

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200416

Docket: A-102-20

Ottawa, Ontario, April 16, 2020

Present: LOCKE J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

WHEREAS the applicant has filed an application for judicial review of two public statements made by the respondent on its website; these two public statements comprise (i) a Statement on Vouchers published on March 25, 2020 concerning the propriety of airlines offering vouchers or credits for future travel (instead of refunds) to passengers affected by flight disruptions caused by COVID-19, and (ii) a webpage entitled Important Information for Travellers During COVID-19 which refers to the Statement on Vouchers; the applicant argues that the Statement on Vouchers was published contrary to the respondent's own *Code of Conduct*, and further that it misleads passengers concerning their rights;

AND WHEREAS, in the context of this application, the applicant has made a motion in writing (under Rule 369 of the *Federal Courts Rules*, SOR/98-106) for an interlocutory order that, among other things, the two public statements in question be removed from the respondent's website;

AND WHEREAS there appears no longer to be any dispute that the applicant's motion record has been properly served on the respondent;

AND WHEREAS on March 19, 2020, this Court issued a *Notice to the Parties and the Profession*; the Notice provided, among other things, for a suspension period ("suspension period"); this is a period during which time will not run under the *Federal Courts Rules*, judgments and directions; the Notice set the suspension period from March 16, 2020 to April 17, 2020;

AND WHEREAS on April 2, 2020, this Court issued a further *Notice to the Parties and the Profession* extending the suspension period to May 15, 2020;

AND WHEREAS the March 19, 2020 Notice suggests that the suspension period may not apply in cases of genuine urgency, and that such cases should be dealt with case-by-case;

AND WHEREAS the applicant requests that its motion be dealt with on an expedited basis and as a case of genuine urgency not subject to the suspension period; among other things, the applicant alleges that the Statement on Vouchers is being cited by members of the travel industry, including air carriers, travel agencies and travel insurance companies, to convince passengers (wrongly, it is alleged) that they are not entitled to refunds for travel disruptions caused by COVID-19, and must instead be satisfied with vouchers, credits, cancellation fees, or

reduced refunds; the applicant argues that, since the Statement on Vouchers is affecting relations between non-parties, any delay in addressing the concerns raised in its application and its motion may give rise to irreparable harm, and that this matter is therefore urgent;

AND WHEREAS the respondent opposes the request that the applicant's motion be dealt with on an expedited basis; the respondent notes that its operations have been significantly affected by various measures put in place in the context of COVID-19, though it does acknowledge on its website that it "continues to maintain its normal operations" other than dispute resolution activities involving air carriers and their passengers; the respondent also notes that the Statement on Vouchers has already been widely publicized, and that little benefit would therefore be achieved by dealing with the applicant's motion on an expedited basis; the respondent further alleges that it will suffer significant prejudice if required to respond to the applicant's motion in the normal course;

AND WHEREAS it is not the role of this Court to reach any conclusions at this time concerning the issues that will be considered in the context of the applicant's motion or the applicant's application;

AND WHEREAS the Court is satisfied that, if the applicant is successful in its arguments on the motion, there is potential for reliance by non-parties on the Statement on Vouchers such that their rights might be irrevocably affected - indeed the timing of the publication of the Statement on Vouchers (in the midst of the COVID-19 pandemic) suggests that it was intended to have an immediate effect on relations between air carriers and their passengers;

AND WHEREAS the Court is also satisfied that, though the respondent's resources are limited at present, it is not unable to deal with the applicant's motion during the suspension period, especially if the usual timelines are relaxed somewhat; the Court is not convinced that the respondent will suffer significant prejudice under these circumstances;

AND WHEREAS the Court is also not convinced that the wide dissemination of the Statement on Vouchers is a reason not to expedite the applicant's motion; the apparently urgent basis on which the Statement on Vouchers was prepared and published suggests that the question of its removal should likewise be considered on an expedited basis;

AND WHEREAS the Court is therefore satisfied that it is in the interest of justice that the applicant's motion be dealt with during the suspension period despite the March 19 and April 2, 2020 Notices;

THIS COURT ORDERS that:

1. The applicant's request that its motion for an interlocutory order shall be dealt with on an expedited basis is granted.
2. The respondent shall serve and file its record no later than April 29, 2020.
3. The applicant may serve and file its written representations in reply within eight days after being served with the respondent's record.

“George R. Locke”

J.A.