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March 4, 2016

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Mr. Christopher C. Johnson and Dr. Gábor Lukács v. Air Canada
Application concerning failure to apply the tariff and application of terms and conditions not set out in the tariff and with respect to delayed passengers
Case No.: 15-05627
Air Canada's refusal to comply with Decision No. LET-C-A-6-2016

In Decision No. LET-C-A-6-2016 of the Agency, dated February 24, 2016, the Agency ordered Air Canada to disclose to the Applicants Document A-2, subject to the Applicants signing a Non-Disclosure Undertaking (NDU).

On March 1, 2016, the Applicants provided the Agency and Air Canada with a signed NDU. The Applicants have stated and maintain that they are complying with Decision No. LET-C-A-6-2016 of the Agency under protest, and reserve their right to challenge said decision before the Federal Court of Appeal at the end of the proceeding. Accordingly, in addition to the date and page numbering, "UNDER PROTEST" has also been added to the running header as it was done in other proceedings before the Agency in the past, to assist appellate review.

Air Canada refuses to comply with Decision No. LET-C-A-6-2016, which ordered it to provide the Applicants with a copy of Document A-2 within 2 business days from the receipt of the NDU.

Instead, on March 2, 2016, Air Canada falsely claimed in its email of March 2, 2016 that the Applicants modified the wording of the NDU, and took issue with the pages having been marked as "UNDER PROTEST."

The Applicants submit that Air Canada's position is meritless for the following reasons:

1. The practice of complying with a demand or condition "under protest" and marking the protest on the face of a document has been accepted and endorsed by the Supreme Court of Canada.

The Queen v. Premier Mouton Products Inc., [1961] SCR 361

2. Compliance with a demand or condition without a protest may prejudice the ability of the party to subsequently challenge the demand or condition.

Eadie v. Brantford (Township), [1967] SCR 573 at 585

3. More recently, the practice of protesting and/or complying under protest has been endorsed by Madam Justice Sharlow during the hearing before the Federal Court of Appeal in File No. A-460-12 on June 25, 2013.
4. The running header of "UNDER PROTEST" does not alter the wording of the undertaking, and thus does not prejudice Air Canada in any way: it remains a valid undertaking unless the Federal Court of Appeal sets aside Decision No. LET-C-A-6-2016.
5. The Applicants do have the right to comply with a decision of the Agency under protest and to mark their compliance as such to assist appellate review of the matter. It would be inappropriate for the Agency to interfere with Applicants' efforts and/or ability to seek appellate review of the Agency's own decision.

Thus, it is submitted that the Applicants have fully complied with Decision No. LET-C-A-6-2016 of the Agency, although they have done so under protest.

Therefore, in light of Air Canada's refusal to provide the Applicants with Document A-2 and in order to move the proceeding forward, the Applicants request that the Agency provide them with Document A-2, which has already been provided to the Agency by Air Canada.

Dr. Gábor Lukács
Co-applicant and
representative for Mr. Johnson

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