



Department of Justice
Canada

Ministère de la Justice
Canada

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BY DIGITAL SUBMISSION WITH COPY TO COUNSEL BY EMAIL

October 23, 2023

Our File Number: LEX-500074803

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

Re: Air Passenger Rights v The Attorney General of Canada
Court File No.: A-102-20
Applicant's counsel's letter of October 19 2023 re: extension of factum size

Dear Administrator:

I would be grateful if this letter were brought to the attention of the Honourable Justice Gleason at your earliest convenience.

I write in respect of the October 19, 2023 letter from the Applicant's counsel, framed as an informal motion requesting leave to file a 45 page memorandum of fact and law in place of the 30 pages allowed under the *Federal Court Rules*, Rule 70(4).

The AGC opposes this request.

It is the obligation of the parties before the Court of Appeal to make their arguments in the time and within the limits provided by the Rules. As this Court of Appeal has noted in *Canada v. General Electric Capital Canada Inc.*, 2010 FCA 92 (CanLII), Rule 70 uses the term "concise" three times. There is no page limit on the affidavit evidence which a party may rely upon – and the Applicant's 1000+ page affidavit exemplifies this – however a decision to file a sizeable affidavit does not equate with a requirement for more space to make argument. It is up to each party to use the allocated space to make their central and important points, and requests to increase the 30-page limit are to be granted sparingly and exceptionally. Bald assertions that issues are important or complicated are not sufficient.

There is no basis for the Applicant's suggestion that they are prejudiced because the Respondent and Intervener's facta together equal more pages than they are permitted under the Rules. The CTA intervener is permitted a ten-page affidavit to address their own jurisdiction and no other subject.

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Finally, a point of clarification in respect of the October 19, 2023 letter: the Applicant's counsel requested AGC consent to an extension to 50 pages. The AGC declined. They did not propose any other extension. Further, "all issues are on the table" until an Applicant puts forward their arguments. There is no obligation on a respondent to concede issues which may be in dispute prior to seeing an applicant's argument, and a lack of concession does not oblige an applicant to expand an argument which, reasonably constructed, will require only the space allocated by the Rules.

Yours truly,

A handwritten signature in black ink, appearing to read "Lorne Ptack". The signature is written in a cursive style with a long horizontal stroke at the end.

Lorne Ptack
Sandy Graham
Counsel for the Respondent

c.c. Simon Lin, Counsel for the Applicant
Kevin Shaar, Counsel for the Intervener