

August 1, 2023

VIA EMAIL

Judicial Administrator, Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario K1A 0H9

Dear Madam or Sir,

RE: APR v. AGC and CTA (A-102-20) – Reply to AGC’s Letter of August 1, 2023

We are counsel for the Applicant. Please bring this letter to Gleason J.A.’s attention. Her Ladyship is seized of all pre-hearing issues, pursuant to the Order of July 19, 2022. This letter is in reply to the AGC’s letter dated today, with submissions about the Applicant’s informal motion. The Applicant’s reply below will track the three points in the AGC’s letter:

Firstly, the AGC is misdirecting this Court by claiming that “[*the Applicant*] has presented no new evidence.” The new evidence is Transport Canada’s June 8, 2023 letter confirming that it does not have the “TC-CTA Weekend Meeting Documents.” Said letter is in the court docket and is enclosed for the Court’s convenience.

Secondly, the AGC again misrepresented that procedural history of this application. The Court granted those motions to obtain further documents from the CTA to address the CTA’s poor record keeping (and searching) practices, although a “hold” was supposedly in place.

The AGC’s assertion that the Applicant is “*seeking evidence from parties outside of the decision maker*” is inaccurate. The Applicant seeks a short examination of Mr. Streiner (the then CTA chair), *the* decision maker. The Applicant also seeks to examine Mr. Roy, whom Mr. Streiner met over the weekend that seems to be contrary to the CTA’s *Code of Conduct*.¹

Notably, the AGC is not even disputing that the Rule 41 test is met for the “TC-CTA Weekend Meeting Documents.” Rather, the AGC is urging this Court to favour expediency at the risk of immunizing the CTA’s conduct from judicial scrutiny. The Applicant had already substantially narrowed the requested examinations to ensure expediency.

Thirdly, the fact that the AGC does not represent Mr. Streiner and Mr. Roy is irrelevant. Under Rule 41(5), the Court may issue a subpoena *ex parte* without hearing from the subject persons. It is difficult to imagine what grounds Mr. Streiner or Mr. Roy could bring to refuse to give material evidence to this Court. Moreover, as the defender of the rule of law, the AGC also bears the responsibility to ensure that a full record will be before a panel of this Court. Unfortunately, the AGC may have overlooked this important constitutional role.

¹ Also point #4 from Applicant’s July 11, 2023 letter on p. 3 that bars communication with political actors.

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

Yours truly,

EVOLINK LAW GROUP

Simon Lin

SIMON LIN

Barrister & Solicitor

Cc: (1) Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada,
and (2) Mr. Kevin Shaar, counsel for the Canadian Transportation Agency

FEDERAL COURT OF APPEAL

BETWEEN:

Air Passenger Rights

APPLICANT

AND:

The Attorney General of Canada

RESPONDENT

Canadian Transportation Agency

INTERVENER

SUBPOENA FOR COPIES OF DOCUMENTS

(Rule 41 of the Federal Courts Rules)

TO:

Colin Stacey

Director General, Air Policy, Transport Canada

330 Sparks Street

Ottawa, Ontario, K1A 0N5

c/o Lorne Ptack, Senior Counsel, Department of Justice (Lorne.Ptack@justice.gc.ca)

YOU ARE REQUIRED TO PRODUCE A PDF VERSION OF THE MATERIALS LISTED BELOW, FROM WHICH ALL ENCRYPTION ARE REMOVED, within **thirty (30) days** of receiving this subpoena as follows:

1. **Stacey-Jones Email:** Email sent by Mr. Colin Stacey at Transport Canada to Ms. Marcia Jones at the Canadian Transportation Agency on March 18, 2020 around 14:57, in respect of Air Transat's request that vouchers be endorsed in lieu of cash refunds, whose subject line includes "*From MinO: Air Transat.*"
2. **Millette-Hurcomb Email Exchanges:** Email exchanges between Mr. Vincent Millette at Transport Canada and Ms. Caitlin Hurcomb at the Canadian Transportation Agency in respect of Air Transat's request that vouchers be endorsed in lieu of cash refunds, between March 18-25, 2020, including but not limited to those whose subject line includes the phrase "*From MinO: Air Transat.*"
3. **TC-CTA Weekend Meeting Documents:** All non-privileged documents (i.e., meeting notes or minutes, agenda, to-do or tasking list, debrief minutes, etc.) for the meeting(s) between the personnel at the Canadian Transportation Agency and officials at Transport Canada relating to the Statement on Vouchers around the

weekend from March 20-22, 2020, including but not limited to:

- a. meeting(s) between Mr. Scott Streiner, the Canadian Transportation Agency's then Chairperson, Mr. Michael Keenan, the then Deputy Minister of Transport, and Mr. Marc Roy, the then Transport Minister's Chief of Staff; and
- b. meeting(s) between Ms. Marcia Jones, the Canadian Transportation Agency's then Chief Strategy Officer, and Mr. Lawrence Hanson, the then Assistant Deputy Minister of Transport.

ATTENDANCE MONEY for ZERO (0) days of attendance is served with this subpoena, calculated in accordance with Tariff A of the Federal Courts Rules as follows:

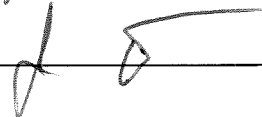
Attendance allowance of	\$0
Transportation allowance	\$0
Overnight accommodations and meal allowance	\$0
TOTAL	\$0

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

IF YOU FAIL TO PRODUCE THE DOCUMENTS AS REQUIRED BY THIS SUBPOENA, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

Date: May 26, 2023

Issued by: _____
(Registry Officer)



JEAN-FRANÇOIS DUPORT
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: 90 Sparks Street
Ottawa, ON K1A 0H9

This subpoena was issued at the request of the solicitors for the Applicant, and inquiries may be directed to:

Simon Lin
Evolink Law Group
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Burnaby, British Columbia, V5C 6C6
Tel: 604-620-2666; Email: simonlin@evolinklaw.com



Transport
Canada

Transports
Canada

Director General
Air Policy

Directeur général
Politique aérienne

June 8th, 2023

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Government of Canada
kevin.shaar@otc-cta.gc.ca
Counsel for the Intervenor CTA

**Re: Air Passenger Rights v AGC, Court File No.: A-102-20
Subpoena received May 26, 2023 - documents**

Counsel,

I, the undersigned, in my capacity as an employee of Transport Canada, do confirm that Transport Canada has performed a search of documents in its possession and control, in compliance with the May 26, 2023, subpoena received in respect of Federal Court of Appeal file number A-102-20.

I do further confirm that in respect of items '1' and '3' of the subpoena, no compliant documents have been identified, and that a single document has been identified in respect of item '2', a March 18, 2020, email, attached hereto.

Sincerely,

Colin Stacey

Director General, Air Policy
Directeur général, Politique aérienne

c.c.: Lorne Ptak and Sandy Graham, Counsel for the Respondent

Canada

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 5:14 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: FW: From MinO: Air Transat

Hi Cait – we have a question from our MinO. Would that be contrary to the APPRs to provide vouchers instead of cash for tickets refunds?

Colin has been in touch with Marcia but I don't think she responded.

Many Thanks!

From: Stacey, Colin
Sent: Wednesday, March 18, 2020 2:57 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Hi Marcia,

Air Transat are telling us that they are getting pressure from creditors who are pushing on the airlines for cash. They will request that we officially let them to provide vouchers to passengers instead of providing them cash because they literally do not have enough cash to give refunds.

Have you heard anything about this? Are you available to discuss?

Thanks,

cs