

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220411

Docket: A-102-20

Citation: 2022 FCA 64

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

**THE CANADIAN TRANSPORTATION
AGENCY**

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 11, 2022.

REASONS FOR ORDER BY:

GLEASON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220411

Docket: A-102-20

Citation: 2022 FCA 64

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

**THE CANADIAN TRANSPORTATION
AGENCY**

Intervener

REASONS FOR ORDER

GLEASON J.A.

[1] I have before me two motions regarding disclosure of documents by the Canadian Transportation Agency (CTA). The first relates to a claim of privilege over portions of two documents and the second relates to a disagreement over whether the CTA has complied with the disclosure order issued by this Court on October 15, 2021.

I. Background

[2] A little background is necessary to place the two motions into context.

[3] The underlying application for judicial review in these matters challenges a statement on vouchers published on the CTA's website on March 25, 2020, shortly after the onset of the COVID-19 pandemic. The CTA opined in the statement that airlines could issue vouchers to passengers for cancellations caused by the pandemic as opposed to providing reimbursements for cancelled flights.

[4] In its application for judicial review, the applicant alleges, among other things, that the issuance of the statement gives rise to a reasonable apprehension of bias for two reasons: first, because it demonstrated pre-judgment of complaints in which passengers might seek reimbursement for cancelled flights; and second, because there was third party influence in the development of the statement.

[5] The applicant brought a motion seeking disclosure from the CTA, and on October 15, 2021, this Court granted the motion in part and ordered the CTA to disclose:

- a. all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020;
- b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and
- c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed.

[6] Further to the October 15, 2021 Order, the CTA disclosed a number of documents to the applicant, but the applicant believes the disclosure is incomplete based on the contents of the documents that have been disclosed to date. On January 17, 2022, the applicant brought a motion in which it sought an order for disclosure of the additional documents listed in the schedule to its Notice of Motion plus the issuance of a show cause order for contempt and related ancillary relief.

[7] On December 15, 2021, the respondent brought a motion seeking to have portions of two documents found to be privileged and protected from disclosure. On the same date, it also

brought another motion, seeking an extension of time to obtain instructions on whether it would seek to claim privilege over two additional documents.

[8] A case conference was convened on January 25, 2022 during which the parties made submissions on the procedure for dealing with the various motions before the Court. Following that case conference, the Court issued two Orders on January 26, 2022.

[9] The first of the January 26, 2022 Orders granted the respondent additional time to bring a motion if it wished to request a ruling on privilege in respect of the two additional documents. The respondent subsequently advised that it was not seeking such a ruling and has disclosed the two additional documents to the applicant.

[10] The second of the January 26, 2022 Orders provided that the applicant's January 17, 2022 motion would be bifurcated such that the request for an order for disclosure of additional documents would be decided first because it could well render the request for a show cause order for contempt unnecessary. The CTA and the applicant subsequently filed written submissions in respect of the outstanding disclosure issues.

II. The Motion for a Ruling on Privilege

[11] I turn now to the respondent's motion seeking a determination that portions of two documents are privileged. I have carefully reviewed the two documents, along with the parties' submissions in respect of them, and am satisfied that the requested order should be granted as

portions of the two documents that the respondent wishes to protect from disclosure are privileged.

[12] The first of these documents is an email chain, in which a to-do list appears for various members of the CTA. The list was issued by the former Chairperson of the CTA. Three of the tasks that appear on the second page of the list are directed to Valérie Lagacé, the Senior General Counsel of the CTA. They request legal advice and a legal opinion and therefore are subject to solicitor-client privilege and are protected from disclosure. The CTA shall accordingly redact the portions of this document directed to Ms. Lagacé and disclose only the redacted version of it.

[13] The second document is an email chain between various individuals at the CTA, emanating from the former Chairperson of the CTA, which attaches a draft of the statement on vouchers as well as a draft of a decision in an unrelated matter. The respondent asserts that the draft decision is subject to deliberative privilege and, moreover, is irrelevant to the applicant's application for judicial review. Having carefully reviewed the document, I agree that the draft decision is subject to deliberative privilege and therefore determine that the CTA shall disclose this second document with the draft decision redacted from it.

III. The Motion of Further Disclosure

[14] Turning to the applicant's motion for further disclosure, the additional documents that the applicant seeks an order to disclose are listed in the Appendix to these Reasons.

[15] The applicant filed an affidavit from Dr. Gábor Lukács in support of its motion for a more detailed order for disclosure in which Dr. Lukács sets out in some detail the reasons why he believes that the documents listed in the schedule likely exist. In response, the CTA declined to file an affidavit and, with a few exceptions, instead simply asserts that most of the requested documents in the Appendix do not exist or, in two cases, says it no longer possesses them.

[16] I will deal first with the documents the CTA admits exist but has declined to produce.

A. *Microsoft Word files for the statement on vouchers and for the template media response attached to the Chairperson's March 24, 2020 email*

[17] The first set of documents that the CTA admits exists but declined to disclose are the original Microsoft Word files for the statement on vouchers and for the CTA's media response (items A1 and A5 in the Appendix). The CTA chose to send the applicant PDF versions of these documents from which the metadata had been removed.

[18] The CTA submits that it is not required to produce the original Microsoft Word files because: (1) the applicant did not specify in its notice of motion, seeking disclosure, that they were sought, (2) this Court's October 15, 2021 Order did not specifically require their production, and (3) Rules 317 and 318 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules) do not contemplate or require production of original electronic version of documents. On the final point, the CTA submits that these Rules contemplate as the default position only the disclosure of certified copies of documents and that original materials need only be disclosed where such copies cannot be produced. Because it reproduced these two documents in PDF form,

the CTA says that it need not produce the original Microsoft Word files. In essence, it claims that original electronic versions of documents are not subject to disclosure under Rules 317 and 318.

[19] I disagree with the CTA.

[20] As concerns the requirements of the Rules, there is nothing in Rule 317 or 318 that shields the electronic version of documents from disclosure. Indeed, contrary to what the CTA alleges, rule 318(1)(b) contemplates such disclosure where the original electronic version is relevant. Rule 318 provides:

318 (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

Objection by tribunal

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Directions as to procedure

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions

318 (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Opposition de l'office fédéral

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

Directives de la Cour

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter

with respect to an objection under subsection (2).

des observations au sujet d'une opposition à la demande de transmission.

Order

Ordonnance

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

[21] Where the authorship of documents or their revision history is relevant (as it is here and will often be where allegations of bias are raised), the metadata contained in the documents are relevant. Metadata were not disclosed in the type of PDF the CTA produced but will be disclosed if the original Microsoft Word file version of the documents is disclosed.

[22] Disclosure of the metadata is contemplated in rule 318(1)(b) precisely because it cannot be reproduced in a photocopy of the document or in a PDF copy of the sort produced by the CTA. The Federal Court reached the same conclusion in *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, 2021 FC 624 [*Vancouver Fraser Port Authority*], where it required production of original Microsoft Excel files that contained embedded data of relevance to bias allegations raised by the applicant (see paras. 41-48 and 132). Thus, contrary to what the CTA says, the Microsoft Word files in question are not immune from disclosure under Rules 317 and 318.

[23] As for the fact that this Court did not specifically state that Microsoft Word file versions of documents were to be disclosed (as opposed to PDF versions) or that the applicant did not

specifically request them, such assertions are without merit. Given the prevalence of computer use and electronic documents, it cannot seriously be contested in 2022 that documents include electronic documents. This Court's October 15, 2021 Order required the production of "all non-privileged documents" coming within the scope of the Order. The Order was not limited to production of the paper version of documents. Nor was the applicant's disclosure request so limited.

[24] The CTA shall therefore disclose the documents listed as items A1 and A5 in the Appendix.

B. *Twitter messages and messages sent via the CTA's Info email*

[25] The next group of documents that the CTA acknowledges exist but declined to disclose are messages from and to third parties received via its Twitter accounts or through its Info email account concerning the statements on vouchers over the period in respect of which disclosure was ordered (item B4 in the Appendix).

[26] The CTA offers three reasons for its position. First it says that, at least as concerns its Twitter accounts, materials from them should be available to the applicant because the applicant has filed these sorts of materials in this case. Second, the CTA says that the applicant abandoned this request in its original motion seeking disclosure. Third, the CTA says that these documents do not fall within the scope of this Court's October 15, 2021 Order because they are unlikely to

support the applicant's bias allegations as most would be from individuals. It therefore asserts that the documents fall outside the scope of this Court's October 15, 2021 Order.

[27] Turning first to the CTA's Twitter accounts, to the extent that Tweets on the accounts are publicly available (and thus accessible to the applicant), they need not be produced. A party may only obtain disclosure through Rules 317 and 318 of materials that are not already in its possession. Rule 317(1) provides in relevant part that a party may request disclosure of material "that is in the possession of the tribunal ... and not in the possession of the party".

[28] As concerns the CTA's second and third points in respect of these materials, I disagree that the applicant has abandoned a request for their disclosure or that they are not covered by the October 15, 2021 Order.

[29] In its original motion materials, the applicant principally modified its disclosure request to shorten the period in respect of which it sought disclosure. Over the shortened period, it still maintained its request for "complete and unredacted copies of all records from March 9 – April 8, 2020 in respect of [the statement on vouchers and a related posting on the CTA website] but not limited to emails, meeting agendas, meeting minutes, notes, draft documents, and memos". This request is clearly broad enough to cover the category of documents that the CTA has declined to disclose.

[30] Likewise, they fall within the scope of this Court's October 15, 2021 Order. In paragraph 3(b) of that Order, this Court ordered disclosure of "all non-privileged documents sent to a third

party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020". In the Reasons for that Order, the Court specified that third parties "include anyone other than a member or employee of the CTA." (at para. 23).

[31] With respect, it is not for the CTA to opine whether these documents are likely to further the applicant's case. They are third party communication over the relevant period concerning the impugned statement on vouchers and thus fall within the scope of documents that the Court determined were relevant and subject to disclosure in its October 15, 2021 Order. The CTA shall therefore disclose to the applicant all materials listed in item B4 in the Appendix except those that are publicly available on its Twitter feeds. For clarity, private Twitter messages sent or received on the CTA's accounts must be disclosed.

C. *Documents for the March 19, 22 and 23, 2020 Executive Committee and Key Personnel Calls*

[32] Although the CTA acknowledges that there are documents that pertain to the calls between CTA's Executive Committee and Key Personnel on the above dates (items C1, C5 and C6 in the Appendix), it says that none of them relates to the statement on vouchers and therefore need not be disclosed. It is unclear from the CTA's representations whether the statement on vouchers was discussed during the calls on March 19, 22 and 23, 2020, although the CTA states that the applicant has not been able to establish that it was discussed. (I note that the documents

disclosed to date appear to show that it was the intent to discuss the statement on vouchers during these calls.)

[33] In order to comply with the Order, the CTA was required to inquire whether the subject was discussed during these calls. If the subject matter was not discussed, then none of these documents needed to be disclosed. Conversely, if the statement on vouchers was discussed during the calls, the terms of the October 15, 2021 Order requires disclosure of these documents.

[34] The Order requires disclosure of two different sorts of documents in paragraphs 3(a) and 3(c). By virtue of paragraph 3(a) of the Order, the CTA was required to disclose all non-privileged documents sent to or by a CTA Member (including its Chairperson and Vice-Chairperson) between March 9 and 25, 2020 concerning the statement on vouchers. Paragraph 3(c) of the Order, on the other hand, requires disclosure of all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson and Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers was discussed. In paragraph 23 of the Reasons, the Court specified that a meeting includes telephone conversations, video conferences and internet meetings as well as in person meetings.

[35] Thus, the CTA shall determine if the statement on vouchers was discussed during these calls. If so, then it must disclose all the documents relating to these calls.

D. *Documents for the March 20, 2020 Executive Committee call*

[36] The CTA admits that the statement on vouchers was discussed during this call and that it has in its possession additional documents that pertain to the call (item C2 in the Appendix). It takes the position that it need not disclose these documents because the documents contain no mention of the statement on vouchers. This is incorrect. As noted, pursuant to the clear wording of paragraph 3(c) of the October 15, 2021 Order, the CTA has been ordered to produce these documents. It accordingly must do so.

[37] All the disclosures required by these Reasons shall be made within 5 days of the date of the Order that accompanies these Reasons.

E. *Documents for the March 24, 2020 CTA Members' call*

[38] The applicant has requested production of the notes taken by CTA Members during this call. The CTA states that it has no knowledge of whether its Members, Chairperson and Vice-Chairperson kept notes of the March 24, 2020 call during which the statement on vouchers was discussed (item C7 in the Appendix). It further submits that, to the extent there might be any such notes, they are not in the possession of the CTA but are rather the personal property of the Members and are immune from disclosure.

[39] In support of its position, the CTA relies on the decision of this Court in *Canada (Privacy Commissioner) v. Canada (Labour Relations Board)* (2000), 180 F.T.R. 313, 257 N.R. 66 (A.D.) [*Canada (Privacy Commissioner)*] in which this Court declined to order production under the

Privacy Act, R.S.C. 1985, c. P-21 of notes taken by members of the Canada Labour Relations

Board during a hearing. At paragraphs 5-6, Justice Desjardins, who wrote for the Court, stated:

[5] While the notes taken by the Board members may or may not amount to "personal information", a matter we need not decide, it is obvious to us that these notes are not "under the control" of the Board as provided in paragraph 12(1)(b) of the *Privacy Act*. These notes are being taken during the course of quasi-judicial proceedings, not by employees of the Board, but by Governor in Council's appointees endowed with adjudicative functions which they must perform, not as agent of the Board, but independently of other members of the Board including the chairperson of the Board or a government institution. Board members are under no obligation to take notes although they may. Their notes are not part of the official records of the Board and are not contained in any other record keeping system over which the Board has control.

[6] The trial judge made the following statement with which we agree:

... It is clear that there is no requirement either in the *Canada Labour Code*, or in the CLRB policy or procedure touching upon the notes. The notes are viewed by their authors as their own. The CLRB members are free to take notes as and when they see fit, and indeed may simply choose not to do so. The notes are intended for the eyes of the author only. No other person is allowed to see read or use the notes, and there is a clear expectation on the part of the author that no other person will see the notes. The members maintain responsibility for the care and safe keeping of the notes and can destroy them at any time. Finally, the notes are not part of the official records of the CLRB and are not contained in any other record keeping system over which the CLRB has administrative control.

In my view, it is apparent from the foregoing that however broadly one construes the word control, the notes in issue were not "under the control" of the CLRB within any of the meanings that can be attributed to that term. Not only are the notes outside the control or custody of the CLRB but they are also considered by the CLRB to fall outside the ambit of its functions.

[40] The underpinning for the foregoing determination that the notes were not producible was the fact that they were subject to adjudicative privilege. Indeed, in the subsequent case of

Wyndowe v. Rousseau, 2008 FCA 39, 373 N.R. 301 [*Wyndowe*], Justice Decary, who wrote for the Court stated that the thrust of the decision in *Canada (Privacy Commissioner)*:

... is that the disclosure of the notes would offend the adjudicative privilege, also termed judicial immunity, that could be claimed by administrative tribunals and would compromise the operation of the Board and be injurious to the conduct of lawful investigations within the meaning of the exemption found in paragraph 22(1)(b) of the *Privacy Act*.

[41] In *Wyndowe*, disclosure was ordered because the note-taker in that case was not engaged in an adjudicative function.

[42] In the present case, it appears that there may well be a debate between the parties as to the nature of the function that was being carried out by the CTA Members, Chairperson and Vice-chairperson in the adoption of the statement on vouchers. If the function is an adjudicative one, then the notes taken by the Members are protected from disclosure under the principles set out above.

[43] In light of this uncertainty, the respondent is directed to confirm within ten days of the date of the Order that accompanies these Reasons whether it takes the position that these notes are immune from disclosure by reason of adjudicative privilege and, if not, on what other basis they cannot be ordered to be disclosed.

F. *The Remaining Documents*

[44] With three exceptions, the CTA states that none of the remaining documents that the applicant seeks exists.

[45] Two of these exceptions relate to the documents listed as items B1 and B2 in the Appendix, the original emails between a CTA staff member and an official at Transport Canada. The CTA concedes that it must have been in possession of these emails at some point because they are found within other email chains, but states that they cannot be located.

[46] The other exception is one of the documents listed as item A4 in the Appendix, the draft email to carriers that Ms. Jones of the CTA sent to the CTA Chairperson the day before the statement on vouchers was posted. As originally produced, this email had the sender and recipient information removed from it. The CTA subsequently provided a revised version of the email, showing this information. It disclosed the revised version of this email with its written submissions.

[47] Given the number of issues that have arisen with disclosure and compliance with this Court's October 15, 2021 Order as well as the number of outstanding documents that the applicant is seeking, I agree with the applicant that the individual at the CTA who was responsible for complying with this Court's October 15, 2021 Order should be required to serve and file an affidavit detailing what has been done to ensure the required disclosure was made. I

would expect that the affidavit would address the following issues set out in paragraph 43 of the applicant's reply submissions, namely:

- (a) how the CTA narrowed down the several thousands of pages of documents to less than two hundred pages it has disclosed;
- (b) what steps were taken, if any, to gather and/or preserve documents upon being served with the Notice of Application on April 9, 2020;
- (c) who at the CTA conducted the searches for documents;
- (d) whether the CTA reviewed its encrypted emails or documents;
- (e) what record-keeping systems the CTA has, and whether all of them were searched for responsive documents;
- (f) whether the CTA has any backups or archives of their emails and other electronic documents, and whether those backups or archives were searched;
- (g) whether the CTA conducted any investigation after learning that some documents no longer exist, and any steps taken to recover those documents; and
- (h) whether the CTA's audio or video conferencing system has a recording feature and whether the conferences between March 9 and 25, 2020 were recorded.

[48] Somewhat similar orders requiring an affidavit were made by the Federal Court in *Vancouver Fraser Port Authority* and in *Constantinescu c. Canada (Correctional Service)*, 2021 FC 229 where problems with disclosure by a tribunal arose.

[49] Such affidavit shall be served and filed within 10 days of the date of the Order that accompanies these Reasons. The CTA shall also serve and file an updated certificate, attesting to the authenticity of the additional documents it is required to disclose in accordance with these

Reasons as well as copies of the aforementioned documents within 10 days of the date of the Order that accompanies these Reasons.

[50] To allow for any necessary cross-examinations of the CTA's affiant, within 40 days of the date of the Order that accompanies these Reasons, the applicant shall file any additional affidavit(s) it intends to rely on in support of this application. All further steps for the perfection of this application shall be governed by the Rules.

[51] Costs of these motions are in the cause.

"Mary J.L. Gleason"

J.A.

Appendix A

SCHEDULE “A” (the “Withheld Materials”)

A. CTA Member Correspondences

- A1. **The Microsoft Word Files for the Statement on Vouchers.** The original Microsoft Word files for the Statement on Vouchers, and drafts of the Statement on Vouchers, attached to emails that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 9, 2020 and March 25, 2020.
- A2. **Documents Regarding the Statement on Vouchers on March 23, 2020.** All documents regarding the Statement on Vouchers that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) on or about March 23, 2020.
- A3. **Documents Regarding the Statement on Vouchers on March 24, 2020.** All documents regarding the Statement on Vouchers that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) on or about March 24, 2020 between 8:30AM and 7:00PM.
- A4. **Documents Regarding the Announcement of the Statement on Vouchers to Third-Parties.** All documents regarding Ms. Jones’s email on March 24, 2020 with the subject line “message to carriers – signals check” that was sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.
- A5. **Chairperson’s Template Response to Media in MS Word Format.** The original Microsoft Word file(s) for the template media response in the March 24, 2020 at 7:34PM email sent by the Chairperson with subject line “Answer,” which were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.
- A6. **Ms. Jones’s Draft FAQs about the Statement on Vouchers.** All documents in respect of Ms. Jones’s draft FAQs first circulated on

March 24, 2020 in response in the email with subject line “RE: Answer,” which was sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.

B. Third-Party Correspondences

- B1. Original Email Announcing the Statement on Vouchers.** Original version of the e-mail sent by Ms. Marcia Jones on March 25, 2020 with the subject line “Update: CTA measures/Mise à jour: mesures prises par l’OTC.”
- B2. Original Email from Transport Canada on March 18, 2020.** Original version of the e-mail sent by Mr. Colin Stacey at Transport Canada to Ms. Marcia Jones on March 18, 2020 with the subject line “FW: From MinO:[Redacted],” including all attachments to that email.
- B3. Correspondences in respect of Ms. Jones’s and the Assistant Deputy Minister’s Meeting(s).** All non-privileged correspondences in respect of the meeting(s) between Ms. Marcia Jones and the Assistant Deputy Minister of Transport on or about March 21-22, 2020.
- B4. CTA’s Info Email and Twitter Messages.** All non-privileged documents sent to or from the CTA in respect of the Statement on Vouchers between March 9, 2020 and March 25, 2020 using:
- (a) the CTA’s Info email account (info@otc-cta.gc.ca); and
 - (b) the CTA’s Twitter accounts in English (CTA_gc) and French (OTC_gc), including but not limited to Private Messages.
- B5. Correspondences to/from PIAC.** All non-privileged correspondences to/from PIAC between March 9, 2020 and March 25, 2020 regarding the Statement on Vouchers.

C. Meeting Documents

- C1. **Documents for the March 19 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 19, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C2. **Documents for the March 20 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 20, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C3. **CTA Chairperson's March 21-22, 2020 Weekend Meeting(s).** All non-privileged documents in respect of the meeting(s) between the CTA's Chairperson, the Deputy Minister of Transport, an unidentified individual, and/or some of them over the course of the weekend of March 21-22, 2020 about the Statement on Vouchers, including but not limited to:
- (a) documents sent to/from those third-parties before or after the meeting(s), including draft(s) of the Statement on Vouchers;

- (b) the meeting agenda;
- (c) correspondences to schedule and/or set up the meeting;
- (d) video or audio recordings of the meeting;
- (e) meeting minutes;
- (f) notes taken by or on behalf of any of the participants; and
- (g) correspondences of the meeting's decisions and deliverables.

C4. **CTA Chairperson's March 21 and/or 22, 2020 Discussions with Vice- Chairperson.** All non-privileged documents in respect of the meeting(s) between the CTA's Chairperson and Vice-Chairperson over the course of the weekend of March 21-22, 2020 about the Statement on Vouchers, including but not limited to:

- (a) documents circulated between them before or after their meeting(s), including draft(s) of the Statement on Vouchers;
- (b) the meeting agenda;
- (c) correspondences to schedule and/or set up the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences regarding the meeting(s).

C5. **Documents for the March 22 CTA Key Personnel Call.** All non-privileged documents in respect of the call on March 22, 2020 at or about 10:30AM, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and

- (f) correspondences of the meeting's decisions and deliverables.

C6. **Documents for the March 23 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 23, 2020, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meeting's decisions and deliverables.

C7. **Documents for the March 24 CTA Members' Call.** All non-privileged documents in respect of the CTA Members' Call on March 24, 2020, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meeting's decisions and deliverables.

C8. **Documents for the March 25 Discussions Involving Chair and/or Vice-Chair.** All non-privileged documents in respect of the discussions involving the Chairperson or Vice-Chairperson, and/or other persons on March 25, 2020 regarding the Statement on Vouchers, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;

- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meetings' decisions and deliverables.

C9. **Documents for the Cancelled March 25 Call.** All non-privileged documents for the March 25, 2020 meeting originally scheduled for 10:00AM, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting; and
- (c) draft documents circulated prior to the scheduled meeting.

C10. **The CTA Chairperson's Discussion(s) with "Other Federal Players"**. All non-privileged documents in respect of the discussion(s) between the Chairperson and "other federal players" on or before March 23, 2020 regarding the Statement on Vouchers, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meeting's decisions and deliverables.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-102-20

STYLE OF CAUSE: AIR PASSENGER RIGHTS v.
THE ATTORNEY GENERAL OF
CANADA AND THE CANADIAN
TRANSPORTATION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: GLEASON J.A.

DATED: APRIL 11, 2022

WRITTEN REPRESENTATIONS BY:

Simon Lin COUNSEL FOR THE
APPLICANT

J. Sanderson Graham COUNSEL FOR THE
RESPONDENT

Barbara Cuber COUNSEL FOR THE
INTERVENER

SOLICITORS OF RECORD:

Evolink Law Group FOR THE APPLICANT
Burnaby, British Columbia

A. François Daigle FOR THE RESPONDENT
Deputy Attorney General of Canada

Legal Services Directorate FOR THE INTERVENER
Canadian Transportation Agency
Gatineau, Quebec