

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
BRITISH AIRWAYS PLC**

Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: June 27, 2016

Issued by: _____

Address of
local office: Federal Court of Appeal
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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from a decision made by the Canadian Transportation Agency [the Agency] dated March 23, 2016 and bearing Decision No. 91-C-A-2016 [Decision Under Appeal], in which the Agency concluded that the Tariff wording proposed by British Airways on March 9, 2016 complies with the Order of the Agency found in Decision No. 49-C-A-2016, requiring British Airways to amend its Tariff “to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation by reference of Regulation (EC) 261/2004.”

THE APPELLANT ASKS that:

1. the Decision Under Appeal be set aside;
2. this Honourable Court make the order that should have been made by the Agency, declaring that the Tariff wording proposed by British Airways does not comply with the order found in Decision No. 49-C-A-2016 of the Agency, and directing British Airways to amend its International Tariff within seven (7) days;
3. the Appellant be awarded a moderate allowance for the time and effort he devoted to preparing and presenting his case, and reasonable out-of-pocket expenses incurred in relation to the appeal; and
4. this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. On January 30, 2013, Dr. Gábor Lukács, the Appellant, filed a complaint with the Agency concerning, among other things, the terms and conditions set out in British Airways' international tariff [the Tariff] governing the compensation of passengers who are denied boarding as a result of overbooking [denied boarding compensation].
2. On May 26, 2014, the Agency issued Decision No. 201-C-A-2014 [First Decision] that determined, with finality, the issue of denied boarding compensation.
3. On November 27, 2015, this Honourable Court granted the appeal of Lukács, set aside the First Decision, and directed the Agency to redetermine the issue of denied boarding compensation, and:

clarify whether the tariff must in all instances set out denied boarding compensation provisions for flights to and from Canada, or whether the fact that British Airways passengers from the E.U. to Canada are covered by E.U. Regulation (EC) No. 261/2004 is sufficient.

Lukács v. Canada (CTA), 2015 FCA 269, paras. 40 and 42

4. On February 18, 2016, in Decision No. 49-C-A-2016 [Redetermination Decision or Second Decision], the Agency redetermined the issue of denied boarding compensation, and ordered British Airways to amend its Tariff

[...] to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation by reference of Regulation (EC) 261/2004 [...]

5. Air Canada's International Tariff Rule 90, governing denied boarding compensation, states among other things that:

When AC is unable to provide previously confirmed space due to there being more passengers holding confirmed reservations and tickets than for which there are available seats on a flight, AC shall implement provisions of this rule, except for employee and industry discounted travel, unless applicable local law provides otherwise. In particular, for flights departing from the following countries, Air Canada will apply the provisions of the following legislation:

[...]

European Union and Switzerland: EC regulation No. 261/2004;

[Emphasis added.]

6. On March 9, 2016, British Airways submitted *ex-parte* to the Agency a proposed wording for a Tariff rule for denied boarding compensation on flights from the EU to Canada, which improperly includes exceptions to the obligation to pay compensation that are found in Rule 87(B)(3)(a). These exceptions:

- (a) relieve British Airways from the obligation to pay denied boarding compensation in situations where compensation is owed under *Regulation (EC) 261/2004*; and
- (b) were previously found, in part, to be unreasonable and were disallowed by the Agency in Decision No. 204-C-A-2013 (para. 45).

7. Thus, the Agency erred in law in the Decision Under Appeal by concluding that the Tariff wording proposed by British Airways on March 9, 2016, which includes the exceptions found in Rule 87(B)(3)(a), complies with the Order found in the Redetermination Decision.

Statutes and regulations relied on

8. Sections 108, 110, 111, 113, and 122 of the *Air Transportation Regulations*, S.O.R./88-58.
9. Sections 41 and 86 of the *Canada Transportation Act*, S.C. 1996, c. 10.
10. *Regulation (EC) No. 261/2004* of the European Parliament and of the Council.
11. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

June 27, 2016

DR. GÁBOR LUKÁCS

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Appellant