

August 19, 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 (A-102-20)

We are counsel for the Applicant. This letter is submitted pursuant to the August 18, 2020 Order of Boivin J.A. ordering that the Applicant file its request for extension of time by letter. The Applicant requests an extension of time of five-days, to August 19, 2020, for serving and filing the Applicant's Responding Motion Record in response to the Agency's preliminary motion to strike.

The court expects counsel to request an extension of time as soon as practicable, which Applicant's counsel has abided by in this instance. On the business day that the Applicant was deemed to have been served with the Respondent's motion, Applicant's counsel requested a short extension from the Agency pursuant to Rule 7. When consent was not forthcoming, on the next business day, Applicant's counsel wrote to the Court seeking directions.

Motions for extension of time turn on the facts of each case and the applicant must demonstrate: (1) a continuing intention to pursue the application; (2) that the application has some merit; (3) that no prejudice arises from the delay; and (4) that a reasonable explanation for the delay exists.

The fact that the Applicant has already served and filed their Responding Motion Record on August 18 (one day *earlier* than the requested 5-day extension to August 19) firmly demonstrates the Applicant's continued intention to advance the important issues in its Application for judicial review. The Applicant has also filed a leave to appeal to the Supreme Court from Mactavish, J.A.'s Order of May 22, 2020 in this case. The Applicant's Supreme Court leave application addresses the issue of availability of judicial review, which is the same issue in the Agency's motion, further confirming the Applicant's continued intention to advance its case for judicial review.

The Applicant's filed Responding Motion Record confirms that there is merit to the Applicant's argument on the availability of judicial review. The Applicant relies on recent jurisprudence from the Supreme Court on the availability of judicial review that supports the Applicant's position.

In respect of prejudice arising from the five-day extension that the Applicant requests, the Agency has not pointed to any prejudice in their letter to the Court dated August 7, 2020, where the Agency indicated that it takes no position with respect to the Applicant's request for a five-day

extension to file its Responding Motion Record. Similarly, the Agency did not point to any prejudice when the Agency refused to consent to the Applicant's request for a five-day extension.

Moreover, all of the evidence the Applicant relies upon were in the Agency's possession well in advance of the August 14, 2020 deadline under Rule 369. Even for the Affidavit of Dr. Gabor Lukacs affirmed on August 18, 2020, Exhibits A-C were in the Agency's hands on August 3, 2020 and Exhibit D was in the Agency's hands on August 7, 2020. There is no surprise for the Agency.

As for the reason for seeking the extension of time, the Applicant relies on the unavailability of counsel, as expressed in its letter to the Court dated August 5, 2020. We note that there were some slight changes to counsel's availability after the August 5, 2020 letter was filed, which permitted the Applicant to prepare its Responding Motion Record one-day earlier than planned.

On August 9, 2020, Applicant's counsel learned that the adjournment motions scheduled before the Supreme Court of British Columbia for August 10 and 13 would have to be rescheduled to August 17 and 21 for the reason that the presiding judge was no longer available on the originally scheduled dates. The August 17 hearing proceeded as scheduled.

Furthermore, Applicant's counsel was scheduled to argue a four-day summary trial on August 11-14, 2020 before the Supreme Court of British Columbia. The court adjourned the summary trial mid-day on the second day, August 12, 2020, after hearing preliminary submissions on "suitability" for summary trial. The court directed that Applicant's counsel file further motion materials within seven days, which Applicant's counsel just completed on August 17, 2020.

In addition to the professional obligations noted in the letter of August 5, 2020, Applicant's counsel also completed another motion before the Supreme Court of British Columbia on August 18, 2020.

Applicant's counsel is a sole practitioner that has been advancing this Application for judicial review from the onset on a pro-bono basis. The Applicant submits it was impossible to seek alternative *pro bono* counsel to prepare the Responding Motion Record on short notice.

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

Yours truly,
EVOLINK LAW GROUP


SIMON LIN

Cc: Mr. Allan Matte, counsel for the Respondent, Canada Transportation Agency