

**SUPREME COURT OF PRINCE EDWARD ISLAND  
(GENERAL SECTION)**

**B E T W E E N:**

CAPITAL MARKETS TECHNOLOGIES INC. and 7645686 CANADA INC.

**Plaintiffs**

- and -

THE GOVERNMENT OF PRINCE EDWARD ISLAND, WES SHERIDAN, STEVE  
MACLEAN, ALLAN CAMPBELL, CHRIS LECLAIR, BRAD MIX,  
CHERYL PAYNTER, STEVEN DOWLING, WILLIAM DOW,  
MELISSA MACEACHERN, ROBERT GHIZ, GARY SCALES, TRACEY CUTCLIFFE, NEIL  
STEWART, PAUL JENKINS, and 7628382 CANADA CORPORATION

**Defendants**

**AFFIDAVIT OF PAUL MAINES**

**(Sworn July 27, 2021)**

**(Plaintiffs' Motion to Produce and Preserve Records)**

I, PAUL MAINES, of the Town of Malpeque, Prince County, Prince Edward Island, having knowledge of the matters hereinafter, **MAKE OATH AND SAY AS FOLLOWS:**

*I am an officer of each of the Plaintiffs and, as such, have personal knowledge of the matters hereinafter deposed, except where stated to be on information, in which case I disclose the source of my information and I believe those facts to be true. This affidavit is provided in support of the Plaintiffs' motion to preserve and produce records relevant to this litigation and, in particular, an email chain between Chris LeClair and Wes Sheridan dated November 26, 2011.*

**1. DOCUMENTS DISCLOSED BY THE GOVERNMENT DEFENDANTS**

*The "Government Defendants" (which includes the Defendants the Government of Prince Edward Island, Wes Sheridan, Steve MacLean, Allan Campbell, Chris LeClair, Brad Mix, Cheryl Paynter, Melissa MacEachern, Neil Stewart and Robert Ghiz), together with the "Other Defendants" (which includes Steven Dowling, William Dow, Tracey Cutcliffe, and Gary Scales) brought a motion for summary judgment under Rule 20 of the Rules of Civil Procedure seeking the dismissal of this action in its entirety. The Defendants' motion was heard beginning on April 23, 2019 and this Court rendered a decision on September 25, 2019, reported as CMT et al. v. Government of PEI et al., 2019 PESC 40. The decision of this Court was overturned, in part, by the Court of Appeal on October 28, 2020 following hearings on May 19-20, 2020.*

*At the time that the Defendants brought their motion for summary judgment, the Government Defendants had delivered an affidavit of documents sworn by Marie M. Kemp, an Insurance Officer in Risk Management and Insurance for the Government of Prince Edward Island, that was dated November 5, 2018 (the “First Affidavit”). As required, that affidavit included a Solicitor’s Certificate confirming that Ms. Kemp had been informed of her obligations to make full disclosure of “all documents relating to any matter in issue in the action” and “what kinds of documents are likely to be relevant to the allegations made in the pleadings.” The affidavit included a list of documents in Schedule “C” that were previously in the possession of the Government Defendants, but for various reasons no longer were in their possession.*

*Attached and marked as **Exhibit “A”** is a copy of the Affidavit of Documents sworn by Marie M. Kemp on November 5, 2018.*

*Following the First Affidavit, the Government Defendants, presumably aware of their continuing disclosure obligations, delivered a supplementary affidavit of documents, also sworn by Ms. Kemp, on December 17, 2018. Again, this affidavit contained a Solicitor’s Certificate and documents listed in Schedules “A”, “B”, and “C” (the “Second Affidavit”).*

*Attached and marked as **Exhibit “B”** is a copy of the Supplementary Affidavit of Documents sworn by Marie M. Kemp on December 17, 2018.*

*At the time that the Government Defendants brought their summary judgment motion, I was led to believe, as was this Court, that between the First and the Second Affidavits, I was informed of all documents that are or were in the possession of the Defendants relevant to this action.*

*Following the hearing of the summary judgment motion, and only five days before this Court rendered its decision, a second supplementary affidavit of documents was filed, again with a Solicitor's Certificate and documents listed in Schedules "A", "B", and "C" (the "Third Affidavit").*

*Attached and marked as **Exhibit "C"** is a copy of the second supplementary affidavit of documents sworn by Marie M. Kemp on September 20, 2019.*

*In the First Affidavit, the Second Affidavit, and the Third Affidavit, Ms. Kemp swore that "the Government and the Defendants have never had in the possession, control or power of the Government and the Defendants any documents relating to any matter in issue in this action other than those listed in Schedules "A", "B" and "C"."*

### **GOVERNMENT DEFENDANTS' INCOMPLETE AFFIDAVIT OF DOCUMENTS**

*I am now aware that all three affidavits of documents sworn by Ms. Kemp were inaccurate and omitted key disclosures that have a direct bearing on this litigation. I believe that Ms. Kemp failed to take steps properly to inform herself of all available records or was intentionally misled by persons within, or acting on behalf of, the Government.*

*In particular, I am aware, as a result of information brought to my attention by Dr. Kevin J. Arsenault (who is providing an affidavit for this motion), that key email correspondence from two of the Government Defendants (Wes Sheridan and Chris LeClair) on November 26, 2011 that speaks to the existence of a Simplex "Request for Proposals" ("RFP") being used without the Plaintiffs' consent*

*during the Memorandum of Understanding (“MOU”) time period that is the focus of this litigation.*

*I have, as of today’s date, received no explanation from the Government Defendants as to why the November 26, 2011 email (the “Subject Email”) was not disclosed to the Plaintiffs. The Subject Email is clearly relevant as it is a communication between two Government Defendants specifically referencing the use of confidential information (the “Simplex RFP”) for an improper purpose (specifically, to evaluate a “partner bank RFP process”). The context of the email makes plain that, despite the exclusive negotiation window during the MOU, the Government Defendants were actively exploring other possibilities and using confidential information from the MOU to do so. The date of the Subject Email was unquestionably during the time period during which the MOU was in place.*

**2. PURPOSE OF AFFIDAVIT**

*I swear this affidavit in support of the Plaintiffs’ motion to produce and preserve records in the possession of the Government Defendants and for no other or improper purpose.*

**SWORN BEFORE ME** )  
at the City of Charlottetown, in the )  
Province of Prince Edward Island on this )  
27<sup>th</sup> day of July, 2021 )  
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A Commissioner for taking affidavits )  
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**PAUL MAINES**  
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6 CANADA INC

Plaintiffs

-and-

THE GOVERNMENT OF PRINCE EDWARD ISLAND

Def

Court File No. S1-

**PRINCE EDWARD ISLAND  
SUPREME COURT**

**AFFIDAVIT OF PAUL MA  
(Plaintiffs' Motion to Produce  
Preserve Records)**

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