



By Fax: (613) 952-7226

October 6, 2014

The Administrator
Federal Court of Appeal
1st Floor
90 Sparks Street
Ottawa, Ontario

Dear Sir/Madam:

**Re: Dr. Gabor Lukacs v. Canadian Transportation Agency
Court File No.: A-357-14**

I am writing on behalf of the respondent Canadian Transportation Agency (the Agency) to respond to the appellant's October 5, 2014 letter to the Court, in which he addresses the Agency's reply to its motion to determine the contents of the appeal book or, in the alternative, to introduce new evidence in the above appeal.

As part of its reply, the Agency has offered an affidavit in support of the Annotated Dispute Adjudication Rules (the Annotation), and explained that it has done so in the event the Court determines that the absence of an affidavit in the motion record constitutes a defect.

The Agency reiterates the submissions made in its reply that the affidavit provides formal corroboration of the authorship, purpose and approval of the Annotation. These issues were addressed in the motion, but concerns about them were raised by the appellant in his response.

The Agency elected to offer an affidavit in the form and manner it did because sections of the *Federal Courts Rules* like Rule 312 are not directly applicable to appeals and because, as the Agency indicated in its reply, it was not seeking to introduce new, substantive evidence into the record. The Agency has proposed an expeditious manner of addressing the absence of an affidavit, but recognizes that whether one is necessary, and if so, whether the affidavit may be considered properly filed in this case is subject to this Court's determination.

Because of the absence of clear jurisprudence on the matter, the Agency indicated in its reply that it is seeking clarification from the Court on the proper means by which a soft law instrument like the Annotation should be introduced into the court record on an appeal pursuant to section 41 of the *Canada Transportation Act*, S.C.1996, c. 10.

Finally, the Agency respectfully submits that Court File No. A-279-13 is a separate matter from the present appeal. In *Lukacs v. Canada (Transportation Agency)*, 2014 FCA 76, the Court did not make a ruling with respect to the contested document that can be relied upon here. Moreover, in the present appeal, the Agency has made submissions in its reply concerning the appellant's allegation that the Annotation is not credible because it exists in multiple versions. In particular, the Agency indicated in its motion and reply that a soft law instrument like the Annotation is in fact designed to be updated in light of, and in response to, the Agency's experience.

All of which is respectfully submitted.

Yours truly,



Barbara Cuber
Counsel
Legal Services Branch
Canadian Transportation Agency
15 Eddy Street, 19th Floor
Gatineau, Quebec
K1A 0N9
Tel: (819) 953-2236
Fax: (819) 953-9269

c.c: Dr. Gabor Lukacs

By e-mail: lukacs@airpassengerrights.ca

Halifax, NS