evoLink LAW

Evolink Law Group
4388 Still Creek Drive, Suite 237
Burnaby, BC V5C 6C6

p. 604 620 2666
info@evolinklaw.com
www.evolinklaw.com

VIA EMAIL

April 14, 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 (FCA : A-102-20)

We are counsel for the Applicant Air Passenger Rights. This letter is in reply to the letter from the Canadian Transportation Agency (the "**Agency**") dated April 14, 2020.

Firstly, with great respect, the Agency mischaracterized this Court's Order on April 9, 2020 (excerpted below). This Court recognized the importance of the issues raised by the Applicant although it was not sufficiently urgent to warrant an *ex parte* hearing without giving the Agency a reasonable opportunity to respond. The Court specifically permitted the refiling of the Applicant's motion upon service on the Agency.

> ***WHEREAS*** *while the matters raised in the Notice of Application are important, they are not of such urgency as to require this Court to interfere in the work of a senior Canadian agency without hearing from it.*
>
> [emphasis added]

Secondly, the Agency's bald assertions of unavailability are not supported by any sworn evidence. Most importantly, the Agency's assertions are squarely contradicted by their own public statement confirming that the Agency is still continuing its normal operations,[1] a statement that continues to be posted as of the writing of this letter.

> *During these difficult times, the Canadian Transportation Agency (CTA) continues to maintain its normal operations while our employees practice social distancing. Our dedicated employees are working remotely and are available through electronic means to provide service. You can continue to request CTA services, file applications, and do normal business with us through our normal channels.*
>
> [emphasis added]

[1] Exhibit "P" of the Applicant's Motion Record at page 95 and posted at https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19

Thirdly, the legal maxim "*justice delayed is justice denied*" finds clear application here. The Applicant's motion record includes evidence on how the purported Statement (as defined in the Notice of Application) are prejudicing passengers. Further delays may render any interlocutory relief moot. To the contrary, the Agency has not provided a scintilla of evidence on how proceeding with the motion will prejudice the Agency, whose mandate is to ensure that consumers are provided clear and correct information. The objective of the Applicant's motion is to precisely achieve that very objective.

Indeed, it seems ironic that the Agency now asserts that there is no urgency in addressing the Statement, but the Agency found it sufficiently "urgent" to publicly disseminate the Statement in the midst of this pandemic. Those contradicting positions are irreconcilable.

Finally, the Applicant is not inviting the Court to embark on a novel procedure. It is common for motions in the federal courts to be addressed in writing (Rule 369). The practice directions of various trial-level courts, which are not binding on this Court, confirms that injunction applications or motions that have substantial financial consequences should still be dealt with during the COVID-19 pandemic.[2]

The Agency's letter confirms that the Statement, which is the subject of the Application, has been "widely publicized", meaning that it has likely been or will likely be relied upon by thousands of passengers in dealing with their refund situations. This would likely amount to a substantial sum individually, and would certainly be a substantial financial sum collectively for all passengers.

The Applicant's position is also supported by a recent Ontario Court of Appeal decision addressing a similar adjournment request where one of the parties relied on COVID-19 as a reason for delay.[3] The reason for delay here is far less compelling considering the

[2] For example see the Federal Court's Updated Practice Direction and Order (COVID-19) dated April 4, 2020 confirming that matters giving rise to hardship or otherwise have substantial financial consequences should be heard. Similarly, the Supreme Court of British Columbia (Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings dated March 30, 2020) stated that injunctions, restraining orders, and preservation orders are presumptively essential or urgent that would warrant a hearing during the pandemic.

[3] *Carleton Condominium Corporation No. 476 v. Wong*, 2020 ONCA 244

Agency is a government entity that is expected to continue their operations, as they publicly indicated in the statement excerpted above.

Indeed, the Ontario Court of Appeal denied the adjournment because the matter was capable of being adequately addressed in writing, with oral questioning over telephone if necessary and it would not be in the interests of justice to later overburden courts with adjourning matters that could have been dealt with fairly during the pandemic. These propositions find clear application in this instance.

The Applicant submits that it is clearly in the interest of justice, particularly the interest of the public to see that justice is done and that any harm to the public is addressed swiftly, even during a pandemic. The Applicant therefore submits that the motion for interlocutory injunction should be determined by this Court on an expedited basis.

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

Yours truly,
EVOLINK LAW GROUP

SIMON LIN
Barrister & Solicitor (Ontario/BC)
Avocat (Québec – Permis temporaire)
simonlin@evolinklaw.com

cc: CTA Legal Services (servicesjuridiques/legalservicesotc/cta@otc-cta.gc.ca)