BARBARA JACKMAN, HADAYT NAZAMI
JACKMAN & ASSOCIATES
Barristers & Solicitors
596 St. Clair Avenue West, Unit 3
Toronto, Ontario M6C 1A6
Tel: 416-653-9964 Fax: 416-653-1036
e-mail: barb@bjackman.com

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Registry
Federal Court of Canada
180 Queen St. West, Suite 200
Toronto, Ontario

By fax: 416.973.2154

URGENT

Re: The Toronto Coalition to Stop The War et al v. MCI and MPSEP
Court File: IMM-1474-09

Please bring this letter to the attention of Mr. Justice Mosley.

I am writing to inform the Court of the result of the consultations between the parties with respect to the disclosure of documents in the within matter. Further, while we wish to maintain the schedule for the matter to be heard before this Court, we need some further time to both have the issues about what constitutes the 'record' resolved and to thereafter finalize our written submissions.

As per the Direction of Mr. Justice Mosley of March 31, 2010 with respect to the Applicants' motion of March 29, 2010 seeking the production of the complete Certified Tribunal Record, I wish to inform the Court that the parties have attempted to resolve the issues but have not succeeded.

By letter dated, April 1, 2010, the Respondents, through counsel, provided additional documents in response to the motion for production filed by the Applicants. I understand that a copy of the same package was filed with the Court on the same date.

As a preliminary matter, Ms. Wcislo is correct in noting in her letter of April 1, 2010 that she did indeed send the Applicants' counsel an offer, by letter dated March 18, 2010, that the Respondents would provide some of the documents requested by the Applicants even though these had been refused during the course of the cross-examinations of witnesses. Unfortunately, counsel for the Applicants only became aware of the existence of this offer on April 1, 2010 when Ms. Wcislo referred to it in her letter of that date. It would appear that Ms. Wcislo's letter of March 18, 2010 was

inadvertently filed away without being reviewed by counsel. The Applicants would much rather resolve these issues, if at all possible, between parties without resort to the Court.

Having now reviewed the Respondents' further disclosure package of April 1, 2010 and having discussed the matter with the Respondents' counsel, it is clear now that a resolution of the disclosure issues cannot be reached by consensus between the parties. At this point in time, regrettably, the Applicants believe that the Court's intervention is required.

The Applicants are deeply troubled by the manner in which the Respondents' have acted and continue to act in the production of relevant documents. Ms. Wcislo's covering letter of April 1, 2010, enclosing further disclosure, refers to yet another relevant piece of information, this time by CSIS of March 18, 2010, which has not been produced and which the Applicants were not made aware of before. The existences of this information came to light during cross examination. Other such examples are listed in the Applicants' motion before the Court. The package of April 1, 2010 by the Respondent is incomplete. Further to the extent that documents are provided, some of those documents are redacted. However small those redactions may be, no grounds for such redactions have been put forward by the Ministers.

Further disclosure provided by the Respondent after the Applicants' have filed a motion in this Court for disclosure does not end the matter. As is apparent from the Respondents' covering letter of April 1, 2010, and from the transcripts of cross-examination of the deponents of the Ministers' affidavits, Michel Sauvé and Robert Orr, the Applicants believe that a substantial portion of the Tribunal Record remains undisclosed to them and to the Court.

It would appear that the Respondents have taken the position that, since the decision was presented to Mr. Galloway in London, England, only the part of the record maintained in the visa post in London should be disclosed. As noted above and as is apparent from the transcripts of Mr. Orr's cross-examination, even the London record is not fully disclosed.

It is apparent from the record before the Court, that the office of the Minister of Citizenship & Immigration played a central role in the impugned decision. The Case Management Branch of the CIC and the CBSA both played significant roles. The office of the Prime Minister also had a direct role in barring Mr. Galloway from Canada. None of the files from these offices have been disclosed to the Court and to the Applicants. The Tribunal Record provided by the Respondents only contains an incomplete copy of the Record from the visa post in London.

The above noted deficiencies are consistent with the actions of the Respondents from the outset of this proceeding. The Ministers have either over claimed on national security concerns or failed to provide a complete record.

A brief outline of the issues concerning disclosure of the CTR is as follows:

By letter dated November 20, 2009, counsel for Respondents notified the Court and the Applicants that the CTR record was sent to the Court and to the Applicants by mistake. It was demanded in the same letter that said CTR be returned back to the Respondents unopened and unread. This is because according to the Respondents the record needed to be redacted for national security concerns. No indication of the extent of intended redaction or the nature of national security concerns was provided by the Respondents. Unaware of the letter from the Respondents, one counsel for the Applicants had reviewed the CTR and could not agree with the position taken by the Respondents that the document needed redactions for national security purposes.

By letter dated November 24, 2009, counsel for the Applicants replied to the Respondents' request of November 20, 2009, undertaking to protect against further disclosure of the CTR pending a resolution of the matter. In the same letter, counsel for the Applicants requested that the circumstances of the disclosure of the unredacted CTR be provided to the Applicants. Counsel further requested that a redacted version of the CTR also be provided so that the Applicants could properly consider the Respondents request to return the unredacted copy of the CTR to the Respondents. The Respondents ignored these requests.

On November 25, 2009, the Respondent filed a motion with this Court pursuant to Rules 369 and 399(2) requesting that the Applicants' counsel be ordered to return the unredacted CTR to the Respondents. The Respondents' motion was supported by an Affidavit from Julie Remillard, a Senior Program Adviser employed with the Canada Border Services Agency (CBSA). Ms. Remillard provided an estimate of the intended redactions to the CTR which were extensive and raised serious concerns for the Applicants. It is not known to the Applicants as to why and who in the offices of the Respondents had initially requested that Ms. Remillard review the record for possible redactions of a record which had already been disclosed. Ms. Remillard, having reviewed excerpts of the CTR, noted at paragraph 2 of her affidavit:

> "... I determined that these documents may need to be redacted for national security concerns. Further, I realized that the entire tribunal record would have to be reviewed by CBSA. Partner agencies may also have to review the tribunal record to determine if information contained in the tribunal record may have to be redacted."

Counsel for the Applicants, having inadvertently reviewed the unredacted documents referred to by Ms. Remillard, was aware that there was no information contained in the CTR which concerned the involvement of any partner agencies. Counsel was also concerned that the intended redactions appeared to be extensive and not related to actual national security concern. Counsel for the Applicants noted these concerns in his reply to the Respondents' motion, which clearly indicated that counsel had in fact reviewed the unredacted disclosed documents. We know in hindsight, subsequent to the disclosure of the redacted documents and the Court order disposing of the

Minister's motion, that the Applicants' concerns were well founded.

Further, and quite apart from the issue of "inadvertent" disclosure, counsel was concerned that the CTR was not complete, and requested, in submissions under seal to this Court, that the issue be addressed by the Court in the *in camera, ex parte* hearing of the Ministers' 87 motion.

It is now apparent from the cross-examination of the Respondents' witnesses on their affidavits and from the further disclosure of April 1, 2010, that the Applicants' concern about the incompleteness of the CTR are well founded.

Based on the above and without intending to criticize or impute wrong-doing on the part of counsel for the Respondents, the Applicants have serious concern that the Ministers cannot be relied upon to provide the full and complete CTR to the Applicants and to this Court on their own accord.

It is important for the public interest and in the interest of the administration of justice that the complete Tribunal Record, containing all of the relevant governmental records, from the various offices involved, as noted above, be disclosed. This is particularly important given that the Applicants assert that, in barring Mr. Galloway for entering Canada, the officials involved acted in bad faith and abused their power. The Applicants further claim that their Charter rights have been infringed.

The Respondents control the relevant documents. For the Respondents to continue to withhold relevant materials from the Court and from the Applicants is a further infringement of the Applicants' rights and puts at issue the integrity of the Court process. It is both prejudicial and an abuse of process.

Under the circumstances, with the outstanding disclosure issues unresolved, we are concerned about how to advance the application and still ensure that the Applicants' rights are protected. We would suggest that a conference call with the parties would be of assistance in finalizing the process. We realize that our supplementary memorandum of argument is due today. We have not completed it, and would ask the Court that we be permitted to do so once the record is complete. Even if the Court should find that the additional documents, which have not been provided, are not necessary to complete the record, or that the Applicants should be filing their supplementary factum without the complete record, we would request the Court's indulgence to file the memorandum a few days late, with the Ministers being permitted a consequent extension to reply. Thank you.

Yours Truly,

Barbara Jackman and Hadayt Nazami

Cc. Counsel for the Respondent