Federal Court Cour fédérale

Date: 20251105

Docket: T-2004-25

Citation: 2025 FC 1782

Ottawa, Ontario, November 5, 2025

PRESENT: THE CHIEF JUSTICE

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34, as amended;

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act* into conduct by Amazon.com.ca ULC and/or its affiliates reviewable under Part VIII of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by the Commissioner of competition for an Order requiring Amazon.com.ca ULC to produce records pursuant to paragraphs 11(1)(b) and 11(2)(a) of the *Competition Act* and to make and deliver written returns of information pursuant to paragraphs 11(1)(c) and 11(2)(b) of the *Competition Act*.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant (responding party)

and

AMAZON.COM.CA ULC

Respondent (moving party)

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I. Introduction

[1] On October 1, 2025, I issued an Order (the "**October 1st Order**") in the Respondent's Motion to vary an Order that I issued on July 4, 2025 (the "**July Order**"), pursuant to various provisions in section 11 of the *Competition Act*, RSC 1985, c C-34 (the "**Act**"). The July Order required the Respondent, Amazon.com.ca ULC ("**Amazon Canada**"), to produce records and

other things specified in Schedule I thereto, and to provide written returns specified in Schedule II, within deadlines of 90 and 120 days, depending upon the specification in question.

[2] In the October 1st Order, I (a) maintained the deadlines applicable to some of the specifications, (b) extended the deadline applicable to others, and (c) rejected the Respondent's request for further extensions of time in respect of the remaining specifications. I also stated that my reasons would follow. These are those reasons.

[3] In support of its Motion to vary the timelines in the July Order, Amazon Canada maintained that it would be "impossible" to provide its responses within the 90-day and the 120-day periods set forth therein. (The 90-day period expired on October 2, 2025 and the 120-day period effectively expired on November 3, 2025.[1]) Amazon Canada therefore requested that those periods be extended as follows:

(i) to December 15, 2025 for certain specifications to which the 90-day deadline applied, and for certain other specifications to which the 120-day deadline applied;

(ii) to January 30, 2026 for several other specifications; and

(iii) to March 2, 2026 for all remaining documents and information responsive to Schedule I and Schedule II, specification 1.

[4] In advancing its requests, Amazon Canada underscored that it intended to meet the original 90-day timeline applicable to three of the specifications in question, and to meet the 120-

[1] The 120-day period set forth at paragraph 17 of the July Order expired on Saturday November 1, 2025. However, pursuant to Rule 6(1) of the *Federal Courts Rules*, SOR/98-106 **[*Rules*],** sections 26 and 35(1) of the *Interpretation Act*, RSC 1985, c I-21, and the Federal Court's practice, if a deadline falls on a Saturday a document submitted for filing will be accepted for filing the following Monday, unless that day is a holiday.

day timeline applicable to two others.[2] It added that its proposed "rolling production process" would ensure that the ongoing inquiry of the Commissioner of Competition (the "**Commissioner**") would not be delayed.

[5] Amazon Canada's position is summarized in the following chart:

Specifications	**Time limit in paragraph 17 of July Order**	**Amazon's Proposed total time for response**
1(a), (b) and 10 of Schedule I	90 days (October 2, 2025)	90 days (no extension)
8 and 9 of Schedule I, as they relate to Amazon US	120 days (November 3, 2025)	120 days (no extension)
1(c), 2, 4 and 5 of Schedule I	90 days	164 days (December 15, 2025)
2 and 3 of Schedule II	120 days	164 days (December 15, 2025)
1(d), 3, 6, 7, 8 and 9 of Schedule I	120 days	208 days (January 30, 2026)
All remaining documents (including specifications 8 and 9 of Schedule I, as they relate to Amazon Canada, and specification 1 of Schedule II)	120 days	239 days (March 2, 2026)

[2] In its Amended Notice of Motion, Amazon Canada did not seek an extension in respect of specifications 1(a), (b) and 10 of Schedule I to the July Order, to which a 90-day time period applied; or in relation to specifications 8 and 9 of that Schedule, as they relate to Amazon US, for which a 120-day production period applied.

[6] For the following reasons, I granted Amazon Canada's request to extend to December 15, 2025 the deadline applicable to (i) specifications 1(c), 2, 4 and 5 of Schedule I, and (ii) Specifications 2 and 3 of Schedule II. These reasons also explain why I rejected Amazon's request to further extend the applicable deadlines, as described in the last two rows of the chart immediately above. The deadline applicable to the specifications and documents described in those two rows shall be December 15, 2025.

II. Background

[7] On June 16, 2025, the Commissioner, who is the responding party on this Motion, filed an *ex parte* application with this Court under section 11 of the Act. In that application, the Commissioner sought an Order requiring Amazon Canada to produce records pursuant to paragraphs 11(1)(b) and 11(2)(a) of the Act and to make and deliver written returns of information pursuant to paragraphs 11(1)(c) and 11(2)(b) of that legislation.

[8] The Commissioner's application was made in furtherance of an inquiry commenced on December 17, 2024 under subparagraph 10(1)(b)(ii) of the Act (the "**Inquiry**"). The Inquiry concerns allegations that Amazon Canada is engaging in conduct contrary to section 79 of the Act, through the use of the Amazon Marketplace Fair Pricing Policy. The Commissioner maintains that this policy allows Amazon Canada to penalize Third Party Sellers (defined in the July Order) on its platform if they set "a price on a product or service [on Amazon] that is significantly higher than recent prices offered on or off Amazon".

[9] Ultimately, I issued the July Order following a hearing (the "**July Hearing**") in which the Commissioner agreed to make two relatively small changes to the draft Order that was filed with the underlying application (the "**Filed Draft Order**") and that are not relevant for the present purposes. That Order was served on Amazon Canada on the same day that it was issued, namely, July 4, 2025.

[10] Before agreeing to issue the July Order, I pressed the Commissioner's affiant, Mr. Kevin Rushton, on whether the Commissioner's Inquiry would be slowed down to any material degree if the Filed Draft Order were revised to require production of documents on a rolling basis over a period of time, with a final deadline of a further 60 days for those specifications to which a 120-day production period was requested: Transcript of the July 3, 2025 hearing (the "**July Hearing Transcript**") at pp. 92-94. I also pressed the Commissioner's counsel on this point: July Hearing Transcript at pp. 83-92.

[11] After hearing Mr. Rushton's evidence and counsel's representations, I agreed to leave the requested 120-day time-period as it was in the Filed Draft Order. However, I added that:

> "… people are always welcome to come back to the Court if they just can't do this and you're at an impasse and you're digging in at that point, 120 days out, and they're trying to comply and they just can't and all of a sudden they're in breach of an order to which they technically can't -- with which they technically can't comply. That would be my concern.
>
> So, I would expect you to be reasonable, if that's what winds up happening."
>
> July Hearing Transcript at p. 94.

[12] The Commissioner's counsel replied:

> Of course. I mean, we have the precedent relating to the other Amazon matter. The Commissioner is always reasonable in these kinds of requests, and Amazon has, of course, the option to also seek an extension of the order before the Federal Court.
>
> July Hearing Transcript at pp. 94-95.

[13] The July Order requires documents from Amazon Canada and Amazon.com, Inc. ("**Amazon US**") pertaining to approximately 40 specifications and sub-specifications set forth in Schedule I thereto, and written returns in respect of three specifications contained in Schedule II.

[14] In the course of pressing the Commissioner's counsel and Mr. Rushton regarding the possibility of rolling production and an extension of the 120-day period applicable to some of the requested specifications, I noted the apparently exceptional nature of the requested Order. I explained that, based on Amazon Canada's representations, and "on its face," the draft Order seemed to be exceptional because it appeared to "capture way more documents than would typically be the case for those kinds of cases that we have given a 120-day period for": July Hearing Transcript at pp. 92 and 83-84.

[15] It appears to be common ground between the parties that the documentation required to be produced by Amazon Canada under the July Order overlaps substantially with information that has been collected in the discovery process in *Federal Trade Commission et al v Amazon.com, Inc.*, No. 2:23-cv-01495 (W.D. Wash.) (the "**FTC Litigation**"). That discovery process commenced in November 2023 and was scheduled to be completed sometime last month. I understand that, as of the time of the hearing of the present Motion, Amazon US had

produced to the FTC a substantial amount of the documentation that had been collected for the purposes of the FTC Litigation. The fact that information had already been collected in the FTC Litigation explains why Amazon proposed different time limits in the chart at paragraph 5 above, for the production of information from Amazon US in relation to specifications 8 and 9. As reflected in that chart, Amazon Canada intended to submit the records of Amazon US that are responsive to those specifications within essentially the same time limit as set forth in the July Order, while it requested an extension of 90 days for the records of *Amazon Canada* that are responsive to those same specifications. That said, I understand that some of the documents that Amazon Canada proposed to submit by December 15, 2025 include documents drawn from the FTC Litigation collections. Amazon Canada added that the records of Amazon US that it intended to submit to the Commissioner by November 3, 2025 comprised approximately 350,000 documents.

III. Relevant Rules and Principles

A. *The Applicable Rule*

[16] The present Motion was brought by Amazon Canada pursuant to Rule 8 of the *Federal Court Rules* **[*Rules*]** and, in the alternative, Rule 399.

[17] The Commissioner maintained that Rule 8 does not apply to variations of *ex parte* orders issued by the Court, including under the Act.

[18] In support of this position, the Commissioner asserted that Rule 8 is intended to address procedural matters, such as adjustments to timelines where the circumstances warrant, and that Rule 8 is not a vehicle to revisit or vary substantive portions of an order. The Commissioner added that Rule 399 specifically addresses variations of Court orders, including *ex parte* orders, and that therefore the rule of implied exception, also known as *generalia specialibus non derogant*, applies and requires the Court to treat Rule 399 as prevailing over Rule 8.

[19] In essence, the rule of implied exception provides that "a statute or provision of a statute which deals specifically with a subject-matter must take priority over, and override, any general legislation or provision dealing with the same subject-matter": *National Bank Life Insurance v Canada*, 2006 FCA 161 at para 9; see also *Çolakoğlu Metalurji A.S. v Altasteel Inc.*, 2023 FC 1102 **[*Altasteel*]** at para 52.

[20] Relying on Ruth Sullivan, *Sullivan on the Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022) at Chapter 11, the Commissioner stated that this rule of statutory interpretation also stands for the proposition that a "specific provision prevails over a general one only if applying the general provision would render the specific one superfluous" (at p. 354). This proposition was cited with approval in *Altasteel*, above, at para 52, quoting *Njorage v Canada (Attorney General)*, T-1140-22 at para 17 (unreported).

[21] In my view, the *generalia specialibus non derogant* rule of statutory construction does not require the Court to treat Rule 399 as prevailing over Rule 8. This is so for two separate and independent reasons. First, in the present context, I consider that Rule 8 is the specific provision

and Rule 399 is the general provision. This is because Rule 399 deals with setting aside or varying an order in general, whereas Rule 8 is confined to extending or abridging a period provided by the Rules *or fixed by an Order*. Second, this interpretation would not render Rule 399 superfluous. Rule 399 would still apply to motions to vary all other aspects of an order, and to set aside an order that was made in the circumstances described in Rule 399(1), or for the reasons described in Rule 399(2).

[22] In any event, nothing turns on this, as I specifically indicated during the July Hearing that Amazon Canada would be able to come back to the Court if the situation got to the point at which Amazon Canada appeared to be facing the prospect of breaching an order with which it technically could not comply, despite endeavouring to do so: see paragraph 11 above. In response to my expressed concern about the prospect of this situation arising, the Commissioner stated: “Amazon has, of course, the option to also seek an extension of the order before the Federal Court”: see paragraph 12 above.

[23] I recognize that, in making this statement, the Commissioner may have been contemplating Rule 399, rather than Rule 8. Indeed, the exchanges between the parties in the weeks following the issuance of the July Order reflect that the Commissioner apparently invited Amazon Canada to bring a motion under Rule 399, after refusing to extend the deadlines in the July Order: Motion Record of the Respondent at page 448.

[24] Given that the Commissioner’s recognition, during the July Hearing, of Amazon’s ability to seek an extension of the deadlines in the July Order was made in the context of an exchange

regarding the possibility of extending those deadlines, I assume that the Commissioner was not contemplating Rule 399(1)(a), which generally applies in other circumstances: see e.g., *Canada (Commissioner of Competition) v Canada Tax Reviews Inc.*, 2021 FC 921 [***Canada Tax Reviews***] at paras 30-31 and 41-42; and *Canada (Commissioner of Competition) v McGee*, 2025 FC 860 (CanLII) at paras 28-29. Likewise, Rules 399(1)(b) and Rule 399(2)(b) would not be applicable in the present circumstances.

[25] So, this leaves Rule 399(2)(a), which permits the Court, on motion, to set aside or vary an order by reason of a matter that arose or was discovered subsequent to the making of an order. My abovementioned exchange with counsel to the Commissioner during the July Hearing specifically contemplated the possibility that Amazon Canada might determine, after making best efforts to comply with the July Order, that it could not do so. In the particular circumstances of this case, I am prepared to give Amazon Canada some benefit of the doubt in this regard, even though I consider that it could have done more to meet the timelines set forth in the July Order. I will return to this further below.

[26] For the present purposes, it will suffice to say that I am satisfied that Amazon made sufficient good faith efforts, between the issuance of the July Order and the time it brought this Motion, to bring itself within the scope of Rule 399(2)(a) and what was clearly contemplated during my exchange with the Commissioner in the course of the July hearing, discussed at paragraphs 10 to 12 above. As reflected in the hearing transcript, given the seemingly exceptional nature of Amazon's vast business and the scope of some of the specifications in the July Order, I was not entirely certain that Amazon would be able to comply with that Order

within the deadlines stipulated therein. It was this explicitly expressed concern of mine that the Commissioner assuaged by agreeing that Amazon would have the opportunity to come to the Court and seek an extension of those deadlines, if it needed to do so.

[27] I will address further below the separate issue of the link between the extent of Amazon's efforts and the length of some of the time extensions that it sought, namely until January 30, 2026 for some specifications and until March 2, 2026 for those documents and information that do not fall within any of Amazon Canada's other proposed revised deadlines. For the reasons I will explain below, I consider that Amazon could have done more, and should have done more, both before the issuance of the July Order and afterwards. This has a bearing on the exercise of the Court's discretion to grant the time extensions mentioned immediately above.

[28] In summary, nothing turns on the issue of whether Rule 8 or Rule 399(2)(a) applies to the present Motion. For the reasons set forth above, I consider that the former Rule applies over the latter in the present context and that, in any event, Amazon Canada has brought itself within the scope of Rule 399(2)(a). I will now turn to the requirements of Rule 8.

B. *The Requirements of Rule 8*

[29] In *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA), the Court identified the following four criteria as being relevant to the exercise of discretion to grant an extension of time under Rule 8:

> (1) Did the moving party have a continuing intention to pursue the proceeding?
>
> (2) Is there some merit to the proceeding?

(3) Has the defendant been prejudiced from the delay?

(4) Does the moving party have a reasonable explanation for the delay?

[30] These criteria simply serve as a guide, and do not all need to be resolved in the moving party's favour. The overriding consideration is whether granting an extension of time is in the interests of justice: *Alberta v Canada*, 2018 FCA 83 at para 45; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62.

IV. Assessment

A. *Amazon Canada's Continuing Intention to Pursue the Proceeding*

[31] This factor is somewhat inapt in the context of the present proceeding, as Amazon Canada is the named respondent in a compulsory order to produce the records and written returns specified in Schedules I and II to the Order.

[32] In the current context, the relevant analogous consideration is whether Amazon Canada demonstrated an ongoing intention to respond to the July Order from the time of its issuance.

[33] I consider that the record amply demonstrates such an ongoing intention. This is reflected in the evidence provided at paragraphs 26 to 32 of the affidavit of Mr. Pierre Gemson, dated August 19, 2025 (the "**First Gemson Affidavit**"). While the Commissioner submitted that Amazon Canada ought to have been more diligent in preparing for, and then responding to, the July Order, I do not understand him to be contesting the facts set forth in the above-mentioned

paragraphs of the First Gemson Affidavit, which corroborate Amazon Canada's ongoing intention to respond to the July Order.

[34] Indeed, the record also demonstrates an ongoing effort by Amazon Canada to cooperate with the Commissioner's investigation from its outset, in early 2020. This is reflected in the evidence provided at paragraphs 6 to 18 of the First Gemson Affidavit. Once again, I do not understand the Commissioner to be contesting that evidence, at least insofar as it concerns the dates of the various exchanges between Amazon Canada and representatives of the Commissioner.

B. *The Merit to the Proceeding*

[35] The underlying proceeding is the Commissioner's application under various provisions of section 11 of the Act for an Order compelling Amazon Canada to produce certain records and written returns. Before granting the July Order, I satisfied myself that the Commissioner met the requirements to trigger the Court's jurisdiction under section 11: Transcript of Hearing on July 3, 2025 at pages 5-7; *Canada Tax Reviews* at para 26; *The Commissioner of Competition v Pearson Canada Inc.*, 2014 FC 376 [***Pearson***] at paras 37-39.

C. *Is the Commissioner Likely to be Prejudiced by the Requested Extensions?*

[36] Amazon Canada submitted that the Commissioner would not likely be prejudiced if the extensions of time that it requested were granted. In support of this position, Amazon Canada essentially maintained that the Commissioner had been investigating the Amazon Marketplace

Fair Pricing Policy since early 2020 and that the "rolling production" it proposed would likely provide the Commissioner and his staff in the Competition Bureau (the "**Bureau**") with sufficient information to advance their Inquiry, to the extent possible, as a practical matter. In support of this position, Amazon Canada noted that it intended to submit approximately 350,000 documents from the FTC Litigation on or before November 3, 2025.

[37] Amazon Canada added that the Commissioner could not establish prejudice solely based on having a public interest mandate related to preventing anti-competitive conduct, when the existence of such conduct (or its alleged effects) remained unproven and subject only to the Commissioner's investigation.

[38] I disagree.

[39] The Commissioner investigates instances of potentially anti-competitive pursuant to a statutory mandate set forth in the Act. In conducting investigations in accordance with that statutory mandate, the Commissioner benefits from a presumption that actions taken pursuant to the Act are in the public interest: *Pearson* at para 43. For the present purposes, that public interest includes completing the investigation into the potentially anti-competitive conduct which the Commissioner decided warranted the initiation of a formal inquiry under section 10 of the Act. Pursuant to sub-paragraph 10(1)(b)(ii), the Commissioner is required to commence an inquiry whenever he/she has reason to believe that grounds exist for the making of an order under Part VII.1 or Part VIII of the Act. Where that inquiry is slowed down because of delays in obtaining critical information from the very party being investigated, the public suffers prejudice.

This is so despite the fact that the Commissioner may not have reached a final determination as to whether the conduct being investigated is or is likely to be anti-competitive. In brief, delay in completing an inquiry, in and of itself, constitutes prejudice to the public interest: *The Commissioner of Competition v HarperCollins Publishers LLC and HarperCollins Canada Limited*, 2017 Comp Trib 14 at paras 112-113. During any such delay, the consumers may well be paying higher prices or suffering other anti-competitive effects of the conduct that is the subject of the Commissioner's inquiry.

D. *Does Amazon Canada Have a Reasonable Explanation for the Requested Extensions?*

(1) Overview of Amazon's submissions

[40] Beyond the submissions described above, Amazon Canada asserted that it was not reasonable for it to have to risk prejudicing itself by inadvertently producing privileged and/or unresponsive documents, simply to achieve compliance with an arbitrary timeline. Amazon Canada insisted that it required more time to implement quality control measures to ensure that such documents were not inadvertently produced as part of the vast production contemplated by the July Order.

[41] To support its position that it required more time to respond to the July Order, Amazon Canada filed two affidavits affirmed by Robert Keeling, who is a partner and member of the Executive Committee at Redgrave LLP ("**Redgrave**"), counsel for Amazon Canada. Redgrave is based in the United States and has extensive experience assisting Amazon US and other firms with electronic discovery and related issues. Amazon also filed two affidavits sworn by

Pierre Gemson, who is a partner at Borden Ladner Gervais LLP ("**BLG**"), Canadian-based counsel for Amazon Canada.

[42] I will pause to note that the Commissioner initially objected to Mr. Keeling's opinion evidence on the basis that he was not put forth as a properly qualified expert.[3] However, during the hearing of this Motion, counsel to the Commissioner clarified that the Commissioner does not object to the admissibility of Mr. Keeling's evidence, but rather to the weight to be accorded to that evidence. In adopting that position, the Commissioner implicitly accepted that in some circumstances, fact witnesses who are "participant experts" are allowed to provide opinion evidence going to their participation in the underlying matters at issue, in the ordinary exercise of their expertise: *Kaul v The Queen*, 2017 TCC 55 (CanLII) at paras 39-43. However, counsel to the Commissioner submitted that the Court should give minimal weight to Mr. Keeling's evidence because he did not have day-to-day involvement with several matters in respect of which he testified. I have taken that into account in assessing that particular evidence from Mr. Keeling.

[43] According to the initial affidavit affirmed by Mr. Keeling on August 19, 2025 (the "**First Keeling Affidavit**"), the first step necessary to respond to the July Order was to identify custodians with potentially responsive documents. This task required two separate workstreams:

(i) analyzing a list of 130 custodians whose files were collected for the FTC Litigation, to identify a subset of custodians whose files were likely to contain documents responsive to the July Order; and

[3] There was no similar dispute about Mr. Gemson's evidence.

(ii) identifying additional Canada-specific custodians, as well any predecessors who may have held their position during the period covered by the July Order, who may have had documents that are potentially responsive to that Order.

First Keeling Affidavit at para 10.

[44] Once Amazon identified the list of incremental custodians, it needed to inquire about each custodian's document use practices to determine where their potentially responsive documents were stored. The information in those sources then had to be collected and migrated to a dedicated review space: First Keeling Affidavit at para 11.

[45] Amazon Canada added that, in addition to the above steps for custodial documents, the July Order requires the production of several document types from non-custodial sources, which can be housed in large databases, workshares, and other networks, rather than with individual members of Amazon personnel.

[46] Given the volume of data implicated by the July Order, Amazon Canada contended that a significant amount of time was required for *technical processing* to prepare documents for review and then for production. This time was apparently outside Amazon Canada's control, and was additional to the time required for the review itself. According to Mr. Keeling:

- it typically takes approximately 4-6 weeks to collect, migrate and process custodians' data, once the subset of custodians with potentially responsive documents has been identified;
- it typically takes an additional 2-3 weeks once all documents are in the review workspace to implement analytics and deploy and to conduct initial training of Technology Assisted Review ("TAR") tools and generative artificial intelligence ("Gen AI"); and

- it typically takes approximately 2 weeks to conduct final quality control and production processing in order to export the production.

  First Keeling Affidavit at para 19.

[47] Mr. Keeling stated that these processes occur at various stages of the document review process workflow and typically cannot be run at the same time as each other. Consequently, he maintained that "nearly half of the 120 days and more than half of the 90 days provided for responding to the [July] Order would be consumed by the processing time during which the substantive work of reviewing and coding documents cannot take place": First Keeling Affidavit at para 20.

[48] Mr. Keeling added that, as of August 19, 2025, Amazon Canada estimated that it would need to review more than 5 million documents from the FTC Litigation collections and Canada-specific custodians, for responsiveness, privilege, and issue coding in compliance with the terms of the July Order: First Keeling Affidavit at para 12. In a supplementary affidavit affirmed on September 3, 2025 (the "**Second Keeling Affidavit**"), Mr. Keeling explained that this estimate of 5 million documents was based on his estimate of the document review population, prior to employing TAR: Second Keeling Affidavit at para 4. In cross-examination, Mr. Keeling added that, after employing TAR tools, he estimated that approximately 45% of those documents, i.e., 2.25 million documents, would remain to be reviewed: Transcript of Cross-Examination of Robert Keeling (the "**Keeling Cross Transcript**") at 93:23-94:14.

[49] The efforts that had been undertaken by Amazon Canada to respond to the July Order were further summarized in an affidavit sworn by Mr. Gemson on September 3, 2025 (the "**Second Gemson Affidavit**"), as follows:

> 9. As set out in my First Affidavit, Amazon is working diligently and has committed significant resources to respond to the Order. At the time of swearing this affidavit, a core team of 10 lawyers from BLG, including myself, are coordinating this large-scale document review and will be preparing written returns. The BLG team is assisted by a team of lawyers at Redgrave, who have primary responsibility for carrying out many of the workstreams described below further to instructions from Amazon and BLG lawyers.
>
> 10. Amazon will be engaging a large team of contract lawyers to conduct a first level ("1L") review. A 1L review is conducted by a large team of lawyers who review documents at first instance and provisionally code the documents for relevance, privilege and, in this case, issue coding the documents to sub-specifications.
>
> 11. This 1L effort will be supplemented by a team of additional lawyers at BLG and Redgrave LLP who will be engaged in a second level review ("2L") of the documents. The 2L review team will be staffed with as many lawyers as reasonably necessary to review the documents for responsiveness, issue coding and privilege determinations. This process ensures an adequate level of quality control prior to documents being produced.

(2) Overview of the Commissioner's submissions

[50] In brief, the Commissioner maintained that Amazon Canada failed to make reasonable and good faith efforts to comply with the July Order. The Commissioner asserted that Amazon had consistently and repeatedly sought an eight-month period of time in which to respond to what ultimately became the July Order, despite changes made to the initial Draft Order that significantly narrowed the scope of the information requested. The Commissioner added that the

requested eight-month period is approximately double the maximum amount of time specified in past orders issued under section 11 of the Act.

[51] The Commissioner also noted that other persons have been able to provide a roughly equivalent amount of information in analogous contexts.

[52] In addition, the Commissioner stated that Amazon Canada failed to provide a reasonable explanation of why it was unable to make greater progress than it actually made, at various points between the issuance of the July Order and the bringing of this Motion. Amazon Canada also failed to explain why it was unable to make greater progress prior to the issuance of the July Order, including in relation to identifying relevant custodians of information falling within the purview of that Order, which was the same as the Filed Draft Order, except for two small changes. Among other things, the Commissioner maintained that Amazon Canada's affiants were unable to provide these explanations because they were not as well placed as others to answer those questions.

(3) Analysis

[53] I largely agree with the Commissioner's submissions, at least insofar as Amazon Canada's request to vary the time limits applicable to the production of information beyond December 15, 2025 is concerned.

[54] The explanation given for a request to extend time limits in an order must justify that request for the entire period in question: *Lesly v Canada (Citizenship and Immigration)*, 2018 FC

272 at para 20. Moreover, “any laxity or failure to pursue an application as diligently as could reasonably be expected will militate strongly against the granting of an extension”: *Spectrum Brands, Inc. v Schneider Electric Industries SAS*, 2021 FCA 51 **[*Spectrum Brands*]** at para 11.

[55] For the reasons set forth below, I consider that Amazon Canada was able to justify its request to extend to December 15, 2025 the production deadlines for records responsive to Schedule I, specifications 1(c), 2, 4 and 5, as well as written returns of information responsive to Schedule II, specifications 2 and 3. However, I find that Amazon Canada failed to justify its request for an extension of time beyond December 15, 2025 for the specifications identified in the last two rows of the chart at paragraph 5 above. Among other things, the evidence indicates that Amazon Canada did not proceed as diligently as could reasonably be expected from the date the July Order was issued, and indeed from June 16, 2025, when the Filed Draft Order became public.

(a) *Breakdown of Amazon Canada’s timing estimates*

[56] The principal steps required by Amazon Canada to respond to the July Order are summarized at paragraphs 43-49 above.

[57] With respect to the first step in the process – the *identification* of custodians with potentially responsive documents, the evidence regarding the time typically required is unclear. Mr. Keeling testified that this is a dynamic and iterative process that was ongoing on September 9, 2025: Keeling Cross Transcript at 40:18-26, 43:8-12 and 44:17-21.

[58] In a letter to the Commissioner dated August 4, 2025, Amazon Canada stated that approximately 4-6 weeks are required to *identify, collect and process* the documents from Canadian-specific custodians who were not part of the FTC Litigation discovery process: Motion Record of the Respondent at page 449. Amazon Canada added that an unspecified amount of time is also required to (i) identify relevant custodians from among the group of custodians whose records were collected in relation to the FTC Litigation, and then to (ii) import their collections to a dedicated review workspace for document review. I will return to this further below.

[59] I consider that the process of *identifying* Canadian-specific custodians who were not part of the FTC Litigation discovery process, and to *identify* potential non-custodial sources of relevant information, ought reasonably to have been completed within approximately one week of the issuance of the July Order. This part of the process began sometime prior to May 9, 2025 (Transcript of Cross-Examination of Pierre Gemson (the "**Gemson Cross Transcript**") at 19:18-26), and prior to the subsequent and significant *narrowing* of the Draft Order by the Commissioner. Given that the July Order was not expanded to a material degree,[4] relative to the Filed Draft Order (or indeed the initial Draft Order that was sent to Amazon Canada in April 2025), it would not have been necessary to identify any new custodians or non-custodial sources of information as of June 16, 2025, when the Filed Draft Order became public.

[4] Minor edits were made to sub-paragraph 6(a)(i) and paragraph 7(c). Those changes ought not to have materially impacted the time required to identify relevant custodians, and then collect and process their documents.

[60] I pause to observe that experienced counsel would be aware that draft orders filed with the Court by the Commissioner pursuant to section 11 of the Act are rarely, if ever, *expanded,* and that they are often issued without material modification.

[61] Amazon Canada also would have been able to benefit from the significant lead time that it had, between the time it received the Final Draft Order and the time the July Order was issued, to reduce the time required to complete the identification of custodians of relevant information from the FTC Litigation process that had been already been gathered and placed into a central repository. As noted at paragraph 111 below, that information had also already benefitted from an initial deduplication process. Even if Amazon may have reasonably needed a few additional weeks to complete the identification of non-Canadian custodians, it ought reasonably to have been able to move to the second step in the process, based on the significant number of custodians that, with reasonable diligence, it should have been able to identify within the lead time described above, plus an additional week following the issuance of the July Order.

[62] The second principal step of the process involves collecting custodians' records and migrating them to a dedicated workspace: Keeling Cross Transcript at 83:13-15 and 84:5-6. Insofar as the records of *Canadian custodians* are concerned, Mr. Keeling's evidence combined this second step with the third step described below. As noted at paragraph 46 above, he stated that "it typically takes approximately 4-6 weeks to collect, migrate and process custodians' data once the subset of custodians with potentially responsive documents has been identified."

[63] Regarding the documents *from the FTC Litigation discovery process*, it appears that the "vast majority" of that documentation had already been collected and migrated to a central repository at the time the July Order was issued: Keeling Cross Transcript at 55:11-25. According to Mr. Keeling, that documentation constitutes the bulk of potentially responsive documents: Keeling Cross Transcript at 59:12-13. Consequently, insofar as these documents are concerned, I consider that Amazon Canada ought to have been able to move to the third step of the process very quickly following the issuance of the July Order.

[64] The third principal step in the process involves the technical processing requirements associated with the TAR process. In its abovementioned letter to the Commissioner dated August 4, 2025, Amazon Canada stated that it would take (i) 2-3 weeks to migrate the FTC Litigation collections to a dedicated review workspace; (ii) an additional 2-3 weeks once all documents are in the review workspace to implement analytics and deploy assisted review tools such as TAR; and (iii) approximately 10-14 days to conduct final quality control and production processing in order to export the production: Motion Record of the Respondent at 449. The 4-6 weeks described in sub-steps (i) and (ii) correspond with the 4-6 weeks that Mr. Keeling stated would be necessary to collect, migrate *and process* the data of *Canadian custodians*.

[65] The fourth principal step is the initial (1L) manual review of records for responsiveness, privilege, and issue coding: Keeling Cross Transcript at 83:17-84:6.

[66] The fifth principal step is the final quality control and processing of records (2L review): Keeling Cross Transcript at 83:17-84:6.

[67] Given the way the evidence came in on this Motion, I will consider the timing requirements related to the fourth and fifth steps together.

[68] As noted at paragraph 48 above, Mr. Keeling estimated that approximately 2.25 million documents would remain to be manually reviewed after completing the third step described above. This was based on his estimate that the TAR process would result in the elimination of 55% of the initial population of 5 million documents from further review, leaving 45% of those documents to be manually reviewed. Mr. Keeling then estimated that each lawyer could be expected to accurately review and issue code approximately 250 documents per business day: Keeling Cross Transcript at 9:1-12. This was premised on a 10-hour day and an average or blended rate across all workflows of 25 documents per hour for contract attorneys: Keeling Cross Transcript at 9:14-26.

[69] The Commissioner's time calculations were based on a 60-hour work week for contract lawyers. However, I consider that it would not be reasonable to expect that Amazon Canada should require contract workers to work 12 hours per business day, or six 10-hour calendar days per week, to assist it to respond to the July Order. In my view, and subject to the discussion at paragraphs 113-123 below, the 50-hour per week figure used by Mr. Keeling in his calculations is reasonable: Keeling Cross Transcript at 98:18-25.

[70] Nevertheless, I do not consider Mr. Keeling's assumption of an average hourly review rate of 25 documents per hour to be reasonable. In my view, experienced lawyers ought to be able to review an average of at least 30 documents per hour.

[71] Regarding the number of lawyers that one could reasonably expect to have been assembled to perform the initial (1L) manual review of the aforementioned estimated 2.25 million documents, I agree with the Commissioner that *at least* 100 lawyers, working full time to respond to the July Order, ought to have been allocated by Amazon Canada to this task. This is also the number of lawyers that Amazon Canada used in the estimated timeline it included at Appendix "C" to its Reply Written Representations.

[72] Mr. Keeling stated that it "is best practice for a review team to have a maximum of approximately 100 lawyers to avoid significantly increasing the error rate": First Keeling Affidavit at para 22. However, in a document entitled *Joint Brief Regarding Interim Deadlines* (the "**Joint US Brief**"), attached at Exhibit 3 to the Keeling Cross Transcript, Amazon US repeatedly stated that it intended to employ a review team of *over* 100 contract attorneys to meet the parties' jointly proposed deadlines in the FTC Litigation: Joint US Brief at pages 159, 160 and 162. This was reflected in its proposed dates for production, which "assume[d] a review of over 100 attorney reviewers working full time …" (emphasis added): Commissioner's Responding Motion Record at page 159.

[73] In my view, it is reasonable to expect that Amazon Canada ought to have done the same as Amazon US, much sooner in the process (see part IV.(3)(c) of these reasons below).

[74] Assuming a document population of 2.25 million documents and a review team of *at least* 100 lawyers, each lawyer would have no more than approximately 22,500 documents to review.

[75] Assuming a 10-hour day, a five-day week, and an average review of 30 documents per hour, each lawyer ought to be able to review 1,500 documents per week.

[76] Therefore, it would take approximately 22,500 ÷ 1,500 = 15 weeks for a team of 100 lawyers to review, code and conduct quality control in relation to 2.25 million documents. It would take even less time for a larger team to complete that task.

[77] In summary, I consider that the time required after the issuance of the July Order to complete the five principal steps described in the preceding paragraphs immediately above is approximately as follows:

Step	**Approximate number of weeks**
1. Confirmation of identity of custodians	1 week
2 & 3. Collecting, migrating and technical processing	4-6 weeks plus 10-14 days for final quality control and production processing to export the production
4 & 5. Manual 1L and 2L review, coding and quality control	15 weeks
TOTAL	21.5 - 24 weeks

[78] The foregoing would support a date of approximately December 15, 2025, which is approximately 23 weeks from the issuance of the July Order, as a reasonable outside date for the completion of Amazon Canada's document production.

(b) *Amazon Canada has been operating on its own timetable*

[79] I agree with the Commissioner that the evidence demonstrates that Amazon Canada appears to have managed the process of responding to the July Order with an overall *internal* objective of completing that process within approximately eight months. In this regard, Mr. Gemson testified on cross-examination that the number of outside lawyers hired by Amazon Canada to assist it to respond to the July Order "will be what is reasonable to get the work done to meet the timelines that are being proposed in the schedule." When asked what he meant by that, he explained that "the number of lawyers will be calibrated to meet [the] timelines" in Amazon's proposed timetable: Gemson Cross Transcript at 42:12-24.

[80] I acknowledge that Messrs. Keeling and Gemson both maintained that the proposed timetable of eight-months was based on an estimate of the scope of the information contemplated by the July Order, and on the fact that the Commissioner accepted Amazon Canada's request for an eight-month period for the production of documents in response to a narrower Order issued by this Court last year in Court File T-1357-24. However, this does not change the fact that Amazon Canada appears to have tailored the size of the team it hired to respond to the July Order to its consistent objective of completing the production of its responses within eight months, rather than within a shorter period of time, including the timelines set forth in the July Order. While the fact that the Commissioner agreed to an eight-month response time in Court File T-1357-34 is one indication of what might be a reasonable period of time in which to provide the information contemplated by the July Order, that precedent does not establish that such a long timeframe is reasonably necessary in the present proceeding, or indeed in any other proceeding.

[81] According to an affidavit sworn by Mr. Kevin Rushton and included in the Commissioner's initial application record (the "**Rushton Affidavit**"), Amazon first requested a period of eight months in which to comply with the first draft of what ultimately became the July Order, in a chart that was attached to an e-mail dated May 13, 2025. In that chart, Amazon Canada provided initial feedback and proposed revisions to the Commissioner's Draft Order. Amazon Canada explained its position as follows:

> **Objection: unreasonable/impossible.** The Draft Order contains 43 separate document sub-specifications, of which 29 seek documents dating back to January 1, 2017. Based on our experience with the section 11 order obtained against Amazon by the Commissioner last year in the customer reviews matter (Court File No. T-1357-24) — and Amazon's experience providing discovery in the US FTC litigation covering subject matters overlapping with the Draft Order — completing the requirements of the Draft Order in 90 days will not be possible.
>
> Application Record at pages 488-489.

[82] Amazon Canada maintained its position during a meeting that took place with representatives of the Commissioner on May 14th. Two weeks later, on May 28, 2025, it submitted an eight-page letter in which, among other things, it reiterated its position. In addition to referencing the eight-month period that the Commissioner granted in Court File T-1357-24, Amazon Canada explained that it was currently in the process of providing document discovery in the FTC Litigation, which substantially overlapped with the information sought in the initial version of the Draft Order that it received the prior month. Amazon Canada added that the FTC Litigation discovery process was scheduled to conclude in August 2025. Amazon Canada also suggested that an extension of the Commissioner's proposed response time was justified by the fact that the period for response would coincide with the pending summer holiday period: Application Record at page 513.

[83] In response, the Commissioner amended the return period in the Filed Draft Order to specify a lengthened return period of 120 days for the specifications in Schedule I that seek production of records from 2017, and for the written returns of information in Schedule II: Rushton Affidavit at para 89.

[84] The scope of the Filed Draft order was also significantly narrower than the scope of the initial Draft Order in various ways: Rushton Affidavit at paras 80-109.[5]

[85] I pause to observe that, on cross-examination, Mr. Keeling was repeatedly instructed to refuse to answer questions regarding the basis for Amazon Canada's request for a return period of eight months during the process of "pre-issuance dialogue": Keeling Cross Transcript at 76:8-78:9 and 80:17-81:8. Amazon Canada maintained that the eight-month period that it requested in respect of the Draft Order was not relevant to its request in the present Motion for the same amount of time in which to complete its production to the information required pursuant to the July Order. I disagree. To the extent that Amazon Canada has consistently sought a period of eight months to reply to both the Draft Order that it was sent during the process of "pre-issuance dialogue" and the much narrower July Order, its rationale for seeking an eight-month return period in relation to the Draft Order is potentially very probative of its rationale for seeking a similar period in respect of the July Order.

[86] Despite the fact that the Filed Draft Order had been significantly narrowed from the initial Draft Order that was sent to Amazon Canada, Amazon Canada once again maintained, in a

[5] A convenient summary of those changes was provided at paragraph 13 of the Commissioner's written submissions on this Motion.

letter dated June 27, 2025, that the Filed Draft Order be modified to stipulate a return period of eight months. In addition to reiterating that the Commissioner had agreed to an eight-month return period in Cour File T-1357-24, and that the FTC Litigation discovery process was still ongoing, Amazon Canada stated that approximately 54 million records would likely require searching. Amazon Canada added that even if the review volume were to be reduced to 15 million documents by applying search terms, meeting a 120-day deadline would require review of 125,000 documents per day for responsiveness, privilege and issue tagging, every day.

[87] Subsequent to the issuance of the July Order, Mr. Gemson sent an e-mail dated July 28, 2025 to counsel to the Commissioner requesting, once again, an opportunity to speak about the timelines in the Draft Order: First Gemson Affidavit, Exhibit "O". The following day, Amazon Canada advised counsel to the Commissioner that it had "determined that it would be impossible to review the documents from the FTC Litigation collections and Canada-specific custodians for responsiveness, privilege, and issue-coding to sub-specifications in compliance with the terms of the [July] Order within 90 and 120 days." Consequently, Amazon Canada repeated its position that it required eight months to comply with the July Order. It also proposed a schedule to produce documents to the Commissioner on a rolling basis: First Gemson Affidavit at para 27.

[88] After counsel to the Commissioner replied that the Commissioner would not agree to Amazon Canada's request at that time, Amazon Canada wrote another letter to the Commissioner, dated August 4, 2025, in which it repeated its request for an eight-month rolling response period: Motion Record of the Respondent at pages 448-449. Once again, Amazon

Canada stated that such a period was reasonable based on the eight-month period that was agreed to by the Commissioner in Court File T-1357-24. In addition, Amazon Canada noted that the Commissioner's investigation had been ongoing since August 2020, and that its proposed eight-month period was substantially more expeditious than the 2-year period required for document production in the related FTC Litigation. Amazon Canada also explained the technical processing requirements that are set forth at paragraph 63 above.

[89] After Amazon Canada filed its Notice of Motion on August 19, 2025, I conducted a case management conference with the parties on August 22, 2025. At that time, I encouraged the parties to endeavour to amicably resolve their dispute with respect to the timetable for the production of information required by the July Order.

[90] In a "With Prejudice" letter dated September 10, 2025,[6] the Commissioner proposed to extend to December 1, 2025[7] the timeline for the production of all documents and written returns required by the July Order.

[91] In response, Amazon Canada filed its Amended Notice of Motion, in which it made some amendments to the variation of the timelines in the July Order that it requested in its initial Notice of Motion. These amendments can be briefly summarized as follows:

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[6] The Commissioner appears to have abandoned the "with prejudice" nature of this proposed extension to the July Order. At paragraphs 77 and 81 of his written submissions on the present Motion, this proposed extension was characterized as a "proposed varied return period", without further qualification. At paragraph 116 of those submissions, this proposed extension was characterized as being in the alternative to the Commissioner's request to decline the relief sought on this Motion.

[7] At the end of the third recital of the October 1st Order, I inadvertently conflated this date with the December 15, 2025 date that Amazon Canada proposed as a new deadline for certain specifications in the July Order. In deciding to extend those and other deadlines to December 15, 2025, I was mindful that the Commissioner had proposed a very similar date (December 1, 2025) as the new deadline for those specifications.

(i) Amazon Canada advanced by 30 days the date for the production of documents responsive to Schedule I, specifications 1(a), (b) and 10. Based on this change, these documents were to be provided within the 90-day period contemplated by the July Order. I agree with the Commissioner that this production of documents was very minor, and very easy for Amazon Canada to do.

(ii) Amazon Canada advanced by 45 days its requested date for the production of written returns of information responsive to Schedule II, specifications 2 and 3. Based on this change, the date for the production of these written returns was advanced from March 2, 2026 to December 15, 2025. This is approximately 45 days later than the 120-day return date required by the July Order.

(iii) Amazon Canada advanced its requested date for the production of documents responsive to Schedule I, specifications 1(d), 3, 6, 7, 8 and 9 from March 2, 2026 to January 30, 2026. This is almost 90 days later than the 120-day return date required by the July Order.

[92] However, at paragraph 1(e) of its Amended Notice of Motion, Amazon Canada continued to request a timeline of approximately 8 months in which to provide (a) the written return set out in Specification 1 of Schedule II to the July Order, and (b) "all remaining documents and information responsive to Schedule I". The former category of information simply requires "the names and titles of all Company personnel who were searched for records responsive to a specification in Schedule 1 of the Order, together with the name(s) and title(s) of the person to whom such Company personnel immediately reported during the Relevant Period." It is far from apparent why this information could not be provided much earlier in the process. As for "all remaining documents responsive to Schedule I," it is not clear what could possibly be covered by this category of documents, because Schedule I only has 10 specifications, and each of them is already covered by one of the earlier timelines set forth at paragraphs 1(a) to (d) of the Amended Notice of Motion.

[93] The foregoing, together with Amazon Canada's unrelenting insistence on an eight-month timeline for the completion of its production of information in response to the July Order, as well

as its repeated references to the eight-month timeline that was granted by the Commissioner in Court File T-1357-24, suggests that Amazon Canada's position on this point was based more on principle than on need. This would certainly be consistent with its counsel's unwillingness to permit Mr. Keeling to answer questions regarding the basis for Amazon Canada's initial requests for an eight-month return period during the "pre-issuance dialogue" process.

[94] In summary, the foregoing demonstrates that Amazon Canada has been operating on its own timetable since it received the Filed Draft Order. That is to say, Amazon Canada appears to have managed the process of responding to the July Order with an overall *internal* objective of completing that process within approximately eight months. Over time, the reasons given for requesting that period evolved. However, Amazon Canada's position did not materially change prior to when it filed its Amended Notice of Motion on September 3, 2025, notwithstanding the fact that the Commissioner substantially narrowed the scope of the July Order, relative to the Draft Order that was initially sent to Amazon Canada.

[95] Then, in its Amended Notice of Motion, Amazon Canada suddenly proposed to complete the submission of what appears to be virtually all information required by the July Order within approximately seven months, i.e., by January 30, 2026. It also proposed to submit a significant amount of information on a rolling basis prior to that time, despite previously maintaining that it would require eight months to complete the production of information and written returns, and despite seeking in its initial Notice of Motion a return period of March 2, 2026 for much of that information. At the same time, Amazon Canada continued to propose March 2, 2026 for the

production of all “remaining documents and information” that it has not produced by January 30, 2026.

[96] Given that Amazon Canada adopted its own internal timeline of completing its production by March 2, 2026, it did not proceed as diligently as could reasonably be expected in the circumstances: *Spectrum Brands* at paragraph 11. As discussed below, the evidence demonstrates that there is more that it likely could have done. Its failure to do so militates strongly against the granting of the extensions beyond December 15, 2025 that it now requests: see paragraph 54 above.

(c) *The size of Amazon Canada’s legal team*

[97] As noted at paragraph 72 above, Mr. Keeling stated that “[it] is best practice for a review team to have a maximum of approximately 100 lawyers to avoid significantly increasing the error rate”: First Keeling Affidavit at para 22. During cross-examination, Mr. Gemson stated that he did not have better information than Mr. Keeling on this point, and that he was inclined to take Mr. Keeling’s advice: Gemson Cross Transcript at page 40:27-28.

[98] Also during cross-examination, Mr. Keeling explained that “the ultimate size of the team will depend, in part, on the results of the TAR process” and that where there is a “very low prevalence or response of documents …then a smaller contract attorney team would be appropriate”: Keeling Cross Transcript at 32:9-11 and 33:22-26. Consequently, “the contract attorney team would range from at least 50 to 70 contract attorneys”: Keeling Cross Transcript at 33:18-20.

[99] It would appear that Amazon Canada is *not* expecting its use of the TAR process in the present proceeding to result in a very low level of responsive documents. This is because Mr. Keeling expects that it will be necessary to review "families" of documents, which were not included in his initial estimate of 20-30% of the total initial document population that typically remains after the application of the TAR process: Keeling Cross Transcript at 8:5-10. At Amazon, the inclusion of "families" of documents that may not need to be reviewed for responsiveness, but rather for issue coding, privilege or other reasons "typically results in an increase of 1.9 to slightly less than double the document population": Keeling Cross Transcript at 8:14-16. So, once those additional documents are brought into the equation, the total number of documents that need to be manually reviewed is approximately 45 percent of the number of documents that were initially run through the TAR process. As discussed at paragraph 68 above, this would result in .45 x 5,000,000, or 2,250,000 documents remaining to be manually reviewed, assuming Mr. Keeling's estimates are accurate. I note also that Mr. Keeling stated that he and his team are "expecting a higher richness rate" in the data that is to be run through the TAR process: Keeling Cross Transcript at 97:11-18.

[100] Having regard to the foregoing, it would appear that a contract lawyer team of well above the minimum of 50 to 70 contract lawyers, up to approximately 100 lawyers, ought to have been assembled by Amazon Canada. It further appears that this estimate of 100 lawyers applies to the first level (IL) review of documents, as Amazon Canada clarified in its reply submissions that the second level (2L) review of documents "involves lawyers who are separate from and additional to the approximately 100 contract lawyers, which Mr. Keeling describes as the maximum size a

1L review team can reach without a significant decrease in accuracy": Reply Written Representations of the Moving Party ("**Reply Submissions**") at page 21.

[101] Notwithstanding the above, Mr. Gemson stated that, as of September 3, 2025, which was two full months after the issuance of the July Order, the core team of lawyers at BLG who were "coordinating this large-scale document review" and "*will be* preparing written returns" (emphasis added) consisted of only 10 lawyers. He added that the "BLG team is assisted by a team of lawyers at Redgrave, who have primary responsibility for carrying out many of the workstreams described below further to instructions from Amazon and BLG lawyers": Second Gemson Affidavit at para 9. Mr. Gemson then explained: "Amazon *will be* engaging a large team of contract lawyers to conduct a first level … review of documents": Second Gemson Affidavit at para 10 (emphasis added).

[102] Mr. Keeling testified that, as of September 9, 2025, only 17 Redgrave lawyers "have worked in some capacity with the order": Keeling Cross Transcript at 31:11-13. He added that "we would expect the larger review team *to start in two to three weeks after* the TAR training has stabilized": Keeling Cross Transcript at 30:20-22 (emphasis added). As discussed below, the TAR training process did not start to occur until the week of September 8th.

[103] Mr. Gemson provided similar evidence regarding Amazon Canada's *future plans*, as of September 9, 2025, to engage "a large team of contract lawyers to conduct a first level 1-L review": Second Gemson Affidavit at para 10. However, neither he nor Mr. Keeling provided

any evidence of the specific extent to which Amazon Canada increased the size of its team after that date.

[104] In summary, the evidence regarding the evolving size of the legal team assembled by Amazon Canada to respond to the July Order demonstrates that Amazon Canada's legal team remained very small more than two months after the issuance of the July Order. As of September 9, 2025, the size of Amazon Canada's legal team was well below the benchmark of 100 lawyers that Mr. Keeling testified is the "best practice" maximum size of legal team for document review exercises of the nature at issue in the present proceeding. This is despite the fact that the documents collected in the FTC Litigation discovery process had already been placed in a central repository and the TAR process was only expected to take approximately 5-8 weeks: Motion Record of the Respondent at page 449. This is also despite the fact that Amazon Canada is a part of a very large, successful, well-resourced and technologically sophisticated enterprise.

[105] The foregoing evidence certainly does not assist Amazon Canada to establish that it acted "as diligently as could reasonably be expected" (*Spectrum Brands* at para 11), particularly when one considers how long it took Amazon Canada to identify and question relevant custodians. I will now turn to that issue.

(d) *The identification and questioning of custodians*

[106] Mr. Keeling testified that, as of September 3, 2025, the number of custodians identified by Amazon Canada was approximately 75: Keeling Cross Transcript at 40:24 and 41:9-10. By

the date of his cross-examination (September 9, 2025), only six days later, that number had increased by 41 to 116: Keeling Cross Transcript at 41:3.

[107] This begs the question of why, if Amazon Canada could identify an additional 41 custodians in six days, it could not reasonably have identified more than 75 custodians in the first two months following the issuance of the July Order, particularly given that this was "[t]he first step necessary to respond to the [July] Order": First Keeling Affidavit at para 10. During cross-examination, Mr. Keeling went so far as to describe the number of custodians as "a key input into the compliance date, or when the reasonable compliance date is, as well as the timeframe": Keeling Cross Transcript at 45:22-26.

[108] Despite the fact that the process of identifying custodians began sometime before May 9, 2025 (Gemson Cross Transcript at 19:18-26), neither Mr. Keeling nor Mr. Gemson was able to identify how many custodians had been identified by July 21, 2025 or August 4, 2025: Keeling Cross Transcript at 44:16 and 45:15-18; Keeling Cross Transcript at 44:11-22 and 45:26-46:8.

[109] Mr. Keeling further testified that, of the total 116 custodians who had been identified by September 9, 2025, approximately 65-70 of them were drawn from the list of 130 custodians whose files had already been collected for the FTC Litigation: Keeling Cross Transcript at 47:16-24. In other words, more than two months following the issuance of the July Order, and almost three months after the Filed Draft Order became public on June 16, 2025, Amazon Canada had not identified more than approximately 41-46 Canadian-based custodians.

[110] Turning to the process of sending questionnaires and interviewing custodians, Mr. Keeling stated that, as of September 3, 2025, Amazon had sent questionnaires to and/or interviewed only "27 individuals, who are incremental to the FTC Litigation custodians who were already interviewed or sent questionnaires": Second Keeling Affidavit at para 6(b). Mr. Keeling was unable to state when the process of sending questionnaires and interviewing those custodians began: Keeling Cross Transcript at 53:5-11. He was also unable to state when the first request was made for data from the first batch or subset of custodians: Keeling Cross Transcript at 58:17-20. This begs the question of why Amazon Canada was unable to reasonably do more in these respects.

[111] Mr. Keeling maintained that because the *bulk* of the data assessed in the TAR process would be from the FTC Litigation discovery process, the dates upon which data from new custodians in Canada was not "particularly material or relevant to Amazon's ultimate compliance date": Keeling Cross Transcript at 59:18-21. I find that this strains credulity, especially given that Amazon Canada had collected approximately 7.4 terabytes of data from Canadian custodians, beyond the 55 terabytes that were collected for the FTC Litigation and that had already been through the initial process of deduplication in a central repository (but not the "threading" deduplication process): Keeling Cross Transcript at 59:25-60:10 and 62:2-7. (See also Keeling Cross Transcript at 86:26-87:1, where Mr. Keeling testified that the data from the FTC discovery process had been "processed and migrated to the new review repository and have been indexed in the Brainspace" for processing in the TAR process.)

[112] In summary, the evidence regarding the identification and interviewing/questioning of custodians suggests that Amazon Canada did not act as diligently in responding to the July Order as one would have expected. This is particularly so given that the process of identifying custodians started at some point prior to May 9, 2025, and Amazon Canada had a very good appreciation of the scope of what would become the July Order, when the Filed Draft Order became public on June 16, 2025. I consider that even if, as Amazon Canada represents, it had to conduct an analysis of over 200 individuals in Canada alone, it ought to have been able to confirm the identity of most of the relevant custodians within 1-2 weeks of the issuance of the July Order. In any event, the fact that Amazon Canada had only identified approximately 75 custodians approximately four months after starting that process suggests that it did not act as diligently as could reasonably be expected: *Spectrum Brands* at para 11. Moreover, Amazon Canada failed to explain why it was unable to reasonably identify and then interview more custodians, and collect information from them sooner in the process: see paragraph 52 above.

(e) *The time periods for production in other proceedings*

[113] For guidance purposes only, the Court previously observed that return periods of "60 and 90 days would ordinarily not be inappropriate for orders falling towards the middle and more onerous parts of the spectrum … in terms of the nature and extent of information being requested and the difficulty required to assemble the information": *Canada (Commissioner of Competition) v Bell Mobility Inc.*, 2015 FC 990 **[*Bell Mobility*]** at para 43. The Court added: "Of course, there may well be cases, involving much more extensive requests for information, in which a longer period may be appropriate": *Bell Mobility* at para 44. Such longer periods generally have been 120 days. I am not aware of any case in which a timeline for production of longer than 120 days

was granted in a proceeding under section 11 of the Act. This is despite the fact that the production required in some cases has been quite extensive.

[114] The process of responding to an Order issued under section 11 of the Act is, for the present purposes, very similar to the process of responding to what is called a "Second Request" for information in the merger review context, both in Canada and the US.

[115] On cross-examination, Mr. Keeling testified that his firm has significant experience in assisting firms to respond to a Second Request. In that regard, he confirmed the statement he previously made in a podcast, to the effect that "a second request is typically quite large and involves the production of hundreds of thousands … if not millions of documents, as well as the provision of large amounts of data to the government authority": Keeling Cross Transcript at 19:13-18 and 23-25. Mr. Keeling also confirmed that he recalled stating in that same podcast that the entire process of document collection, processing, review and production is typically completed in 90 to 120 days, or potentially longer: Keeling Cross Transcript at 20:18-21, 20:25-21:2 and 21:7-13.

[116] Mr. Keeling added that, in his "fastest" case, his firm was able to achieve compliance with the Second Request in 30 days, and that:

> … in that review, we started, if memory serves, *about three months prior to the issuance of the second request* with respect to collections and processing, and then we've had a very large team of contract attorneys, *several hundred contract attorneys working*, and my recollection is two months prior to the issuance of the second request.
>
> Keeling Cross Transcript at 21:15-24 (emphasis added).

[117] This is helpful evidence that the entire process of identifying custodians, collecting and reviewing the custodians' documentation, and then producing that information, is sometimes started before a Second Request is actually issued. In my view, there is no reason in principle why the same could not be done in respect of an Order issued under section 11 of the Act, especially as of the time at which a draft Order is publicly filed with the Court.

[118] Likewise, the example provided above by Mr. Keeling is also helpful evidence that the maximum size of the legal team assembled to conduct that process is sometimes greater than 100 lawyers.

[119] Mr. Keeling stated that the process of identifying custodians and processing their documents is less time consuming in relation to Second Requests than it would be in the present proceeding: Keeling Transcript at 45:22-46:18. He explained that this is because Second Requests typically require documents with respect to a two or three year timeframe, whereas the July Order includes specifications that date back to the beginning of 2017. Consequently, he stated that Second Requests would typically require the production of a much smaller set of documents, and the gathering of documents from a significantly smaller number of custodians.

[120] However, insofar as the size of the document production is concerned, the Joint US Brief refers to multiple cases involving the production of more documents than the estimated 2.25 million documents at issue in the present proceeding, and in which the parties were able to conduct the entire process of document collection, review and production much more quickly than Amazon Canada is proposing here. In this regard, the Joint US Brief states as follows:

- In *United States v Google*, No. 1:23-cv-00108 (E.D. Va. Sept. 15, 2023), Google reviewed approximately 4.8 million documents in twenty-two days);
- In *FTC v Qualcomm, Inc.*, 5:17-cv-00220, (N.D. Cal. Dec. 15, 2023), Apple utilized a review team of 500 attorneys to produce approximately 2.6 million documents in two months;
- In *Transamerica Comput. Co., Inc. v Int'l Bus. Machs Corp.*, 573 F2d. 646, 648-49 (9th Cir. 1978), IBM produced 17 million pages of documents in three months, at a time when technological limitations required review to be done "page by page."

Commissioner's Responding Motion Record at pages 154-155.

[121] The Joint US Brief also notes that in *Phipps v Wal-Mart Stores, Inc.*, 2018 WL 1183746 (M.D. Tenn. Mar. 7, 2018), the defendant searched 26 million documents and reviewed two million documents for responsiveness, confidentiality, and privilege in three months: Commissioner's Responding Motion Record at page 154.

[122] Insofar as the number of custodians is involved, it bears reiterating that (i) the documents collected from the FTC Litigation discovery process were already in a central repository at the time of the issuance of the July Order, (ii) Amazon Canada began the discovery process of identifying custodians well before the July Order was issued, (iii) the Filed Draft Order significantly *narrowed* the scope of documents to be produced, relative to the initial draft Order that was sent to Amazon, and (iv) the July Order did not materially expand the scope of the Filed Draft Order. Consequently, I reject Mr. Keeling's suggestion that the number of custodians that had to be identified in the present proceeding provides a reasonable basis for extending the timeline for production beyond December 15, 2025.

[123] In summary, the experience with Second Requests in the United States suggests that it would not be unreasonable to expect Amazon to be able to complete the production of documents and other information required by the July Order, by December 15, 2025.

(f) *Amazon Canada failed to lead the best evidence available*

[124] I agree with the Commissioner's assertion that Messrs. Keeling and Gemson were unable to answer many questions posed to them on cross-examination on their affidavits, and that this was because they were not the best placed to do so. Insofar as Mr. Keeling is concerned, he acknowledged that the critical process of identifying custodians was led by a team at BLG, and that Mr. Jon Dugan from Redgrave took primary responsibility in assisting that team with respect to custodial identification: Keeling Cross Transcript at 42:7-11. Mr. Keeling also repeatedly indicated that Mr. Gemson was better placed than him to answer various questions regarding the process of identifying custodians and sending them questionnaires or interviewing them. Yet, Mr. Gemson did not provide much helpful information in that regard. Indeed, he could not even say more than that "the custodian identification process isn't complete and so as new potential custodians are identified they will be sent a questionnaire and interviewed as necessary": Gemson Cross Transcript at 47:26-48:2. Like Mr. Keeling, Mr. Gemson was unable to identify how many custodians had been identified by certain dates, including July 21, 2025, August 4, 2025 and August 18, 2025: Gemson Cross Transcript at 44:11-22, 45:26-46:8 and 46:22-25.

[125] The foregoing evidence significantly undermined Amazon Canada's efforts to justify its requested extensions of time, beyond December 15, 2025: see paragraph 54 above.

(g) *Summary regarding the reasonableness of Amazon's explanations*

[126] In summary, Amazon Canada adduced sufficient evidence to demonstrate the reasonableness of its request to extend to December 15, 2025 certain deadlines set forth in the July Order. Those specific deadlines are summarized in the third and fourth columns of the chart at paragraph 5 above. These are the deadlines to produce documents and other information responsive to specifications 1(c), 2, 4 and 5 of Schedule 1, as well as the written returns described in specifications 2 and 3 of Schedule II. The evidence adduced to support these requests consisted of the evidence, primarily provided by Mr. Keeling, regarding the time required to collect, migrate and technically process documents from relevant custodians, and then to review, code and conduct quality control in relation to those documents. As discussed in part IV.D.(3)(a) above, and summarized at paragraph 77 above, I find that Amazon Canada required 20.5 – 23 weeks to complete these steps in the overall process, plus an additional week to confirm the identity of custodians. This supports its request to extend the deadlines described immediately above to December 15, 2025, which is approximately 23 weeks from the issuance of the July Order.

[127] However, Amazon Canada failed to justify the reasonableness of its requested extensions beyond December 15, 2025. That is to say, it failed to justify its requests for extensions to January 30, 2026, and March 2, 2026, as described in the last two columns of the chart at paragraph 5 above. These extensions pertained to specifications 1(d), 3, 6, 7, 8 and 9 of Schedule I, and all remaining documents, including specifications 8 and 9 (as they relate to Amazon Canada), and specification 1 of Schedule II, respectively. Indeed, the evidence demonstrates that

Amazon Canada consistently and unreasonably insisted upon a period of eight months within which to complete its responses to the July Order and drafts thereof, despite the significant narrowing of those drafts.

[128] The evidence also demonstrates that Amazon Canada did not pursue as diligently as could reasonably be expected various steps in the process. These include identifying custodians, interviewing or sending questionnaires to custodians and conducting 1L and 2L reviews (including coding). This militates strongly against the granting of Amazon Canada's requested extension beyond December 15, 2025.

E. *The Interests of Justice*

[129] Amazon Canada asserts that the interests of justice would be served by its requested extensions of time. In support of this position, Amazon Canada maintains that, in the absence of those requested extensions, it would face an impossible choice between risking (i) prejudice to itself by inadvertently producing privileged and/or irrelevant documents, and (ii) the consequences associated with breaching the July Order.

[130] Amazon Canada submits that the interests of justice would be served by its requested extensions, because any prejudice the Commissioner may assert would be outweighed by the potential harm to Amazon caused by rushed compliance with the current deadlines.

[131] In support of its position, Amazon Canada relies on the principle that "[w]here an Act can be construed more than one way, courts must reject any alternative which is manifestly absurd,

or extremely harsh, unjust, or capricious": *Boardwalk Reit LLP v Edmonton (City)*, 2008 ABCA 220 at para. 78.

[132] For the reasons discussed in part IV.D.(3)(a) above, and summarized at paragraph 126, I find that it would have been extremely harsh and unjust to require Amazon Canada to complete the production of all documents and written returns set forth in the July Order within the 90-day and 120-day deadlines therein. This would not have been in the interests of justice. Consequently, in the October 1st Order, I granted Amazon Canada's request to extend to December 15, 2025, the deadlines applicable to the specifications identified at paragraph 126 above.

[133] However, for the reasons set forth in parts IV.C. and IV.D.(3)(a) – (f) of these reasons above, and summarized at paragraphs 39 and 127-128, I find that it would not be in the interests of justice to grant Amazon Canada's requests to extend the deadlines in the July Order beyond December 15, 2025, for the specifications identified at paragraph 127. In my view, it would not be extremely harsh, unjust, capricious or impossible for Amazon Canada to complete its responses to those specifications by December 15, 2025.

[134] For greater certainty, Amazon Canada has not demonstrated that it would be in the interests of justice to extend the deadline for compliance with those specifications, beyond December 15, 2025.

[135] I pause to observe that the Commissioner did not assist his position by failing to initiate the Inquiry before December 17, 2024, despite commencing his investigation into the Amazon Marketplace Fair Pricing Policy in early 2020.

V. Conclusion

[136] For the reasons set forth above, I granted Amazon Canada's request to extend to December 15, 2025 the deadlines applicable to specifications 1(c), 2, 4 and 5 of Schedule 1 to the July Order, as well as the written returns described in specifications 2 and 3 of Schedule II.

[137] However, I rejected Amazon Canada's request to extend beyond December 15, 2025 the deadlines applicable to specifications 1(d), 3, 6, and 7 of Schedule I, as well as specifications 8 and 9 as they relate to Amazon Canada. This conclusion also applies to Amazon Canada's request in subparagraph 1(e) of its Amended Notice of Motion, in respect of "all remaining documents and information responsive to Schedule I and Schedule II, specification 1."

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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