

December 20, 2021

VIA EMAIL AND FAX (819-953-9269)

Canadian Transportation Agency
ATTN : Ms. Barbara Cuber
Legal Services Directorate
15 Rue Eddy
Gatineau, Québec J8X 4B3

Dear Ms. Cuber,

RE: Air Passenger Rights v. Attorney General of Canada and the Canadian Transportation Agency (A-102-20)

We write regarding the Court's Order dated October 15, 2021 (the "**Order**") and our letter dated December 17, 2021 regarding compliance with the Order. We kindly request that the Canadian Transportation Agency acknowledge receipt of our letter dated December 17, 2021.

Furthermore, please also confirm that the Order and our letter on December 17, 2021 were brought to the attention of the following individuals at the Canadian Transportation Agency, and that they are aware of their obligation to obey the Order.

1. Ms. France Pégeot, Chair and CEO
2. Ms. Elizabeth C. Barker, Vice-Chair
3. Ms. Valérie Lagacé, Senior General Counsel and Secretary

Yours truly,

EVOLINK LAW GROUP



SIMON LIN
Barrister & Solicitor

Cc: Mr. Lorne Ptack and Sandy Graham, counsel for the Attorney General of Canada (email)

Encls: Order of Gleason J.A. dated October 15, 2021; Letter from Applicant's Counsel dated December 17, 2021.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211015

Docket: A-102-20

Ottawa, Ontario, October 15, 2021

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

UPON informal motion of the applicant to file an additional affidavit in respect of its disclosure motion;

AND UPON motion of the applicant for an order under Rules 317 and 318 of the *Federal Courts Rules*, SOR 98/106, requiring the Canadian Transportation Agency (the CTA) to disclose the documents described in the applicant's Notice of Motion;

AND UPON motion of the CTA for leave to intervene in this application and other consequential orders;

AND UPON reading the materials filed;

THIS COURT ORDERS that:

1. The motions are granted on the terms set out below;
2. The additional affidavit from Dr. Gábor Lukács, sworn May 12, 2021, may be filed, effective the date it was received by the Court;
3. Within 60 days of the date of this Order, the CTA shall disclose to the applicant:
 - a. all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020;
 - b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and

- c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed;
4. The foregoing disclosure shall be made electronically;
5. Within 60 days of the date of this Order, the AGC shall submit to the Court for a ruling on privilege all documents over which privilege is asserted that would otherwise fall within paragraph 3 of this Order, the whole in accordance with the Reasons for this Order;
6. Within the same timeframe, the AGC shall serve and file a redacted version of its submissions, from which details of the contents of the documents are deleted;
7. The applicant shall have 30 days from receipt of the forgoing submissions to make responding submissions, if it wishes;
8. The materials related to claims for privilege shall then be submitted to the undersigned for a ruling on privilege;
9. Within 30 days of receipt of a ruling on the privilege claims, the applicant shall file any additional affidavit(s) it intends to rely on in support of its application;
10. The time for completion of all subsequent steps for perfection of this application shall be governed by the *Federal Courts Rules*;

11. The CTA is granted leave to intervene and to file an affidavit and a memorandum of fact and law of no more than 10 pages, the whole in accordance with the Reasons for this Order;
12. The style of cause is amended to add the CTA as an intervener and it shall be served with all materials the parties intend to file;
13. The issues of whether the CTA will be permitted to make oral submissions and of costs in respect of its intervention are remitted to the panel of this Court seized with hearing this application on its merits; and
14. No costs are awarded in respect of these motions.

"Mary J.L. Gleason"

J.A.

December 17, 2021

VIA EMAIL

Attorney General of Canada
ATTN : Mr. Lorne Ptack and Sandy Graham
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Department of Justice, Government of Canada
50 O'Connor Street, Suite 500, Room 526
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Canadian Transportation Agency
ATTN : Ms. Barbara Cuber
Legal Services Directorate
15 Rue Eddy
Gatineau, Québec J8X 4B3

Dear Madam or Sir,

**RE: Air Passenger Rights v. Attorney General of Canada and the Canadian
Transportation Agency (A-102-20)**

We write regarding the Court's Order dated October 15, 2021 (the "**Order**"), where at paragraph 3, the Court ordered the Canadian Transportation Agency to disclose three categories of documents. It has come to our attention that the Canadian Transportation Agency (the "**CTA**") may not have fully complied with the Order, specifically paragraph 3.

We set out the text of paragraph 3 of the Order below for ease of reference.

1. All non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020 (hereafter the "**CTA Member Correspondences**").
2. All non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020 (hereafter the "**Third-Party Correspondences**").
3. All non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed (hereafter the "**Meeting Documents**").

[emphasis added]

At para. 23 of the Court's reasons for judgment, the Court provided the following clarity regarding the terms "meeting" and "third party":

[23] For clarity, meetings include telephone conversations, video conferences and internet meetings as well as in-person meetings and third parties include anyone other than a member or employee of the CTA.

CTA Member Correspondences

Under this first category, the Court ordered production of all non-privileged documents between March 9-25, 2020 concerning the Statement on Vouchers that were either: (1) sent to a member of the CTA; or (2) sent by a member of the CTA.

With reference to the package that the CTA provided on December 14, 2021 (the “**Dec. 14 Package**”), we note that there were at least the following deficiencies:

1. For page 15 of the Dec. 14 Package, there was an attachment titled “Statement.docx” which is a Microsoft Word Document that contains tracked-changes, and possibly comments. We note that a “document” is not limited to a paper print-out of an electronic document. A “document” also captures the original electronic document. We trust that the CTA will provide the original “Statement.docx” with the tracked-changes and comments.
2. For page 17 of the Dec. 14 Package, please refer to #1 above regarding a missing email attachment.
3. For page 31 of the Dec. 14 Package, that page appears to be incomplete. The email that enclosed the Microsoft Word Document titled “Rebooking and Refund Requirements.docx” (page 28 of the Dec. 14 Package) makes reference to jurisdictions, but page 31 only included a printout for one jurisdiction – the European Union. Furthermore, on its face, the table on page 31 should also have a row for “Method of refund” under the “Passenger cancellation” heading. But the printout did not have that row. We trust that the CTA will provide the original “Rebooking and Refund Requirements.docx” for the email on page 28 of the Dec. 14 Package, with the tracked-changes and comments.

Third-Party Correspondences

Under this second category, the Court ordered production of all non-privileged documents between March 9-25, 2020 concerning the Statement on Vouchers that were either: (1) sent to the CTA by third parties; or (2) sent by the CTA to third parties.

Of note, this category is not limited to documents sent/received by a Member of the CTA, but relates to the CTA as a whole.

We note that there are numerous documents missing from the Dec. 14 Package, including but not limited to the following:

1. Based on pages 130, 152, and 157 of the Dec. 14 Package, Ms. Marcia Jones (the CTA’s

former chief strategy officer) sent an email on March 25, 2020 at 2:34PM with the subject line “Update: CTA measures/Mise à jour: mesures prises par l'OTC”. That email dealt with the Statement on Vouchers. The content of the email makes clear that it was intended for consumption by third-parties outside of the CTA. However, the versions of this email that were disclosed only revealed the “To:” and “Cc:” fields for the email, which only had names of the CTA employees. It appears that the CTA may have overlooked that they are to provide the **original** email sent by Ms. Jones,¹ which will contain the recipients list in the “Bcc:” field. We trust that the CTA would provide that original email forthwith.

2. The letter from Air Transat dated March 22, 2020 (pages 163-165 of the Dec. 14 Package) was sent to Mr. Streiner (the former chairperson of the CTA) and copied to Ms. Jones. The CTA had not produced the email that attached this letter from Air Transat, and all of the email responses and/or discussions flowing from this Air Transat letter.
3. At page 150 of the Dec. 14 Package, there was an email dated March 22, 2020 sent by ACTA to the CTA, and the email was labelled as “High” importance and marked for “Follow-up”. The Dec. 14 Package did not include the follow-ups and/or responses sent by the CTA to ACTA regarding this March 22, 2020 email.
4. The discussion between Mr. Streiner, the Deputy Minister of Transport, and an unidentified individual on or before March 23, 2020. This discussion was mentioned in Exhibit B of the Affidavit of Vincent Millette affirmed on December 14, 2021.
5. The discussion(s) and correspondences between Ms. Jones and the Assistant Deputy Minister of Transport during the weekend of March 21-22, 2020. This discussion was also mentioned in Exhibit B of the Affidavit of Vincent Millette affirmed on December 14, 2021.
6. At page 136 of the Dec. 14 Package, there was reference to at least three inquiries from the media, and also numerous inquiries at the CTA’s Info inbox and on Twitter on this issue. The Dec. 14 Package did not include copies of those inquiries, and responses.

Meeting Documents

We note that the Dec. 14 Package primarily consisted of emails and email attachments. The Dec. 14 Package did not include meeting minutes, CTA Members’ meeting or discussion notes, or

¹ We note that Tab 9 of the Dec. 14 Package contains documents from Ms. Jones, but the original copy of this March 25, 2020 email was not included.

meeting agendas for numerous meetings² that a CTA Member participated in, including but not limited to the following meetings or discussions:

1. At page 34 of the Dec. 14 Package, Mr. Streiner confirmed that Air Transat's request to issue a statement regarding vouchers would be discussed at the EC call on March 19, 2020 (the "**March 19 EC Call**").
2. At Exhibit AJ of the Affidavit of Gabor Lukacs affirmed on January 3, 2021, there was a reference to a March 20, 2020 EC where there were decisions and follow-ups (the "**March 20 EC Call**").
3. At page 50 of the Dec. 14 Package, Mr. Streiner refers to a "Members' call tomorrow [March 24, 2020]" to discuss the draft Statement on Vouchers (the "**March 24 Members' Call**").
4. At page 67 of the Dec. 14 Package, Mr. Streiner refers to a meeting he had the morning of March 25, 2020 with Ms. Liz Barker, who is the CTA's Vice-Chair (the "**March 25 Discussion**").
5. At pages 69-70 of the Dec. 14 Package, Mr. Streiner confirmed that there were daily EC calls that he (and likely Ms. Barker) would participate in (the "**Daily EC Calls**").
6. At page 38 of the Dec. 14 Package, Mr. Streiner refers to having had discussions with "other federal players" before March 22, 2020 on the topic of issuing the Statement on Vouchers (the "**Other Federal Players Discussions**").

We note that the majority of the CTA Members are lawyers by trade, including Ms. Liz Barker (the CTA's Vice-Chair), Mr. MacKeigan, Ms. Oates, and Ms. Smith. It would be expected that those Members would have taken detailed notes on any discussions or meetings they participated in, including the March 19 EC Call, March 20 EC Call, March 24 Members' Call, the March 25 Discussion, and the Daily EC Calls.

We also understand that meeting minutes and/or notes are recorded for the CTA's EC calls³ since Ms. Alysia Lau is tasked with notetaking, as evident from the email correspondences.⁴

² As the Court noted, meetings include telephone conversations, video conferences and internet meetings as well as in-person meetings.

³ Including the March 19 EC Call, March 20 EC Call, and/or the Daily EC Calls.

⁴ Exhibit AJ of the Affidavit of Gabor Lukacs affirmed on January 3, 2021.

Furthermore, we understand the Government of Canada's teleconferencing system should have a record feature. Please advise if there are any voice recordings for any of the meetings identified above.

Conclusion

The above are the deficiencies we were able to identify on a cursory review. We will continue to review and will inform you should other deficiencies be identified.

Considering the 60-day time limit fixed by the Court having already expired on December 14, 2021, we would request that the aforementioned deficiencies be rectified by **no later than December 24, 2021**. The Applicant will bring a motion to seek the Court's assistance to enforce the Order thereafter without further notice.

Yours truly,
EVOLINK LAW GROUP



SIMON LIN
Barrister & Solicitor