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June 4, 2018

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: False and/or misleading statements on the Agency's consultation website

I am writing to express concern about the false and/or misleading statements that were published on the Canadian Transportation Agency's consultation website (www.airpassengerprotection.ca).

I. Lost or Damaged Baggage: "there is no minimum compensation level"

The page www.airpassengerprotection.ca/baggage, entitled "Lost or Damaged Baggage," materially misrepresents the rights of passengers under the *Montreal Convention* by stating that:

The Montreal Convention sets the maximum liability for damages for lost, damaged or delayed baggage at 1,131 Special Drawing Rights (approximately CAN\$2100) on international travel; there is no minimum compensation level.

[Emphasis added.]

The statement that "there is no minimum compensation level" contradicts not only the clear and unambiguous wording of the *Montreal Convention*, but also the Agency's own finding of law that the airline is required to pay full restitution:

[23] [...] paragraph 17(2) of the Convention provides that a carrier is liable for loss or damage if the event which caused the loss or damage took place on board an aircraft or during any period within which the checked baggage was in the charge of the carrier. The carrier can avoid liability only if the damage resulted from an inherent quality or defect of the baggage.

[24] The Agency therefore is of the opinion that if a carrier accepts checked baggage for transportation and the checked baggage is under the care and control of the carrier, the carrier assumes liability for the baggage in the event of loss and damage, notwithstanding the carrier has not agreed to carry items and the items are contained in checked baggage with or without the carrier's knowledge.

[Emphasis added.]

Decision No. 227-C-A-2008, paras. 23-24

The aforementioned decision has been cited in at least 21 subsequent decisions by the Agency, and the Agency reached a similar conclusion with respect to baggage delay.

Decision No. 16-C-A-2013, para. 93
Decision No. 108-C-A-2017, para. 27

I therefore request that the false and/or misleading statement that “there is no minimum compensation level” under the *Montreal Convention* be removed from the Agency's consultation website.

II. Flight Delays and Cancellations: omission rights under the *Montreal Convention*

The page www.airpassengerprotection.ca/delays-cancellations, entitled “Flight Delays and Cancellations,” materially misrepresents the rights of passengers by failing to disclose that the *Montreal Convention* requires airlines to compensate passengers up to approx. **CAD\$8,500** for delay in transportation by air. Indeed, in 2012, the Agency held that:

[11] Article 19 of the Convention states:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[12] By virtue of the *Carriage by Air Act*, R.S.C., 1985, c. C-26, the Convention has the force of law in Canada and governs, among other matters, the liability limitations for delay applicable to international carriage by air for travel to which the Convention applies. The Convention modernizes the liability regime governing international carriage.

[13] Under Article 26 of the Convention, an air carrier may not relieve itself from liability nor fix a lower limit to its liability than that prescribed in the Convention.

[Emphasis added.]

Decision No. 250-C-A-2012, paras. 11-13

The Agency reached the same conclusion in a wealth of other decisions.

Decision No. LET-C-A-78-2011, paras. 22-24

Decision No. LET-C-A-79-2011, paras. 22-24

Decision No.10-C-A-2014, paras. 90-94

Decision No. 91-C-A-2017, paras. 30-32

As acknowledged on the Agency's own website, on the page entitled "[Limits of liability for passengers and goods,](#)" in the case of delay in transportation of passengers, the airline's liability cap is \$4,694 SDR (Special Drawing Rights), which is approximately **CAD\$8,500**.

I therefore request that the Agency's consultation website be corrected by disclosing to the public the rights they already have under the *Carriage by Air Act*, which incorporates the *Montreal Convention*.

Kindly please confirm that these corrections will be implemented promptly.

I look forward to hearing from you.

Yours very truly,

Dr. Gábor Lukács