

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court of Appeal in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

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 613-992-4238) or at any local office.

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

Date: March 28, 2014

Issued by: _____

Address of

local office: Federal Court of Appeal
1801 Hollis Street
Halifax, Nova Scotia

TO: **CANADIAN TRANSPORTATION AGENCY**

15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

APPLICATION

This is an application for judicial review in respect of the refusal of the Canadian Transportation Agency to hear and/or render a decision in the complaint of the Applicant dated February 24, 2014, as required by subsection 29(1) of the *Canada Transportation Act*, S.C. 1996, c. 10.

The Applicant makes application for:

1. an order of *mandamus*, requiring the Canadian Transportation Agency to render a decision in the Complaint;
2. costs and/or reasonable out-of-pocket expenses of this application;
3. such further and other relief or directions as the Applicant may request and this Honourable Court deems just.

The grounds for the application are as follows:

1. The Applicant, Dr. Gábor Lukács, is an air passenger rights advocate and a frequent traveller.

A. The statutory framework and statutory duty

2. The Canadian Transportation Agency (“Agency”), established by the *Canada Transportation Act*, S.C. 1996, c. 10 (“CTA”), has a broad mandate in respect of all transportation matters under the legislative authority of Parliament. The Agency performs two key functions:
 - (a) as a quasi-judicial tribunal, the Agency resolves commercial and consumer transportation-related disputes; and
 - (b) as an economic regulator, making determinations and issuing licenses and permits to carriers which function within the ambit of Parliament’s authority.

3. Section 26 of the Act confers power upon the Agency to order a person to do an act or refrain from an act related to any Act of Parliament that is administered in whole or in part by the Agency. The Agency has exercised these powers, for example, to order carriers to remove misleading signage at airports or misleading information from their websites.
4. Pursuant to subsection 27(1) of the Act, a person may make an application to the Agency. The term “application” is defined in section 1 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the “*General Rules*”) as follows:

“application” means an application, made to the Agency, that commences a proceeding under the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, and includes a complaint, [...]

[Emphasis added.]

5. Section 1 of the the Agency’s *General Rules* states:

“complaint” means a complaint made to the Agency that alleges anything to have been done or omitted to have been done in contravention of the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, [...]

[Emphasis added.]

6. Subsection 29(1) of the Act imposes on the Agency the statutory duty to make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received (unless the parties agree otherwise or the Governor in Council shortens the time frame by regulation).
7. Subsection 86.1(1) of the Act requires the Agency to make regulations with respect to advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada.

8. Part V.1 of the *the Air Transportation Regulations*, S.O.R./88-58 (the “*ATR*”), comprising of ss. 135.5, 135.6, 135.7, 135.8, 135.9, 135.91, and 135.92, was promulgated pursuant to subsection 86.1(1) of the Act.
9. Section 135.8 of the *ATR* requires advertisements to clearly distinguish air transportation charges from other fees and taxes.
10. Section 135.91 of the *ATR* explicitly prohibits misrepresenting air transportation charges as if they were third party charges or taxes.

B. The Applicant’s Complaint

11. On or around February 24, 2014, the Applicant made a complaint to the Agency, alleging that Expedia, Inc. has been advertising prices of air services on its Canadian website, expedia.ca, contrary to sections 135.8 and 135.91 of the *ATR* (the “Complaint”); the Applicant asked that the Agency order Expedia, Inc. to amend its Canadian website to comply with Part V.1 of the *ATR*.

C. Refusal of the Agency to render a decision

12. On March 11, 2014, Ms. Cathy Murphy, the Secretary of the Canadian Transportation Agency, contacted the Applicant by email concerning the Complaint, and advised, among other things that:

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

13. On March 15, 2014, the Applicant request in writing that:
 - (a) the Agency clarify whether Ms. Murphy’s email was a decision of the Agency; and
 - (b) the Complaint be placed before a Panel of the Agency.

14. On March 21, 2014, Ms. Murphy advised the Applicant that:

The message I sent was a staff message simply setting out the process that is followed for alleged contraventions to the Air Service Price Advertising Regulations. A response with additional information will be provided to you next week.

15. On March 27, 2014, Mr. Geoffrey C. Hare, Chair and Chief Executive Officer of the Agency, wrote in a letter addressed to the Applicant, among other things, that:

[...] the Agency will not be conducting an inquiry into the matters you have raised.

D. Jurisdiction of this Honourable Court

16. The refusal of the Agency to render a decision in the Complaint of the Applicant falls outside the scope of the statutory appeal pursuant to section 41 of the *Act*.
17. Thus, the present application is brought under sections 18.1 and 28 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, and the *Federal Courts Rules*, 1998.
18. Such further and other grounds as the Applicant may advise and this Honourable Court permits.

This application will be supported by the following material:

1. Affidavit of Dr. Gábor Lukács, to be served.
2. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

March 28, 2014

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant