

April 28, 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)**

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We are counsel for the Applicant. Please bring this letter to Gleason J.A.'s attention. This letter relates to Her Ladyship's Order on April 11, 2022, particularly the cross-examination permitted in that Order,<sup>1</sup> and also responding to the CTA's letter of today (the "**Letter**").

The CTA's Letter is an improper attempt to bring a motion under the guise of a correspondence without any evidence, and to re-litigate the Gleason J.A.'s October 15, 2021 and April 11, 2022 orders. If the CTA objects to the production of documents in the Direction to Attend, it may bring a motion under Rule 94 of the *Federal Courts Rules* ("**FCR**").

Of note the two Federal Court cases in page 5 of the Letter deals with cross-examinations of a respondent's affidavit under Rule 307, **not** an affidavit specifically ordered by the Court to address issues arising from a respondent's retention and search of relevant documents. Based on the CTA's theory, the Applicant would be deprived of its court-ordered right to test whether the CTA properly retained and searched for documents it was ordered to disclose.

Similarly, the CTA's bald assertions of solicitor-client privilege should not be entertained in an informal letter, without the Court being provided with unredacted copies of the documents that may be at issue. Gleason J.A. has already provided a clear procedure for addressing claims of privilege.<sup>2</sup> It is for the Respondent (AGC) to make privilege claims, not the CTA.

Considering that Rule 94 and Gleason J.A.'s reasons for judgment on October 15, 2021 at paras. 28-31 already contain clearly defined processes for addressing the CTA's concerns, the Applicant submits that a case conference is unnecessary. However, should the Court find that a case conference be necessary, the Applicant proposes that Gleason J.A. preside over that conference because the Applicant also wishes to briefly address the Court to correct a clerical error in the April 11 Order. Moreover, Her Ladyship is intimately familiar with this case,

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<sup>1</sup> *Air Passenger Rights v. A.G.C.*, 2022 FCA 64 at para. 50 (CanLII link not available)

<sup>2</sup> [Air Passenger Rights v. Canada \(Attorney General\)](#), 2021 FCA 201 at paras. 28-31.

having rendered numerous decisions in this case in the past year, and presided over the last case conference.

Although the CTA has made lengthy submissions regarding the Applicant's Direction to Attend, it appears that the CTA may have overlooked that their Letter did not contain a copy of that document. A copy of the Direction to Attend is enclosed for the Court's convenience.

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

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN  
Barrister & Solicitor

ENCLS: Direction to Attend for May 3, 2022.

**Cc:** Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada, and Mr. Allan Matte and Kevin Shaar, counsel for the Canadian Transportation Agency.