

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220126

Docket: A-102-20

Ottawa, Ontario, January 26, 2022

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

FURTHER to the Case Conference held on January 25, 2022, scheduled to discuss the process for dealing with various motions pending before the Court;

AND UPON reading the materials filed in respect of the said motions, including the applicant's record in support of its January 17, 2022 motion;

AND UPON considering that the applicant seeks in its January 17, 2022 Notice of Motion what it terms an order of progressive enforcement, whereby this Court would issue various orders requiring, *inter alia*: (1) production of certain documents; (2) service of the production order upon the Chairperson, Vice-Chairperson and the Secretary and Senior Counsel for the intervener; and (3) issuance of a show cause order for contempt against the aforementioned individuals upon the filing by the applicant of affidavit evidence of failure to comply with this Court's Order of October 15, 2021 or the further production order sought by the applicant in its January 17, 2022 Notice of Motion;

AND UPON considering that the authority relied upon by the applicant in support of its request for progressive enforcement, namely *Hyundai Motor America v. Cross Canada Auto Body Supply (West) Limited*, 2007 FC 120 (*Hyundai*) is not binding upon this Court and is distinguishable as in that case, unlike the present, there was no claimed uncertainty surrounding which documents had previously been ordered to be disclosed;

AND UPON considering that in *Hyundai* Justice Dawson held at paragraph 15 that a court's contempt powers "... should not be ... invoked when they are premature or not required";

AND UPON considering that resort to this Court's contempt powers in respect of disclosure issues is premature at this stage as there is no reason to assume that there would be non-compliance with any further production order that might be made in response to the applicant's January 17, 2022 Notice of Motion;

AND UPON determining that the most expeditious and appropriate method for dealing with the various orders requested by the applicant in its January 17, 2022 Notice of Motion is to bifurcate the said motion and deal in the first instance only with the order requested in paragraph 1 of the Notice of Motion, which will clarify which of the documents in dispute are to be produced in accordance with this Court's Order of October 15, 2021;

THIS COURT ORDERS that:

1. The Court shall hear the applicant's January 17, 2022 motion in an bifurcated manner and address in the first instance only the order requested in paragraph 1 of the Notice of Motion as well as the request for costs in respect of this portion of the motion;
2. Any materials the respondent or the intervener wish to file that are responsive to the request for relief made in paragraph 1 of the Notice of Motion and the request for costs shall be served and filed by no later than February 1, 2022; and
3. In the event the applicant requires an extension of time to file its reply representations in respect of this portion of its motion, the applicant may seek an order approving the extension via way of email addressed to the Registry.

"Mary J.L. Gleason"

J.A.