

Court File No.

**IN THE SUPREME COURT OF CANADA**  
(on appeal from the FEDERAL COURT OF APPEAL)

B E T W E E N :

**DELTA AIR LINES INC.**

**APPLICANT**  
(Moving Party)

- and -

**DR. GÁBOR LUKÁCS**

**RESPONDENT**  
(Responding Party)

---

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**  
(DELTA AIR LINES INC., APPLICANT)  
(Pursuant to Rule 25(1)(a) of the *Rules of the Supreme Court of Canada*)

---

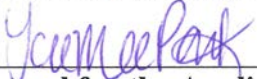
**TAKE NOTICE THAT** DELTA AIR LINES INC. hereby applies for Leave to Appeal to the Court, pursuant to section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, from the judgment of the Federal Court of Appeal, docket A-135-15, made September 7, 2016, and for an order granting leave to appeal or such further or other order that the said Court may deem appropriate.

**AND FURTHER TAKE NOTICE** that this Application for Leave is made on the following grounds:

1. The Federal Court of Appeal erred by allowing the appeal of the Respondent Dr. Gábor Lukács.
2. The Federal Court of Appeal erred in holding that the Canadian Transportation Agency (the “Agency”) is prohibited from applying the law of standing as developed by courts of civil jurisdiction when exercising its statutory discretion to decline to investigate and inquire into a complaint brought before it. In doing so, the Federal Court Appeal undermined the broad, discretionary language set out in the Agency’s governing statute by mandating that the Agency must hear air transportation complaints unless the complaint is “futile or devoid of any merit on its face”.

3. The Federal Court of Appeal has radically departed from the post-*Dunsmuir* jurisprudence by undertaking a *de novo* interpretation of the Agency's statutory mandate and authority and concluding that the Agency's decision was not reasonable because it did not match the Federal Court of Appeal's interpretation of the Agency's statutory regime. In effect, the Federal Court of Appeal applied a correctness review that will have serious implications for all future reviews of Agency decisions.
4. The Federal Court of Appeal's Decision contains critical errors in the interpretation of the *Canada Transportation Act*, S.C. 1996, c. 10 and the *Air Transportation Regulations*, SOR/88-58 and the significance of these errors highlights the importance of deference to the Agency when interpreting its governing statute.
5. The Federal Court of Appeal's Decision, if allowed to stand, permits the court to substitute its own erroneous interpretation of the Agency's complex, specialized governing statute, with the result that all future reviews of Agency decisions may now be reviewed without any deference to the expertise of the Agency. The Federal Court of Appeal's Decision completely undermines this Court's decision in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 SCR 650.
6. If granted leave, this case provides this Court with the opportunity to clarify the general powers of the Agency as set out in *VIA Rail* in a post-*Dunsmuir* landscape. This case will also allow this Court to clarify whether, and in what circumstances, administrative tribunals may grant public interest standing.

Dated at Toronto in the Province of Ontario, this 3<sup>rd</sup> day of November, 2016.

  
\_\_\_\_\_  
**Counsel for the Applicant,  
DELTA AIR LINES INC.**

**BERSENAS JACOBSEN CHOUET  
THOMSON BLACKBURN LLP**  
33 Yonge St, Suite 201  
Toronto, ON M5E1G4  
**Carlos P. Martins**  
**Tae Mee Park**  
**Andrew W. MacDonald**  
Tel.: (416) 982-3800

\_\_\_\_\_  
**Ottawa Agent for Counsel for the Applicant,  
DELTA AIR LINES INC.**

**SUPREME ADVOCACY LLP**  
340 Gilmour Street, Suite 100  
Ottawa, ON K2P 0R3

**Marie-France Major**  
Tel.: (613) 695-8855  
Fax: (613) 695-8580  
Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

Fax: (416) 982-3801  
Email: cmartins@lexcanada.com

**ORIGINAL TO: THE REGISTRAR**

**COPIES TO:**

**Dr. Gábor Lukács**

Halifax, NS

**Canadian Transportation Agency**  
Air and Accessible Transportation Branch  
15 Eddy Street, 17<sup>th</sup> Floor  
Gatineau, Quebec K1A 0N9

Agency Secretariat  
Tel: 1-888-222-2592  
Fax: 819-953-5253

**NOTICE TO THE RESPONDENT OR INTERVENER:** A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the Supreme Court Act.