift rate allegations as in category 3 above. In summary, Universal argues that CATSA was aware that

Paladin's bid was not viable at the price bid, and knew it would have to allow change orders to increase Paladin's compensation. Universal relies on allegations of maladministration for this category.

[84] As set out above, I find that there is an air of reality to the allegation that the error in the Paladin bid was identified before the execution of the ASSA, and that the ASSA was amended afterwards to address it, particularly in light of the October 16, 2023 internal CATSA email stating that this issue can be freely addressed post award, I am satisfied that post-decision documents should be produced because they directly relate to allegations of maladministration that occurred during the RFP process.

[85] The production order will not be limited or narrowed to changes to shift rates. It is possible that shift rates could have been adjusted directly, and also possible that CATSA and Paladin could have adjusted other terms in the ASSA to correct or make accommodations for the shift rate issue.

[86] Universal asks that the window for document production extend to one year following the execution of the ASSA with Paladin. That is too long. If the shift rate issue is as consequential as Universal believes it is, it would have been addressed relatively quickly. I am not satisfied that CATSA and Paladin would have waited up to a year to sort this out, assuming it was addressed at all.

F. *Supplementary Search and Affidavit*

[87] Universal also asks for an order that CATSA undertake an additional search of its records, and that a senior official be required to serve and file an affidavit outlining the nature and scope of the supplementary search. In addition to the five categories of documents described above, Universal wants CATSA to serve and file an affidavit from a senior CATSA official which lists any documents withheld from the CTR on the basis of privilege, relevance, or any other grounds, along with sufficient reasons to understand why each withheld document has not been transmitted.

[88] Compelling a senior representative of a party to serve and file an affidavit outlining the nature and scope of the supplementary search is an exceptional remedy, and I am not satisfied that it is warranted here.

[89] While CATSA will be required to disclose certain further documents if they exist, the scope of production is much narrower than what was requested in the notice of motion. I am not satisfied that CATSA's disclosure was so deficient that it is necessary to require it to provide an affidavit.

[90] The CTR comprises some 13,000 pages. Universal's request would effectively require CATSA to review everything that could have been included in the CTR and provide a chart explaining why it was included or excluded. This would be an enormous exercise, and disproportionate to the demonstrated gaps in the CTR. I contrast this request to the order made in *JNF*, where an official was tasked to search for a defined and specific category of documents.

VI. Confidentiality

[91] Universal's notice of motion also asks for relief relating to the confidentiality order and redactions that were applied to certain documents in the CTR. At the commencement of the hearing, counsel advised that the parties had basically settled the confidentiality issues. No order will be made in this respect. If any issues arise, a case management conference may be requested.

VII. Costs

[92] The parties are encouraged to reach an agreement on costs. If an agreement cannot be reached, concise submissions shall be provided.

ORDER in T-2744-23

THIS COURT ORDERS that:

1. Within 45 days of the date of this order, the Canadian Air Transport Security Authority shall serve and file a supplementary certified tribunal record that includes, to the extent they exist:

    a) all documents created up to the selection of Paladin as the winning bidder relating to the shift rate error contained in Paladin's bid. This includes, but is not limited to, correspondence (email or otherwise), analyses, meeting minutes, memos, and handwritten or typed notes;

    b) change requests, change orders, or related correspondence or documents exchanged between CATSA and Paladin, (i) after the selection of Paladin as the winning bidder but before the execution of the Airport Screening Services Agreement, and (ii) for a period of six months after the execution of the Airport Screening Services Agreement.

2. The motion for relief under Rule 318 of the *Federal Courts Rules*, SOR/98-106 is otherwise dismissed.

3. If the parties cannot agree on costs, the applicant shall serve and file costs submissions, not to exceed five pages, within 10 days of the date of this order. The Canadian Air Transport Security Authority shall serve and file any costs submissions in reply, not to exceed five pages, within 20 days of the date of this order.

"Trent Horne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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