

May 16, 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 concerns various matters arising out of the Applicant's January 16, 2022 motion [**Jan. Motion**], and Gleason, J.A. is seized with that motion. Her Ladyship had issued an order on October 15, 2021 that the CTA produce three categories of documents [**Oct. 2021 Order**]. Thereafter, Her Ladyship issued two orders for the Jan. Motion, on January 26, 2022 bifurcating that Motion [**Jan. 2022 Order**] and on April 11, 2022 for the CTA to produce specific documents [**Apr. 2022 Order**].

Show Cause Motion for Contempt of Court

In the Jan. Motion, the Applicant sought an Order for production of twenty-one specific categories of documents that were within the scope of the Oct. 2021 Order but had not been produced, and a *show cause* order that the CTA was allegedly in contempt of Court. In the Jan. 2022 Order, the Court bifurcated the motion, with the *show cause* motion to be heard at a later date if necessary.

The Applicant respectfully requests the Court to fix a timetable for filing further evidence and supplementary submissions, for the *show cause* order. The Applicant requests that the timeline should start after the cross-examination of the CTA's affiant on the document search affidavit that was ordered in para. 7 of the Apr. 2022 Order. As summarized further below and detailed in the Applicant's motion filed today [**Motion**],¹ the CTA's affiant failed to attend that cross-examination.

Ruling on Category C7 for the Applicant's Jan. Motion

In the Apr. 2022 Order at para. 6, the Court ordered that the AGC provide submissions for one category of documents requested in the Jan. Motion (i.e. Category C7 for a March 24, 2020 Members' Meeting). On April 21, 2022, the AGC had filed a short letter. In the Reasons for April Order at paras. 38-43, Her Ladyship had not yet ruled on category C7. As a result, the Applicant respectfully requests that the Court rule on this remaining category. Further submissions can be found in the Motion at paras. 58-63 and 100-110 of the Written Representations.

¹ Motion Regarding the CTA's Affiant's Failure to Attend a Cross-Examination, and Motion to Enforce, Vary, and Correct the Court Orders Issued by Gleason, J.A.

Ruling on the Remaining Thirteen (13) Categories in the Jan. Motion

In the Apr. 2022 Order, in paras. 4-6, the Court ordered the CTA to produce seven (7) of the twenty-one categories and for the AGC to provide submissions within 10 days for category C7. There are thirteen (13) categories that remain to be decided, and the Court had ordered the CTA to file an affidavit detailing its document search efforts (para. 7 of Apr. 2022 Order).

The Applicant respectfully requests the Court to fix a timetable for filing further evidence and supplementary submissions, for these remaining 13 categories in the Jan. Motion. The Applicant also requests that the timeline should start after the cross-examination of the CTA's affiant.

Rule 97 Order for Failure to Attend a Cross-Examination

The Motion filed today seeks to compel the CTA's affiant to attend the cross-examination specified in para. 50 of Gleason, J.A.'s Reasons for Apr. 2022 Order. As stated in the Motion at paras. 39-46 and 70-73 of the Written Representations, the CTA's affiant failed to attend on May 3, 2022.

We also note that the CTA has filed a motion on May 12, 2022 purporting to make various challenges regarding this cross-examination. The Applicant will shortly be filing a motion record in response, in accordance with the *Federal Courts Rules*.

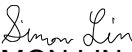
Informal Motion for Privilege Claims from the Recent CTA Document Searches

In the Oct. 2021 Order at paras. 5-8, Gleason, J.A. ordered the AGC to file an informal motion for Her Ladyship to determine any assertions of privilege from the CTA's document searches. We regret to inform the Court that the AGC (and the CTA) failed to abide by the Court's specified process for the CTA's document search for the Apr. 2022 Order. This particular concern is addressed in paras. 48-53 and 89-94 of the Written Representations for the Motion.

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

Encls: Applicant's *Motion Regarding the CTA's Affiant's Failure to Attend a Cross-Examination, and Motion to Enforce, Vary, and Correct the Court Orders Issued by Gleason, J.A.*, dated May 16, 2022

Cc: (1) Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada, (2) Mr. Allan Matte and Kevin Shaar, counsel for the Canadian Transportation Agency, and (3) Ms. Anne Tardif and Mr. James Plotkin, counsel for France Pégeot, Elizabeth C. Barker, and Valérie Lagacé,