

**Court File No. A-357-14**

**IN THE FEDERAL COURT OF APPEAL**

**BETWEEN:**

**DR. GABOR LUKÁCS**

**Appellant**

**-and-**

**CANADIAN TRANSPORTATION AGENCY**

**Respondent**

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**MEMORANDUM OF FACT AND LAW  
OF THE  
CANADIAN TRANSPORTATION AGENCY**

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INTRODUCTION

1. This is the Memorandum of Fact and Law of the Respondent, Canadian Transportation Agency (Agency), in response to the appeal filed before this Honourable Court, pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 (CTA), of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (New Rules).
2. In the absence of any other proper respondent to address the issues put forward in this appeal, the Agency is responding in order to provide assistance to this Honourable Court as to the relevant statutory framework which governs the New Rules and their application by the Agency.

**PART 1****STATEMENT OF FACTS**

3. The Agency is a superior independent quasi-judicial administrative body of the Government of Canada which performs two key functions. As an adjudicative tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

4. The Agency has explicit powers in its enabling statute, the CTA, to make both “rules” (for example, rules of procedure under section 17) and “regulations” (for example, regulations in relation to air matters under subsection 86(1)).

*Canada Transportation Act*, S.C. 1996, c.10, s. 17 and 86(1) - Appendix A

5. The *Canadian Transportation Agency General Rules*, SOR/2005-35, (Former Rules) governed conduct of proceedings before the Agency. The Former Rules came into force on February 8, 2005 and their predecessor, *the National Transportation Agency General Rules*, SOR/88-23, came into force on December 17, 1987.

6. After holding public consultations in the winter of 2012 on proposed revisions to the Former Rules, the Agency made the New Rules in accordance with the process set out in the

*Statutory Instruments Act*, R.S.C., 1985, c. S-22 (SIA), which includes scrutiny by the Clerk of the Privy Council and by the Department of Justice.

*Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 3(1), 3(2), 5(1), 6, 11, 19. – Appendix A

7. The New Rules replaced the Former Rules, which had become overly broad, difficult for parties without legal representation to understand, and, at times, inefficient.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), Regulatory Impact Analysis Statement, Appeal Book, page 31

8. The New Rules are designed to provide the predictability and clarity that the Agency's clients and stakeholders expect and to ensure that the Agency's services are timely, effective, responsive, fair and transparent by

- modernizing and streamlining the Agency's procedures for dispute adjudication;
- enhancing the clarity, transparency and predictability of the formal adjudication process in dispute proceedings;
- improving the efficiency of case processing; and
- better informing and assisting persons who do not have legal representation or commercial parties that are first-time users of the Agency's processes.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), Regulatory Impact Analysis Statement, Appeal Book, page 32

**PART II**

**POINTS IN ISSUE**

9. The Agency respectfully submits that the following issues stand to be determined on this appeal:

- a) Whether paragraphs 41(2)(b) to (d) of the New Rules are *ultra vires* or invalid; and
- b) Whether the New Rules are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament.

**PART III****SUBMISSIONS****STANDARD OF REVIEW**

10. The Supreme Court of Canada has described the approach to reviewing the validity of regulations as follows:

Regulations benefit from a presumption of validity ... This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them ... and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* ...

*Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*,  
[2013] 3 S.C.R. 810, at para. 25

11. This Honourable Court found in *Lukács v. Canada (Transportation Agency)* that the New Rules are not regulations in the strict legal sense for the purposes of the CTA. However, the New Rules are still exercises of the Agency's legislative power pursuant to the CTA, and accordingly, the Agency submits that the same reasoning process used in *Katz* for regulations is equally suited to other exercises of legislative power, such as the New Rules.

*Lukács v. Canada (Transportation Agency)*, 2014 FCA 76

12. Furthermore, given the scope of the Agency's rule-making authority pursuant to section 17 of the CTA which enables the Agency to make rules respecting "the manner of and procedures for dealing with matters and business before the Agency", the Agency submits that

Parliament intended to grant the Agency wide discretion in the area of procedural rule-making and accordingly, this Honourable Court should adopt an interpretive approach that recognizes this plenary authority.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 17 – Appendix A

13. While the Agency acknowledges that the standard of review for questions of procedural fairness is correctness, this standard of review applies in relation to adjudicative decisions. Importantly, the present case does not relate to any adjudicative decision. Rather, it challenges rules made pursuant to a statutory power granted by Parliament: an exercise of legislative, not adjudicative, function. Therefore, more deference is merited.

*Mission Institution v. Khela*, 2014 SCC 24, at para. 79

14. Moreover, the Supreme Court of Canada has indicated that the Agency is due a high degree of deference in respect of the Agency's authority to determine and control its own procedure:

Parliament entrusted the Agency with extensive authority to govern its own process. ... It may make its own rules to govern many aspects of the conduct of proceedings before it (*Canada Transportation Act*, s. 17)...

Considerable deference is owed to procedural rulings made by a tribunal with the authority to control its own process. The determination of the scope and content of a duty to act fairly is circumstance-specific, and may well depend on factors within the expertise and knowledge of the tribunal, including the nature of the statutory scheme and the expectations and practices of the Agency's constituencies. Any assessment of what procedures the duty of fairness requires in a given proceeding should "take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what

procedures are appropriate in the circumstances".

*Council of Canadians with Disabilities. VIA Rail Canada Inc.*,  
[2007] 1 S.C.R. 650, at paras. 230-231

15. Indeed, the Supreme Court also held as follows:

While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints.

*Baker v. Canada (Minister of Citizenship and Immigration)*,  
[1999] 2 S.C.R. 817, at para. 27

16. This Honourable Court has shown restraint in interfering with procedural choices in relation to specialized administrative tribunals:

Administrative agencies normally have considerable discretion over the precise form of participation in their decision-making by those interested. A reviewing court will not interfere with a specialist agency's procedural choices unless, in all the circumstances, they result in a denial of a fair opportunity to be heard.

*Telus Communications Company v. Canadian Radio-Television and Telecommunications Commission*, 2010 FCA 191, at para. 24

17. Since discretion is given to tribunals for their procedural decisions in specific cases, the

Agency respectfully submits that it follows that deference should also be given to tribunals for the general procedures that they choose to set out in their rules.



18. In addition, the Agency notes that this appeal challenges the New Rules in a vacuum, outside of a factual adjudicative context. Accordingly, this Honourable Court has been given no indication of how the Agency has applied, or would apply, the New Rules. This is an important consideration given that the New Rules are intended to apply to a wide spectrum of disputes ranging across four modes of transportation, including accessible transportation complaints that engage the Agency's human rights mandate. The New Rules must therefore capture the most common procedures that apply across all of these varied and disparate types of dispute proceedings, and should be interpreted in that light.
19. Finally, the Agency respectfully submits that the issues before this Court are subject to the principle that, unless specific procedures are required by statute, the content of the duty of fairness depends on the factual context. The Supreme Court of Canada has indicated that “the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case” (emphasis added).

*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at para. 79

20. More recently, the Supreme Court of Canada held as follows:

The duty of fairness is not a “one-size-fits-all” doctrine. Some of the elements to be considered were set out in a non-exhaustive list in *Baker* to include (i) “the nature of the decision being made and the process followed in making it” (para. 23); (ii) “the nature of the statutory scheme and the ‘terms of the statute pursuant to which the body operates’” (para. 24); (iii) “the importance of the decision to the individual or individuals affected” (para. 25); (iv) “the legitimate expectations of the person challenging the decision” (para. 26); and (v) “the choices of

procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances” (para. 27).

*Canada (Attorney General) v. Mavi* [2011] 2 SCR 504, at para. 42

21. For all these reasons, in the Agency's respectful submission, the New Rules are entitled to deference, and the following principles are relevant to this Honourable Court's review of the Agency's procedures:

- 1) the Agency is master of its own procedure and has been entrusted by Parliament with broad authority to determine its procedures;
- 2) the New Rules are designed to apply to a broad range of disputes, and to expressly cover only the most commonly-arising procedural steps in adjudicated cases;
- 3) the New Rules provide a "general request" provision in section 27 that allows parties to make procedural requests not otherwise specifically provided for under the New Rules;
- 4) the New Rules provide a variance provision in section 6 that allows the Agency to vary any rule at any time or grant other relief on any terms for a just determination of the issues; and
- 5) the specific duties owed by the Agency to parties vary; they are best evaluated in light of the facts of the Agency's actual adjudicative choices in specific cases.

**A. Whether paragraphs 41(2)(b) to (d) of the New Rules are *ultra vires* or invalid**

22. Paragraphs 41(2)(b) to (d) of the New Rules provide as follows:

The Agency may, at the request of a party, stay a decision or order of the Agency in any of the following circumstances:

...

(b) a review is being considered by the Governor in Council under

section 40 of the Act;

(c) an application for leave to appeal is made to the Federal Court of Appeal under section 41 of the Act;

(d) the Agency considers it just and reasonable to do so.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), para. 41(2)(b) to (d) – Appeal Book, page 22

23. The Agency submits that this Honourable Court should have regard to the following factors when determining if paragraphs 41(2)(b) to (d) of the New Rules are *ultra vires*:

- a. the Agency's duty to act as an effective steward of its resources, both financial and human, in the exercise of its mandate;
- b. the Agency does not re-adjudicate the merits of a decision or order when it grants a stay; and
- c. the CTA provides several alternative sources of legal authority for the Agency to stay its decisions or orders.

#### Effective Stewardship

24. The Agency respectfully submits that, by providing parties with an expedient mechanism to obtain a stay of its decisions or orders, the Agency is acting as an effective steward of its resources, both financial and human, in the exercise of its mandate.

25. Furthermore, the Agency submits that subsection 41(2) of the New Rules allows the Agency to balance the expediency required by the CTA with considerations of overall fairness. This Honourable Court implicitly endorsed the need to balance expediency with other legitimate considerations when it held that subsection 29(1) of the CTA, which sets out the 120-day time limit for Agency decisions, is not mandatory but rather directory.

*Canadian National Railway Co. Ltd. v. Ferroequus Railway Co. Ltd.*,  
2002 FCA 193

#### No Re-Adjudication of the Merits

26. To clarify, a stay under subsection 41(2) of the New Rules does not constitute a redetermination of the merits of the decision being stayed. It simply suspends the execution of the decision or order.

27. In determining whether to issue a stay under subsection 41(2), the Agency applies the three-part test set out by the Supreme Court of Canada:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

*RJR - MacDonald Inc. v. Canada (Attorney General)*,  
[1994] 1 S.C.R. 311 at p. 334 [RJR]

*KLM Royal Dutch Airlines and Northwest Airlines*,  
Agency Decision No. 377-A-2003

28. Accordingly, in determining a stay application under subsection 41(2) via the RJR test, the Agency does not re-assess the adjudication of the complaint.

#### Legal Authority for Stays

29. The Agency submits that there are three alternative sources of statutory authority that this Honourable Court should have regard to when determining if the Agency has the power to grant a stay under subsection 41(2) of the New Rules:

- 1) the power to vary any decision or order (section 32 of the CTA);
- 2) the powers, rights and privileges that are vested in a superior court (section 25 of the CTA); and
- 3) the collection of broad remedial powers (subsection 33(4), subsection 27(1), subsection 28(1)).

*Canada Transportation Act*, S.C. 1996, c. 10, s. 25, 27(1), 28(1), 32, 33(4)

#### 1. Power to Vary

30. This Honourable Court found that when staying decisions, the Canadian Radio-Television and Telecommunications Commission (CRTC) was exercising its power to "vary the effective date of its decision".

*Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General)*, 2012 FCA 203, paras. 12-14 [ACTQ]

31. The Agency notes that the unqualified power of the CRTC in section 62 of the *Telecommunications Act*, S.C. 1993, c. 38 to vary any decision is broader than section 32 of the CTA, which explicitly requires new facts or circumstances:

The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.

*Telecommunications Act*, S.C. 1993, c. 38, s. 62

*Canada Transportation Act*, S.C. 1996, c. 10, s. 32

32. However, the Agency respectfully submits that in order to satisfy the three-part RJR test for a stay, a party must prove to the Agency that the party will suffer irreparable harm if forced to comply with an Agency decision or order before an appeal, a review or a re-hearing is resolved, or in other circumstances that so require. Proof of such irreparable harm, in the Agency's respectful submission, constitutes a new fact or circumstance sufficient to ground the Agency's review and vary power under section 32 of the CTA.

33. Accordingly, the Agency submits that, applying the reasoning in ACTQ, the Agency is empowered under section 32 of the CTA to issue stays of its decisions or orders by varying the effective date of the decision or order, because the three-part RJR test incorporates the requirement of section 32 of the CTA for new facts or circumstances in the form of irreparable harm.

2. Powers of a Superior Court

34. Alternatively, section 25 of the CTA invests the Agency with the powers, rights and privileges of a superior court, including broad remedial jurisdiction:

**25.** The Agency has, with respect to all matters necessary or proper for the exercise of its jurisdiction, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders or regulations and the entry on and inspection of property, all the powers, rights and privileges that are vested in a superior court.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 25

35. Superior courts have been found to have an inherent jurisdiction to order stays of their decisions pending appeal.

*Buxton v. Carriss*, [1958] B.C.J. No. 104 (BCCA), at paras. 31, 34

*Gyurcsek v. Eng*, [1977] B.C.J. No. 1046 (SC), at para. 2

*O'Hara v. British Columbia (Attorney General)*, [1987] B.C.J. No. 434

*Coolbreeze Ranch Ltd. v. Morgan Creek Tropicals Ltd.*, 2009 BCSC 151, at para. 64

36. Accordingly, the Agency submits that it is empowered under section 25 of the CTA to issue stays of its decisions or orders by virtue of possessing the powers, rights and privileges vested in a superior court, including the inherent jurisdiction to stay execution of its decisions or orders pending appeal, review or re-hearing or in other circumstances that so require.

3. Broad Remedial Powers

37. Alternatively, the CTA grants the Agency broad powers with respect to its decisions and orders, and reading these encompassing powers together, it is open to this Honourable Court to necessarily imply that since Parliament granted the Agency such vast powers in relation to its decisions and orders, Parliament also intended to grant the Agency the power to stay its decisions and orders.

38. The first broad power is provided by the CTA in subsection 33(4):

The Agency may, before or after one of its decisions or orders is made an order of a court, enforce the decision or order by its own action.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 33(4)

39. The second broad power is provided by the CTA in subsection 27(1):

On an application made to the Agency, the Agency may grant the whole or part of the application, or may make any order or grant any further or other relief that to the Agency seems just and proper.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 27(1)

40. The third and final broad power is provided by the CTA in subsection 28(1):

The Agency may in any order direct that the order or a portion or provision of it shall come into force

- a) at a future time,
- b) on the happening of any contingency, event or condition specified in the order, or
- c) on the performance, to the satisfaction of the Agency or



person named by it, of any terms that the Agency may impose on an interested party,

and the Agency may direct that the whole or any portion of the order shall have force for a limited time or until the happening of a specified event.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 28(1)

41. Read together, the Agency respectfully submits that these broad remedial powers necessarily imply that Parliament intended that the Agency's powers with respect to the implementation of its decisions or orders be read broadly, and therefore should include the power to suspend implementation by issuing stays in appropriate circumstances.

42. A broad approach to implementation of orders in the administrative law context is consistent with the approach taken by this Honourable Court in *Amos v. Canada (Attorney General)*:

This power is not expressly provided for in the Act itself, but that is not the end of the matter. As the Adjudicator noted, other labour relations regimes have been interpreted as implicitly authorizing deciders to enforce settlement agreements...

... the Supreme Court held that arbitration boards should be given latitude to exercise their powers "so as to best effectuate their raison d'être" .

*Amos v. Canada (Attorney General)*, 2011 FCA 38, at paras. 62-63

43. The Agency respectfully submits that the same considerations should guide this Honourable Court when determining the powers of the Agency; as an adjudicative tribunal with a human

rights law mandate under Part V of the CTA, the Agency needs an ongoing power over the implementation of its orders in order to ensure fulfillment of its legislative mandate.

**B. Whether the New Rules are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament**

**(i) The Agency's rules of procedure as a "complete code"**

44. The Agency has stated previously that its Former Rules were a "full procedural code."

*Nawrots v. Sunwing Airlines*, Agency Decision No. 432-C-A-2013, at para. 134

*Azar v. Air Canada*, Agency Decision No. 264-C-A-213, at para. 158

*Azar v. Air Canada*, Agency Decision No. 442-C-A-213, at para. 6

45. The Agency respectfully submits that this statement should not be interpreted too broadly as it does not mean that the Former Rules constituted an exhaustive code outlining every conceivable procedure that could arise in the context of a dispute proceeding. Indeed, with respect to the Former Rules, the Agency explained as follows:

... the absence of a specific applicable rule does not constitute a limit to the Agency's procedural powers. This is specifically noted in section 3 of the General Rules, which states:

1. When the Agency is given a discretion under these Rules, it shall exercise the discretion in a fair and expeditious manner.
2. The Agency may, with or without notice,
  - a. do whatever is necessary to deal with anything that is not covered by these Rules; or

- b. do anything prescribed in these Rules on its own, even if the Rules state that a party must make a request or motion to the Agency

*Ruling by the Federal Court of Appeal with respect to the BNSF Railway Company, the Canadian National Railway Company and the Canadian Pacific Railway Company's appeal of the Canadian Transportation Agency's Decision No. LET-R-152-2010, Agency Decision No. 107-R-2012*

46. Indeed, under the Former Rules, the Agency routinely supplemented its rules of procedure.

*Dhillon v. Air Canada*, Agency Decision No. 460-C-A-2006

*Andy Ackerman v. Air Canada*, Agency Decision No. 637-C-A-2002

*Todd Bass v. Air Canada*, Agency Decision No. 37-C-A-2002

*Patricia Morgan v. Air Canada*, Agency Decision No. 38-C-A-2002

47. Thus, the Former Rules permitted the Agency to do whatever was necessary to deal with anything not covered by the Rules. In this sense, the Former Rules were a "complete code"; they provided the Agency with comprehensive authority to deal with any procedural matter, both those that were explicitly enumerated in the Former Rules and those that were not. Notably, section 6 of the Former Rules acknowledged that the Rules were not exhaustive; they provided for a means to supplement any gap.

*Canadian Transportation Agency General Rules*, SOR/2005-35, s. 6  
Appendix A

48. Like the Former Rules, the New Rules allow the Agency wide procedural flexibility:

**6.** The Agency may, at the request of a person, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will allow for the just determination of the issues.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), s. 6  
Appeal Book, page 11

49. Moreover, section 27 provides a mechanism for any procedure not expressly covered and section 34 provides a mechanism to file a document not otherwise provided for:

**27.** (1) A person may file a request for a decision on any issue that arises within a dispute proceeding and for which a specific request is not provided for under these Rules.

**34.** (1) A person may file a request to file a document whose filing is not otherwise provided for in these Rules.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), s. 27(1), 34(1) - Appeal Book, pages 16, 20

50. Finally, the Agency may determine any procedural issues at a conference:

**40.** (1) The Agency may, at the request of a party, require the parties to attend a conference by a means of telecommunication or by personal attendance for the purpose of

...

(e) establishing the procedure to be followed in the dispute proceeding.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), para. 40(1)(e) - Appeal Book, page 21

51. The Agency therefore respectfully submits that this Honourable Court should bear in mind that the very terms of the New Rules demonstrate that they incorporate variance and supplementation as needed, which is consistent with the fundamental principles of administrative law, namely that the Agency is master of its own procedure and that the administrative adjudicative process must remain flexible. Therefore, while the Agency's rules of procedure constitute an extensive guide to process, the Rules are not intended to constitute an exhaustive, exclusive list of procedures available to parties, and have never been treated as such.

**(ii) No opportunity to object to requests of non-parties to intervene**

52. The Supreme Court of Canada has held that the decision to grant or refuse an intervention is discretionary.

*Canada (Combines Investigation Act Director of Investigation & Research) v. Newfoundland Telephone Co.*, [1987] 2 S.C.R. 466, at para. 16

*Great Northern Grain Terminals Limited v. Canadian National Railway Company*, Agency Decision No. 344-R-2007, at paras. 4-5

53. As such, the Agency respectfully submits that intervention requests fall squarely within the administrative law principle that the Agency is master of its own procedure. This is consistent with the principle that the decision of whether to grant a request for intervention should belong to the Agency and be based on the Agency's determination of whether the

participation of the proposed intervener will assist the Agency to arrive at a well-informed decision.

54. Although the New Rules do not provide for an automatic right of reply to requests to intervene, a party may request to file an answer through section 34, cited above, which allows persons to request to file a document which is not otherwise provided for in the New Rules.

55. Furthermore, subsection 5(2) of the New Rules also permits the Agency to utilize section 34 (and any other rule) on its own motion when it considers appropriate:

Anything that may be done on request under these Rules may also be done by the Agency of its own initiative.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), s. 5(2)  
Appeal Book, page 11

56. Indeed, the Agency has, in past cases, requested submissions from parties before making a determination with respect to whether intervener status would be granted.

*Council for Canadians with Disabilities – Application for intervener status in the application by Linda McKay-Panos*, Agency Decision LET-AT-A-21-2002

*Gyles v. British Yukon Railway Company*, Agency Decision No. 25-R-2000

57. Finally, the Agency notes that the New Rules provide for a right of reply to the substance of an intervention, once intervener status is granted:

An applicant or a respondent that is adverse in interest to an intervener may file a response to the intervention. The response must be filed within five business days after the day on which they receive a copy of the intervention and must include the information referred to in Schedule 9.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), s. 22  
Appeal Book, page 14

**(iii) Removal of requirement to provide reasons**

58. The New Rules do not require the Agency to provide reasons in support of its orders and decisions.

59. Although the Former Rules did provide for reasons, the Agency submits that the CTA does not impose an explicit statutory duty to provide reasons:

Although the Act itself imposes no duty on the Agency to give reasons, section 39 of the *National Transportation Agency General Rules* does impose such a duty. In this case, the Agency chose to provide its reasons in writing.

*VIA Rail Canada Inc. v. National Transportation Agency*,  
[2001] 2 FCR 25 at para. 16

60. Because the CTA is silent on this issue, and section 17 of the CTA provides the Agency with plenary authority to make procedural rules, the Agency submits that the removal of a requirement to provide reasons from the New Rules is within the Agency's authority.

61. Nevertheless, the Agency does not dispute that section 41 of the CTA provides for a statutory right of appeal before this Honourable Court and that, pursuant to *Baker*, there may be an implied common law duty on the Agency to give reasons as a matter of procedural fairness:

42 ... In *Orlowski v. British Columbia (Attorney-General)* (1992), 94 D.L.R. (4th) 541 (B.C.C.A.), at pp. 551-52, it was held that reasons would generally be required for decisions of a review board under Part XX.1 of the *Criminal Code*, based in part on the existence of a statutory right of appeal from that decision, and also on the importance of the interests affected by the decision. In *R.D.R. Construction Ltd. v. Rent Review Commission* (1982), 55 N.S.R. (2d) 71 (C.A.), the court also held that because of the existence of a statutory right of appeal, there was an implied duty to give reasons.

*Baker v. Canada (Minister of Citizenship and Immigration)*,  
[1999] 2 S.C.R. 817

62. However, even if the Agency does have a common law duty to provide reasons, it does not follow that the Agency should be required to include a provision respecting reasons in its rules of procedure. The Agency remains bound by common law obligations of procedural fairness, irrespective of whether such obligations are explicitly included in the New Rules. Therefore, amending the New Rules to repeat overriding legal obligations would be unnecessary.



**(iv) Paper proceeding with no meaningful opportunity to challenge statements of adverse witnesses or to call oral evidence**

63. The New Rules do not provide for automatic procedures that govern examinations of deponents and affiants, oral hearings, and in particular, requests for oral hearings.

**Examinations**

64. This Honourable Court has confirmed that the right to cross-examination in an administrative dispute proceeding is not absolute where there is no right to cross-examination provided for by statute:

The right to cross-examine while of principal importance to our judicial system is not an absolute right. Where a statute is silent on the right to cross-examine, courts will generally be reluctant to impose upon a board their procedures and technical rules of evidence.

*Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [1998] 2 FCR 666

65. The CTA does not provide a right to cross-examination. This may be contrasted with the enabling statutes of the following federal administrative tribunals:

*Specific Claims Tribunal Act*, SC 2008 c. 22, s. 28

*Veterans Review and Appeal Board Act*, SC 1995, c 18, s. 42(8)

*Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3, s. 36(3)

66. Authors Macaulay and Sprague have also articulated the principle that there is no common law obligation in administrative law to allow for cross-examination:

At common law, there is no absolute obligation on agencies to allow cross-examination of witnesses in oral hearings or to allow cross-examination on the materials submitted or interlocutories when the hearing is conducted in writing.

Macaulay and Sprague, *Practice and Procedure Before Administrative Tribunals*, loose-leaf edition, 12.28(a)(i) at 12-178.8

67. Accordingly, the Agency respectfully submits that, since there is no legal right to examinations in Agency proceedings, there is no legal obligation to provide for such procedures in the New Rules.

68. The Agency notes, however, that the New Rules set out a mechanism by which parties can test the other parties' evidence:

**24.** (1) A party may, by notice, request that any party that is adverse in interest respond to written questions that relate to the matter in dispute or produce documents that are in their possession or control and that relate to the matter in dispute.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), s. 24(1)  
Appeal Book, page 14

69. Should a party wish to examine a witness orally, the Agency notes that section 27 of the New Rules provides that a party may make any request. In such a case, the Agency will decide the merits of such a request in the context of a specific proceeding.

### **Oral Hearing**

70. The Agency respectfully submits that there is no universal common law right to an oral hearing in the context of administrative law:

However, it also cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations.

*Baker v. Canada (Minister of Citizenship and Immigration)*,  
[1999] 2 S.C.R. 817, at para. 33

71. Notably, this finding was reached by the Supreme Court of Canada, despite the fact that *Baker* involved removals of individuals from Canada, which affect a personal interest of the highest possible importance and which therefore attract a very high level of procedural fairness. This may be contrasted to decisions of the Agency, which do not have the same life, liberty, or security of the person implications for an applicant.

72. Apart from common law, the duty to hold an oral hearing may be provided for by statute.

However, this Honourable Court found at para. 89 in *VIA Rail Canada Inc. v. Canadian Transportation Agency* that the CTA did not impose a requirement to hold oral hearings:

... it is my view that the Agency had the right to exercise its discretion in deciding whether to grant an oral hearing. It has discretion in the conduct of its own affairs (*Baker*, at paragraph 27) and neither the CTA nor the Agency's General Rules (*National Transportation Agency General Rules*, SOR/88-23, section 38) require it to hold an oral hearing (emphasis added).

*VIA Rail Canada Inc. v. Canadian Transportation Agency*,  
2005 FCA 79

73. Accordingly, the Agency respectfully submits that there is no general duty imposed on the Agency to hold oral hearings, whether by virtue of the common law duty of procedural fairness or the CTA. The Agency therefore respectfully submits that it is not required to establish provisions relating to oral hearings in its New Rules.

74. Nevertheless, the Agency notes that the New Rules do, in fact, apply to oral hearings. This was explained in the Regulatory Impact Analysis Statement:

While Part III of the General Rules set out procedures applicable to oral hearings, the provisions did not adequately address the procedural steps involved in an oral hearing process, and therefore, these provisions were not carried over in the Rules. However, the Rules will apply to disputes that proceed by way of oral hearing. In addition, the Agency may establish guidelines in relation to oral hearings and may further establish the procedures and time limits that will apply to each proceeding to be heard by way of oral hearing. This case-by-case approach is consistent with past

practice in disputes before the Agency that have proceeded by way of oral hearing.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings) (SOR/2014-104),*  
Regulatory Impact Analysis Statement, Appeal Book, page 35

### **C. Costs**

75. Generally, an administrative body like the Agency will neither be entitled to nor be ordered to pay costs, at least when responding to a court proceeding to address its jurisdiction and where there has been no misconduct on its part. Where the body has acted in good faith and conscientiously throughout, albeit resulting in error, the reviewing tribunal will not ordinarily impose costs.

*Lang v. British Columbia (Superintendent of Motor Vehicles),*  
2005 BCCA 244, at para. 47, citing Brown and Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback, 1998)

76. It is respectfully submitted that costs and disbursements should not be awarded against the Agency as the Agency was acting in good faith in making the New Rules so as to fulfill its statutory mandate in a manner that is efficient, effective, responsive and exemplifying stewardship, as required under the Values and Ethics Code of the Public Sector. Furthermore, in the absence of respondents, the Agency has responded in this appeal in order to provide necessary and valuable assistance to this Honourable Court.

Treasury Board of Canada Secretariat, *Values and Ethics Code of the Public Sector*, Expected Behaviours

PART IV

**ORDER SOUGHT**

77. The Agency respectfully requests that this Honourable Court dismiss the appeal without costs or disbursements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Gatineau, in the Province of Quebec, this 30<sup>th</sup> day of January, 2015.



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Simon-Pierre Lessard  
Counsel for the Respondent  
Canadian Transportation Agency

**PART V**

**LIST OF AUTHORITIES**

**Appendix A – Statutes and Regulations**

**Statutes**

*Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c. 3, ss.36(3)

*Canada Transportation Act*, S.C. 1996, c. 10, s. 17, 25, 27(1), 28(1), 29(1), 32, 33(4), 41, 86(1), 128(1), 170(1)

*Specific Claims Tribunal Act*, SC 2008, c. 22, s.28

*Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 3, 5, 6, 11, 19

*Telecommunications Act*, S.C. 1993, c. 38, s.62

*Veterans Review and Appeal Board Act*, SC 1995, c.18, ss. 42(8)

**Regulations**

*Canadian Transportation Agency General Rules*, SOR/2005-35, s. 6

**Case Law**

*Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [1998] 2 FCR 666

*Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General)*, 2012 FCA 203

*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817

*Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98

*Buxton v. Carriss*, [1958] B.C.J. No. 104

*Canada (Attorney General) v. Mavi* [2011] 2 SCR 504

*Canada (Combines Investigation Act Director of Investigation & Research) v. Newfoundland Telephone Co.*, [1987] 2 S.C.R. 466

*Canadian National Railway Co. Ltd. v. Ferroequus Railway Co. Ltd.*, 2002 FCA 193

*Coolbreeze Ranch Ltd. v. Morgan Creek Tropicals Ltd.*, 2009 BCSC 151

*Council of Canadians with Disabilities. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650

*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190

*Gyurcsek v. Eng*, [1977] B.C.J. No. 1046

*IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282

*Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013] 3 S.C.R. 810

*Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653

*Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244

*Lukács v. Canada (Transportation Agency)*, 2014 FCA 76

*Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110

*Mission Institution v. Khela*, 2014 SCC 24 at para. 79

*Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249

*O'Hara v. British Columbia (Attorney General)*, [1987] B.C.J. No. 434

*RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 31

*Telus Communications Company v. Canadian Radio-Television and Telecommunications Commission*, 2010 FCA 191

*VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2005 FCA 79

*VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 FCR 25



**Agency Decisions**

*Andy Ackerman v. Air Canada*, Agency Decision No. 637-C-A-2002

*Azar v. Air Canada*, Agency Decision No. 264-C-A-213

*Azar v. Air Canada*, Agency Decision No. 442-C-A-213

*Council for Canadians with Disabilities – Application for intervener status in the application by Linda McKay-Panos*, Agency Decision No. LET-AT-A-21-2002

*Dhillon v. Air Canada*, Agency Decision No. 460-C-A-2006

*Great Northern Grain Terminals Limited v. Canadian National Railway Company*, Agency Decision No. 344-R-2007

*Gyles v. British Yukon Railway Company*, Agency Decision No. 25-R-2000

*KLM Royal Dutch Airlines and Northwest Airlines*, Decision No. 377-A-2003

*Nawrots v. Sunwing Airlines*, Agency Decision No. 432-C-A-2013

*Patricia Morgan v. Air Canada*, Agency Decision No. 38-C-A-2002

*Ruling by the Federal Court of Appeal with respect to the BNSF Railway Company, the Canadian National Railway Company and the Canadian Pacific Railway Company's appeal of the Canadian Transportation Agency's Decision No. LET-R-152-2010*, Agency Decision No. 107-R-2012

*Todd Bass v. Air Canada*, Agency Decision No. 37-C-A-2002

**Other Authorities**

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (SOR/2014-104), Regulatory Impact Analysis Statement

Macaulay and Sprague, *Practice and Procedure Before Administrative Tribunals*, loose-leaf edition, 12.28(a)(i) at 12-178.8

Treasury Board of Canada Secretariat, *Values and Ethics Code of the Public Sector*, Expected Behaviours

## APPENDIX A

*Canadian Transportation Accident Investigation and Safety Board Act, S.C. 1989, c.3, s. 36(3)*

Evidence	<p>36. (1) Subject to subsections (2) and (3),</p> <p>(a) a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to section 19 and stating the results of the exercise of the power, or</p> <p>(b) a document purporting to have been certified by an investigator as a true copy of or extract from a document produced to the investigator pursuant to subsection 19(9)</p> <p>is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the report or certified the document and is, in the absence of evidence to the contrary, proof of the statements contained in the report or proof of the contents of the document.</p>	<p>36. (1) Sous réserve des paragraphes (2) et (3), sont admissibles en preuve dans une poursuite pour infraction à la présente loi, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire ou du certificateur, et, sauf preuve contraire, font foi de leur contenu :</p> <p>a) les rapports censés signés par l'enquêteur, où celui-ci déclare avoir exercé tel pouvoir prévu à l'article 19 et fait état des résultats;</p> <p>b) les pièces censées être des copies ou extraits, certifiés conformes par l'enquêteur, des documents visés au paragraphe 19(9).</p>	Recevabilité en preuve
Notice	<p>(2) No report or document shall be received in evidence under subsection (1) unless the party intending to produce it has, at least seven days before producing it, served on the party against whom it is intended to be produced a notice of that intention, together with a copy of the report or document.</p>	<p>(2) Ces rapports ou pièces ne sont recevables en preuve que si la partie qui entend les produire donne à la partie qu'elle vise un préavis d'au moins sept jours, accompagné d'une copie de ceux-ci.</p>	Préavis
Cross-examination	<p>(3) The party against whom a report or document is produced under subsection (1) may require the attendance, for the purposes of cross-examination, of the person who appears to have signed the report or certified the document as a true copy or extract.</p>	<p>(3) La partie contre laquelle sont produits ces rapports ou pièces peut exiger la présence du signataire ou du certificateur pour contre-interrogatoire.</p>	Contre-interrogatoire

*Canada Transportation Act*, S.C. 1996, c. 10, s. 17, 25, 27

	<i>Rules</i>	<i>Règles</i>	
Rules	<p>17. The Agency may make rules respecting</p> <p>(a) the sittings of the Agency and the carrying on of its work;</p> <p>(b) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which hearings may be held in private; and</p> <p>(c) the number of members that are required to hear any matter or perform any of the functions of the Agency under this Act or any other Act of Parliament.</p>	<p>17. L'Office peut établir des règles concernant :</p> <p>a) ses séances et l'exécution de ses travaux;</p> <p>b) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos;</p> <p>c) le nombre de membres qui doivent entendre les questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale.</p>	Règles
Agency powers in general	<p>25. The Agency has, with respect to all matters necessary or proper for the exercise of its jurisdiction, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders or regulations and the entry on and inspection of property, all the powers, rights and privileges that are vested in a superior court.</p>	<p>25. L'Office a, à toute fin liée à l'exercice de sa compétence, la comparution et l'interrogatoire des témoins, la production et l'examen des pièces, l'exécution de ses arrêtés ou règlements et la visite d'un lieu, les attributions d'une cour supérieure.</p>	Pouvoirs généraux
Relief	<p>27. (1) On an application made to the Agency, the Agency may grant the whole or part of the application, or may make any order or grant any further or other relief that to the Agency seems just and proper.</p>	<p>27. (1) L'Office peut acquiescer à tout ou partie d'une demande ou prendre un arrêté, ou, s'il l'estime indiqué, accorder une réparation supplémentaire ou substitutive.</p>	Réparation
Amendments	<p>(2) and (3) [Repealed, 2008, c. 5, s. 1]</p> <p>(4) The Agency may, on terms or otherwise, make or allow any amendments in any proceedings before it.</p> <p>(5) [Repealed, 2008, c. 5, s. 1]</p> <p>1996, c. 10, s. 27; 2008, c. 5, s. 1.</p>	<p>(2) et (3) [Abrogés, 2008, ch. 5, art. 1]</p> <p>(4) L'Office peut, notamment sous condition, apporter ou autoriser toute modification aux procédures prises devant lui.</p> <p>(5) [Abrogé, 2008, ch. 5, art. 1]</p> <p>1996, ch. 10, art. 27; 2008, ch. 5, art. 1.</p>	Modification

*Canada Transportation Act, S.C. 1996, c.10, s. 28, 29, 32*

Orders	<p>28. (1) The Agency may in any order direct that the order or a portion or provision of it shall come into force</p> <p>(a) at a future time,</p> <p>(b) on the happening of any contingency, event or condition specified in the order, or</p> <p>(c) on the performance, to the satisfaction of the Agency or a person named by it, of any terms that the Agency may impose on an interested party,</p> <p>and the Agency may direct that the whole or any portion of the order shall have force for a limited time or until the happening of a specified event.</p>	<p>28. (1) L'Office peut, dans ses arrêtés, prévoir une date déterminée pour leur entrée en vigueur totale ou partielle ou subordonner celle-ci à la survenance d'un événement, à la réalisation d'une condition ou à la bonne exécution, appréciée par lui-même ou son délégué, d'obligations qu'il aura imposées à l'intéressé; il peut en outre y prévoir une date déterminée pour leur cessation d'effet totale ou partielle ou subordonner celle-ci à la survenance d'un événement.</p>	Arrêtés
Interim orders	<p>(2) The Agency may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.</p>	<p>(2) L'Office peut prendre un arrêté provisoire et se réserver le droit de compléter sa décision lors d'une audience ultérieure ou d'une nouvelle demande.</p>	Arrêtés provisoires
Time for making decisions	<p>29. (1) The Agency shall make its decision in any proceedings before it as expeditiously as possible, but no later than one hundred and twenty days after the originating documents are received, unless the parties agree to an extension or this Act or a regulation made under subsection (2) provides otherwise.</p>	<p>29. (1) Sauf indication contraire de la présente loi ou d'un règlement pris en vertu du paragraphe (2) ou accord entre les parties sur une prolongation du délai, l'Office rend sa décision sur toute affaire dont il est saisi avec toute la diligence possible dans les cent vingt jours suivant la réception de l'acte introductif d'instance.</p>	Délai
Period for specified classes	<p>(2) The Governor in Council may, by regulation, prescribe periods of less than one hundred and twenty days within which the Agency shall make its decision in respect of such classes of proceedings as are specified in the regulation.</p>	<p>(2) Le gouverneur en conseil peut, par règlement, imposer à l'Office un délai inférieur à cent vingt jours pour rendre une décision à l'égard des catégories d'affaires qu'il indique.</p>	Délai plus court
Review of decisions and orders	<p>32. The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.</p>	<p>32. L'Office peut réviser, annuler ou modifier ses décisions ou arrêtés, ou entendre de nouveau une demande avant d'en décider, en raison de faits nouveaux ou en cas d'évolution, selon son appréciation, des circonstances de l'affaire visée par ces décisions, arrêtés ou audiences.</p>	Révision, annulation ou modification de décisions

*Canada Transportation Act, S.C. 1996, c.10, s. 33, 41*

Enforcement of decision or order	<p>33. (1) A decision or order of the Agency may be made an order of the Federal Court or of any superior court and is enforceable in the same manner as such an order.</p>	<p>33. (1) Les décisions ou arrêtés de l'Office peuvent être homologués par la Cour fédérale ou une cour supérieure; le cas échéant, leur exécution s'effectue selon les mêmes modalités que les ordonnances de la cour saisie.</p>	Homologation
Procedure	<p>(2) To make a decision or order an order of a court, either the usual practice and procedure of the court in such matters may be followed or the Secretary of the Agency may file with the registrar of the court a certified copy of the decision or order, signed by the Chairperson and sealed with the Agency's seal, at which time the decision or order becomes an order of the court.</p>	<p>(2) L'homologation peut se faire soit selon les règles de pratique et de procédure de la cour saisie applicables en l'occurrence, soit au moyen du dépôt, auprès du greffier de la cour par le secrétaire de l'Office, d'une copie certifiée conforme de la décision ou de l'arrêté en cause, signée par le président et revêtue du sceau de l'Office.</p>	Procédure
Effect of variation or rescission	<p>(3) Where a decision or order that has been made an order of a court is rescinded or varied by a subsequent decision or order of the Agency, the order of the court is deemed to have been cancelled and the subsequent decision or order may be made an order of the court.</p>	<p>(3) Les décisions ou arrêtés de l'Office qui annulent ou modifient des décisions ou arrêtés déjà homologués par une cour sont réputés annuler ces derniers et peuvent être homologués selon les mêmes modalités.</p>	Annulation ou modification
Option to enforce	<p>(4) The Agency may, before or after one of its decisions or orders is made an order of a court, enforce the decision or order by its own action.</p> <p>1996, c. 10, s. 33; 2002, c. 8, s. 122; 2006, c. 11, s. 17; 2007, c. 19, s. 6.</p>	<p>(4) L'Office peut toujours faire exécuter lui-même ses décisions ou arrêtés, même s'ils ont été homologués par une cour.</p> <p>1996, ch. 10, art. 33; 2002, ch. 8, art. 122; 2006, ch. 11, art. 17; 2007, ch. 19, art. 6.</p>	Faculté d'exécution
Appeal from Agency	<p>41. (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.</p>	<p>41. (1) Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.</p>	Appel
Time for making appeal	<p>(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.</p>	<p>(2) Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.</p>	Délai
Powers of Court	<p>(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.</p>	<p>(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.</p>	Pouvoirs de la cour
Agency may be heard	<p>(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.</p>	<p>(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.</p>	Plaidoirie de l'Office

*Canada Transportation Act, S.C. 1996, c.10, s. 86*

## REGULATIONS

## RÈGLEMENTS

Regulations

86. (1) The Agency may make regulations
- (a) classifying air services;
  - (b) classifying aircraft;
  - (c) prescribing liability insurance coverage requirements for air services or aircraft;
  - (d) prescribing financial requirements for each class of air service or aircraft;
  - (e) respecting the issuance, amendment and cancellation of permits for the operation of international charters;
  - (f) respecting the duration and renewal of licences;
  - (g) respecting the amendment of licences;
  - (h) respecting traffic and tariffs, fares, rates, charges and terms and conditions of carriage for international service and
    - (i) providing for the disallowance or suspension by the Agency of any tariff, fare, rate or charge,
    - (ii) providing for the establishment and substitution by the Agency of any tariff, fare, rate or charge disallowed by the Agency,
    - (iii) authorizing the Agency to direct a licensee or carrier to take corrective measures that the Agency considers appropriate and to pay compensation for any expense incurred by a person adversely affected by the licensee's or carrier's failure to apply the fares, rates, charges or terms or conditions of carriage applicable to the service it offers that were set out in its tariffs, and
    - (iv) requiring a licensee or carrier to display the terms and conditions of carriage for its international service on its Internet site, if the site is used for selling the international service of the licensee or carrier;
  - (i) requiring licensees to file with the Agency any documents and information relating to activities under their licences that are necessary for the purposes of enabling the Agency to exercise its powers and perform its duties and functions under this Part and respecting the manner in which and the times at which the documents and information are to be filed;

Pouvoirs de l'Office

86. (1) L'Office peut, par règlement :
- a) classer les services aériens;
  - b) classer les aéronefs;
  - c) prévoir les exigences relatives à la couverture d'assurance responsabilité pour les services aériens et les aéronefs;
  - d) prévoir les exigences financières pour chaque catégorie de service aérien ou d'aéronefs;
  - e) régir la délivrance, la modification et l'annulation des permis d'affrètements internationaux;
  - f) fixer la durée de validité et les modalités de renouvellement des licences;
  - g) régir la modification des licences;
  - h) prendre toute mesure concernant le trafic et les tarifs, prix, taux, frais et conditions de transport liés au service international, notamment prévoir qu'il peut :
    - (i) annuler ou suspendre des tarifs, prix, taux ou frais,
    - (ii) établir de nouveaux tarifs, prix, taux ou frais en remplacement de ceux annulés,
    - (iii) enjoindre à tout licencié ou transporteur de prendre les mesures correctives qu'il estime indiquées et de verser des indemnités aux personnes lésées par la non-application par le licencié ou transporteur des prix, taux, frais ou conditions de transport applicables au service et qui figureraient au tarif,
    - (iv) obliger tout licencié ou transporteur à publier les conditions de transport du service international sur tout site Internet qu'il utilise pour vendre ce service;
  - i) demander aux licenciés de déposer auprès de lui les documents ainsi que les renseignements relatifs aux activités liées à leurs licences et nécessaires à l'exercice de ses attributions dans le cadre de la présente partie, et fixer les modalités de temps ou autres du dépôt;

*Canada Transportation Act*, S.C. 1996, c.10, s. 86 cont.

(j) requiring licensees to include in contracts or arrangements with travel wholesalers, tour operators, charterers or other persons associated with the provision of air services to the public, or to make those contracts and arrangements subject to, terms and conditions specified or referred to in the regulations;

(k) defining words and expressions for the purposes of this Part;

(l) excluding a person from any of the requirements of this Part;

(m) prescribing any matter or thing that by this Part is to be prescribed; and

(n) generally for carrying out the purposes and provisions of this Part.

(2) No regulation shall be made under paragraph (1)(l) that has the effect of relieving a person from any provision of this Part that requires a person to be a Canadian and to have a Canadian aviation document and prescribed liability insurance coverage in respect of an air service.

(3) [Repealed, 2007, c. 19, s. 26]

1996, c. 10, s. 86; 2000, c. 15, s. 8; 2007, c. 19, s. 26.

j) demander aux licenciés d'inclure dans les contrats ou ententes conclus avec les grossistes en voyages, voyagistes, affréteurs ou autres personnes associées à la prestation de services aériens au public les conditions prévues dans les règlements ou d'assujettir ces contrats ou ententes à ces conditions;

k) définir les termes non définis de la présente partie;

l) exempter toute personne des obligations imposées par la présente partie;

m) prendre toute mesure d'ordre réglementaire prévue par la présente partie;

n) prendre toute autre mesure d'application de la présente partie.

(2) Les obligations imposées par la présente partie relativement à la qualité de Canadien, au document d'aviation canadien et à la police d'assurance responsabilité réglementaire en matière de service aérien ne peuvent faire l'objet de l'exemption prévue à l'alinéa (1)l).

(3) [Abrogé, 2007, ch. 19, art. 26]

1996, ch. 10, art. 86; 2000, ch. 15, art. 8; 2007, ch. 19, art. 26.

Exclusion not to provide certain relief

Exception

*Canada Transportation Act, S.C. 1996, c.10, s. 128*

Regulations	<p><b>128.</b> (1) The Agency may make regulations</p> <p>(a) prescribing terms and conditions governing the interswitching of traffic, other than terms and conditions relating to safety;</p> <p>(b) determining the rate per car to be charged for interswitching traffic, or prescribing the manner of determining that rate, including the adjustments to be made to that rate as a result of changes in costs, and establishing distance zones for those purposes; and</p> <p>(c) prescribing, for the purposes of subsections 127(3) and (4), a greater distance than 30 km from an interchange.</p>	<p><b>128.</b> (1) L'Office peut, par règlement :</p> <p>a) fixer les modalités de l'interconnexion du trafic autres qu'en matière de sécurité;</p> <p>b) fixer le prix par wagon ou la manière de le déterminer, de même que les modifications de ce prix découlant de la variation des coûts, à exiger pour l'interconnexion du trafic et, à ces fins, établir des zones tarifaires;</p> <p>c) fixer, pour l'application des paragraphes 127(3) et (4), la distance depuis un lieu de correspondance qui est supérieure à 30 kilomètres.</p>	Règlement
Different distances	<p>(1.1) A regulation made under paragraph (1)(c) may prescribe different distances for the regions or goods that it specifies.</p>	<p>(1.1) Le règlement pris en vertu de l'alinéa (1)c) peut prévoir des distances différentes selon les régions ou les marchandises qu'il précise.</p>	Distances selon les régions ou les marchandises
Cost savings to be considered	<p>(2) In determining an interswitching rate, the Agency shall take into consideration any reduction in costs that, in the opinion of the Agency, results from moving a greater number of cars or from transferring several cars at the same time.</p>	<p>(2) Lorsqu'il fixe le prix, l'Office prend en compte les réductions de frais qui, à son avis, sont entraînées par le mouvement d'un plus grand nombre de wagons ou par le transfert de plusieurs wagons à la fois.</p>	Prise en compte des économies
Limit on rate	<p>(3) In determining an interswitching rate, the Agency shall consider the average variable costs of all movements of traffic that are subject to the rate and the rate must not be less than the variable costs of moving the traffic, as determined by the Agency.</p>	<p>(3) Le prix tient compte des frais variables moyens de tous les transports de marchandises qui y sont assujettis et ne peut être inférieur aux frais variables — établis par l'Office — de ces transports.</p>	Plafond
Transfer of lines does not affect entitlement	<p>(4) For greater certainty, the transfer of a railway line, or an operating interest in it, under Division V or section 158 of the <i>National Transportation Act, 1987</i> does not affect any entitlement to an interswitching rate.</p>	<p>(4) Il demeure entendu que le transfert, en application de la section V ou de l'article 158 de la <i>Loi de 1987 sur les transports nationaux</i>, des droits de propriété ou d'exploitation sur une ligne ne limite pas le droit d'obtenir le prix fixé pour l'interconnexion.</p>	Transfert de lignes
Review of interswitching regulations	<p>(5) The Agency shall review the regulations when the circumstances warrant and at least once in every five year period after the regulations are made.</p> <p>1996, c. 10, s. 128; 2014, c. 8, s. 7.</p>	<p>(5) L'Office révisé les règlements à intervalles de cinq ans à compter de la date de leur prise ou à intervalles plus rapprochés si les circonstances le justifient.</p> <p>1996, ch. 10, art. 128; 2014, ch. 8, art. 7.</p>	Révision des limites



*Canada Transportation Act, S.C. 1996, c.10, s. 170*

	TRANSPORTATION OF PERSONS WITH DISABILITIES	TRANSPORT DES PERSONNES AYANT UNE DÉFICIENCE	
Regulations	<p>170. (1) The Agency may make regulations for the purpose of eliminating undue obstacles in the transportation network under the legislative authority of Parliament to the mobility of persons with disabilities, including regulations respecting</p> <p>(a) the design, construction or modification of, and the posting of signs on, in or around, means of transportation and related facilities and premises, including equipment used in them;</p> <p>(b) the training of personnel employed at or in those facilities or premises or by carriers;</p> <p>(c) tariffs, rates, fares, charges and terms and conditions of carriage applicable in respect of the transportation of persons with disabilities or incidental services; and</p> <p>(d) the communication of information to persons with disabilities.</p>	<p>170. (1) L'Office peut prendre des règlements afin d'éliminer tous obstacles abusifs, dans le réseau de transport assujéti à la compétence législative du Parlement, aux personnes de déplacement des personnes ayant une déficience et peut notamment, à cette occasion, régir:</p> <p>a) la conception et la construction des moyens de transport ainsi que des installations et locaux connexes — y compris les commodités et l'équipement qui s'y trouvent — , leur modification ou la signalisation dans ceux-ci ou leurs environs;</p> <p>b) la formation du personnel des transporteurs ou de celui employé dans ces installations et locaux;</p> <p>c) toute mesure concernant les tarifs, taux, prix, frais et autres conditions de transport applicables au transport et aux services connexes offerts aux personnes ayant une déficience;</p> <p>d) la communication d'information à ces personnes.</p>	Règlements
Incorporation by reference	<p>(2) Regulations made under subsection (1) incorporating standards or enactments by reference may incorporate them as amended from time to time.</p>	<p>(2) Il peut être précisé, dans le règlement qui incorpore par renvoi des normes ou des dispositions, qu'elles sont incorporées avec leurs modifications successives.</p>	Incorporation par renvoi
Exemption	<p>(3) The Agency may, with the approval of the Governor in Council, make orders exempting specified persons, means of transportation, services or related facilities and premises from the application of regulations made under subsection (1).</p>	<p>(3) L'Office peut, par arrêté pris avec l'agrément du gouverneur en conseil, soustraire à l'application de certaines dispositions des règlements les personnes, les moyens de transport, les installations ou locaux connexes ou les services qui y sont désignés.</p>	Exemption

*Specific Claims Tribunal Act, S.C. 2008, c.22, s. 28*

Right to cross-examine

**28.** A party may cross-examine a witness  
(a) as of right, if the witness is called by a party adverse in interest; and  
(b) with leave of the Tribunal, in any other case.

**28.** Toute partie peut contre-interroger un témoin :

- a) de plein droit, dans le cas où le témoin est appelé par une partie adverse;
- b) avec l'autorisation du Tribunal, dans les autres cas.

Contre-interrogatoire

*Statutory Instrument Act, S.C. 1985, c. S-22, s. 3*

EXAMINATION OF PROPOSED  
REGULATIONS

EXAMEN DES PROJETS DE RÈGLEMENT

Proposed  
regulations sent  
to Clerk of Privy  
Council

3. (1) Subject to any regulations made pursuant to paragraph 20(a), where a regulation-making authority proposes to make a regulation, it shall cause to be forwarded to the Clerk of the Privy Council three copies of the proposed regulation in both official languages.

3. (1) Sous réserve des règlements d'application de l'alinéa 20a), l'autorité réglementante envoie chacun de ses projets de règlement en trois exemplaires, dans les deux langues officielles, au greffier du Conseil privé.

Envoi au  
Conseil privé

Examination

(2) On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

(2) À la réception du projet de règlement, le greffier du Conseil privé procède, en consultation avec le sous-ministre de la Justice, à l'examen des points suivants :

Examen

(a) it is authorized by the statute pursuant to which it is to be made;

a) le règlement est pris dans le cadre du pouvoir conféré par sa loi habilitante;

(b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

b) il ne constitue pas un usage inhabituel ou inattendu du pouvoir ainsi conféré;

(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*; and

c) il n'empiète pas indûment sur les droits et libertés existants et, en tout état de cause, n'est pas incompatible avec les fins et les dispositions de la *Charte canadienne des droits et libertés* et de la *Déclaration canadienne des droits*;

(d) the form and draftsmanship of the proposed regulation are in accordance with established standards.

d) sa présentation et sa rédaction sont conformes aux normes établies.

Advise  
regulation-  
making  
authority

(3) When a proposed regulation has been examined as required by subsection (2), the Clerk of the Privy Council shall advise the regulation-making authority that the proposed regulation has been so examined and shall indicate any matter referred to in paragraph (2)(a), (b), (c) or (d) to which, in the opinion of the Deputy Minister of Justice, based on that examination, the attention of the regulation-making authority should be drawn.

(3) L'examen achevé, le greffier du Conseil privé en avise l'autorité réglementante en lui signalant, parmi les points mentionnés au paragraphe (2), ceux sur lesquels, selon le sous-

Avis à l'autorité  
réglementante

ministre de la Justice, elle devrait porter son attention.

Application

(4) Paragraph (2)(d) does not apply to any proposed rule, order or regulation governing the practice or procedure in proceedings before the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court, the Tax Court of Canada or the Court Martial Appeal Court.

(4) L'alinéa (2) d) ne s'applique pas aux projets de règlements, décrets, ordonnances, arrêtés ou règles régissant la pratique ou la procédure dans les instances engagées devant la Cour suprême du Canada, la Cour d'appel fédérale, la Cour fédérale, la Cour canadienne de l'impôt ou la Cour d'appel de la cour martiale du Canada.

Application

R.S., 1985, c. S-22, s. 3; R.S., 1985, c. 31 (1st Supp.), s. 94, c. 51 (4th Supp.), s. 22; 2002, c. 8, s. 174

L.R. (1985), ch. S-22, art. 3; L.R. (1985), ch. 31 (1<sup>er</sup> suppl.), art. 94, ch. 51 (4<sup>e</sup> suppl.), art. 22; 2002, ch. 8, art. 174.

*Statutory Instruments Act, S.C. 1985, c. S-22, s. 5, 6, 11*

## TRANSMISSION AND REGISTRATION

Transmission of regulations to Clerk of Privy Council

5. (1) Subject to any regulations made pursuant to paragraph 20(b), every regulation-making authority shall, within seven days after making a regulation, transmit copies of the regulation in both official languages to the Clerk of the Privy Council for registration pursuant to section 6.

Copies to be certified

(2) One copy of each of the official language versions of each regulation that is transmitted to the Clerk of the Privy Council pursuant to subsection (1), other than a regulation made or approved by the Governor in Council, shall be certified by the regulation-making authority to be a true copy thereof.

R.S., 1985, c. S-22, s. 5; R.S., 1985, c. 31 (4th Suppl.), s. 102

Registration of statutory instruments

6. Subject to subsection 7(1), the Clerk of the Privy Council shall register

(a) every regulation transmitted to him pursuant to subsection 5(1);

(b) every statutory instrument, other than a regulation, that is required by or under any Act of Parliament to be published in the *Canada Gazette* and is so published; and

(c) every statutory instrument or other document that, pursuant to any regulation made under paragraph 20(g), is directed or authorized by the Clerk of the Privy Council to be published in the *Canada Gazette*.

R. S., 1985, c. S-22, s. 6; 1993, c. 34, s. 113(F).

Regulations to be published in *Canada Gazette*

11. (1) Subject to any regulations made pursuant to paragraph 20(c), every regulation shall be published in the *Canada Gazette* within twenty-three days after copies thereof are registered pursuant to section 6.

No conviction under unpublished regulation

(2) No regulation is invalid by reason only that it was not published in the *Canada Gazette*, but no person shall be convicted of an offence consisting of a contravention of any regulation that at the time of the alleged contravention was not published in the *Canada Gazette* unless

(a) the regulation was exempted from the application of subsection (1) pursuant to paragraph 20(c), or the regulation expressly provides that it shall apply according to its terms before it is published in the *Canada Gazette*; and

(b) it is proved that at the date of the alleged contravention reasonable steps had been taken to bring the purport of the regulation to the notice of those persons likely to be affected by it.

R. S., 1985, c. S-22, s. 11; R. S., 1985, c. 31 (4th Suppl.), s.

## TRANSMISSION ET ENREGISTREMENT

Transmission au greffier du Conseil privé

5. (1) Sous réserve des règlements d'application de l'alinéa 20b), l'autorité réglementante, dans les sept jours suivant la prise d'un règlement, en transmet des exemplaires, dans les deux langues officielles, au greffier du Conseil privé pour l'enregistrement prévu à l'article 6.

Certification

(2) L'autorité réglementante certifie la conformité à l'original de la version française et de la version anglaise de l'un des exemplaires ainsi transmis, sauf s'il s'agit d'un règlement pris ou approuvé par le gouverneur en conseil.

L.R. (1985), ch. S-22, art. 5; L.R. (1985), ch. 31 (4<sup>e</sup> suppl.), art. 102.

Enregistrement des textes réglementaires

6. Sous réserve du paragraphe 7(1), le greffier du Conseil privé enregistre :

a) les règlements qui lui sont transmis en application du paragraphe 5(1);

b) les textes réglementaires — à l'exclusion des règlements — qui doivent être publiés dans la *Gazette du Canada* sous le régime d'une loi fédérale et le sont effectivement;

c) les textes réglementaires ou autres documents dont, conformément aux règlements d'application de l'alinéa 20g), il ordonne ou autorise la publication dans la *Gazette du Canada*.

L.R. (1985), ch. S-22, art. 6; 1993, ch. 34, art. 113(F).

Obligation de publier

11. (1) Sous réserve des règlements d'application de l'alinéa 20c), chaque règlement est publié dans la *Gazette du Canada* dans les vingt-trois jours suivant son enregistrement conformément à l'article 6.

(2) Un règlement n'est pas invalide au seul motif qu'il n'a pas été publié dans la *Gazette du Canada*. Toutefois personne ne peut être condamné pour violation d'un règlement qui, au moment du fait reproché, n'était pas publié sauf dans le cas suivant :

Violation d'un règlement non publié

a) d'une part, le règlement était soustrait à l'application du paragraphe (1), conformément à l'alinéa 20c), ou il comporte une disposition prévoyant l'antériorité de sa prise d'effet par rapport à sa publication dans la *Gazette du Canada*;

b) d'autre part, il est prouvé qu'à la date du fait reproché, des mesures raisonnables avaient été prises pour que les intéressés soient informés de la teneur du règlement.

L.R. (1985), ch. S-22, art. 11; L.R. (1985), ch. 31 (4<sup>e</sup> suppl.), art. 103.

*Statutory Instruments Act*, S.C. 1985, c. S-22, s.19SCRUTINY BY PARLIAMENT OF  
STATUTORY INSTRUMENTS

## CONTRÔLE PARLEMENTAIRE

Statutory  
instruments  
referred to  
Scrutiny  
Committee

19. Every statutory instrument issued, made or established after December 31, 1971, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph 20(d), shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

1970-71-72, c. 38, s. 26.

19. Le comité, soit de la Chambre des communes, soit du Sénat, soit mixte, chargé d'étudier et de contrôler les textes réglementaires est saisi d'office de ceux qui ont été pris après le 31 décembre 1971, à l'exclusion des textes dont la communication est interdite aux termes des règlements d'application de l'alinéa 20d).

1970-71-72, ch. 38, art. 26.

Renvoi en  
comité

*Telecommunications Act*, S.C. 1985, c. 38, s. 62

Review of  
decisions

62. The Commission may, on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision.

62. Le Conseil peut, sur demande ou de sa propre initiative, réviser, annuler ou modifier ses décisions, ou entendre à nouveau une demande avant d'en décider.

Révision et  
annulation

*Veterans Review and Appeal Board Act, S.C. 1995, c. 18, s.42*

Inquiries	<p>42. (1) The Chairperson may recommend to the Minister that an inquiry be held to determine whether a member should be subject to disciplinary or remedial measures for any reason set out in any of paragraphs 43(2)(a) to (d).</p>	<p>42. (1) Le président peut recommander au ministre la tenue d'une enquête afin de déterminer si des sanctions ou des mesures correctives s'imposent à l'égard d'un membre du Tribunal pour tout motif énoncé aux alinéas 43(2) a) à d).</p>	Enquête
Judge to conduct inquiry	<p>(2) If the Minister considers it appropriate that an inquiry be held, a judge, supernumerary judge or former judge of the Federal Court of Canada, the Federal Court of Appeal or the Federal Court, in this section and section 43 referred to as a "judge", shall conduct the inquiry.</p>	<p>(2) Si le ministre estime qu'une enquête s'impose, celle-ci est menée par un juge, juge surnuméraire ou ancien juge de la Cour fédérale du Canada, de la Cour d'appel fédérale ou de la Cour fédérale.</p>	Nomination de l'enquêteur
Powers	<p>(3) A judge conducting an inquiry has all the powers, rights and privileges that are vested in a superior court and, without restricting the generality of the foregoing, has the power</p> <p>(a) to issue to any person a summons requiring them to appear at the time and place mentioned in the summons to testify with respect to all matters within their knowledge relative to the inquiry and to bring and produce any thing that they have or control relative to the inquiry; and</p> <p>(b) to administer oaths and examine any person on oath.</p>	<p>(3) L'enquêteur a alors les attributions d'une cour supérieure; il peut notamment:</p> <p>a) par citation adressée aux personnes ayant connaissance des faits se rapportant à l'affaire dont il est saisi, leur enjoindre de comparaître comme témoins aux date, heure et lieu indiqués et d'apporter et de produire tous documents ou autres pièces, utiles à l'affaire, dont elles ont la possession ou la responsabilité;</p> <p>b) faire prêter serment et interroger sous serment.</p>	Pouvoirs d'enquête
Inquiry public	<p>(4) Subject to subsections (5) and (6), an inquiry shall be conducted in public.</p>	<p>(4) Sous réserve des paragraphes (5) et (6), l'enquête est publique.</p>	Enquête publique
Confidentiality	<p>(5) A judge conducting an inquiry may, on application, take any measures or make any order that the judge considers necessary to ensure the confidentiality of the inquiry if the judge is satisfied that financial or personal or other matters may be disclosed and are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any per-</p>	<p>(5) L'enquêteur peut, sur demande en ce sens, prendre toute mesure ou rendre toute ordonnance pour assurer la confidentialité de l'enquête s'il est convaincu que risquent d'être divulguées lors de l'enquête des questions financières, personnelles ou autres de nature telle qu'il vaut mieux éviter leur divulgation dans l'intérêt des personnes concernées ou dans l'in-</p>	Confidentialité de l'enquête

*Veterans Review and Appeal Board Act, S.C. 1995, c. 18, s.42 cont.*

	son affected or in the public interest outweighs the desirability of adhering to the principle that the inquiry be conducted in public.	térêt public que mettre en œuvre le principe de publicité de l'enquête.	
Confidentiality	(6) Where the judge considers it appropriate to do so, the judge may take any measures or make any order that the judge considers necessary to ensure the confidentiality of any hearing held in respect of an application referred to in subsection (5).	(6) L'enquêteur peut, s'il l'estime indiqué, prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité de la demande.	Confidentialité de la demande
Rules of evidence	(7) A judge conducting an inquiry is not bound by any legal or technical rules of evidence and, in any proceedings of the inquiry, the judge may receive and base a decision on evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case.	(7) L'enquêteur n'est pas lié par les règles juridiques ou techniques de présentation de la preuve. Il peut recevoir les éléments qu'il juge crédibles ou dignes de foi en l'occurrence et fonder sur eux ses conclusions.	Règles de preuve
Right to be heard	(8) Every member in respect of whom an inquiry is held shall be given reasonable notice of the subject-matter of the inquiry and of the time and place of any hearing and shall be given an opportunity, in person or by counsel, to be heard at the hearing, to cross-examine witnesses and to adduce evidence.	(8) Le membre en cause doit être informé, suffisamment à l'avance, de l'objet de l'enquête, ainsi que des date, heure et lieu de l'audition, et avoir la possibilité de se faire entendre, de contre-interroger les témoins et de présenter tous éléments de preuve utiles à sa décharge, personnellement ou par procureur.	Avis de l'audition
	1995, c. 18, s. 42; 2002, c. 8, s. 179	1995, ch. 18, art. 42; 2002, ch. 8, art. 179.	



*Canadian Transportation Agency General Rules, SOR/2005-35, s. 6*

Combining of  
proceedings

6. The Agency may combine two or more proceedings in order to provide for a more expeditious process, as the circumstances and considerations of fairness permit.

6. L'Office peut joindre deux ou plusieurs instances en vue du règlement plus expéditif d'une question, si les circonstances et l'équité le permettent.

Jonction  
d'instances

**FEDERAL COURT OF APPEAL**

**BETWEEN:**

**DR. GABOR LUKACS**

Appellant

and

**CANADIAN TRANSPORTATION AGENCY**

Respondent

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**MEMORANDUM OF FACT AND LAW  
OF THE RESPONDENT  
CANADIAN TRANSPORTATION AGENCY**

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