

VIA EMAIL (REGISTRY-GREFFE@SCC-CSC.CA)

September 4, 2020

Supreme Court of Canada
ATTN: Registrar of the Supreme Court
301 Wellington Street
Ottawa, Ontario
K1A 0J1

Dear Registry Officer:

RE: Air Passenger Rights v. Canadian Transportation Agency (File No : 39266)

We are counsel for the Applicant, Air Passenger Rights. We write in regards to the above-noted application for leave to appeal (the “**APR Application**”). We wish to draw to the Court’s attention that an unrelated application for leave to appeal currently before the Court raises a question in common with a central question in the APR Application.

The Applicant recently discovered an unrelated application for leave to appeal presently before the Court, *Democracy Watch v. Attorney General of Canada* (File No. 39202) (the “**DW Application**”). Both the DW Application¹ and the APR Application² seek leave to review a “common question” regarding the availability of judicial review in the federal courts, a question that is at the heart of both cases.

Both applications raise the threshold question of the availability of judicial review under section 18.1 of the *Federal Courts Act* and the effect of the Federal Court of Appeal’s judgment in narrowing the scope for judicial review under that provision. The Applicant believes the common thread between the two applications can be succinctly stated as:

Is the Supreme Court of Canada’s articulation of the test for availability for judicial review in *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 14, applicable in the federal courts?

If not, given the contradictions and inconsistencies in the tests that the federal courts have applied in the past decades for availability of judicial review under the *Federal Courts Act*, what is the proper test?

¹ Memorandum of Argument of the Applicant Democracy Watch at paras. 27 to 35, and Memorandum of Argument – Reply at paras. 1-10 (Court File 39202).

² Memorandum of Argument of the Applicant Air Passenger Rights at paras. 36-51

Underlying both the DW Application and the APR Application are applications for judicial review before the federal courts for review of unrelated subject-matters and seek public law remedies against different federal public bodies. The APR Application is in relation to the consumer rights of the travelling public and seeks remedies against the Canadian Transportation Agency. The DW Application seeks a review of a decision of the federal Commissioner of Lobbying in relation to lobbying of public office holders public body.

Our research indicates that this Court has previously considered, concurrently, unrelated applications for leave to appeal that share a common question. Some examples include:

1. Consider the nature and scope of judicial review of administrative action, as the Court previously articulated in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190³
2. Consider the scope of judicial review for judicial compensation recommendations that the Court previously described in *Bodner v. Alberta*, 2005 SCC 44.⁴
3. Whether “indirect purchasers” of a product have a cause of action in relation to alleged price-fixing of a good.⁵
4. The requirements for class action certification under similar provincial class action legislation from two provinces.⁶
5. The intersection and balance between two *Charter* rights: freedom of religion under section 2 and equality rights under section 15.⁷

³ [Minister of Citizenship and Immigration v. Alexander Vavilov](#), 2018 CanLII 40807 (SCC) (File No: 37748); [Bell Canada, et al. v. Attorney General of Canada](#), 2018 CanLII 40808 (SCC) (File No: 37896); and [National Football League, et al. v. Attorney General of Canada](#), 2018 CanLII 40806 (SCC) (File No: 37897).

⁴ [Attorney General of British Columbia v. Provincial Court Judges' Association of British Columbia](#), 2019 CanLII 23871 (SCC) (File No: 38381); and [Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, et al. v. Judges of the Provincial Court and Family Court of Nova Scotia, as represented by the Nova Scotia Provincial Judges Association](#), 2019 CanLII 23861 (SCC) (File No: 38459).

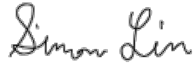
⁵ [Pro-Sys Consultants Ltd. and Neil Godfrey v. Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE](#), 2011 CanLII 77282 (SCC) (File No: 34282); [Samsung Electronics Co. Ltd. and others c. Option Consommateurs et al.](#), 2012 CanLII 26718 (SCC) (File No: 34617); [Sun-Rype Products Ltd. and Wendy Weberg v. Archer Daniels Midland Company](#), 2011 CanLII 77189 (SCC) (File No: 34283).

⁶ The leave to appeal applications were considered one-week apart by the same panel. (*John Hollick v. The City of Toronto*, File No: 27699; and *Her Majesty the Queen in Right of the Province of British Columbia v. Leanne Rumley, et al.*, File No: 27721).

⁷ [Law Society of British Columbia v. Trinity Western University, et al.](#), 2017 CanLII 8574 (SCC) (File No: 37318) and [Trinity Western University, et al. v. Law Society of Upper Canada](#), 2017 CanLII 8575 (SCC) (File No: 37209).

We respectfully request that the Court consider the DW Application and the APR Application concurrently for the purposes of leave to appeal and assign both applications to the same panel of judges. Democracy Watch (the Applicant in File No: 39202) will also be submitting a letter to the Court confirming its agreement with the Applicant's request.

Yours truly,

EVOLINK LAW GROUP

SIMON LIN
Barrister & Solicitor

Cc: Mr. Allan Matte, counsel for the Respondent, Canadian Transportation Agency; Mr. Sebastian Spano, counsel for Democracy Watch (Applicant in File No: 39202); Mr. Alexander M. Gay, counsel for the Attorney General of Canada (Respondent in File No: 39202); and Mr. Christopher Rupar, Agent for the Respondent, Attorney General of Canada (File No: 39202).