

August 29, 2022

VIA EMAIL

Canadian Transportation Agency  
**ATTN : Mr. Kevin Shaar**  
15 Eddy Street  
Gatineau, Québec K1A 0N9

Dear Mr. Shaar,

**RE: Air Passenger Rights v. AGC and CTA (A-102-20)**

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Enclosed for service please find the Direction to Attend for the cross-examination on Ms. Cuber's affidavit on September 16, 2022 at 10AM EST, as agreed by the parties and the CTA.

**The Scope of the Cross-Examination**

As the Court confirmed in the Reasons for Order of July 19, 2022 [**July 19 Reasons for Order**], "it is open to the applicant to ask relevant questions regarding steps taken to comply with **all** the disclosure Orders."<sup>1</sup> The disclosure Orders include the October 15, 2021 Order, the April 11, 2022 Order, and the Order of July 19, 2022.

In light of the Court's clear statement on the permissible scope of the cross-examination, we trust that Ms. Cuber will ensure that she is duly informed about steps taken to comply with **all** the disclosure Orders (i.e., the October 15, 2021 Order, the April 11, 2022 Order, and the Order of July 19, 2022), and not simply the October 15, 2021 Order.

**Documents that Ms. Cuber Must Bring with Her**

With respect to the Direction to Attend, the enclosed Direction to Attend is identical to the one dated April 22, 2022, with the exception of the attendance date/information and items 26-30. Items 26-30 arise from correspondences sent by, or documents disclosed by, the CTA after the original April 22, 2022 Direction to Attend was served.

The Court decided in the July 19 Reasons for Order that items 9, 12, and 13 are to be disclosed. We greatly appreciate the CTA undertaking to providing these documents five (5) days prior to the cross-examination (i.e., by **September 11, 2022**).

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<sup>1</sup> [emphasis added] July 19 Reasons for Order at para. 47.

For items 1-8, 10-11, and 14-25, the Applicant is cognizant that the July 19 Reasons for Order stated that there was, at the time of the motion, an insufficient evidentiary foundation for their production.<sup>2</sup> The Court stated that it was “without prejudice to the right of the applicant to request further disclosure if answers given during the cross-examination establish that further disclosure must be ordered to ensure that all relevant documents are produced.”<sup>3</sup>

As we had previously advised, we are maintaining these items in the Direction to Attend solely because the case law indicates that production can only be enforced if it is in the Direction to Attend.<sup>4</sup> The Applicant had requested the CTA to waive this technicality, if the CTA wishes for the Direction to Attend to include items 9, 12, and 13 only. Unfortunately, the CTA refused to waive this technicality, which would put the Applicant (and the Court) in a catch-22 situation.

The CTA can state its objections to items 1-8, 10-11, and 14-25 on the record at the cross-examination. The Applicant does not intend to hold the affiant in default, if she does not bring items 1-8, 10-11, and 14-25 to the cross-examination. However, the Applicant reserves its right to seek production later on if a necessary evidentiary foundation has been established.

With respect to the newly added items 26-30, if the CTA has any objections, we invite the CTA to state them on the record at the cross-examination, as per the accepted practice.<sup>5</sup>

### **Conclusion**

As previously discussed, the cross-examination is presently scheduled for one-day. In the event that the cross-examination is prolonged due to unreasonable objections, we reserve the right to set a date for the continuation. We thank you in advance for your cooperation.

We look forward to receiving items 9, 12, and 13 by **September 11, 2022**.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN, Barrister & Solicitor

Cc: Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Respondent

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<sup>2</sup> July 19 Reasons for Order at para. 49.

<sup>3</sup> [emphasis added] July 19 Reasons for Order at para. 50.

<sup>4</sup> *Bruno v. Canada (Attorney General)*, 2003 FC 1281

<sup>5</sup> *Héneault et Gosselin Inc. v. Entreprises P.F. St-Laurent Inc.*, [1998] F.C.J. No. 281 at paras. 1-3, 4(4), 8

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

– and –

**ATTORNEY GENERAL OF CANADA**

Respondent

– and –

**CANADIAN TRANSPORTATION AGENCY**

Intervener

**DIRECTION TO ATTEND**

TO: Barbara Cuber

YOU ARE REQUIRED TO ATTEND A CROSS-EXAMINATION for your affidavit affirmed on April 21, 2022 on behalf the Canadian Transportation Agency [**Affidavit**], on **Friday, September 16, 2022 at 10:00 am (Eastern Time)** via Zoom:  
Meeting ID: 829 5447 1580      Passcode: 071979

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

- A. Notification of Agency Personnel on April 14, 2020 Regarding Application**
1. With reference to the Affidavit at paragraph 8, the original notification that was sent on April 14, 2020, including the names of the recipients.
  2. With reference to the Affidavit at paragraph 8, all the responses from the recipients in respect of the notification mentioned therein.
- B. Inquiries for Documents with Former Agency Personnel**
3. All written correspondences, between October 15, 2021 to April 22, 2022, between Ms. Cuber, and Ms. Marcia Jones (former Chief Strategy Officer) or Mr. Scott Streiner (former Chairperson), in respect of compliance with the October Order (as defined in the Affidavit) and/or April Order (as defined in the Affidavit), including any requests to Ms. Jones and/or Mr. Streiner to assist in providing and/or locating documents.

4. All written correspondences, between October 15, 2021 to April 22, 2022, between a member or staff of the Canadian Transportation Agency (other than Ms. Cuber), and Ms. Jones or Mr. Streiner, in respect of compliance with the October Order and/or April Order, including any requests to for assistance in providing and/or locating documents.
5. The Canadian Transportation Agency's policy on retaining of data on computer hard drives and mobile devices of departing personnel.

**C. Inquiry with Ms. Lesley Robertson, Office of the Chairperson**

6. With reference to the Affidavit at paragraph 33, all written correspondences with Ms. Lesley Robertson in respect of the inquiry and/or search for documents responsive to the October Order and/or the April Order.
7. With reference to the Affidavit at paragraph 34, copies of the five documents.

**D. Inquiry with Mr. Guindon and Other Information Technology Personnel**

8. With reference to the Affidavit at paragraphs 37-38, all written correspondences with Mr. Jonathan Guindon or personnel in the Information Technology Services Division [collectively, **Information Technology Personnel**] regarding the search for documents responsive to the October Order and/or the April Order.
9. With reference to the Affidavit at paragraph 38, all documents showing the search terms employed for the electronic search referred to therein.
10. With reference to the Affidavit at paragraphs 38-39, the list of Agency staff whose Outlook accounts returned documents in the 799 item search results.
11. With reference to the Affidavit at paragraph 38, documents showing if searches were made on the Outlook accounts of the former Chief Strategy Officer (Marcia Jones) and the former Chairperson (Scott Streiner).
12. The Outlook system logs showing when the following emails were deleted from Ms. Marcia Jones' Outlook account:
  - (a) Email received by Ms. Marcia Jones on March 18, 2020 from Mr. Colin Stacey with the subject line "FW: From MinO: Air Transat."
  - (b) Email sent by Ms. Marcia Jones on March 25, 2020 with the subject line "Update: CTA measures/Mise à jour: mesures prises par l'OTC."

**E. Searching the Canadian Transportation Agency's Corporate Repository**

13. With reference to paragraph 13 of the Affidavit, all documents showing the search terms that were employed for the search(es) made on RDIMS (the Canadian Transportation Agency's corporate repository) for documents responsive to the October Order and/or the April Order.

**F. Records of or Recordings of the March 9-25, 2020 Meetings**

14. With reference to paragraph 38 of the Affidavit, printouts from the Outlook calendars for Mr. Scott Streiner and Ms. Marcia Jones of the scheduled events between March 18-25, 2020, including the weekend of March 21-22, 2020.
15. With reference to the April 20, 2022 Documents, the first page of Appendix C1.pdf shows the meeting invite from Mr. Streiner with his dial-in code of 935311571, a printout from the teleconferencing platform showing all conferences that were hosted using this dial-in code between March 9 and 25, 2020, including the weekend of March 21-22, 2020.
16. With reference to paragraph 58 of the Affidavit, a printout from the teleconferencing platform listing all the meetings between March 9 and 25, 2020 that were recorded.

**G. Inquiries after Producing the Initial Documents on December 14, 2021**

17. With reference to paragraph 42 of the Affidavit, the written documents showing what "the existing search results" were.
18. With reference to the documents disclosed by the Canadian Transportation Agency on April 20, 2022 [**April 20, 2022 Documents**], a printout of the Outlook search results relied upon by Ms. Amanda Hamelin or other Information Technology Personnel to identify the April 20, 2022 Documents.

**H. Document Referred to in the April 20, 2022 Documents Package**

19. With reference to the April 20, 2022 Documents, page 47 of Appendix C1.pdf refers to a "Circulate updated Members Committee Agenda" for March 24, 2020. Please provide the Members Committee Agenda referred to therein.

**I. Microsoft Outlook Backups**

20. With reference to paragraph 53 of the Affidavit, the Canadian Transportation Agency's policy document on Outlook retention standards referred to in paragraph 53 of the Affidavit (i.e., periods of 10 days and 12 weeks).
21. With reference to paragraph 54 of the Affidavit, all written correspondences between Ms. Cuber and a member or staff of the Canadian Transportation Agency, regarding retrieving the Outlook backup tapes for searching.
22. With reference to paragraphs 53-54 of the Affidavit, a list of all the backup tapes for Outlook that are still being kept, including the dates covered by those backup tapes.
23. The Canadian Transportation Agency's policy on retaining backup of Outlook documents other than on backup tapes, such as backups on Amazon Cloud, Microsoft 365, or other cloud platforms.

**J. Inquiry Relating to ATI Requests A-2020-00002 and A-2020-00029**

24. With reference to the Affidavit at paragraphs 17-20 and 21-25, any index, table of contents, summary, and/or listings for:
  - (a) the 683 items for A-2020-00002; and/or
  - (b) the 1417 Outlook items, the 25 electronic documents, and/or the 5099-page working copy of the search results for A-2020-00029.

**K. Inquiry Relating to TRAN Committee Motion Documents**

25. With reference to the Affidavit at paragraph 29, any index, table of contents, summary, and/or listings of the collection of documents stemming from the motion from the Standing Committee on Transportation, Infrastructure and Communities on March 25, 2021 [**TRAN Committee Motion**].

**L. March 24, 2020 Executive Committee Meeting**

26. With reference to the letter sent by the Canadian Transportation Agency (Mr. Kevin Shaar) to the Federal Court of Appeal on August 8, 2022, the list of participants and attendees of that Executive Committee meeting on March 24, 2020.

27. With reference to the email Mr. Kevin Shaar sent to counsel for the Applicant on or about August 11, 2022 at 8:49AM PST, enclosing various screenshots of the Canadian Transportation Agency's RDIMs system, a list of any Microsoft One-Note documents "checked-in" by Ms. Alysia Lau that includes the following terms in the file name, or the title of a notebook within the Microsoft One-Note file:
28. (a) "Meeting - Mar. 24", or
- (b) "Meeting" as well as one of the terms "Mar. 24", "March 24" or any similar string to represent the date March 24, 2020.

**M. March 24, 2020 Special Members Committee Meeting(s)**

29. With reference to the email Mr. Kevin Shaar sent to counsel for the Applicant on or about August 2, 2022 at 12:10PM PST, enclosing an Outlook meeting invite for an In-Camera Members' Meeting at 11:00AM on March 24, 2020 (the "**March 24, 2020 11AM In-Camera Meeting Outlook Invite**"):
- (a) Documents from Ms. Lesley Robertson's Outlook account showing when the March 24, 2020 11AM In-Camera Meeting Outlook Invite was sent and "accepted" by the attendees, and in particular, a copy of the March 24, 2020 11AM In-Camera Meeting Outlook Invite that was received by Liz Barker, Heather Smith, Mary Tobin Oates, Mark MacKeigan, Lenore Duff, Gerald Dickie, and Sebastien Bergeron, showing the date they received said invite, and their "acceptance" thereto.
- (b) Printouts from the Outlook calendar for Ms. Lesley Robertson showing whether her calendar had any scheduled events on March 24, 2020 at 10:30AM EST.
30. A list of participants and attendees of the Members' Meetings that occurred on March 24, 2020 at 10:30AM EST and 11:00AM EST. Please note that this item refers to the one or more Members' Meetings that took place on March 24, 2020, which is different than the Executive Committee meeting on March 24, 2020 that is referred to in item 26 above.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Simon Lin (simonlin@evolinklaw.com).

August 29, 2022

*Simon Lin*

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**SIMON LIN**

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Air Passenger Rights**