

October 19, 2023

VIA EMAIL

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

Dear Madam or Sir,

RE: APR v. AGC and CTA (A-102-20) – Informal Motion for Extending Page Limit

We are counsel for the Applicant. Please bring this letter to Gleason J.A.'s attention. Her Ladyship is seized of all pre-hearing issues, pursuant to the Order of July 19, 2022. Please accept this letter as the Applicant's informal motion to extend the page limit for the Applicant's Memorandum of Fact and Law to forty-five (45) pages. The Applicant has attempted to seek consent from the AGC to extend the page limit and the AGC has refused any extension.

The Court's discretion to extend the page limit is governed by the factors in [Canada v. General Electric Capital Canada Inc.](#), 2010 FCA 92 [**General Electric**] at para. 5. The Applicant submits that there are two reasons in this case warranting a relaxation of the 30-page limit.

Firstly, this Application is not an appeal. On an appeal of a lower decision or a judicial review of an "order or decision" from a federal tribunal, the Court would benefit from a decision of the lower court or the tribunal below that: (1) decides all the pertinent facts; and (2) narrows down the legal issues for appeal. Rather, this Court will be sitting as the court of first instance on the judicial review of the CTA's conduct that does not relate to an "order or decision."

As revealed in the document disclosure motions, this Application is a highly fact-driven matter that involves important and complicated questions of whether the CTA and its appointed Members acted improperly behind closed doors between March 18-25, 2020. While "important and complicated questions" alone may not necessarily justify a relaxation of the page limit for an appeal,¹ there are three aspects of this first instance judicial review that makes it more complex than a typical judicial review. For ease of reference, the Applicant enclosed a table of contents of its Rule 306 affidavit containing 217 paragraphs, 141 exhibits, spanning 1,102 pages:

- a) For the reasonable apprehension of bias ground of judicial review, the panel would require fulsome explanation, including detailed quotations, on what the CTA said and did on a day-by-day basis between March 18-25, 2020, without the benefit of any first instance decision. The AGC has confirmed that all issues are on the table at this time.

¹ [General Electric](#) at para. 5(d).

Many of the exhibits obtained from the CTA are lengthy email chains spanning days.

- b) At the commencement of this Application, the CTA vehemently contested the Applicant's public interest standing. The Applicant has made good faith attempts to seek clarity from the AGC on whether the AGC intends to continue the CTA's initial objection. The AGC **refused** to confirm if public interest standing would still be contested. Approximately one-third of the Applicant's affidavit deals with this issue. The Applicant would need to dedicate a material portion of its memorandum to explain every factor for public interest standing, a topic that does not arise on a typical judicial review. In a recent case that also involved public interest standing, the applicant there had the benefit of a memorandum solely on the issue of public interest standing, followed by specific guidance from the Court on further submissions on any residual points that needs to be addressed for public interest standing.²
- c) In typical judicial reviews involving an "order or decision", the prejudice to an applicant would be obvious since the applicant would be subject to the underlying "order or decision." The prejudice to passengers in this case may not be readily apparent on its face and would require detailed submissions on the passengers' experiences arising from the CTA's Statement on Vouchers (as demonstrated in the exhibits totalling about 200-pages), along with a fulsome explanation of the underlying laws that the CTA's Statement on Vouchers sought to undermine, including federal laws for protection of passengers and applicable provincial consumer protection laws.

Secondly, the need for procedural fairness mandates that a party must be permitted to present its whole case effectively.³ In the circumstances of this case, there is an "inequality of arms." The CTA was granted leave to file a ten-page memorandum.⁴ The CTA will be elaborating on its statutory jurisdiction, in support of the AGC's argument that issuing the Statement on Vouchers was within the CTA's mandate. The Applicant will be submitting that the CTA and its appointed Members acted for an improper purpose, at the behest of various airlines, to protect the airlines' private commercial interest and overlooked the public interest. The AGC and CTA will collectively have 40 pages for submissions, whereas the Applicant only has 30 pages.

² [Democracy Watch v. Canada \(Attorney General\)](#), 2022 FCA 208 at paras. 24 and 60.

³ [General Electric](#) at para. 5(f).

⁴ [Air Passenger Rights v. Canada \(Attorney General\)](#), 2021 FCA 201 at para. 38.

While the Applicant has not filed a draft memorandum for this informal motion, this Court has granted extensions to the page limits in the absence of a memorandum.⁵ The numerous memorandums that the Applicant has filed in previous motions clearly demonstrate the case is fact-driven with complicated and novel legal issues that have not been previously considered by this Court, or other Canadian courts.

Should the Court see fit to grant an extension of less than 15-pages at this time, the Applicant submits that it should be granted leave to seek a further extension if necessary, similar to the approach adopted by this Court in *General Electric*.⁶

The Applicant is not seeking costs for this informal motion.

Should the Court have any directions, or require further submissions, 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. Kevin Shaar, counsel for the Canadian Transportation Agency

Encls: Table of Contents for Applicant's Rule 306 Affidavit.

⁵ [General Electric](#) at para. 5(h) and 6-7.

⁶ [General Electric](#) at para. 7.

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