

CORRECTIONS – Document 1

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Page:	9	Paragraph / Paragraphe	27	Line / Ligne	1		
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Canadian Transportation Agency General Rules, S.O.R./2005-15							
Page:	9	Paragraph / Paragraphe	28	Line / Ligne	1		
Original text to be corrected / Texte original à corriger							
sections 26 and 37							
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section 37							
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ANNEXE 1 - 135.8(5) (a)... (b) (b).... (section (b) apparaît 2 fois autant en anglais qu'en français)							
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[27] Turning to the definitions of “application”, “complaint” and “proceeding” in the *Canadian Transportation Agency General Rules*, S.O.R./2005-35, the Agency asserts that they are not the source of its jurisdiction as they only establish procedures to deal with complaints initiated under specific provisions of the Act. The Agency also underlined that these Rules have since been repealed and replaced by the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104, which provide no definition of the word “complaint”.

[28] Finally, the Agency indicated that properly read, section 37 of the Act are discretionary as their text states that it “may inquire into”, which does not create a general obligation and leaves room for the proper exercise of discretion.

B. *Analysis*

[29] Both parties acknowledge that the legal test for an order of *mandamus* was clearly set out by this Court in *Apotex*. Eight requirements must be satisfied before an order of *mandamus* is to be issued:

- (1) there must be a legal duty to act;
- (2) the duty must be owed to the applicant;
- (3) there must be a clear right to performance of that duty;
- (4) where the duty sought to be enforced is discretionary, certain additional principles apply;
- (5) no adequate remedy is available to the applicant;
- (6) the order sought will have some practical value or effect;
- (7) the Court finds no equitable bar to the relief sought; and
- (8) on a balance of convenience an order of *mandamus* should be issued.

62, 456 N.R. 186). However, while the issue was not *per se* frivolous and concerned the Agency's jurisdiction, the claim was marginal and the Agency showed no signs of bad faith. I do not think this case warrants an award of costs against the Agency.

[46] Additionally, I am not convinced that Ms. Sasova's affidavit and cross-examination should give rise to any increased costs. Rule 400 of the *Federal Courts Rules*, S.O.R./98-106 grants the Court discretion to sanction the reprehensible conduct of a party; this is not the case here (*Apotex v. Pfizer Canada*, 2009 FCA 8 at paragraph 47, [2009] 4 F.C.R. 223). It is also awarded to ensure adequate compensation in complex or costly cases (*Ultima Foods v. Agro-Farma Canada*, 2013 FC 238 at paragraphs 22-26, 2013 CarswellNat 1185). Admittedly, Ms. Sasova's affidavit could have been clearer with respect to Expedia's degree of compliance or whether she had exercised her discretion not to pursue the matter further. Nonetheless, since Ms. Sasova believed she was rightfully exercising her discretion as the Enforcement officer in these circumstances, I do not think it can be said that there was any bad faith on her or the Agency's part.

VII. Conclusion

[47] For those reasons, I would dismiss the application for judicial review, without costs.

"A.F. Scott"

J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Yves de Montigny J.A."

service;

(b) it is clearly indicated that the advertised price relates to only one direction of the service and applies only if both directions are purchased; and

(c) the advertised price is expressed in Canadian dollars and, if it is also expressed in another currency, the name of that other currency is specified.

135.8(5) A person is exempt from the requirement to provide the information referred to in paragraphs (1)(d) to (f) in their advertisement if the following conditions are met:

(a) the advertisement is not interactive; and

(b) the advertisement mentions a location that is readily accessible where all the information referred to in subsection (1) can be readily obtained.

135.9 A person must not provide information in an advertisement in a manner that could interfere with the ability of anyone to readily determine the total price that must be paid for an air service or for any optional incidental service.

135.91 A person must not set out an air transportation charge in an advertisement as if it were a third party charge or use the term tax in an advertisement to describe an air transportation charge.

b) il est clairement indiqué que le prix annoncé n'est que pour un aller simple et qu'il ne s'applique qu'à l'achat d'un aller-retour;

c) le prix annoncé est en dollars canadiens et, s'il est également indiqué dans une autre devise, la devise est précisée.

135.8(5) La personne est exemptée d'inclure dans sa publicité les renseignements visés aux alinéas (1)d) à f) si les conditions ci-après sont remplies :

a) la publicité n'est pas interactive;

b) la publicité renvoie à un endroit facilement accessible où tous les renseignements visés au paragraphe (1) peuvent être facilement obtenus.

135.9 Il est interdit de présenter des renseignements dans une publicité d'une manière qui pourrait nuire à la capacité de toute personne de déterminer aisément le prix total à payer pour un service aérien ou pour les services optionnels connexes.

135.91 Il est interdit de présenter dans une publicité un frais du transport aérien comme étant une somme perçue pour un tiers ou d'y utiliser le terme taxe pour désigner un frais du transport aérien.