

VIA EMAIL

April 16, 2020

Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario K1A 0H9

Dear Registry Officer,

RE: Air Passenger Rights v. Canadian Transportation Agency (FCA : A-102-20)

We are counsel for the Applicant. Please kindly bring this letter to the Court's attention.

Shortly after our letter to the Court on April 15, 2020, this Court published updated practice directions on COVID-19. The Court's most recent guidance contemplates partial reopening of court operations and specifically provides for dispositions in writing, teleconference, or video conference. In the practice directions, the Court specifically noted that the nature of the case is a factor to consider in the manner of proceeding with a case.

This Court has clearly stated that judicial review, such as the Application, is to be determined in a summary fashion in a timely and speedy manner without delay:¹

[30] As subsection 18.4(2) makes clear, judicial review is meant to be a timely, summary proceeding allowing the administration to implement its administrative decision with no or little delay if the decision is challenged and deemed to be lawful or, if it is deemed to be unlawful, **to quickly make the corrective measures required** for it to comply with the law and take effect.

[31] The rights and obligations of citizens are also determined within a short time. If the lawfulness of the decision is confirmed, the citizen must comply with it. If, however, the decision is found to be unlawful, the citizen may, where applicable, bring an action in liability against the administration. [emphasis added]

The Supreme Court of Canada also provided similar guidance:²

[26] The focus of judicial review is to quash invalid government decisions — or require government to act or prohibit it from acting — by a speedy process. A bookstore, for example, will have a greater interest in getting its foreign books through Canada Customs — despite ill-founded allegations of obscenity — than in collecting compensation for the trifling profit lost on each book denied entry (Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue), 2007 SCC 2, [2007] 1 S.C.R. 38). Thus s. 18.1 of the Federal Courts Act establishes a summary procedure with a 30-day time limit. There is no pre-hearing discovery, apart from what can be learned through affidavits and cross-examination. The applications judge hears no viva voce evidence. Damages are not available. **Judicial review suits the litigant who wishes to strike quickly and directly at the action (or inaction) it complains about**. A damages claimant, on the other hand, will often be unaware of the nature or extent of its losses in a 30-day time frame, and may need pre-trial discovery to either make its case or find out it has none.

[emphasis added]

¹ *Association des crabiers acadiens Inc. v. Canada (Attorney General)*, 2009 FCA 357

² *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62

The Applicant submits that this Court's recent practice directions and the authorities above, firmly support expeditious determination of the interlocutory motion and the Application. The underlying concern is the Agency's handling of the COVID-19 situation, conduct which is still continuing. So far, the Agency has offered no assurances to protect the citizens' rights in the interim if the hearing were to be delayed. If the Agency's action is found to be unlawful, corrective measures must be made quickly (as noted in this Court's jurisprudence above), which is what the interlocutory motion is all about. Delays could leave citizens with no remedy (see footnote 1 above, *Association des crabiers acadiens Inc. v. Canada (Attorney General)*, 2009 FCA 357 at para. 32 and the bookstore example in footnote 2 above, *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62).

Should the Court have any directions, we would be pleased to comply.

Yours truly,

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