

May 17, 2022

VIA EMAIL

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

Dear Madam or Sir,

RE: Air Passenger Rights v. AGC and CTA (A-102-20)

We are counsel for the Applicant. Please bring this letter to Gleason J.A.'s attention. This letter responds to the letter filed today by the Respondent, the Attorney General of Canada [**AGC**].

Respectfully, the AGC's letter attempts to argue the merits of two pending motions (i.e., one motion filed by the Canadian Transportation Agency [**CTA**] under Rule 94 on May 12, 2022, and a motion filed by the Applicant on May 16, 2022). Most importantly, the AGC's summary therein regarding the substance of the two motions is grossly misleading in at least two material respects.

The AGC Conflated Two Completely Different Document Production Obligations

The AGC is conflating two completely different and separate document production obligations. The Applicant's motion primarily deals with production of documents *relating to the merits of this Application* (i.e., the October 15, 2021 Order where Gleason, J.A. ordered the CTA to produce three categories of documents and the April 11, 2022 Order where Gleason, J.A. ordered production of specific items already within the three categories from the October 15, 2021 Order).

On the other hand, on April 11, 2022, the Court ordered the CTA to file an affidavit regarding its document search efforts, including eight specifically defined topics in paragraph 47 of the reasons for the April 11, 2022 order [**CTA Document Search Affidavit**]. This affidavit was ordered because numerous issues have arisen from the CTA's document search, particularly key documents being "non-existent" or "no longer in existence" (i.e., already deleted). The Court also specifically provided for cross-examination on the CTA Document Search Affidavit.

In the CTA's Rule 94 motion, the CTA wishes to be relieved from bringing any documents to the cross-examination for the CTA Document Search Affidavit. The documents that the Applicant requested in the direction to attend are (1) documents that are referenced in the CTA Document Search Affidavit but not attached; or (2) records about the CTA's document search efforts touched upon in the CTA Document Search Affidavit. The CTA's motion is a clear attempt at an end run to circumvent the Court's April 11, 2022 ruling and the right to cross-examination. Regrettably, the CTA has also failed to attend the cross-examination on May 3, 2022.

We also take this opportunity to inform the Court that the documents produced pursuant to the April 11, 2022 Order strongly suggest that the CTA has been misleading the Court on what document it has in its possession, based on a simple comparison between its February 1, 2022 written representations to the Court and the actual documents themselves (see paras. 121-125 of the Applicant's written representations on May 16, 2022).

The Applicant's Motion is not "Redundant and Unnecessary"

The AGC's assertion that the Applicant's motion is somehow "redundant and unnecessary" is inaccurate. The Applicant acknowledges there is a minor overlap in that both motions touches upon the cross-examination on the CTA Document Search Affidavit that the Court had permitted in the April 11, 2022 reasons for order, at paragraph 50.

The AGC completely overlooked that the Applicant's motion mainly seeks the CTA's compliance with the Court's orders in five material respects, which are not dealt with at all in the CTA's Rule 94 motion: (1) Withholding of documents whose production was previously ordered, based on unsubstantiated privilege assertions; (2) Failure to produce the Twitter Private Messages and Info Account emails as ordered on April 11, 2022; (3) Production of March 24, 2020 Members' Meeting Documents, the existence of which is demonstrated from the CTA's documents produced on April 20, 2022; (4) Impermissible redactions to the documents produced on April 20, 2022; and (5) Filing of a deficient certificate of authenticity, contrary to the Court's order on April 11, 2022.

The AGC also exaggerated the complexity of the Applicant's motion by claiming that it is about 650 pages (with the book of authorities). The AGC omitted to advise the Court that the Applicant's motion pales in comparison to the CTA's motion of 730 pages (with the book of authorities).

Should the Court have any directions or require attendance at a case management conference to address the topics raised above, we would be pleased to comply.

Yours truly,
EVOLINK LAW GROUP



SIMON LIN
Barrister & Solicitor

Cc: (1) Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada, and (2) Mr. Allan Matte and Kevin Shaar, counsel for the Canadian Transportation Agency