



Department of Justice
Canada

Ministère de la Justice
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ELECTRONICALLY FILED WITH COPY TO COUNSEL BY EMAIL

August 1, 2023

Our File Number: LEX-500074803

Judicial Administrator
Federal Court of Appeal
90 Sparks Street
Ottawa, Ontario K1A 0H9

Re: Air Passenger Rights v The Attorney General of Canada
Court File No.: A-102-20
Response to Applicant's counsel's letter of July 11, 2023

Dear Administrator:

I would be grateful if this letter were brought to the attention of the Honourable Justice Gleason at your earliest convenience.

I write in respect of the July 11, 2023 letter from the Applicant's counsel, stated to be a 'Request to renew Portion of Rule 41 Motion' and an informal motion.

The Respondent opposes the Applicant's informal motion and this letter is intended as submissions in response.

The Court of Appeal should reject the Applicant's informal motion, in essence an attempt to re-argue their Rule 41 motion, for the following reasons:

1. There is no provision in the Rules for what the Applicant now attempts to do. The Rule 41 motion is already the subject of the April 26, 2023 Order of this Honourable Court of Appeal. That Order makes no provision for a party to resume an argument rejected in the Order.

In respect of the subpoenas the Applicant is now seeking for a second time, the Court concluded that "there is presently no basis for granting the other relief sought by the applicant in its Notice of Motion, which, at best, is premature".

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The Applicant has presented no new evidence or additional grounds upon which this Court might exercise its discretion to require the examination of third party witnesses, other than their counsel's speculation and dissatisfaction with the outcome of the motion.

2. This is a judicial review application and Rule 41 orders are an exceptional remedy. An application for judicial review is properly decided based on the decision in issue (without conceding whether any such decision exists in this matter), and the record which was before the decision maker. Over two years since commencing this proceeding, the Applicant has pursued additional information above and beyond the Certified Tribunal Record provided by the intervener CTA, including the examination of a CTA witness in respect of that agency's efforts in producing documents.

They now demand, for a second time, to examine third parties and ex-employees of the CTA based on unsubstantiated and irrelevant allegations of bias and influence on the purported decision that is the subject of the Application. Subpoenas in judicial review applications are granted on an exceptional basis, all the more so when seeking evidence from parties outside of the decision maker. No such basis was established in the original Rule 41 motion and no new evidence has been raised to change that. The Applicant's counsel's narrative included in the July 11, 2023 letter is speculation and conjecture, and the Court of Appeal should give it no weight and deny this effort to revive and continue a motion already decided.

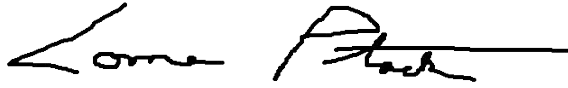
These demands are wholly outside of the scope of this judicial review, and an unnecessary expenditure of time and resources beyond what is reasonable for what is intended to be a summary procedure.

3. The AGC does not represent either of the individuals that the Applicant now seeks to subpoena, nor their employers, in this Application. The AGC opposes this attempt to add unnecessary additional steps to this already long running proceeding, but in no way concedes any right on any individual or entity's behalf to oppose the subpoenas being sought by the Applicant.

All of which is respectfully submitted for the Court of Appeal's consideration.

Should any additional or different submissions be required, we will make ourselves available.

Yours truly,

A handwritten signature in black ink, appearing to read "Lorne Ptack". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lorne Ptack
Sandy Graham
Counsel for the Respondent

c.c. Simon Lin, Counsel for the Applicant
Kevin Shaar, Counsel for the Intervener