

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ruby River Capital LLC

v.

Canada

(ICSID Case No. ARB/23/5)

PROCEDURAL ORDER NO. 11

Decision on Requests for Production of Documents Identified as Privileged

Members of the Tribunal

Ms. Carole Malinvaud, President of the Tribunal

Mr. Barton Legum, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Benjamin Garel

Assistant of the Tribunal

Mr. Pierre Collet

11 April 2025

I. PROCEDURAL BACKGROUND

1. On 30 November 2024, the Tribunal issued Procedural Order No. 4, addressing the Claimant's document production requests and ordering the Respondent, *inter alia*, (i) to produce, by 10 December 2024 at the latest, a privilege log and redacted versions of documents.
2. On 5 December 2024, the Respondent indicated that it would only be able to produce, on 10 December 2024, a partial log of around 350 withheld documents for which it invokes privilege, and that some of the documents would not be produced within the prescribed deadline. The Respondent also explained that it was impossible to produce on that same date, even in a limited number, documents redacted on the basis of privilege.
3. On 9 December 2024, the Claimant objected to the Respondent's production of its privilege log without the corresponding partially redacted documents, and to the production of redacted documents without providing the basis for such redactions.
4. On 11 December 2024, the Tribunal informed the Parties that it would hear them during a procedural session held by videoconference on 18 December 2024. The Tribunal also invited the Parties to confer and agree on proposed adjustments to the procedural calendar, or, should they be unable to agree, to submit their respective proposals by 17 December 2024.
5. On 17 December 2024, the Parties transmitted their respective proposed amendments to the procedural calendar.
6. On 18 December 2024, the Tribunal held a procedural session with the Parties by videoconference. After the videoconference, at the request of the Tribunal, the Claimant transmitted to the Tribunal (i) the partial privilege log it had received from the Respondent on 10 December 2024 and (ii) "*a list of the 44 documents containing*

redactions for which the Respondent provided no justification, nor identified as redacted in the index provided with the documents.”

7. On the same day, the Tribunal informed the Parties that it had reviewed the privilege log transmitted by the Claimant and wished to receive and review the Claimant’s request for production of documents withheld on the basis of privilege, scheduled to be filed on 19 December 2024 (per paragraph 39 of Procedural Order No. 4 and step 14 of the Procedural Calendar), before providing further directions to the Parties.
8. On 19 December 2024, the Claimant filed its “Request for the Production of Documents withheld by the Respondent, listed in the Respondent’s Privilege Log dated 10 December 2024, and its annexes.”
9. On 20 December 2024, the Tribunal issued Procedural Order No. 5 addressing the Respondent’s document production requests to the Claimant.
10. On 21 December 2024, following the Respondent’s request for clarification of 20 December 2024, the Tribunal informed the Parties that the deadline prescribed in Procedural Order No. 4 for the filing by the Respondent of any opposition to the Claimant’s request filed on 19 December 2024 was maintained.
11. On 26 December 2024, the Respondent filed its opposition to the Claimant’s requests for production of the documents not produced, together with the witness statements of Ms. Josée De Bellefeuille and Mr. Donald Booth.
12. On 30 December 2024, the Claimant informed the Tribunal that it maintained its request for an Order per paragraph 39 of Procedural Order No. 4 but that it withdrew certain prior requests which had become moot, thus narrowing down the issues for the Tribunal.
13. On 3 January 2025, the Tribunal issued Procedural Order No. 8, which contained in its Annex A, a revised procedural calendar, and provided to the Parties explanations and guidelines applicable to the privilege logs to be submitted by the Parties on 14 February

2025. The Tribunal explained that these explanations and guidelines might be supplemented by said procedural order addressing the Respondent's privilege log dated 10 December 2024 (as updated on 20 December 2024). The Tribunal also invited the Respondent to incorporate in its final privilege log an updated version of the privilege log submitted on 10 December 2024.

14. On 6 January 2025, the Claimant requested clarifications from the Tribunal regarding the revised procedural calendar transmitted on 3 January 2025.
15. On 7 January 2025, the Tribunal provided the requested clarifications to the Parties.
16. On 9 January 2025, in light of the clarifications provided by the Tribunal, the Parties jointly submitted to the Tribunal a number of proposed corrections to the revised procedural calendar transmitted on 3 January 2025 as Annex A to Procedural Order No. 8. The Tribunal approved the proposed corrections on 10 January 2025, and a revised procedural calendar was transmitted to the Parties on 16 January 2025.
17. On 24 January 2025, the Tribunal issued Procedural Order No. 9, which contained in its Annex A, its decisions on the Claimant's requests for the production of documents identified as privileged in the Respondent's privilege log transmitted on 10 December 2024 and updated on 20 December 2024.
18. On 4 February 2025, the Claimant sought "*leave to address the Tribunal on the Respondent's document production - or rather lack thereof altogether - in response to Procedural Order No. 9 and to request appropriate directions and relief from the Tribunal.*"
19. On 7 February 2025, the Tribunal authorized the Claimant to file its proposed observations on the Respondent's document production, and invited the Parties to try, to the extent possible, to resolve their disagreements before referring them to the Tribunal.

20. On 25 February 2025, the Claimant filed a Request for an order that Respondent produce documents listed in its privilege log dated 14 February 2025, together with exhibits C-432 to C-437.
21. On 25 February 2025, the Respondent filed a Request for the production of a redacted document listed by the Claimant in its privilege log dated 14 February 2025.
22. On 4 March 2025, the Claimant wrote to the Tribunal regarding (i) clarifications provided by the Respondent on 28 February 2025 regarding the Respondent's privilege log, and (ii) four exhibits (R-128 to R-131) uploaded by the Respondent onto the case folder on Box the Claimant on 27 February 2025 (i.e. after the Claimant filed its Request on 25 February 2025). The Claimant indicated that it was prepared to provide comments on these exhibits should it be of assistance to the Tribunal.
23. On 4 March 2025, the Claimant sought *"leave to raise an issue with the Tribunal concerning the Respondent's privilege logs and, more specifically, the Respondent's assertion of legal privilege in connection with documents responsive to the Claimant's request No. 36 for the travaux préparatoires underlying Annex 14-C to the USMCA."*
24. On 6 March 2025, the Tribunal granted the leave sought by the Claimant on 4 March 2025.
25. On 7 March 2025, the Claimant wrote to the Tribunal as authorized by the Tribunal on 6 March 2025.
26. On 11 March 2025, the Tribunal wrote to the Parties regarding pending issues with the Respondent's production of documents, and:
 - a. invited the Respondent to indicate, by 13 March 2025, whether it intends to produce the documents from its final privilege log of 14 February 2025 for which the Respondent invokes political or institutional grounds, should the Tribunal order it to do so.

- b. took note of the Respondent's indication that documents for which it is specified in the Respondent's final privilege log that they are identical or similar to those which were the subject of a decision by the Tribunal in Procedural Order No. 9, will not be disclosed (email from counsel for the Respondent dated 12 February 2025, Exhibit C-0436)
 - c. questioned the Respondent on its position in the event that, in addition to identical or similar documents, the Tribunal were to order the disclosure of documents that it considered to be preparatory documents and not documents reflecting the deliberations of the Council of Ministers.
 - d. asked the Respondent to confirm the nature of the withheld documents PRIV000336, PRIV000361, PRIV000362 and PRIV000364 as being internal documents of the Respondent's government and therefore responsive to Claimant's request no. 37. Absent such confirmation, the Tribunal asked the Respondent to comment on the Claimant's position that the confidentiality privilege attached to documents containing legal advice from government lawyers is waived when such documents are shared with third parties.
27. On 13 March 2025, the Respondent wrote to the Tribunal to address the Tribunal's questions dated 11 March 2025.
28. On 21 March 2025, the Tribunal issued Procedural Order No. 10 ("PO10"), which contained in its Annex A, its decisions on pending issues regarding document production further to Procedural Order No. 9 ("PO9"), and on the Parties' respective requests for the production of documents identified as privileged in the Parties' privilege logs dated 14 February 2025.
29. On 28 March 2025, the Respondent provided the Tribunal with the unredacted documents identified in Annex A to PO10, with the confirmations requested in paragraph 107 of PO10 and with a list of inconsistencies between PO9 and PO10.

30. On 28 March 2025, the Claimant provided the Tribunal with the document requested in paragraph 106 of PO10.
31. On 31 March 2025, the Claimant sought leave to “*briefly comment on the Respondent’s submission concerning “la nature du secret professionnel du comptable,”*”
32. On 1 April 2025, the Tribunal granted the leave requested by the Claimant.
33. On 4 April 2025, the Claimant filed its comments on the Respondent’s submission concerning “*la nature du secret professionnel du comptable.”*”

II. SCOPE OF THE ORDER

34. In this Order, the Tribunal rules on pending issues regarding (i) redactions made by the Respondent in 5 documents produced to the Claimant; (ii) redactions made by the Claimant in one document produced to the Respondent; (iii) the invocation by the Respondent in its final privilege log of the professional secrecy of accountants regarding nine documents requested by the Claimant and (iv) the amendments to PO10 requested by the Respondent further to the confirmations provided pursuant to PO10.

III. ISSUES, ANALYSIS AND TRIBUNAL’S DETERMINATIONS

A. RESPONDENT’S REDACTIONS

35. In Procedural Order No. 10 (paragraph 106), the Respondent was ordered to provide to the Tribunal the unredacted versions of five documents that it had produced, with redactions, to the Claimant, so that the Tribunal may assess the relevance of the redactions.
36. These documents are **CAN586408, CAN593552, CAN593560, CAN596113 and CAN596353**, which the Tribunal will address in turn.

1. CAN586408 (produced under Claimant's Request No. 33)

37. This document is a spreadsheet issued by Québec's Ministry of Economy titled *Tableau global de suivi des projets majeurs d'investissement en traitement au 28 mars 2019*.
38. In its final privilege log, the Respondent justifies the redaction it made as follows:

[l]es informations caviardées sont des renseignements confidentiels de tiers de nature commerciale ou technique d'entreprises tierces. | L'information caviardée concerne des projets industriels qui ne sont ni le projet GNL Québec ni un projet comparateur. Cette information n'est pas pertinente au regard des questions en litiges ou de la solution du différend

39. The Claimant responded as follows:

*[t]he Claimant requests the lifting of the redactions made by the Respondent, which has not met its burden of proof that the redactions are justified. This table addresses the various projects Québec invested in. The Respondent has redacted portions that relate to the GNL Project and are clearly relevant. The Respondent's assertion that the redacted portions are not relevant to the case or material to its outcome under Article 9.2(a) of the IBA Rules is patently wrong. **This document is material to support the Claimant's argument that IQ refused to invest in GNLQ for considerations unrelated to the viability of the Project.***

40. This document relates to Request No. 33 and, as such, and as indicated by the Tribunal in Procedural Order No. 10, raises “*a prima facie question that seems important. However, the Tribunal considers that the Claimant has other means of proving its allegations concerning the financial viability of the Project*”.¹
41. After a preliminary review, the document does not appear to support the Claimant's contention. However, this document may be of interest because it shows that among the

¹ PO10, para. 67.

146 projects listed in this spreadsheet, a significant number have received financial aid from Québec (possibly via IQ).

42. Nevertheless, the information that a number of projects have received financial aid from Québec in 2019 is necessarily public and therefore accessible through other means. It does not justify the disclosure of confidential commercial or technical information relating to different projects.
43. **Tribunal’s determination:** the Respondent’s redaction is justified.

2. CAN593552 (produced under Claimant’s Request No. 8)

44. This document is an email between a civil servant and a deputy minister of Québec.
45. In its final privilege log, the Respondent justifies the redaction it made as follows:

[l]es informations caviardées portent sur des dossiers du MELCC qui n'ont aucun lien avec le projet GNL Québec ou un projet comparateur. Ces informations ne sont pas pertinentes au regard des questions en litige ou de la solution du différend.

46. The Claimant responded as follows:

[t]he Claimant requests the lifting of the redactions made by the Respondent, which has not met its burden of proof that the redactions are justified. This notes discusses the GNL project. The Respondent has redacted portions that relate to the GNL Project and are clearly relevant. The Respondent's assertion that the redacted portions are not relevant to the case or material to its outcome under Article 9.2(a) of the IBA Rules is patently wrong.

47. The document does mention “l’annonce GNL” on the first line but the rest of the email does not relate to the Project or any other topic relevant to the outcome of the dispute.
48. **Tribunal’s determination:** the Respondent’s redaction is justified.

3. CAN593560 and CAN596113 (produced under Claimant's Request No. 8)

49. These documents are identical. They are an internal newsletter addressed to the employees of the MELCC.
50. In its final privilege log, the Respondent justifies the redaction it made as follows:

[l]es renseignements caviardés se rapportent à des questions de gestion interne du MELCC et à un autre projet soumis à la procédure d'évaluation environnementale. Ce projet n'est pas l'un projet comparateur identifié par la demanderesse. Ces renseignements ne sont pas pertinents au regard des questions en litige ou de la solution du différend..

51. The Claimant responded as follows:

[t]he Claimant requests the lifting of the redactions made by the Respondent, which has not met its burden of proof that the redactions are justified. This notes discusses the GNL project. The Respondent has redacted portions that relate to the GNL Project and are clearly relevant. The Respondent's assertion that the redacted portions are not relevant to the case or material to its outcome under Article 9.2(a) of the IBA Rules is patently wrong.

52. This document deals with matters internal to the MELCC, such as the return to in-office work or the retirement of a civil servant. These subjects are not relevant to the present dispute. It also mentions another project which is not relevant either to the present dispute.
53. **Tribunal's determination:** the Respondent's redaction is justified.

4. CAN596353 (produced under Claimant's Request No. 30)

54. This document is undated and neither author nor recipient are apparent. It consists in a table titled "*Irritants pour le Québec et réponses suggérées*"
55. In its final privilege log, the Respondent justifies the redaction it made as follows:

[c]e document contient des renseignements non pertinents et confidentiels se rapportant à des initiatives gouvernementales qui sont confidentielles et non pertinentes au différend.

56. The Claimant responded as follows:

[t]he Respondent has redacted this entire document. It fails to explain how the document can be both responsive to Request 30 and at the same time not relevant under Article 9.2(a) of the IBA Rules. It has failed to meet its burden of proof in that regard. To the extent the document may contain some irrelevant information which is not responsive to the request, that information may be redacted but not the entire document.

57. This document appears to be a discussion between Québec and the Federal Government on a number of topics unrelated to the Project.

58. Only the first item in the table relates to a “*Projet de loi C-69*”, regarding environmental assessments of projects at the federal level and is potentially relevant since it mentions the “*Projet Gazoduq*.” It appears that Québec considers that “*projet de loi C-69 est un fardeau réglementaire qui fait obstacle aux investissements*” by imposing an independent assessment at the federal level for each project, in addition to the assessment at the provincial level. The document indicates that “*Projet Gazoduq est le premier projet qui fait l’objet d’une évaluation en vertu de la loi nouvelle loi fédérale.*”

59. While not directly relevant or related to the present dispute, the document is nevertheless somewhat relevant to the extent that the Claimant does discuss the conditions in which environmental assessments are implemented both at the federal and provincial levels.

60. **Tribunal’s determination:** the Respondent’s redactions are justified, save for the first item in the table.

B. THE CONFIDENTIALITY CLAUSE IN THE BECHTEL CONTRACT

61. In the Claimant's privilege log (Annex B to PO10), the Respondent requested the production of the Bechtel contract without the redactions made by the Claimant in paragraph 2.2 of its Annex J and in its Annex K.
62. The confidentiality clause in the Bechtel contract is set out in article 13 (pp. 18-20 of the PDF).
63. This clause provides that GNL Québec may not, without Bechtel's prior written consent, disclose certain information, including the price and schedule of the EPC contract, pricing methods or pricing information (section 13.2).
64. However, this clause provides that GNL Québec may disclose confidential information to certain persons provided that GNL Québec (i) subjects such persons to confidentiality obligations similar to those contained in section 13.2, (ii) does not disclose the Contractor's confidential information to any competitor of the Contractor listed in Schedule O, and (iii) discloses the Contractor's confidential information in accordance with section 13.4 (section 13.2).
65. This clause defines "Confidential Information" broadly as confidential information of either or both of Bechtel and Québec (section 13.3).
66. As the Respondent stated in its comments on the Claimant's privilege log of 14 February 2025, Confidential Information do not include:

(v) information which is required by Applicable Law or other agencies in connection with the Facility, to be disclosed; provided, however, that prior to such disclosure, the Receiving Party gives reasonable notice to the Disclosing Party of the information required to be disclosed and reasonably assists the Disclosing Party in seeking confidential treatment of such information. (section 13.3)

67. Lastly, this clause states that if a party to the contract receives an order to produce confidential information to a court or government authority, it must (i) notify the other party of this request and (ii) produce the information it is legally obliged to disclose in the opinion of its legal counsel. (section 13.7)
68. The Tribunal considers that a good faith interpretation of this provision warrants its implementation when the order to disclose is issued by an arbitral tribunal, as opposed to a state court, especially if the disclosure is not made to a competitor and appropriate mechanisms to preserve confidentiality of the underlying information are in place.
69. **Tribunal’s determination:** the confidentiality clause in the Bechtel contract allows the disclosure of confidential information under certain conditions, which the Tribunal is satisfied can be met here. In particular, the Tribunal considers that the confidentiality regime established by Procedural Order No. 2 is adequate to preserve the confidentiality of the information redacted by the Claimant and requested by the Respondent. The Bechtel contract, unredacted per the Respondent’s request, can therefore be produced. The Claimant is invited to inform Bechtel, if it deems it necessary.

C. DOCUMENTS SUBJECT TO THE PROFESSIONAL SECRECY OF ACCOUNTANTS

1. Respondent’s Position

70. In its final privilege log, the Respondent indicates that several documents are protected by the “*secret professionnel du comptable*”: PRIV000798, PRIV000799, PRIV000859 et PRIV001036; PRIV000797, PRIV000843, PRIV000864, PRIV001086 et PRIV001578.
71. The Respondent cites a decision of the Supreme Court of Canada in support of its contention that professional secrecy is not limited to lawyers and notaries (R-133). It also cites the *Code des professions du Québec*, which sets out the protection regime for all professional orders, including accountants (R-136, Professional Code, RLRQ, c. C-26).

72. In particular, the Respondent cites the code of ethics of accountants, which provides that a chartered accountant is bound by professional secrecy and may not disclose information of a confidential nature that comes to his knowledge in the practice of his profession, unless he is authorized to do so by their client or by law.
73. The Respondent acknowledges that the Supreme Court, in its decision, held that the scope and extent of the protection of professional secrecy vary according to the functions performed by the members of the various professional orders and the services they are called upon to render. Accordingly, the Supreme Court seems to consider that the professional secrecy of lawyers is more stringent than that of accountants.
74. Lastly, the Respondent proposes that a test used by an administrative court in Québec in a *Gagnon v. IQ* case be applied in this proceeding. This test prescribes that two conditions must be satisfied for professional secrecy to attach: (i) there is a legal obligation for an individual to remain silent, and (ii) such obligation stems from a professional support relationship. According to this administrative court, un “*rapport n’est donc pas automatiquement protégé par le secret professionnel du seul fait qu’il a été préparé par un comptable. Cependant, il le sera si le comptable reçoit des renseignements confidentiels aux fins de la production de ce rapport ou s’il fournit des conseils à son client, le tout dans une relation professionnelle d’aide.*”

2. Claimant’s Position

75. In its 4 April 2025 letter, the Claimant indicated that its requests for unredacted versions of documents PRIV843, 864, 1086 and 1578 are withdrawn, and only unredacted versions of documents PRIV 000787, 798, 799, 858 and 859 are requested.
76. The Claimant submits that the Respondent’s arguments on the professional secrecy of accountant are without merits, for five reasons.

77. First, the Claimant alleges that the *Charte des Libertés* (cited by the Respondent) protects the person bound by law to professional secrecy obligations, i.e. the accountant, and not the right of the accountant's client to withhold information.²
78. Second, the Claimant notes that the Respondent acknowledges that the professional secrecy of accountants is less stringent than that of lawyers. The Claimant notes that in certain situations, Quebec courts have held that “*l'intérêt de la justice à la découverte de la vérité prime [sur] le droit au secret professionnel*”. The Claimant cites in particular a decision from the *Cour supérieure du Québec, Ville de Terrebonne v. Cour du Québec* (C-456), in which the judge balanced the interests of justice against professional secrecy.³
79. Third, the Respondent has not met its burden of proof that all of the documents at issue are covered by “*secret professionnel*”, namely that: (i) the document emanates from someone who is “*tenue par la loi au secret*”; (ii) confidential information was revealed; (iii) by reason of the person’s profession.⁴
80. Fourth, “*even if certain documents were deemed covered by the ‘secret professionnel’, the Respondent has waived any right to confidentiality by sharing related documents with Symbio or the Claimant*”.⁵
81. Fifth, “*what is at issue is not the disclosure of documents to the public [...] What is at issue is the production of documents in international arbitration proceedings in which their confidentiality can be maintained through the mechanism agreed in PO 2. There*

² Claimant’s letter dated 4 April 2025, para. 4.

³ Claimant’s letter dated 4 April 2025, para. 5.

⁴ Claimant’s letter dated 4 April 2025, para. 6.

⁵ Claimant’s letter dated 4 April 2025, para. 7.

*can therefore be no prejudice to the Respondent resulting from disclosure, nor has it alleged as much.”*⁶

3. Tribunal’s approach regarding professional secrecy of accountants

a. Document Productions Requests

82. The documents allegedly protected by the professional secrecy of accountant fall under Requests Nos. 33 and 34, which the Tribunal has examined in the context of PO10 and the analysis of political sensitivity privilege.
83. In PO10,⁷ the Tribunal noted that these requests concerned the “quantum of compensation”, in particular evidence of the Project’s financial viability or lack thereof, and, *in fine*, the method of calculating compensation for the damage alleged by the Claimant.
84. In particular, the Tribunal found that these requests raised a *prima facie* question that appeared to be important. However, the Tribunal considered that the Claimant had other means of proving its allegations regarding the financial viability of the Project.
85. As a result, the Tribunal considered that, for these documents, the balancing of the interests of each Party was in favor of maintaining the privilege and therefore ordered that the privilege be maintained.
86. The Tribunal considers that the analysis it applied to the political sensitivity privilege should also be applied to the professional secrecy of the accountant. Although Requests Nos. 33 and 34 raise a *prima facie* question that seems important, the Claimant should have other means of proving the financial viability of the Project (or lack thereof) and *in fine* on the method of calculating the compensation for the damage alleged.

⁶ Claimant’s letter dated 4 April 2025, para. 9.

⁷ PO10, paras. 66-68.

87. Therefore, if the professional secrecy of the accountant is legitimately invoked with respect to certain documents, it shall prevail over the Claimant's interest in obtaining such documents, regardless of which request they relate to.

b. Criteria

88. To determine whether to maintain or lift the professional secrecy of accountants with respect to the disputed documents, the Tribunal will take the following elements into account.

- Accountants' professional secrecy is protected under both Quebec and Canadian federal law.
- The Parties refer to different tests for the lifting of the professional secrecy of accountants. However, they both cite Quebec court decisions that seem to indicate the need to balance the interests of justice through disclosure of protected documents against the interests of professional secrecy.
- These documents fall under Requests Nos. 33 and 34 for which, in the context of the analysis of political sensitivity privilege, the Tribunal considered that they were important but that the Claimant should have other means of demonstrating the viability of its Project and therefore justify the method of calculating the compensation claimed.
- The protection of the professional secrecy of accountants is less stringent than that of lawyers, as shown by the court decision cited by the Respondent.
- The Respondent has already produced accounting documents, in particular to contest the viability of the Project (ACC-00001 ; SS-0004).
- Procedural Order no. 2 provides for a reinforced confidentiality regime that may maintain the confidentiality of documents protected by the professional

secrecy of accountants, which seems *prima facie* less sensitive than the secrecy of the deliberations of the Council of Ministers.

4. Tribunal's determinations

89. The Tribunal notes that, depending on the documents in question, the Respondent indicated that it was willing to produce a redacted version of certain documents, and that the Claimant has withdrawn its request for the production of certain documents.
90. The documents on which the Tribunal must rule are therefore: PRIV000797, PRIV000798, PRIV000799, PRIV000858, PRIV000859. The Tribunal will review them in turn below.

a. PRIV000797

91. This document was requested by the Claimant under Request No. 33. It is an email containing information exchanged between civil servants regarding the issuance of instructions to RCGT, an accounting firm. Attached to this email are documents PRIV000798 and PRIV000799.
92. The Respondent agrees to produce this document, with redactions. The Claimant submits that this communication was not sent to an accountant and is therefore not covered by professional secrecy. The Claimant therefore rejects the Respondent's proposed redactions.
93. **Tribunal's determination:** Canada has not proved to the satisfaction of the Tribunal that this document is covered by the professional secrecy of accountant. The document is indeed a communication between administration officials, which was not sent by or to an accountant. Accordingly, the Tribunal orders disclosure of the document without redactions notwithstanding the privilege claimed by the Respondent.

b. PRIV000798 et PRIV000799

94. These documents were requested by the Claimant under Request No. 33. PRIV000798 is an estimate of fees for a certain set of instructions. PRIV000799 is a service contract between IQ and RCGT.
95. The Respondent contends that the privilege should be maintained. The Claimant submits that these documents are relevant as they would likely comprise instructions and background information reflecting IQ’s views on the GNLQ Project, and are not covered by professional secrecy. The Claimant further submits that *“by sharing the RCGT report commissioned by IQ with Symbio contemporaneously, the Respondent waived the right to withhold its contract with and instructions to RCGT (PRIV798/799)”*.
96. **Tribunal’s determination:** the Tribunal considers that the need to preserve the professional secrecy of accountants is established to the satisfaction of the Tribunal and the Applicant has other means of demonstrating the viability of the Project. The balancing of the interests of the two Parties is in favour of maintaining the privilege invoked by Canada, which is therefore maintained.

c. PRIV000858 and PRIV000859

97. These documents were requested by the Claimant under Requests Nos. 33 and 34. PRIV000858 is a cover email transmitting PRIV000859, which is a draft report prepared by professional accountants.
98. The Respondent is willing to produce the cover email (PRIV000858) but submits that PRIV000859 is protected by the professional secrecy of accountants and cannot be disclosed. In particular, the Respondent contends (i) that this draft report was prepared in the context of an accountant-client professional relationship to help the client make an informed decision; (ii) that this document responds to Requests Nos. 33 and 34, under which the Tribunal has found that the Claimant has other means to gather and file

supporting evidence; and (iii) that it is unlikely that a working document that pre-dates the final version by about a month can provide helpful insights regarding the financial viability of the Claimant's Project.

99. The Claimant submits that by introducing the final version of this report into the record of the proceeding, the Respondent has waived its right to withhold the draft version of this accounting report.
100. **Tribunal's determination:** the Tribunal agrees with the Claimant that the Respondent, by filing the final version of the report as an exhibit in this proceeding, has waived its right to invoke the professional secrecy of accountants. The Tribunal therefore orders the production of this document by the Respondent to the Claimant, notwithstanding the privilege raised by the Respondent.

D. THE AMENDMENTS TO PO10 REQUESTED BY THE RESPONDENT FURTHER TO THE CONFIRMATIONS PROVIDED PURSUANT TO PO10

101. The Tribunal takes note of the Respondent's letter of 28 March 2025 in which the Respondent provided a number of confirmations pursuant to PO10 and requested a number of clarifications on PO10.
102. The Tribunal notes the Respondent's confirmation that it has conducted reasonable searches to identify documents responsive to Requests no. 23 and 31 and that it does not have in its possession or under its control any document responsive to these requests.
103. The Tribunal also notes the Respondent's confirmation that 15 documents correspond to the final version of the letter produced in Exhibit C-281⁸ and 10 documents correspond

⁸ PRIV000037, PRIV000209, PRIV000221, PRIV000242, PRIV000480, PRIV000559, PRIV000613, PRIV000635, PRIV001095, PRIV001253, PRIV001339, PRIV001364, PRIV001419, PRIV001427, PRIV001466.

to the final version of the letter produced in Exhibit C-280.⁹ Pursuant to PO9, the Tribunal orders the production of these 25 documents¹⁰.

104. The Tribunal further notes the Respondent's confirmation that the documents withheld or redacted on legal privilege grounds referred to in paragraphs 84 and 85 of PO10 qualify as "legal advice" in accordance with PO8.¹¹ Therefore, the Tribunal orders that the privilege be maintained.
105. The Tribunal notes the Respondent's confirmation that the (i) the documents identified in its privilege log under number PRIV001408 and PRIV001424 predate 14 July 2021, and (ii) the redacted passages of the document identified by number CAN596017 actually relate to the draft press release accompanying the decision to refuse the Énergie Saguenay project.
106. The Tribunal finally notes the points raised by the Respondent concerning inconsistencies between PO9 and PO10. In this respect, the Tribunal has addressed these points in Annex A to this Order. Each individual decision can be found in the Amended Respondent's Final Privilege Log (Annex A).

⁹ PRIV000032, PRIV000216, PRIV000220, PRIV000265, PRIV000270, PRIV000278, PRIV000681, PRIV001267, PRIV001328 and PRIV001362.

¹⁰ See Annex A to OP11 (Amended Respondent's Final Privilege Log): PRIV000037, PRIV000209, PRIV000221, PRIV000242, PRIV000480, PRIV000559, PRIV000613, PRIV000635, PRIV001095, PRIV001253, PRIV001339, PRIV001364, PRIV001419, PRIV001427, PRIV001466, PRIV000032, PRIV000216, PRIV000220, PRIV000265, PRIV000270, PRIV000278, PRIV000681, PRIV001267, PRIV001328 and PRIV001362.

¹¹ PRIV000443, PRIV000542, PRIV000574, PRIV001591 and CAN596250

IV. ORDER

107. For the foregoing reasons, the Tribunal orders:

- The Respondent to provide to the Claimant, by 18 April 2025, a revised version of CAN596353, in which the first item in the table shall be unredacted;
- The Claimant to provide to the Respondent, by 18 April 2025, a revised version of the Bechtel contract, in which the information identified by the Respondent (see Annex B to PO10) shall be unredacted;
- The Respondent to provide to the Claimant, by 18 April 2025, documents PRIV000797, PRIV000858 and PRIV000859.
- The Respondent to provide to the Claimant, by 18 April 2025, the documents mentioned in paragraph 103 of this Order.

On behalf of the Tribunal,

Signature

Ms. Carole Malinvaud
President of the Tribunal
Date: 11 April 2025

Annexes:

Annex A – Amended Respondent’s Final Privilege Log