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September 1, 2020

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

Dear Registry Officer,

RE: Air Passenger Rights v. Canadian Transportation Agency (A-102-20)

We are counsel for the Applicant, Air Passenger Rights. Please kindly bring this letter to the attention of Boivin, J.A. By Order dated August 18, 2020, Boivin, J.A. is seized of this file.

We send this letter to the Court about the Agency's Reply that was served and filed August 31, 2020. The Applicant notes that, from the outset of this Application in April 2020, in various correspondences or submissions to the Court, the Agency has made bald and insinuating allegations on Applicant's motive in bringing the within application for judicial review, all without any evidentiary basis, and the Agency made numerous attacks against the witness Dr. Lukacs.

The Applicant has refrained from responding to the Agency's allegations as they are not relevant to the issues before the Court. However, the Agency's recent conduct appears to be treading far beyond forceful advocacy and may require specific attention from this Honourable Court. In its Reply, for example, the Agency begins with a wholly inaccurate claim that "*The Applicant is a frequent litigator before the Courts*." The Agency and its counsel *know* that claim is not true.

Should the Court require the Applicant to specifically respond to the Agency's allegations regarding Dr. Gabor Lukacs or his previous unrelated litigation, please kindly advise.

Moreover, by way of this letter, the Applicant respectfully requests this Honourable Court to consider the three brief paragraphs below as the Applicant's sur-reply to the Agency's Reply of August 31, 2020. The Agency's Reply is even longer than its in-chief submissions, appears to be case splitting with the introduction of fresh arguments, and invites this Honourable Court to make a legal error that goes against the clear text of section 18.1 pf the *Federal Courts Act*.

In reply to paragraphs 3, 10, and 11, the Agency invites this Honourable Court to adopt a novel approach to decouple the "matter" and consider it separately and apart from the relief that is being sought, and the grounds for the relief. That goes squarely against the text of section 18.1 of the *Federal Courts Act* confirming that "matter" is considered in the context of the relief being sought:

> *18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.*

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In paragraphs 13-15 of its reply, the Agency mischaracterizes the judicial review in suggesting that the Publications is the only action that is to be considered to determine "the matter in respect of which relief is sought". That cannot be correct, at least insofar as it concerns the Reasonable Apprehension of Bias Ground for judicial review. A reviewing court should also consider the internal statements of any impugned members in relation to the Publications because "public statements are only part of the evidence that must be examined …. Private statements are often more indicative of a person's true state of mind, than public statements."[1] It would be open to the panel of this Honourable Court, after considering the full evidentiary record, to find that an impugned member exhibited a reasonable apprehension of bias from supporting the Publications and grant relief in the form of a permanent injunction.[2]

In respect of the Agency's "dinner" example at paragraph 16, the within application for judicial review is clearly far more nuanced than the simple dinner involving a single case or party. According to the Agency, the Publications in question have been widely disseminated, likely to hundreds of thousands of passengers. Justice and fairness, for both those passengers and the Agency, would demand an oral hearing to determine the merits of the judicial review, not a summary dismissal on a technicality, which the Applicant submits is devoid of merit.

Should the Court have any directions, we would be pleased to comply.

Yours truly,
EVOLINK LAW GROUP

Simon Lin

SIMON LIN

Cc: Mr. Allan Matte, counsel for the Respondent, Canadian Transportation Agency

[1] *Canadian Arab Federation v. Canada (Citizenship and Immigration)*, 2013 FC 1283 at paras. 78-81; upheld in 2015 FCA 168

[2] A permanent injunction differs from an interlocutory injunction, in that the infringement or "wrong" has already been established and that "irreparable harm" is no longer a consideration at all (see *778938 Ontario Limited v. Annapolis Management Inc.*, 2020 NSCA 19 at paras. 27-8). The Agency's position relies on Mactavish, J.A.'s finding on "irreparable harm", which would not be relevant at the merits stage.