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Examination No. 14-0775

Court File No. A-218-14

FEDERAL COURT OF APPEAL

B E T W E E N:

DR. GABOR LUKACS

APPLICANT

- and -

CANADIAN TRANSPORTATION AGENCY

RESPONDENT

CROSS-EXAMINATION OF PATRICE BELLEROSE ON HER AFFIDAVIT
SWORN JULY 29, 2014, pursuant to an appointment made on
consent of the parties, to be reported by Gillespie
Reporting Services, on the 21st day of August, 2014,
commencing at the hour of 10:29 in the forenoon.

APPEARANCES:

Dr. Gabor Lukacs,

for the Applicant

Mr. Simon-Pierre Lessard,

for the Respondent

This Cross-Examination was digitally recorded by Gillespie
Reporting Services at Ottawa, Ontario, having been duly appointed
for the purpose.

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PATRICE BELLEROSE, SWORN:

CROSS-EXAMINATION BY DR. GABOR LUKACS:

1. Q. Ms. Bellerose, I understand that on July 29, 2014, you swore an affidavit.

A. Yes.

DR. LUKACS: Let's mark that Affidavit as Exhibit 1.

EXHIBIT NO. 1: Affidavit of Patrice Bellerose dated July 29, 2014

DR. LUKACS:

2. Q. And I understand that you received the Direction to Attend dated August 8, 2014.

A. That is correct.

DR. LUKACS: Let's mark it as Exhibit 2.

EXHIBIT NO. 2: Direction to Attend dated August 8, 2014

DR. LUKACS:

3. Q. For how long have you been working with the Canadian Transportation Agency and in what roles?

A. I have been working with the Canadian Transportation Agency for just about six years and my initial position was the manager of record services and access to information and privacy co-ordinator for the Agency initially for the first one to two years. I was the acting director of the information services

1 directorate for three and a half years and I have recently
2 been changed to a slightly different position as the
3 senior manager of information services but that again is
4 supposed to be changing shortly. There is going to be
5 another reorganization of the Agency.

6 4. Q. In your current role what are your
7 responsibilities?

8 A. I am responsible for all records, record
9 keeping at the Agency, retention, dispositions, keeping
10 the files, so information management, access to
11 information and mail services.

12 5. Q. So when you say "records" can you elaborate
13 what you mean by records in that context?

14 A. All records relating to the Agency, both
15 transitory and official records.

16 6. Q. So for example, when the Agency orders paper
17 would that also be a record that you would be handling?

18 A. If we -- the order for the paper?

19 7. Q. Yes, the invoice and all those things, are
20 those records in this sense?

21 A. It depends. Probably for a period of time we
22 have to have a record of an invoice, sure.

23 8. Q. And also submissions of parties and
24 proceedings before the Agency are records?

25 A. Case files are records of the Agency, yes.

1 9. Q. Okay. In your current position can you
2 describe to me the chain of command, who is your immediate
3 supervisor, superior or whom do you report?

4 A. Right now I report to the director of
5 information services who the current acting is Christine
6 Guérette. She reports to the acting director of
7 communications and information services branch which is
8 Jacqueline Bannister who reports directly to the chairman.

9 10. Q. Just to confirm, are you currently or have you
10 ever been a member of the Canadian Transportation Agency?

11 A. Of the which?

12 11. Q. Of the Canadian Transportation Agency. Have
13 you been a member?

14 A. No.

15 12. Q. In carrying out your duties as manager of
16 record services and access to information and privacy are
17 you required to follow the decisions, rules and policies
18 made by the Agency?

19 A. Yes.

20 13. Q. Now let's look at Exhibit A to your Affidavit.
21 Do you have it in front of you?

22 A. Exhibit A to my Affidavit?

23 14. Q. Yes.

24 A. Yes.

25 15. Q. This is an email dated February 14th, 2014

1 from myself to the secretary of the Agency, correct?

2 A. Yes.

3 16. Q. Were you aware when you received this that it
4 explicitly makes reference to the fact that the request is
5 made pursuant to section 2(b) of the Charter?

6 A. Yes.

7 17. Q. Did you understand the meaning of a request
8 pursuant to section 2(b) of the Charter?

9 A. Yes.

10 18. Q. What does it mean?

11 A. It means that you were making a request under
12 the Charter, under your Charter rights, and any requests
13 for information at the Agency are treated as in -- those
14 types of requests are treated as informal requests for
15 information.

16 19. Q. What does section 2(b) of the Charter mean to
17 you?

18 MR. LESSARD: For the record, I will object to the
19 question because -- well there is an issue of relevance
20 but also because you are asking the opinion to the
21 witness. However Madam Bellerose will answer subject to
22 the right to have the propriety of the question determined
23 by the court at a later date.

24 DR. LUKACS: Sure.

25 THE WITNESS: Okay so my understanding is that you

1 were making a request under the Charter which you were
2 saying your Charter rights allowed you to request the
3 documents as they were part of the open court principle
4 and were subject -- it was under your Charter rights as
5 opposed to making a formal access to information request.

6 DR. LUKACS:

7 20. Q. Did you make any inquiry to anybody at the
8 Agency as to the meaning of a request pursuant to section
9 2(b) of the Charter?

10 A. Well, we discussed your request with the
11 secretary and legal services.

12 MR. LESSARD: I will object because it is
13 solicitor/client privilege with respect to discussions
14 with legal services and -- like for the rest of the
15 question I don't really have a problem with it.

O

16 THE WITNESS: So we discussed the request and it
17 was determined that we would proceed, even though you had
18 indicated that it was under section 2(b) of the Charter,
19 that we would proceed as a normal request for information
20 as we normally receive for other case files throughout the
21 Agency. We regularly receive them from other applicants
22 on a daily basis.

23 DR. LUKACS:

24 21. Q. Did you receive any instructions from your
25 superiors about how to process such a request pursuant to

1 section 2(b) of the Charter?

2 A. All requests for information are processed
3 through our office in a standard fashion; either they are
4 formal requests under the Access to Information Act or
5 they are informal. Generally anybody asking for
6 information regarding a case file that is ongoing at the
7 Agency is considered an informal request because the
8 documents are part of the public record.

9 22. Q. So do you agree with me that Exhibit A to your
10 Affidavit was not a request made pursuant to the Access to
11 Information Act?

12 MR. LESSARD: I will object for the record again
13 because in this case it is not appropriate in this type of
14 examination to ask for admissions from a witness. She is
15 here as a witness and not as a party. However Madame
16 Bellerose will answer subject to the right to have the
17 propriety of the question determined by the court at a
18 later date.

19 THE WITNESS: It was not considered a formal
20 request under the Access to Information Act, no. It did
21 not meet the requirements.

22 DR. LUKACS:

23 23. Q. So at section 3 of your affidavit you say that
24 the request was treated as an informal access request.

25 A. Yes.

1 24. Q. Can you please explain exactly what an
2 informal access request means?

3 A. It means any requests for government records
4 that are not completed formally under the Access to
5 Information Act, meaning it must require the \$5 fee. It
6 must have the formal form that has been completed and
7 signed.

8 25. Q. So in the case of this request you'd agree
9 that no fee was paid.

10 A. No fee was paid nor was the form filled out.

11 26. Q. So there are two types of requests. There is
12 a formal request where the fee is paid and the form is
13 completed and --

14 A. Correct.

15 27. Q. -- those are treated as formal requests under
16 the Act.

17 A. Correct.

18 28. Q. And then there are the informal requests which
19 are everything else which are not treated under the Act,
20 correct?

21 A. That's correct.

22 29. Q. In paragraph 3 of your Affidavit you say that
23 this request was treated and I am quoting, "in conformity
24 with the directive on the administration of the Access to
25 Information Act".

1 A. Yes.

2 30. Q. Is Exhibit B to your Affidavit the directive
3 that you are referring to?

4 A. Yes.

5 31. Q. Can you point to specific provisions of the
6 directive to which treating the request as an informal
7 access request conforms?

8 A. Section 7.4.5.

9 32. Q. Would you mind reading it into the record just
10 for clarity?

11 A. "Informal processing
12 7.4.5 Determining whether it is appropriate to
13 process the request on an informal basis. If so,
14 offering the requester the possibility of treating
15 the request informally and explaining that only
16 formal requests are subject to provisions of the
17 Act".

18 33. Q. So just for clarity, according to this
19 directive an informal request for access is not subject to
20 the provisions of the Act. Is that correct?

21 A. An informal?

22 34. Q. Yes.

23 A. That is correct.

24 35. Q. And did you consult this directive when you
25 were deciding how to treat my request?

1 A. No, because any request that we receive for
2 information at the Agency other than formal requests are
3 treated as informal access to information requests.

4 36. Q. Let's move on. I asked you to bring the
5 attachment to your March 19, 2014 email which was
6 referenced in paragraph 4 of your Affidavit.

7 A. Yes.

8 37. Q. I believe it consists of 121 pages.

9 A. That is correct.

10 DR. LUKACS: Let's mark it as Exhibit 3.

11 **EXHIBIT NO. 3:** Attachment to the email dated March
12 19, 2014 12:58 PM, from Patrice Bellerose to Dr.
13 Gabor Lukacs, attachment 121 pages.

14 DR. LUKACS:

15 38. Q. Do you agree that the file contains no claim
16 for confidentiality by any of the parties?

17 A. Yes.

18 39. Q. Do you agree that the file contains no
19 determination by the Agency concerning confidential
20 treatment of any of the documents or portions of documents
21 in the file?

22 A. Sorry. Can you repeat that?

23 40. Q. Do you agree that the file contains no
24 determination by the Agency concerning confidential
25 treatment of any of the documents or portions of

1 documents?

2 A. No.

3 41. Q. You don't agree or...?

4 A. No. There is personal information that is
5 contained in the documents that the Agency determines as
6 confidential.

7 42. Q. Can you refer me to -- My question is: Is
8 there -- in the file is there a decision, order or any
9 other decision by the Agency stating that certain
10 documents or portions of document will be treated
11 confidentially?

12 A. The Privacy Act requires that we remove
13 personal information from Agency records.

14 43. Q. I am sorry. I didn't ask you about the
15 Privacy Act. I asked you about those 121 pages.

16 A. Yes there contains personal information in
17 those 121 pages.

18 44. Q. That is not my question.

19 MR. LESSARD: Can you please reformulate Dr.
20 Lukacs?

21 DR. LUKACS: Sure.

22 45. Q. Among those 121 pages is there any document,
23 any directive, decision, order made by a member or members
24 of the Agency directing that any of these documents be
25 treated confidentially?

1 A. No.

2 46. Q. Thank you. Do you agree with me that some of
3 the pages were partially blacked out?

4 A. Yes.

5 47. Q. Who decided which parts to black out?

6 A. Myself in collaboration with various staff
7 members of the Agency.

8 48. Q. How was it decided which parts to black out?

9 A. Personal information was removed. That's all.

10 49. Q. All personal information?

11 A. No, only personal information that was not
12 divulged in the decision.

13 50. Q. Under what legal authority was the blackened
14 outs performed?

15 A. The Privacy Act.

16 51. Q. So under the Privacy Act are you telling me
17 that you have the authority to decide which parts of an
18 Agency adjudicative document will be released?

19 A. Under the Privacy Act we are obligated to
20 remove personal information from government records prior
21 to releasing them.

22 52. Q. Now let's look at page 75. It was a letter
23 from Air Canada to the secretary of the Agency dated
24 October 18th, 2013, correct?

25 A. Correct.

1 53. Q. Do you agree that the name, that the business
2 email address and the signature of Air Canada's counsel
3 were blacked out on page 75?

4 A. Yes.

5 54. Q. Do you agree that the name, the business email
6 address and the signature of Air Canada's counsel were
7 blacked out throughout the file?

8 A. I would have to look through the pages --

9 55. Q. Take your time.

10 A. -- through the 121 pages to verify that but
11 they should be. It's possible we made an error but
12 generally yes they should be.

13 56. Q. So you say that those things should have been
14 blacked out in your opinion?

15 A. Their contact information as well as their
16 emails.

17 57. Q. Even though we are talking about work email
18 address, not home ones?

19 A. We have had various consultations with air
20 industry and different industries at the Agency and
21 depending on whether a number is published, a work number
22 is published or not, determines whether sometimes the
23 information is public or not. Sometimes information is
24 available publically; sometimes it's not. So in those
25 cases more often than not we err on the side of caution

1 and if the number isn't published -- sometimes it is a
2 general number, for example. If it is a general line
3 obviously we include that type of information.

4 58. Q. So just to be clear, you made this decision or
5 decided what things to redact in consultation also with
6 the airline industry. Is that correct, what you just
7 earlier said?

8 A. On previous files. That's not just air but
9 different transportation modes. They have indicated that
10 there are certain numbers that are purposely not published
11 for people that work in businesses and that they keep
12 those -- that information protected for various reasons
13 and that they would like it not to be divulged.

14 59. Q. So in the case of Air Canada, Air Canada's
15 lawyers, the counsel acting on the file, the name of the
16 counsel, the business email address were blacked out
17 pursuant to this request from the industry, from Air
18 Canada specifically?

19 A. Based on consultations we have previously had
20 with industry this was --

21 60. Q. But in this specific file was there any
22 request from Air Canada to have their information redacted
23 in this specific file?

24 A. We didn't consult them on this specific file
25 because it was informal and we just went with according to

1 the usual personal information exemptions that we had so
2 that we could get you the file in a timely fashion.

3 61. Q. Let's go also to page 68 of this file,
4 actually 67, Annex G. This was an exhibit filed by Air
5 Canada, correct?

6 A. That is correct.

7 62. Q. What I am seeing here on pages 68, 69 and 70
8 is that virtually the entire pages were blacked out,
9 correct?

10 A. Correct.

11 63. Q. Why is that?

12 A. Because they contained PNR details which have
13 personal information contained within them.

14 64. Q. All PNR information is personal information?

15 A. Pardon me?

16 65. Q. All PNR information is personal information?

17 A. Not necessarily. Certain parts are. It
18 contains all of the information relating to the passenger
19 air travel.

20 66. Q. Isn't that the issue before the Agency, the
21 passengers' travel?

22 A. Sure, but the details of their travel aren't
23 really relevant. If they are they have been included in
24 the decision and the information is released.

25 67. Q. Are you familiar with the notion of open court

1 principle?

2 A. I am.

3 68. Q. Did you receive any training concerning the
4 notion of open court principle?

5 A. Yes.

6 69. Q. Are you aware of any relationship between the
7 open court principle and section 2(b) of the Charter?

8 MR. LESSARD: For the record, I will object to the
9 question because of relevance and the fact again that you
10 are asking an opinion from a witness who is not a party in
11 this case. However Madame Bellerose will answer subject
12 to the right to have the propriety of the question
13 determined by the court at a later date.

O

14 THE WITNESS: Sorry. Can you repeat the question?

15 DR. LUKACS:

16 70. Q. My question was: Are you aware of any
17 relationship between the open court principle and section
18 2(b) of the Charter?

19 A. Yes.

20 71. Q. Do you know if the Agency is subject to the
21 open court principle?

22 A. Yes.

23 72. Q. Are you aware of any policies or rules of the
24 CTA that are in place for the purpose of compliance with
25 the open court principle?

1 A. Our General Rules state that documents filed
2 in relation to a complaint -- or actually there is a
3 specific term for it. I don't have the General Rules in
4 front of me -- but a proceeding, sorry, will be on the
5 public record.

6 73. Q. How many requests pursuant to the open court
7 principle have you handled in, say, the past 12 months?

8 A. In the past 12 months? I don't have the
9 numbers with me but we --

10 74. Q. Approximately?

11 A. Twenty to 25.

12 75. Q. And they were all pursuant to the open court
13 principle?

14 A. They were all requests for -- I am taking the
15 liberty of trying to figure out what you are talking about
16 but essentially any requests for case files, documents
17 that were filed in relation to a decision that was issued
18 by the Agency, where the documents were placed on the
19 public record I would say we had about 20 to 25 of those
20 in the past 12 months.

21 76. Q. In each case, in each of those cases, what you
22 provided to the public was redacted documents?

23 A. Just personal information removed from each of
24 them, yes.

25 77. Q. And all requests that were made pursuant to

1 the open court principle were handled as informal access
2 requests?

3 A. That's correct. And actually I should
4 elaborate on my previous answer. There were some requests
5 for information where claims for confidentiality had been
6 made on certain cases, so that information was also
7 removed in those cases.

8 78. Q. That is obvious. That is not an issue in this
9 case. All right; let's look at page 79 of the same
10 document. Just for clarity would you care to read into
11 the record the two titles and the first two paragraphs,
12 please?

13 A. "Important privacy information and Open Court
14 Principle"

15 79. Q. And the first two paragraph?

16 A. "As a quasi-judicial tribunal operating like a
17 court, the Canadian Transportation Agency is bound by the
18 constitutionally protected open-court principle. This
19 principle guarantees the public's right to know how
20 justice is administered and to have access to decisions
21 rendered by administrative tribunals. Pursuant to the
22 General Rules, all information filed with the Agency
23 becomes part of the public record and may be made
24 available for public viewing".

25 80. Q. Okay, so what does "public record" mean here?

1 A. It means it's available for public viewing.
2 It's available to the public.

3 81. Q. So any document placed on public record the
4 public can access. Would it be fair to say that?

5 A. As long as it is filed with the Agency and in
6 respect to a proceeding.

7 82. Q. So are you telling me that if somebody walks
8 in the door of the Agency and says hi, I want to see file
9 number so-and-so then they can look at all documents on
10 the public record?

11 A. Well they have to be -- we have to remove
12 personal information from them prior to viewing.

13 83. Q. But I don't understand really. You say that
14 all documents are placed on public record. You just said
15 that all documents on public record can be viewed. Then
16 where does this Act of removal fit into that notion of
17 public record?

18 A. I am sorry. Can you repeat that?

19 84. Q. You just said that documents filed with the
20 Agency are placed on public record, correct?

21 A. Correct.

22 85. Q. You also said that documents on public record
23 can be viewed by the public.

24 A. Correct.

25 86. Q. Where does redaction come into this whole

1 procedure then? The Agency's own information sheet just
2 says that those things may be viewed by the public.

3 A. They may be viewed by the public but the
4 personal information that is contained within those
5 documents is removed prior to viewing.

6 87. Q. So let's back-trace. What do you mean then by
7 the notion "public record", because my understanding of
8 public record is that public record is a document that the
9 public can view? Do you agree with that?

10 A. Yes.

11 88. Q. So what you are telling me here is that you go
12 and remove personal information from documents which are
13 already on public record?

14 A. We remove personal information from Agency
15 records prior to disclosing them to the public, yes.

16 89. Q. Doesn't public record mean that the public can
17 access those documents?

18 A. They are accessing the documents. They are
19 just not accessing the personal information that is
20 contained within them. The public has a right to
21 transparency which is the purpose of what we are doing
22 because of the open court principle but the individual
23 also has a right to privacy.

24 DR. LUKACS: Let's mark as Exhibit 4 Rule 23 of
25 the Agency, of the General Rules.

1 THE WITNESS: Sorry, Rule 23? Okay, we don't have
2 the General Rules with us but I believe you are talking --

3 DR. LUKACS: I believe it was printed out.

4 THE WITNESS: It is the part where it talks about
5 the confidentiality of records and that all documents will
6 be placed on the public record unless a claim for
7 confidentiality is made?

8 DR. LUKACS: That's right.

9 THE WITNESS: Okay.

10 **EXHIBIT NO. 4:** Canadian Transportation Agency
11 General Rules, Rule No. 23.

12 DR. LUKACS:

13 90. Q. So you have already referred to it and I
14 would prefer to have it in front of you.

15 MR. LESSARD: I just gave it to her.

16 THE WITNESS: This is only a portion of the
17 General Rules. There are other things that come into
18 play. We only have a portion here to talk about but okay
19 let's --

20 DR. LUKACS:

21 91. Q. Which portion do you have there because my
22 understanding is that Rule 23 in its entirety should be
23 before you?

24 A. Rule 23 is here.

25 92. Q. Yes. Is there any other Rule in the General

1 Rules that govern confidentiality?

2 A. Yes, there is another rule further that talks
3 about the Agency can deem certain records confidential.
4 Unfortunately I don't have the rules with me to identify
5 that for you. I apologize.

6 93. Q. You are referring to financial or corporate
7 information. Is that the Rule that you are referring to?

8 A. Yes.

9 94. Q. But we are talking here about personal
10 information not --

11 A. That's right.

12 95. Q. So can you explain to me something?

13 A. Sure.

14 96. Q. Rule 23 has an elaborate confidentiality
15 procedure.

16 A. That is correct.

17 97. Q. A party who doesn't want some information to
18 be released to the public can request confidentiality,
19 correct?

20 A. That is correct.

21 98. Q. And if the request is granted then a redacted
22 copy of the document is placed on the public record.

23 A. That's correct.

24 99. Q. So deciding what to redact and what isn't,
25 isn't that the job of the members of the Agency according

1 to Rule 23?

2 MR. LESSARD: For the record, I will object to the
3 question because again it is a question of relevance and
4 you are asking for an opinion or an admission from the
5 witness. However Madame Bellerose will answer subject to
6 the right to have the propriety of the question determined
7 by the court at a later date.

O

8 THE WITNESS: The Agency is subject to the Privacy
9 Act and so for that reason that is why the personal
10 information is redacted.

11 DR. LUKACS:

12 100. Q. You are not answering my question. My
13 question was: Isn't it the duty of members and the
14 responsibility of members hearing the case to determine
15 pursuant to Rule 23 what portions will be redacted and
16 what portions won't?

17 A. In a claim for confidentiality, yes.

18 101. Q. So if no claim for confidentiality is made all
19 documents are placed on the public record, correct?

20 A. With the personal information removed.

21 102. Q. Can you point to me at anything in the General
22 Rules that requires the removal of personal information?

23 A. The Agency is subject to the Privacy Act.

24 That's what requires us to remove the personal
25 information.

1 103. Q. My question was: Can you point to me at
2 something in the General Rules that requires the removal
3 of personal information, in the General Rules?

4 A. In the General Rules, no.

5 104. Q. No. The General Rules require that all
6 documents with respect to which confidentiality has not
7 been claimed be placed on public record, correct?

8 A. This is correct.

9 105. Q. And what you are telling me is that after a
10 document is placed on public record you go in and redact
11 things from it.

12 A. We don't redact things. We redact personal
13 information that is required under the Privacy Act which
14 is another legislation to which we are required to comply.

15 106. Q. I am sorry. I am asking you now about the
16 facts, not about the law, for the law will be for the
17 court to decide. My question is: When you have a file
18 which contains no claim for confidentiality which we have
19 agreed is placed on public record, correct?

20 A. Correct.

21 107. Q. And then when the public wants to access the
22 file you go in and redact a portion of it. Is that
23 correct?

24 A. We remove -- no, not a portion. We remove
25 personal information.

1 108. Q. Is personal information not a portion of the
2 document?

3 A. I guess vaguely, yes.

4 109. Q. It is contained in the document. So to
5 summarize even when a document is placed on public record
6 pursuant to Rule 23 you redact further portions from it
7 before releasing it to the public, correct?

8 A. Correct. I think it is important to clarify
9 that it is personal information that is removed.
10 "Portions" isn't really clear. It is important to
11 distinguish that it is personal information only that is
12 removed.

13 110. Q. Things that you deem to be personal
14 information.

15 A. Things that are defined in the Act as personal
16 information.

17 111. Q. But you purport to making those decisions what
18 to redact or not, we just heard earlier, correct?

19 A. I interpret the Act, is that what you are
20 asking?

21 112. Q. What I am asking is: Once the document is
22 placed on public record and the Agency -- as a member of
23 the Agency did not see a reason to grant confidentiality--

24 A. Or if there was no request.

25 113. Q. Or if there was no request.

1 A. That's right.

2 114. Q. Then you go and make some decisions as to what
3 to redact from the file before it is released to the
4 public, correct?

5 A. Personal information is removed, that is
6 correct.

7 115. Q. And you decide what will be removed and what
8 not?

9 A. I personally decide or --

10 116. Q. Yes.

11 A. -- is there an approval process?

12 117. Q. What can you tell me about that approval
13 process?

14 A. Sure. Generally speaking it depends on --
15 with informal requests generally we take care of them in
16 our office. Sometimes we consult with legal services and
17 depending on the file it is possible that it can go to the
18 chair who is the delegated head for access to information
19 and privacy at the Agency.

20 DR. LUKACS: I guess I have no more questions.

21 Thank you.

22

23

24 --THIS CROSS-EXAMINATION ADJOURNED AT 11:07 A.M. ON

25 THE 21ST DAY OF AUGUST, 2014.

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WE HEREBY CERTIFY THAT the foregoing was transcribed
to the best of our skill and ability, from digitally
recorded proceedings.

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G R S / B M P