



By Email: [Information@fca-caf.gc.ca](mailto:Information@fca-caf.gc.ca)

April 15, 2020

The Judicial Administrator  
Federal Court of Appeal  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

**Re: *Air Passenger Rights v Canadian Transportation Agency***  
**Court File No.: A-102-20**

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We write in reply to the Applicant's letter dated April 14, 2020.

It is surprising that Counsel for the Applicant would question the current situation and its impact on government employees, and demand affidavit evidence to support our submission that operations have been affected. It is well known that government employees have been directed to work remotely if they are able to do so. This includes Agency and Court staff. If the Court wishes affidavit evidence in support of these facts we could endeavour to provide one. In our view it is not necessary.

It was conceded in our submission yesterday that "normal operations are being maintained as much as possible". This includes services to the public as indicated in the March 25, 2020, statement on the Agency's website to which Counsel for the Applicant refers.<sup>1</sup> The Applicant quotes only the first half of the Agency's statement regarding operations during the pandemic. The second paragraph emphasizes the impact of the COVID-19 pandemic on operations.

Please note, however, that the CTA has temporarily paused all dispute resolution activities involving air carriers until June 30, 2020, to permit them to focus on immediate and urgent operational demands. While you can continue to file air passenger complaints with us and all complaints will be processed in due course, we may not be able to respond quickly. On or before June 30, 2020, the Agency will determine if the pause should end on that date or be extended to a later date.

While the Agency is maintaining operations, they have clearly been affected by the closing of the Agency's offices, the restrictions on travel and the need for social distancing.

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<sup>1</sup> Canadian Transportation Agency, "COVID-19 and CTA Services" (25 March, 2020), online: *Canadian Transportation Agency* <<https://otc-cta.gc.ca/eng/covid-19-and-cta-services>>.

There is no evidence that a short delay in proceeding with the motion will result in a denial of justice. The interlocutory relief the Applicant seeks will have the same effect even if delayed for a few weeks for reasons of health and safety.

The Applicant makes reference to the Updated Practice Direction and Order (COVID-19)<sup>2</sup> of the Federal Court which has also imposed a Suspension Period until May 15, 2020, and asserts that motions that would have substantial financial consequences should proceed. Again, the Applicant fails to make reference to important aspects of the Federal Court's Direction. The Applicant does not make reference to the examples of the types of cases that would be considered "urgent" or "exceptional" such that they should be exempted from the Suspension period.

By way of guidance only, applications for a stay of release from detention or for a stay of removal from Canada will be considered to be "urgent" if the release or removal is scheduled to occur during the Suspension Period, or within seven (7) days following its termination. Likewise, an application in respect of the seizure of a ship, an aircraft, or other property, will also be considered to be urgent. Similarly, matters where hardship or substantial financial consequences are likely to result from delay may be considered to be "urgent" or "exceptional." Such matters will be heard by telephone or video conference.

The Applicant's motion does not meet the test for urgency when considering the Federal Court's Direction as a reference. Nobody's liberty or property is at stake. There is no evidence that the legal rights of passengers are being affected. In fact, the Applicant repeatedly concedes and relies on his assertion that the Agency's statement is not legally binding.<sup>3</sup>

It is also noteworthy that the Federal Court's Direction states that adjudication of motions in writing pursuant to Rule 369 would continue on condition that all parties consent.<sup>4</sup>

The Ontario Court of Appeal decision of *Carleton Condominium Corporation No. 476 v Wong*<sup>5</sup> is a request for an adjournment of a hearing. The Court determined that the matter could be heard in writing. This is not a "similar adjournment request". This Court has imposed the Suspension Period and the Applicant has failed to show that an exception should be made in his case. The Court determined that questions from the panel could be addressed by teleconference, they were not discussing cross-examinations on affidavits.

The merits of the Application should be considered in the circumstances. Subsection 18.1(1) of the *Federal Courts Act* provides for judicial review by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought. The Applicant is not directly affected. Moreover, the Applicant concedes that the Agency's statement, which is the

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<sup>2</sup> Federal Court, "Updated Practice Direction and Order (COVID-19)" (4 April 2020), online: *Federal Court* <<https://www.fct-cf.gc.ca/content/assets/pdf/base/FINAL%20-%20EN%20Covid-19%20Amended%20Practice%20Direction%20Order.pdf>> [*Updated Practice Direction and Order (COVID-19)*].

<sup>3</sup> See, for example, the Memorandum of Fact and Law of the Applicant dated April 7, 2020 at paras 61-63, Applicant's Motion Record dated April 7, 2020 at 204-205.


<sup>4</sup> *Updated Practice Direction and Order (COVID-19)*, *supra* note 2 at 4.

<sup>5</sup> [2020 ONCA 244](#).

subject of the Application, is not legally binding. We are contemplating a motion to strike the Application once the Suspension Period has expired on the basis that the Applicant is not affected by the statement and if it is non-binding and does not affect legal rights, judicial review is not available.

In our submission the Suspension Period should continue to apply.

Yours truly,

A handwritten signature in black ink, appearing to read "AMT", followed by a period.

Allan Matte  
Senior Counsel  
Legal Services Directorate  
Canadian Transportation Agency  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0N9

Tel: (819) 953-0611

Fax: (819) 953-9269

Email: [Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)

Email: [Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca](mailto:Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca)

c.c.: Simon Lin

Counsel for the Applicant, Air Passengers Rights

[simonlin@evolink.com](mailto:simonlin@evolink.com)