

NEWS RELEASE

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Regulator must address compensation of British Airways passengers bumped from flights from the EU to Canada, Federal Court of Appeal rules

Halifax, November 29, 2015 – The Federal Court of Appeal ordered the Canadian Transportation Agency (CTA) to decide how passengers bumped from Canada-bound British Airways flights can seek compensation in Canada.

The judgment vindicates Halifax-based air passenger rights advocate Dr. Gábor Lukács, who wants passengers to be able to seek compensation in Canada. The CTA imposed a lopsided policy on British Airways, which covers only passengers travelling from Canada to the EU, but not those travelling from the EU to Canada.

Dr. Lukács contended that the CTA’s decision is contrary to the *Air Transportation Regulations* and prevents Canadian passengers from seeking compensation in Canada, leaving them only with the unrealistic option of suing in the EU.

The majority of the court agreed with Dr. Lukács, and sent the matter back to the CTA for redetermination. Justice Near, writing for the majority, found that the CTA’s decision “lacks clarity” and is inconsistent with the case law, and held that the CTA “must clearly address” the rights of passengers who are bumped from flights from the EU to Canada.

“The case underscores that Canada is behind developed and even some developing countries,” says Dr. Lukács. The EU, the US, Bolivia, Colombia, Ecuador, Israel, Peru, and Turkey have all passed air passenger rights legislation. In Canada, however, airlines can set their terms and conditions as they see fit, subject only to a review by the CTA on a case-by-case basis. Since 2008, Dr. Lukács has successfully challenged the terms and conditions of airlines in 24 cases.

The present court ruling is the second victory of Dr. Lukács against the CTA this year. In June, the court rebuked the CTA for its secretive practices, and ordered it to disclose unredacted passenger complaints to Dr. Lukács.

“I am concerned that there may be elements of regulatory capture at play in the CTA,” says Dr. Lukács. “It has turned from an industry watchdog into a lapdog, and lately, very little is done to enforce the rights of passengers.”

Sam Barone was a chief lobbyist for the airline industry in Canada before he was appointed Vice-chair of the CTA by the Harper government. Mr. Barone was one of the two members who made the CTA decision that Dr. Lukács successfully appealed.

A copy of the ruling and related court documents are available online:

<http://docs.AirPassengerRights.ca/FCA/A-366-14/2015-11-27--FCA--REASONS.pdf>

http://docs.AirPassengerRights.ca/Federal_Court_of_Appeal/A-366-14/

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Issue: Compensation for passengers bumped from Canada-bound flights

Background

Denied boarding compensation regimes for long international flights

- A. European Union, Switzerland, and Turkey
- uniform rules for compensation set out in [Regulation \(EC\) 261/2004](#) and [Regulation on Air Passenger Rights](#), respectively;
 - €300 / €600, depending on whether the passenger is delayed by less than or more than four hours; and
 - not enforceable in Canada, passenger must sue in the EU.
- B. United States
- uniform rules of compensation set out in [14 CFR 250.5](#);
 - no compensation if passenger is delayed by less than one hour;
 - 200% / 400% of total fare to next stopover, depending on whether the passenger is delayed by less than or more than four hours (maximum US\$650 / US\$1,300); and
 - not enforceable in Canada, passenger must sue in the US.
- C. Canada
- no uniform rules for compensation;
 - [Paragraph 122\(c\)\(iii\)](#) of the *Air Transportation Regulations (ATR)* requires each airline to set out its policy for compensating bumped passengers in its tariff;
 - CTA can disallow tariff provisions that fail to be “just and reasonable”; and
 - only obligations set out in the airline’s tariff are enforceable in Canada.

Sam Barone

- 2013 - present Vice-chair of the Canadian Transportation Agency
- 2008 - 2013 President and CEO of Canadian Business Aviation Association (CBAA)
[Registered with the Office of the Commissioner of Lobbying of Canada](#)
- 2006 - 2008 President and CEO of Air Transportation Association of Canada (ATAC)
[Registered with the Office of the Commissioner of Lobbying of Canada](#)