

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