

SCC 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)

APPLICATION FOR LEAVE TO APPEAL
(DELTA AIR LINES INC., APPLICANT)
(Pursuant to s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26)

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4. Document Relied Upon

A. Complaint of Dr. Gábor Lukács to the Canadian Transportation Agency
dated August 24, 201474

PART I – OVERVIEW & STATEMENT OF FACTS

A. Overview

1. Nearly a decade ago, in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, this Court held that the Canadian Transportation Agency (the “Agency”) is an “expert and specialized body”¹ that is “expected to bring its transportation policy knowledge and experience to bear on its interpretation of its assigned statutory mandate”.² Further, this Court found that Parliament had entrusted the Agency with “extensive authority to govern its own process” and that “[c]onsiderable deference is owed to procedural rulings made by a tribunal with the authority to control its own process”³.

2. The Federal Court of Appeal’s decision in this case⁴ flies in the face of that ruling – and of the jurisprudential trend since the release of *Dunsmuir v New Brunswick*⁵ – by cavalierly interfering with the Agency’s ability to control its own process. The Appeal Decision exemplifies why this Court has held that reviewing courts “may not be as well qualified” as a given specialized administrative agency to interpret that agency’s legislative and regulatory regime “given the broad policy context within which that agency must work”⁶ and that, therefore, the agency “holds the interpretative upper hand”.⁷

3. The proposed appeal will provide this Court the opportunity to clarify the ambit and limits of the Agency’s authority under the *Canada Transportation Act*⁸ (the “Act”) to determine when it will hear complaints brought against those subject to its regulatory authority. In addition, it will allow this Court to address whether and how the principles underlying the law of standing should be applied in the administrative law context.

¹ 2007 SCC 15, [2007] 1 SCR 650 (“*VIA Rail*”) at para 8.

² *Ibid* at para 98.

³ *Ibid* at paras 230-231.

⁴ Reasons for Judgment of the Federal Court of Appeal, September 7, 2016, reported at 2015 (the “Appeal Decision”), [Tab 2C].

⁵ 2008 SCC 9, [2008] 1 SCR 190 (“*Dunsmuir*”).

⁶ *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895 (“*McLean*”) at para 31, citing *National Corn Growers Assn. v Canada (Import Tribunal)*, [1990] 2 SCR 1324 at p. 1336, *per* Wilson J.

⁷ *Ibid* at para 40.

⁸ S.C. 1996, c. 10.

4. In its decision, the Agency decided not to hear a complaint alleging that certain alleged practices of Delta Air Lines, Inc. (“Delta”) are unjustly discriminatory because the complainant, Dr. Gábor Lukács (“Lukács”), did not demonstrate either that he had a sufficient interest in the practices complained of or that he should be accorded public interest standing. The Agency declined to determine these issues “in the absence of those with the most at stake.”⁹

5. The Court of Appeal overturned the Agency Decision, holding that, even though the Agency’s complaint scheme is permissive, the general law of standing has no application to an administrative tribunal such as the Agency. The effect of this ruling is that, unless complaints submitted to it are “futile or devoid of merit on their face”, the Agency must hear them regardless of whether the complainant has an interest in the matter.

6. The Court of Appeal’s holding strips away a fundamental gatekeeping tool from tribunals that administer complaint schemes and will encourage “curious busybodies” to launch complaints in which they do not have a demonstrated or sufficient interest. Moreover, if allowed to stand, the Appeal Decision will undermine the principle of deference to the expert and specialized Agency in deciding when the complaint process should be triggered, a consequence that has serious implications not just for the Agency, but for other tribunals too.

B. Facts

7. Lukács is a mathematician by education and profession. He has filed more than two dozen complaints before the Agency challenging the tariffs of several air carriers, both domestic and international. He has also been a party to several appeals and applications for judicial review emanating from disputes he has commenced before and against the Agency.

8. Delta is an international air carrier based in the United States that is licensed by the Agency to provide international service to and from Canada.

9. In August 2014, Lukács filed a written complaint with the Agency alleging that Delta’s practices relating to the transportation of “large (obese) persons” are discriminatory and contrary

⁹ Canadian Transportation Agency Decision No. 425-C-A-2015, November 25, 2014, at para 52 (the “Agency Decision”), [Tab 2A].

to subsection 111(2) of the *Air Transportation Regulations*¹⁰ (the “ATR”). The complaint was founded on the basis of an email sent by a Delta customer care representative to a passenger known only as “Omer”. The Delta representative apologized to “Omer” for any inconvenience he had encountered while sitting next to a passenger who required “additional space” and briefly described the “guidelines” Delta follows to accommodate passengers who require additional space due to their size, as well as those “sitting nearby”.¹¹

10. Specifically, Lukács alleged that the following practices are discriminatory, contrary to the ATR and to the findings of the Agency in a prior Agency decision concerning the accommodation of passengers with disabilities:¹²

(1) in certain cases, Delta refused to transport large (obese) passengers on the flights on which they hold a confirmed reservation, and require them to travel on later flights; and

(2) Delta requires large (obese) passengers to purchase additional seats to avoid the risk of being denied transportation.

11. The Agency issued a preliminary decision holding that it was not clear whether Lukács had an interest in Delta’s practices governing the carriage of obese persons and thus, that his standing in the matter was in question. The Agency invited submissions on that preliminary issue.¹³ Lukács and Delta each filed detailed submissions.

12. Lukács submitted that he qualified as a “large” person affected by the allegedly discriminatory practice and therefore had private interest standing. Alternatively, he argued that he met the test for public interest standing. Delta disputed both of these assertions.

13. The Agency ruled that: (a) Lukács did not qualify for direct or private interest standing because the allegedly discriminatory practice does not personally affect him as he does not require more than one seat to travel; and (b) Lukács did not meet the elements of the test for public interest standing.

¹⁰ SOR/88-58.

¹¹ Complaint of Dr. Gábor Lukács to the Agency dated August 24, 2014, [Tab 4A].

¹² Canadian Transportation Agency Decision No. 6-AT-A-2008 dated January 10, 2008 (online: <https://otc-cta.gc.ca/eng/ruling/6-at-a-2008>).

¹³ Canadian Transportation Agency Decision No. LET-C-A-63-2014 dated September 5, 2014, [Tab 2B].

14. Lukács obtained leave to appeal the Agency Decision. At the appeal stage, Lukács conceded that he did not have a direct and personal interest in the case and did not claim to have standing on that basis.¹⁴

15. The Court of Appeal defined the issues as follows (para 8):

- a. Did the Agency err in applying the general law of standing on a complaint for discriminatory terms and conditions under subsections 67.2(1) of the Act and 111(2) of the *Regulations*?
- b. Did the Agency err in finding that public interest standing is limited to cases in which the constitutionality of legislation or the non-constitutionality of administrative action is challenged?

16. The Court determined the case on the basis of the first issue alone. It held that the Agency had erred in applying the general law of standing to Lukács’s complaint, distinguishing between courts and administrative bodies such as the Agency. In de Montigny JA’s view, the rationale underlying the notion of standing – “a concern about the allocation of scarce judicial resources and the corresponding need to weed out cases brought by persons who do not have a direct personal legal interest in the matter” – should not be “superimposed” onto the regulatory scheme administered by the Agency.¹⁵ The Court noted that “the role of the Agency is not only to provide redress and grant monetary compensation to persons adversely affected by national transportation actors, but also to ensure that the policies pursued by the legislator are carried out.”¹⁶

17. In its reasons, the Court of Appeal briefly reviewed the caselaw that stands for the proposition that administrative tribunals may impose court-like procedures, but are not required to do so,¹⁷ noting that the imposition of stricter procedures on tribunals has been met with criticism.¹⁸ In its conclusion, however, the Court of Appeal held that the Agency’s adoption and application of the “judicial” law of standing was unreasonable and constituted a reviewable error.

¹⁴ Appeal Decision at para 8, [Tab 2C].

¹⁵ *Ibid* at para 18.

¹⁶ *Ibid* at para 19.

¹⁷ *Ibid* at para 20-22.

¹⁸ *Ibid* at para 21.

18. The Court of Appeal did not give respectful attention to the reasons of the Agency, or to the reasons that could be offered in support of its decision.¹⁹ Despite paying lip service to the limited nature of its role, the Court of Appeal did exactly what that court has held should not be done: it began by interpreting the statutory regime and deciding on a correct meaning itself, rather than assessing whether the Agency’s interpretation fell within the range of reasonable outcomes. This is a correctness review, not a reasonableness review.²⁰

19. Having taken this improper analytical approach, the Court of Appeal concluded that the Agency’s decision was unreasonable simply because it was inconsistent with the Court’s *de novo* interpretation of the Agency’s statutory mandate and authority. In doing so, the Court of Appeal made critical errors in reading the Act and the ATR that underscore the importance of deference to administrative tribunals and undermine the wide ambit of the Agency’s authority, as confirmed by this Court in *VIA Rail*.

PART II – QUESTIONS IN ISSUE

20. This case raises the following issues of national and public importance:

Does the Canadian Transportation Agency have the authority to decline to hear complaints on the basis of lack of standing?

Is the law of standing, including public interest standing, applicable in the administrative law context?

PART III – STATEMENT OF ARGUMENT

A. Legislative framework

i. *Canada Transportation Act*

21. As this Court noted in *VIA Rail*, the Act is highly specialized regulatory legislation with a strong policy focus. The scheme and object of the Act are the oxygen the Agency breathes.

¹⁹ *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 SCR 654 at paras 54-56. The Agency issued another decision involving the standing of Lukács three days before the hearing of the appeal in the within case. In *Lukács v Porter Airlines Inc.* (22 April 2016), Agency Decision No. 121-C-A-2016 (“Decision No. 121”), the Agency expanded on its reasoning on the law of standing (online: <https://www.otc-cta.gc.ca/eng/ruling/121-c-a-2016>). The Court of Appeal did not refer to this decision.

²⁰ *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 28.

When interpreting the Act, the Agency is expected to bring its transportation policy knowledge and experience to bear on its interpretations of its assigned statutory mandate.²¹

22. The Agency has a broad mandate in respect of all transportation matters under the legislative authority of Parliament.²² Section 5 of the Act sets out the National Transportation Policy, which includes the declaration that

a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada.²³

23. The Agency fulfills two key functions. In one, it acts as an economic regulator by “making determinations and issuing licences and permits to carriers which function within the ambit of Parliament’s authority”. In the other, it is a quasi-judicial tribunal that resolves commercial and consumer transportation-related disputes, including accessibility-related issues for persons with disabilities.²⁴

24. The Act is divided into seven parts, the most relevant of which are Part I – Administration, under which the general powers of the Agency are set out, and Part II – Air Transportation, which governs the regulation of commercial air transportation.

25. Part V of the Act, “Transportation of Persons with Disabilities”, sets out the Agency’s obligation to interpret and apply the Act in a manner consistent with the purpose and provisions of human rights legislation.²⁵

26. Under the Act, the Agency has been granted “all the powers, rights and privileges that are vested in a superior court” with respect to, *inter alia*, “all matters necessary or proper for the

²¹ *VIA Rail, supra* at para 98.

²² The Act, s. 3.

²³ *Ibid*, s. 5.

²⁴ *Lukács v Canada (Transportation Agency)*, 2014 FCA 76 at paras 50-52.

²⁵ *VIA Rail, supra* at para 117.

exercise of its jurisdiction.”²⁶ In addition, the Agency has broad rule-making powers,²⁷ under which it has established court-like rules which govern its dispute resolution proceedings.²⁸

27. Section 26 provides that the Agency “may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.”

28. Section 37 of the Act grants the Agency the discretionary power to inquire into a complaint:

The Agency **may** inquire into, hear and determine a complaint concerning any act, matter or thing prohibited sanctioned or required to be done under any Act of Parliament that is administered in whole or in part by the Agency. [emphasis added]

29. Part II of the Act begins with certain defined terms at section 55, including “tariff”, which means “a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental services.”

30. Part II governs licences for domestic service, scheduled international service and unscheduled international service. Domestic licences allow the licensee to operate air services between points within Canada, while international licences allow the operation of air services between Canada and other countries.

31. The Act treats the different kinds of licence differently: specific provisions that govern the fares, tariffs, and terms and conditions of carriage of domestic service licenses do not apply to international service licences. For example, and of particular import in this case, subsection 67.2(1) provides:

67.2(1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

²⁶ The Act, s. 25.

²⁷ *Ibid*, s. 17.

²⁸ *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (the “Rules”). These replaced the *Canadian Transportation Agency General Rules*, SOR/2005-35.

32. There is no equivalent to s. 67.2(1) in the Act that is applicable to international service licences, such as the one held by Delta. Nevertheless, the Court of Appeal based its reasoning on its interpretation of this provision.

ii. Air Transportation Regulations

33. The ATR also treats different classes of licence differently.

34. Carriers' tariffs are governed under Part V of the ATR, with domestic licence tariffs addressed under Division I (sections 105 through 107.1) and international licence tariffs governed under Division II (sections 108 through 135).

35. Subsection 111(2) of the ATR, which falls under Division II relating exclusively to international service tariffs, provides:

111(2) No air carrier shall, in respect of tolls or the terms and conditions of carriage,

- (a) make any unjust discrimination against any person or other air carrier;
- (b) give any undue or unreasonable preference or advantage to or in favour of any person or other air carrier in any respect whatever; or
- (c) subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

36. Section 113 provides that the Agency "may", without qualifying language, suspend any international tariff or portion of an international tariff that appears not to conform with certain provisions of Division II, including section 111, or disallow those that do not conform with those provisions. It may also establish and substitute another tariff for one it disallows.

B. The Federal Court of Appeal's Decision demonstrates why the Agency should be accorded the "highest degree of deference"

37. The Agency is responsible for interpreting its own legislation, including what its statutory responsibility includes.²⁹ In *VIA Rail*, this Court articulated the relationship between the Agency and the Federal Court of Appeal in the following way:

The Agency has the expertise and specialized knowledge. That is why it is the body charged with balancing all the competing interests, including cost and the public interest. The court is a reviewing body, not a court of first instance.³⁰

²⁹ *VIA Rail*, *supra* at para 100.

38. In the Appeal Decision, the Court recognized that the applicable standard of review was reasonableness and that the question of whether or not the Agency has the power to determine standing “falls squarely within the Agency’s expertise.” It noted that its task “is rather limited and is restricted to determining whether the decision of the Agency falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law.”³¹

39. On that standard, the Federal Court of Appeal was only entitled to interfere with the Agency Decision if “the ordinary tools of statutory interpretation lead to a single reasonable interpretation” of the Agency’s statutory authority and the Agency adopted an interpretation different from that lone interpretation.³²

i. The Agency’s Air Travel Complaints Scheme

40. Neither the Act nor the ATR dictates when or how the Agency must deal with consumer complaints about air carriers’ tariffs. The design and administration of a complaint scheme has been left entirely to the discretion of the Agency.

41. As noted above, section 37 provides for a permissive power of the Agency to inquire into, hear and determine a complaint concerning matters within the Agency’s authority.

42. Section 85.1 of the Act requires the Agency to “review” a complaint made “under any provision of [Part II]”, but it does not go so far as to require a hearing or “inquiry” under section 37 or otherwise. It, too, is permissive.

43. Subsection 85.1(1) provides that the Agency “shall review and may attempt to resolve the complaint”. It also gives the Agency discretion as to whether or not it mediates or arranges for mediation of the complaint.

44. Subsection 85.1(3) provides that, if the complaint is not resolved to the complainant’s satisfaction, “the complainant may request the Agency to deal with the complaint in accordance with the provisions of this Part under which the complaint has been made.” That is, it is left to the discretion of the Agency as to whether or not it hears, or deals with, a complaint.

³⁰ *Ibid* at para 243.

³¹ Appeal Decision at para 15, [Tab 2C].

³² *McLean, supra* at para 38.

45. Section 85.1 was amended in 2007.³³ The contrast between the current provision and its predecessor, which was enacted in 2000,³⁴ further supports the idea that the Agency has wide control over when and how it will deal with air travel complaints.

46. Under the former provision, Parliament created a dedicated “Air Travel Complaints Commissioner”. Unlike the current scheme, the former subsection 85.1(3) provided that the Commissioner “shall review and attempt to resolve every complaint filed under subsection (2)”.

47. In 2007, Parliament determined that the Air Travel Complaints Commissioner was no longer necessary and its functions were transferred to the Agency itself. In so doing, however, Parliament removed any legislated positive duty to resolve every complaint it received.

48. Currently, the Agency consists of not more than five members appointed by the Governor in Council.³⁵ The Agency’s members are responsible for making a variety of rulings, which includes issuing orders, decisions and permits of different kinds. According to the Agency’s website, its members made 1,135 rulings in 2014-2015, 1,370 in 2013-2014, and 1,629 in 2012-2013.³⁶

49. In the exercise of its statutory authority, the Agency has instituted a complaints scheme through which it reviews complaints related to air travel.³⁷ Under this scheme, the Agency receives hundreds of complaints each year relating both to domestic air services and to international air services.³⁸

50. The Act and the ATR include requirements in respect of air carriers’ tariffs and terms and conditions of carriage and grant the Agency powers to enforce these requirements. But the legislative framework does not mandate the circumstances in which the Agency must review a carrier’s tariff. Parliament has empowered the Agency to hear complaints and review tariffs, but

³³ *An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts*, SC 2007, c.19, s. 25.

³⁴ *An Act to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence*, SC 2000, c.15, s. 7.1.

³⁵ The Act, s. 7(2). Temporary members may be appointed pursuant to s. 9(1), but not more than three may hold office at any one time (s. 9(3)).

³⁶ Agency website at <https://www.otc-cta.gc.ca/eng/statistics-2014-2015>

³⁷ The Agency’s air travel complaints scheme is accessible online at: <https://services.otc-cta.gc.ca/eng/air-complaints>

³⁸ Agency website at <https://www.otc-cta.gc.ca/eng/statistics-2014-2015>

it has left to the discretion of the Agency, as a specialized body with a mandate to regulate a broad and complex industry, the determination of when and how it will do so.

51. The Court of Appeal’s decision is directly contrary to the permissive legislative scheme Parliament enacted and the discretion it has entrusted to the Agency. As noted above, the Agency’s statutory mandate is complex and the various sections of the Act and the ATR may not seem very clear at first glance. As this Court has noted, the resolution of unclear language in an administrative decision maker’s home statute is usually best left to the decision maker.³⁹ The Court of Appeal has overlooked the expertise the Agency brings to the exercise of interpreting its enabling legislation and defining the scope of its statutory authority. Moreover, the Court of Appeal’s own inexpert interpretation of the Agency’s legislative regime and authority does not even constitute a reasonable alternative to that of the Agency, much less the “single reasonable interpretation”.

ii. The Federal Court of Appeal’s demonstrated lack of expertise

52. The Court of Appeal’s disregard for the Agency’s expertise is highlighted by a crucial error in its reasoning. It based its holding on a flawed interpretation of a provision of the Act that has no application to Lukács’s complaint against Delta. At paragraph 14 of the Appeal Decision, Justice de Montigny stated that “[a]t its core, this case calls into question the general principles the Agency should apply when determining whether a party has standing to file a complaint under subsection 67.2(1) of the Act”.

53. In particular, de Montigny JA relied heavily on the fact that subsection 67.2(1) uses the “broad phrase “any person”” (para 25). That subsection provides:

67.2(1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

54. In the Court’s interpretation, the use of “any person” means that the Agency is prohibited from refusing to consider a complaint on the basis that the complainant is not affected by and/or

³⁹ *McLean, supra* at para 33.

does not have a sufficient interest in its subject matter. In contrast, the Agency dismissed Lukács's complaint because he was not able to show that he was affected by, could be affected by or otherwise had a sufficient interest in the Delta practice he complained was discriminatory.

55. The emphasis put on this provision by the Court of Appeal constitutes a crucial flaw in its reasoning and it reveals the Court of Appeal's lack of understanding of the legislative scheme and of the Agency's authority, powers and role.

56. Most fundamentally, subsection 67.2(1) has no application whatsoever to Delta or any complaint lodged against it. Delta does not hold a domestic licence. Subsection 67.2(1) only applies to holders of domestic licences.

57. Sections 111 and 113 of the ATR apply to holders of international licences, but not to domestic licenses. Neither provision contains any reference at all to complaints or complainants,⁴⁰ whether brought by "any person" or otherwise. Instead, on their face, these sections grant the Agency with the unqualified authority to suspend or disallow international tariffs that do not conform with section 111.⁴¹

58. The Court of Appeal appears to have been oblivious to the distinction that exists between the Agency's authority and powers over domestic and international tariffs.⁴² The fact that this error directly led the Court to interfere with the Agency's interpretation of its home statute and the ambit of its authority is an issue of public importance: if left to stand, the Agency will be

⁴⁰ In *Lukács v Canadian Transportation Agency*, 2016 FCA 202, the same panel of the Federal Court of Appeal as in this case relied on the fact that there is no "complaint provision" in Part V.1 of the ATR, which governs air transportation advertising prices, in dismissing a judicial review application Lukács brought against the Agency earlier this year (the hearing was two days after it heard the appeal in this case). On the Court's reasoning in that case, the lack of a "complaint provision" similar to s. 135.4 of the ATR under Part V ("Where the Agency, on receiving a complaint or of its own motion...") in Part V.1 meant that the Agency was not required to decide Lukács's complaint and refused to grant an order in *mandamus*. The panel's own logic, applied to this case, should have led it to the conclusion that the Agency was not required to hear Lukács's complaint against Delta. Section 135.4, which contains the word "complaint", is in Division III of Part V, which applies to the tariffs of transborder charter licence holders. There is no provision that contains the word "complaint" in Division II of Part V, which applies to international service tariffs.

⁴¹ In Decision No. 121, *supra*, the Agency made this very point in relation to the s. 113.1 of the ATR, which is similar to s. 113 (paras 40-43). In addition, because the complaint in that case involved a domestic carrier, the Agency provided its view of the meaning of "any person" in the provisions of the Act relating to domestic tariffs, as discussed below.

⁴² For example, at paragraphs 11-12 of the Appeal Decision, the Court characterized s. 111(2) of the ATR as "further expand[ing]" on s. 67.2(1) of the Act, rather than constituting a similar, but separate regime.

bound by jurisprudence purporting to interpret something within its area of expertise that is wrong on its face.

59. Apart from its improper and erroneous reliance on it, the Court of Appeal’s interpretation of s. 67.2(1) is also wrong. The clause on which the Court of Appeal put so much emphasis actually restricts the authority of the Agency to act. Rather than serving to require the Agency to review a domestic tariff on receipt of any complaint in writing, s. 67.2(1) does not allow such a review unless it receives a written complaint.

60. According to the Agency, it has the power to review an international tariff on its own motion even in the absence of a complaint, but it lacks this power with respect to domestic tariffs.⁴³ This is so because s. 113 of the ATR does not contain any qualifying language similar to that found in s. 67.2(1) of the Act. That is, on its interpretation, the Agency has wider discretion and authority over the enforcement of international tariffs than over domestic tariffs.

61. In this case, the Agency instituted a process to determine whether it would conduct a review of Delta’s tariff and practices, something over which, in its expert view, it has discretion. The Court of Appeal paid no mind to the Agency’s expert view and has essentially transformed a condition precedent to the exercise of the Agency’s authority (in the domestic setting) – a written complaint – into a trigger that imposes a positive duty on the Agency to exercise its authority and expend resources (in the international setting).

62. The Agency did not comment on the use of the phrase “any person” in s. 67.2(1) in its underlying decision, presumably because it recognized it had no relevance to Lukács’s complaint. However, in a subsequent decision related to a domestic licence tariff that involved s. 67.1, a similar provision of the Act (and one on which the Court of Appeal also opined at para 25),⁴⁴ the Agency interpreted the phrase directly.⁴⁵ Lukács was the complainant in that case too;

⁴³ Canadian Transportation Agency, *Annual Report 2014-2015: Making transportation efficient and accessible for all* (Ottawa: CTA, 2015) at 44
online: https://www.otc-cta.gc.ca/sites/default/files/annual_report_2014-2015_en.pdf

⁴⁴ The Court found the contrast between “any person” in ss. 67.1 and 67.2(1) and “any person adversely affected” in s. 67.1(b) significant. While it cannot be doubted that Parliament intended that the Agency only have the power to order compensation for persons who have been “adversely affected” by a domestic carrier’s application of a fare not set out in its tariff, the Court’s leap to concluding that this must mean that Parliament intended that the Agency could not decline to hear a complaint brought by “any person” in the world is without merit. In addition to the reasons set out by the Agency in Decision No. 121, the fact that the phrase in the

the Agency dismissed his complaint for lack of standing.⁴⁶ The Agency's considered interpretation is directly contrary to the one offered by the Court of Appeal below.

63. In part, in that case the Agency relied on the Ontario Court of Appeal's interpretation of "any person" in *Galganov v Russell (Township)*⁴⁷ in holding that, in context, "any person" does not grant "universal standing" and should be interpreted as meaning "any person who has standing under the common law relating to standing."⁴⁸ The Agency held that interpreting its statutory regime as requiring it to grant "universal standing" would detract from its "capacity to act as an expeditious, efficient, and effective recourse for those persons who actually were, or would be, directly and personally affected by" an air carrier's contravention of the Act or ATR.⁴⁹

64. The Agency, having in mind its myriad roles and responsibilities, including the hundreds of complaints it resolves each year, held that it was entitled, authorized and required to consider the broader implications granting "universal standing" might have on its ability to carry out its duties to the public. The Agency is far better placed to make this assessment than are the courts.

iii. Further Errors and Implications for Future Reviews

65. The Appeal Decision contained additional uninformed reasoning that further demonstrates the Court of Appeal's flawed understanding of the Agency's enabling statute and role as a quasi-judicial tribunal. Because the Appeal Decision is binding authority, unless it is corrected, the Agency will be left with the obligation to apply clearly erroneous jurisprudence in its decisions and proceedings going forward.

French version of the Act ("S'il conclut, sur dépôt d'une plainte...") does not use "toute personne" or anything similar might have been considered by the Court in this part of its analysis. As well, earlier versions of the Act, in which s. 67.1 included "or of its own motion" ("ou de sa propre initiative") after "on complaint ...by any person", might also have formed part of its interpretative analysis. As it stands, the most that can be concluded from the difference identified by the Court is that Parliament wanted to be certain that the Agency was not ordering carriers to redress persons who had not suffered any loss.

⁴⁵ Decision No. 121. This decision is dated April 22, 2016. The appeal before the Federal Court of Appeal in the within case was heard on April 25, 2016. There is no indication that the Federal Court of Appeal was aware of the Agency's April 22, 2016 decision.

⁴⁶ The Agency also dismissed the complaint on the basis of mootness.

⁴⁷ 2012 ONCA 409 ("*Galganov*"), leave to appeal to SCC ref'd, [2012] SCCA No 369.

⁴⁸ Agency Decision No. 121, *supra* at paras 37-38, citing para 15 of *Galganov, supra*.

⁴⁹ *Ibid* at para 43.

66. For example, the Court of Appeal held that it was significant that the Act distinguishes between “applications” and “complaints”, with the former used in Part III, which governs railway transportation, and the latter “mainly used” in Part II – Air Transportation. The Court reasoned that it was also significant that Part III usually specifies the party entitled to bring an application, while Part II usually allows “any person” to bring a complaint.⁵⁰

67. If there were as much significance as the Court views in the difference between “application” and “complaint”, one would expect that the expert Agency would know this. A cursory review of the Act shows that the Court of Appeal’s reasoning is plainly incorrect. Both terms have broad meanings and neither is defined in the Act; they are not used as consistently as the Court suggests. Sometimes the Act provides that an application, not a complaint, may be brought by “any person”⁵¹. Sometimes it provides that a complaint, not an application, may be brought by a specific party.⁵² Sometimes it provides that an application may be brought by a specific party under Part II, rather than Part III.⁵³ Sometimes it provides that a complaint may be brought by “any person” under Part III, rather than Part II.⁵⁴

68. For instance, under Part III, the Agency is empowered to make certain orders on receipt of noise and vibration complaints. Section 95.3 provides that the Agency “may order a railway company to make changes to its operation” on receipt “of a complaint made by any person that a railway company is not complying with section 95.1”.

69. This construction is similar to that found in s. 67.2(1) and other provisions found in Part II. One might presume that the Agency is not required to entertain any noise complaint against a railway company brought by anyone in the world, and that it has the discretion only to weigh in where it receives a complaint from a person who is actually affected by the noise complained of. The effect of the Appeal Decision is to remove that basic, common sense discretion and authority of the Agency in the context both of complaints against air carriers and railway companies.

⁵⁰ Appeal Decision at paras. 24-25 [Tab 2D].

⁵¹ See the Act, ss. 22, 91(1).

⁵² See ss. 120.1(1), 144(6) and (7).

⁵³ See ss. 64(2).

⁵⁴ See ss. 95.3(1), 116(1).

70. The Court of Appeal compounded its error by holding, without citing any authority, that the Agency-made Rules applicable to adjudicative or dispute proceedings, which the court noted “are generally based on an adversarial model”, only apply to railway transportation “applications” and do not apply to air transportation “complaints” (paras 24-25). This, too, is patently incorrect.

71. In fact, all air travel complaints that the Agency hears, including the more than two dozen brought by Lukács, are subject to the Agency’s court-like Rules.⁵⁵ The Rules apply to “dispute proceedings”⁵⁶ which are defined as “any contested matter that is commenced by application to the Agency.”⁵⁷ Under the Rules, “application” is defined as “a document that is filed to commence a proceeding before the Agency under any legislation or regulations that are administered in whole or in part by the Agency.”⁵⁸ Therefore, Lukács’s “complaint” in this case under the Act is an “application” under the Rules, a fact the Court of Appeal paid no mind to.

72. The Court of Appeal’s flawed reasoning and incorrect reading of the legislative scheme underscores the need for deference to the Agency’s expertise in interpreting its governing statute and regulations, and administering the complex regime for which it is responsible.

73. The Court of Appeal’s significant analytical errors demonstrate that it is not as expert as the Agency to interpret the Act and the ATR. Far from being the “single reasonable interpretation”, the Court’s interpretation is wrong. In the Agency Decision and in Decision No. 121, the Agency has put forward a reasonable interpretation of its statutory authority, under which it has the power to decline to hear complaints for lack of standing. That interpretation should be restored.

⁵⁵ The Agency Decision the Court of Appeal was reviewing in this case made specific reference to the Rules at para 63, from which the Court of Appeal should have inferred, if it was not certain, that the Rules applied to Lukács’s complaint. It is not clear on what basis the Court of Appeal determined that the Rules do not apply to complaints against air carriers.

⁵⁶ The Rules, r. 2.

⁵⁷ *Ibid*, r. 1.

⁵⁸ *Ibid*.

iv. Other legislative schemes do require administrative bodies to deal with complaints

74. A useful contrast can be drawn between the permissive scheme governing the Agency and the legislative scheme governing the Commissioner of Official Languages.

75. Under the *Official Languages Act*⁵⁹ (“OLA”), the Commissioner has been granted the power to investigate complaints regarding the use and status of Canada’s official languages. Subsection 58(1) provides, in part:

Investigation of complaints

58(1) Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission...

76. Unlike sections 37 or 67.2 (or 65, 66, 67.1 or 85.1) of the Act (or s. 113 of the ATR, for that matter), the OLA uses “shall” rather than “may” in its grant of power. The Act and the ATR are permissive where the OLA creates an obligation.

77. Section 58 of the OLA goes on to specifically address who may bring a complaint:

Who may make complaint

(2) A complainant may be made to the Commissioner by any person or group of persons, whether or not they speak, or represent a group speaking, the official language the status or use of which is at issue.

78. The OLA, unlike the Act, is explicit in allowing any person (or group of persons), whether or not they have a direct or personal interest in the subject matter of the complaint, to bring a complaint to the Commissioner. In combination, subsections 58(1) and (2) impose an explicit, positive duty on the Commissioner to investigate complaints brought by persons regardless of whether they have a direct interest.⁶⁰

⁵⁹ RSC 1985, c.31 (4th Supp).

⁶⁰ Section 58 of the OLA sets out the circumstances under which the Commissioner may exercise his right to refuse or cease to investigate a complaint, including where the subject matter of the complaint is trivial, or the complaint is frivolous.

79. The *Canadian Human Rights Act*⁶¹ (“CHRA”) is also explicit in allowing persons who have not been directly affected by a discriminatory practice to bring a complaint to the Canadian Human Rights Commission. Section 40 of that act begins:

Complaints

40(1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

Consent of victim

(2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.

80. Section 41 of the CHRA requires the Commission to deal with any complaint, except in certain prescribed situations, including, as provided for in s. 40(2), if the Commission exercises its discretion not to deal with a complaint brought by a non-victim of a discriminatory practice.

81. The Act governing the Agency is quite different. It does not explicitly state that a person without an interest in the subject complained of may bring a complaint and it does not require the Agency to hear an air travel complaint, whether or not the complainant has an interest. Rather, it is open-ended and permissive. The logical, common sense interpretation of the provisions of the Act is that the Agency may determine whether or not it will hear a complaint.

82. Guidance is also found closer to home. Section 116 of the Act, which falls under Part III, obliges the Agency to investigate certain kinds of complaint brought against railway companies:

Complaint and investigation concerning company’s obligations

116(1) On receipt of a complaint made by any person that a railway company is not fulfilling any of its service obligations, the Agency shall

- (a) conduct, as expeditiously as possible, an investigation of the complaint that, in its opinion, is warranted; and
- (b) within one hundred and twenty days after receipt of the complaint, determine whether the company is fulfilling that obligation.

⁶¹ RSC 1985, c. H-6.

83. The use of different words in the Act⁶² indicates Parliament's intention to distinguish between when Agency action with respect to a complaint is permitted and when it is required. Effect must be given to this distinction.

84. Courts may deny a party standing to avoid opening floodgates to unnecessary proceedings, screen out the mere busybody, ration scarce resources, and/or avoid a risk of hearing inadequately presented cases.⁶³ The Agency has all the powers, rights and privileges of a superior court that are necessary for the proper exercise of its jurisdiction (s. 25 of the Act). The application of the law of standing is an exercise of discretion. The Act (including s. 37) grants the Agency wide discretion to hear or not hear complaints and nothing restricts it.

85. The Agency has been entrusted with the licensing and regulation of air carriers and enforcement of the legislative and regulatory requirements imposed on those carriers. As part of that complex task, the Agency administers an air travel complaints scheme, through which it invites, reviews and hears complaints from members of the travelling public. It has a broad obligation to serve the public and the public interest.

86. But the Agency is not required to hear and decide every complaint brought before it. Nor is it restricted in the Act or the ATR as to how to make that decision. The Agency has been given broad discretion to fulfill its duties by Parliament. It is entitled to institute processes to ensure that it expends its time and resources on complaints from those "with the most at stake". That is what it did in this case.

C. Public interest standing in the administrative law context

87. If leave is granted, the proposed appeal would raise an additional issue of public importance: do administrative tribunals have the common law power to grant public interest standing in their proceedings?

88. Before the Agency and the Court of Appeal the parties made submissions assuming that the Agency has the authority to grant public interest standing to those who do not have standing otherwise. On the Court of Appeal's view, this question did not require an answer.

⁶² This is in addition to the amendments made to s. 85.1, noted above, in which "shall" was changed to "may".

⁶³ *Galganov, supra* at para 15.

89. This Court in *Finlay v Canada (Minister of Finance)*⁶⁴ expanded the application of public interest standing to non-constitutional challenges to administrative action, permitting the applicant to challenge a decision of the Province of Manitoba regarding federal public expenditures by way of an application for declaration before the Federal Court. Because it was not in issue, this Court did not address whether public interest standing could be applied by administrative tribunals in their own proceedings.

90. Some Canadian administrative tribunals have determined that, as statutory bodies, they do not have the power to grant public interest standing.⁶⁵ The British Columbia Supreme Court,⁶⁶ the Alberta Court of Queen's Bench,⁶⁷ and the Alberta Court of Appeal⁶⁸ agree with this view. However, other administrative tribunals (including the Agency in this case) have at least assumed that they do have this power.⁶⁹

91. The proposed appeal would provide this Court the opportunity to clarify whether, and in what circumstances, administrative tribunals may grant public interest standing.

PART IV – SUBMISSIONS CONCERNING COSTS

92. Delta does not seek costs and submit that no costs should be awarded against it.

PART V – ORDERS SOUGHT

93. Delta respectfully submits that leave to appeal be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of November, 2016.



Bersenas Jacobsen Chouest Thomson Blackburn LLP
Carlos P. Martins/Tae Mee Park/Andrew W. MacDonald

⁶⁴ [1986] 2 SCR 607.

⁶⁵ See eg. Decision No. 619/05, 2005 ONWSIAT 1645, 205 CarswellOnt 8146 para 77 (ONWSIAT); *D'Orazio v Ontario Human Rights Commission*, 2014 HRTO 111, *Water Matters Society of Alberta v Director, Southern Region, Operations Division, Alberta Environment and Water*, 2012 CarswellAlta 1901 at paras 131ff (Alta Environmental Appeals Board).

⁶⁶ *Gagne v Sharpe*, 2014 BCSC 2077 at para 77.

⁶⁷ *Alberta Wilderness Association v Alberta (Environmental Appeal Board)*, 2013 ABQB 44 at para 27.

⁶⁸ *CUPE Local 40 v. WMI Waste Management of Canada Inc*, 1996 ABCA 6 at para 23.

⁶⁹ See eg. *TWU v Telus Corp*, [2004] CIRB No 278, 2004 CarswellNat 3315 at paras 349-352 (CIRB); *Platinum Produce Company v Director, Ministry of the Environment*, 2014 CarswellOnt 1002 at p 28ff (Appendix B: Reasons for order granting standing) (Ont. Environ. Review Board); *Burgoon v British Columbia (Regional Water Manager)*, 2008 CarswellBC 456 at para 12 (BC Environ. Appeal Board).

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PART VII – STATUTES, REGULATIONS, RULES, ETC.

Canada Transportation Act, SC 1996, c.10

Application generally

3 This Act applies in respect of transportation matters under the legislative authority of Parliament.

National Transportation Policy

Declaration

5 It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when

- (a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;
- (b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;
- (c) rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada;
- (d) the transportation system is accessible without undue obstacle to the mobility of persons, including persons with disabilities; and

Loi sur les transports au Canada, LC 1996, c.10

Champ d'application

3 La présente loi s'applique aux questions de transport relevant de la compétence législative du Parlement.

Politique nationale des transports

Déclaration

5 Il est déclaré qu'un système de transport national compétitif et rentable qui respecte les plus hautes normes possibles de sûreté et de sécurité, qui favorise un environnement durable et qui utilise tous les modes de transport au mieux et au coût le plus bas possible est essentiel à la satisfaction des besoins de ses usagers et au bien-être des Canadiens et favorise la compétitivité et la croissance économique dans les régions rurales et urbaines partout au Canada. Ces objectifs sont plus susceptibles d'être atteints si :

- a) la concurrence et les forces du marché, au sein des divers modes de transport et entre eux, sont les principaux facteurs en jeu dans la prestation de services de transport viables et efficaces;
- b) la réglementation et les mesures publiques stratégiques sont utilisées pour l'obtention de résultats de nature économique, environnementale ou sociale ou de résultats dans le domaine de la sûreté et de la sécurité que la concurrence et les forces du marché ne permettent pas d'atteindre de manière satisfaisante, sans pour autant favoriser indûment un mode de transport donné ou en réduire les avantages inhérents;
- c) les prix et modalités ne constituent pas un obstacle abusif au trafic à l'intérieur du Canada ou à l'exportation des

(e) governments and the private sector work together for an integrated transportation system.

Agency continued

7 (1) The agency known as the National Transportation Agency is continued as the Canadian Transportation Agency.

Composition of Agency

(2) The Agency shall consist of not more than five members appointed by the Governor in Council, and such temporary members as are appointed under subsection 9(1), each of whom must, on appointment or reappointment and while serving as a member, be a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Chairperson and Vice-Chairperson

(3) The Governor in Council shall designate one of the members appointed under subsection (2) to be the Chairperson of the Agency and one of the other members appointed under that subsection to be the Vice-Chairperson of the Agency.

Temporary members

9 (1) The Minister may appoint temporary members of the Agency from the roster of individuals established by the Governor in Council under subsection (2).

Roster

(2) The Governor in Council may appoint any individual to a roster of candidates for the purpose of subsection (1).

Maximum number

marchandises du Canada;

d) le système de transport est accessible sans obstacle abusif à la circulation des personnes, y compris les personnes ayant une déficience;

e) les secteurs public et privé travaillent ensemble pour le maintien d'un système de transport intégré.

Maintien de l'Office

7 (1) L'Office national des transports est maintenu sous le nom d'Office des transports du Canada.

Composition

(2) L'Office est composé, d'une part, d'au plus cinq membres nommés par le gouverneur en conseil et, d'autre part, des membres temporaires nommés en vertu du paragraphe 9(1). Tout membre doit, du moment de sa nomination, être et demeurer un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*.

Président et vice-président

(3) Le gouverneur en conseil choisit le président et le vice-président de l'Office parmi les membres nommés en vertu du paragraphe (2).

Membres temporaires

9 (1) Le ministre peut nommer des membres à titre temporaire à partir d'une liste de personnes établie par le gouverneur en conseil au titre du paragraphe (2).

Liste

(2) Pour l'application du paragraphe (1), le gouverneur en conseil peut nommer les personnes à inscrire sur la liste de candidats qui y est prévue.

(3) Not more than three temporary members shall hold office at any one time.

Term of temporary members

(4) A temporary member shall hold office during good behaviour for a term of not more than one year and may be removed for cause by the Governor in Council.

No reappointment

(5) A person who has served two consecutive terms as a temporary member is not, during the twelve months following the completion of the person's second term, eligible to be reappointed to the Agency as a temporary member.

Copies of documents obtainable

22 On the application of any person, and on payment of a fee fixed by the Agency, the Secretary of the Agency or, in the absence of the Secretary, the person assigned by the Chairperson to act in the absence shall issue under the seal of the Agency to the applicant a certified copy of any rule, order, regulation or any other document that has been issued by the Agency.

Agency powers in general

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.

Compelling observance of obligations

26 The Agency may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.

Inquiry into complaint

Nombre maximal

(3) L'Office ne peut compter plus de trois membres temporaires.

Durée du mandat

(4) Les membres temporaires sont nommés à titre inamovible pour un mandat d'au plus un an, sous réserve de révocation motivée par le gouverneur en conseil.

Renouvellement du mandat

(5) Les membres temporaires ayant occupé leur charge pendant deux mandats consécutifs ne peuvent, dans les douze mois qui suivent, recevoir un nouveau mandat.

Copies conformes

22 Le secrétaire de l'Office, ou la personne chargée par le président d'assurer son intérim, délivre sous le sceau de l'Office, sur demande et contre paiement des droits fixés par celui-ci, des copies certifiées conformes des règles, arrêtés, règlements ou autres documents de l'Office.

Pouvoirs généraux

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.

Pouvoir de contrainte

26 L'Office peut ordonner à quiconque d'accomplir un acte ou de s'en abstenir lorsque l'accomplissement ou l'abstention sont prévus par une loi fédérale qu'il est chargé d'appliquer en tout ou en partie.

Enquêtes sur les plaintes

37 The Agency may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under any Act of Parliament that is administered in whole or in part by the Agency.

PART II - Air Transportation

...

Licence for Domestic Service

...

Notice period

64(2) A licensee shall not implement a proposal referred to in subsection (1) or (1.1) until the expiry of 120 days, or 30 days if the service referred to in that subsection has been in operation for less than one year, after the notice is given or until the expiry of any shorter period that the Agency may, on application by the licensee, specify by order.

Fares or rates not set out in tariff

67.1 If, on complaint in writing to the Agency by any person, the Agency finds that, contrary to subsection 67(3), the holder of a domestic licence has applied a fare, rate, charge or term or condition of carriage applicable to the domestic service it offers that is not set out in its tariffs, the Agency may order the licensee to

- (a) apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs;
- (b) compensate any person adversely affected for any expenses they incurred as a result of the licensee's failure to apply a fare, rate, charge or term or condition of carriage that was set out in its tariffs; and
- (c) take any other appropriate corrective measures.

When unreasonable or unduly discriminatory terms or conditions

67.2 (1) If, on complaint in writing to the

37 L'Office peut enquêter sur une plainte, l'entendre et en décider lorsqu'elle porte sur une question relevant d'une loi fédérale qu'il est chargé d'appliquer en tout ou en partie.

PARTIE II - Transport aérien

...

Service intérieur

...

Délai

64(2) Le licencié ne peut donner suite au projet mentionné aux paragraphes (1) ou (1.1) avant l'expiration soit des cent vingt jours ou, dans le cas où le service visé à ces paragraphes est offert depuis moins d'un an, des trente jours suivant la signification de l'avis, soit du délai inférieur fixé, à sa demande, par ordonnance de l'Office.

Prix, taux, frais ou conditions non inclus au tarif

67.1 S'il conclut, sur dépôt d'une plainte, que le titulaire d'une licence intérieure a, contrairement au paragraphe 67(3), appliqué à l'un de ses services intérieurs un prix, un taux, des frais ou d'autres conditions de transport ne figurant pas au tarif, l'Office peut, par ordonnance, lui enjoindre :

- a) d'appliquer un prix, un taux, des frais ou d'autres conditions de transport figurant au tarif;
- b) d'indemniser toute personne lésée des dépenses qu'elle a supportées consécutivement à la non-application du prix, du taux, des frais ou des autres conditions qui figuraient au tarif;
- c) de prendre toute autre mesure corrective indiquée.

Conditions déraisonnables

67.2 (1) S'il conclut, sur dépôt d'une plainte, que le titulaire d'une licence intérieure a

Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

Prohibition on advertising

(2) The holder of a domestic licence shall not advertise or apply any term or condition of carriage that is suspended or has been disallowed.

Air Travel Complaints

Review and mediation

85.1 (1) If a person has made a complaint under any provision of this Part, the Agency, or a person authorized to act on the Agency's behalf, shall review and may attempt to resolve the complaint and may, if appropriate, mediate or arrange for mediation of the complaint.

Report

(2) The Agency or a person authorized to act on the Agency's behalf shall report to the parties outlining their positions regarding the complaint and any resolution of the complaint.

Complaint not resolved

(3) If the complaint is not resolved under this section to the complainant's satisfaction, the complainant may request the Agency to deal with the complaint in accordance with the provisions of this Part under which the complaint has been made.

Further proceedings

(4) A member of the Agency or any person authorized to act on the Agency's behalf who has been involved in attempting to resolve or mediate the complaint under this section may not act in any further proceedings before the

appliqué pour un de ses services intérieurs des conditions de transport déraisonnables ou injustement discriminatoires, l'Office peut suspendre ou annuler ces conditions et leur en substituer de nouvelles.

Interdiction d'annoncer

(2) Il est interdit au titulaire d'une licence intérieure d'annoncer ou d'appliquer une condition de transport suspendue ou annulée.

Plaintes relatives au transport aérien

Examen et médiation

85.1 (1) L'Office ou son délégué examine toute plainte déposée en vertu de la présente partie et peut tenter de régler l'affaire; il peut, dans les cas indiqués, jouer le rôle de médiateur entre les parties ou pourvoir à la médiation entre celles-ci.

Communication aux parties

(2) L'Office ou son délégué fait rapport aux parties des grandes lignes de la position de chacune d'entre elles et de tout éventuel règlement.

Affaire non réglée

(3) Si l'affaire n'est pas réglée à la satisfaction du plaignant dans le cadre du présent article, celui-ci peut demander à l'Office d'examiner la plainte conformément aux dispositions de la présente partie en vertu desquelles elle a été déposée.

Inhabilité

(4) Le membre de l'Office ou le délégué qui a tenté de régler l'affaire ou joué le rôle de médiateur en vertu du présent article ne peut agir dans le cadre de procédures ultérieures, le cas échéant, devant l'Office à l'égard de la plainte en question.

Agency in respect of the complaint.

Extension of time

(5) The period of 120 days referred to in subsection 29(1) shall be extended by the period taken by the Agency or any person authorized to act on the Agency's behalf to review and attempt to resolve or mediate the complaint under this section.

Part of annual report

(6) The Agency shall, as part of its annual report, indicate the number and nature of the complaints filed under this Part, the names of the carriers against whom the complaints were made, the manner complaints were dealt with and the systemic trends observed.

PART III - Railway Transportation

Application for certificate of fitness

91 (1) Any person may apply for a certificate of fitness for a railway, including a person who owns or leases the railway or controls, either directly or indirectly, a person who owns or leases the railway.

Complaints and investigations

95.3 (1) On receipt of a complaint made by any person that a railway company is not complying with section 95.1, the Agency may order the railway company to undertake any changes in its railway construction or operation that the Agency considers reasonable to ensure compliance with that section.

Complaint and investigation concerning company's obligations

116 (1) On receipt of a complaint made by any person that a railway company is not fulfilling any of its service obligations, the Agency shall

- (a) conduct, as expeditiously as possible, an investigation of the complaint that, in

Prolongation

(5) La période de cent vingt jours prévue au paragraphe 29(1) est prolongée de la durée de la période durant laquelle l'Office ou son délégué agit en vertu du présent article.

Inclusion dans le rapport annuel

(6) L'Office inclut dans son rapport annuel le nombre et la nature des plaintes déposées au titre de la présente partie, le nom des transporteurs visés par celles-ci, la manière dont elles ont été traitées et les tendances systémiques qui se sont manifestées.

PARTIE III - Transport ferroviaire

Demande

91 (1) Toute personne, notamment le propriétaire ou le locataire d'un chemin de fer ou celui qui contrôle directement ou indirectement l'un d'eux, peut demander le certificat d'aptitude.

Plaintes et enquêtes

95.3 (1) Sur réception d'une plainte selon laquelle une compagnie de chemin de fer ne se conforme pas à l'article 95.1, l'Office peut ordonner à celle-ci de prendre les mesures qu'il estime raisonnables pour assurer qu'elle se conforme à cet article.

Plaintes et enquêtes

116 (1) Sur réception d'une plainte selon laquelle une compagnie de chemin de fer ne s'acquitte pas de ses obligations prévues par les articles 113 ou 114, l'Office mène, aussi rapidement que possible, l'enquête qu'il estime indiquée et décide, dans les cent vingt jours suivant la réception de la plainte, si la compagnie s'acquitte de ses obligations.

its opinion, is warranted; and

(b) within one hundred and twenty days after receipt of the complaint, determine whether the company is fulfilling that obligation.

Unreasonable charges or terms

120.1 (1) If, on complaint in writing to the Agency by a shipper who is subject to any charges and associated terms and conditions for the movement of traffic or for the provision of incidental services that are found in a tariff that applies to more than one shipper other than a tariff referred to in subsection 165(3), the Agency finds that the charges or associated terms and conditions are unreasonable, the Agency may, by order, establish new charges or associated terms and conditions.

Remedy if bad faith by a railway company

144(6) If, on complaint in writing by the interested person, the Agency finds that the railway company is not negotiating in good faith and the Agency considers that a sale, lease or other transfer of the railway line, or the company's operating interest in the line, to the interested person for continued operation would be commercially fair and reasonable to the parties, the Agency may order the railway company to enter into an agreement with the interested person to effect the transfer and with respect to operating arrangements for the interchange of traffic, subject to the terms and conditions, including consideration, specified by the Agency.

Remedy if bad faith by an interested person

(7) If, on complaint in writing by the railway company, the Agency finds that the interested person is not negotiating in good faith, the Agency may order that the railway company is no longer required to negotiate with the person.

Frais ou conditions déraisonnables

120.1 (1) Sur dépôt d'une plainte de tout expéditeur assujéti à un tarif applicable à plus d'un expéditeur — autre qu'un tarif visé au paragraphe 165(3) — prévoyant des frais relatifs au transport ou aux services connexes ou des conditions afférentes, l'Office peut, s'il les estime déraisonnables, fixer de nouveaux frais ou de nouvelles conditions par ordonnance.

Défaut par le chemin de fer de négocier de bonne foi

144(6) Saisi d'une plainte écrite formulée par l'intéressé, l'Office peut, s'il conclut que la compagnie ne négocie pas de bonne foi et que le transfert à l'intéressé, notamment par vente ou bail, des droits de propriété ou d'exploitation sur la ligne en vue de la continuation de son exploitation serait commercialement équitable et raisonnable pour les parties, ordonner à la compagnie de conclure avec l'intéressé une entente pour effectuer ce transfert et prévoyant les modalités d'exploitation relativement à l'interconnexion du trafic, selon les modalités qu'il précise, notamment la remise d'une contrepartie.

Défaut par l'intéressé de négocier de bonne foi

(7) Saisi d'une plainte écrite formulée par la compagnie, l'Office peut décider que la compagnie n'est plus tenue de négocier avec l'intéressé s'il conclut que celui-ci ne négocie pas de bonne foi.

Air Transportation Regulations, SOR/88-58**PART V - Tariffs****DIVISION II - International**

111(1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

(2) No air carrier shall, in respect of tolls or the terms and conditions of carriage,

- (a)** make any unjust discrimination against any person or other air carrier;
- (b)** give any undue or unreasonable preference or advantage to or in favour of any person or other air carrier in any

Règlement sur les transports aériens, DORS/88-58**PARTIE V - Tarifs****SECTION II - Service international**

111 (1) Les taxes et les conditions de transport établies par le transporteur aérien, y compris le transport à titre gratuit ou à taux réduit, doivent être justes et raisonnables et doivent, dans des circonstances et des conditions sensiblement analogues, être imposées uniformément pour tout le trafic du même genre.

(2) En ce qui concerne les taxes et les conditions de transport, il est interdit au transporteur aérien :

- a)** d'établir une distinction injuste à l'endroit de toute personne ou de tout autre transporteur aérien;
- b)** d'accorder une préférence ou un avantage indu ou déraisonnable, de

respect whatever; or

(c) subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

(3) The Agency may determine whether traffic is to be, is or has been carried under substantially similar circumstances and conditions and whether, in any case, there is or has been unjust discrimination or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this section, or whether in any case the air carrier has complied with the provisions of this section or section 110.

113 The Agency may

(a) suspend any tariff or portion of a tariff that appears not to conform with subsections 110(3) to (5) or section 111 or 112, or disallow any tariff or portion of a tariff that does not conform with any of those provisions; and

(b) establish and substitute another tariff or portion thereof for any tariff or portion thereof disallowed under paragraph (a).

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

(a) take the corrective measures that the Agency considers appropriate; and

(b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

DIVISION III - Transborder Charters

quelque nature que ce soit, à l'égard ou en faveur d'une personne ou d'un autre transporteur aérien;

c) de soumettre une personne, un autre transporteur aérien ou un genre de trafic à un désavantage ou à un préjudice indu ou déraisonnable de quelque nature que ce soit.

(3) L'Office peut décider si le trafic doit être, est ou a été acheminé dans des circonstances et à des conditions sensiblement analogues et s'il y a ou s'il y a eu une distinction injuste, une préférence ou un avantage indu ou déraisonnable, ou encore un préjudice ou un désavantage au sens du présent article, ou si le transporteur aérien s'est conformé au présent article ou à l'article 110.

113 L'Office peut :

a) suspendre tout ou partie d'un tarif qui paraît ne pas être conforme aux paragraphes 110(3) à (5) ou aux articles 111 ou 112, ou refuser tout tarif qui n'est pas conforme à l'une de ces dispositions;

b) établir et substituer tout ou partie d'un autre tarif en remplacement de tout ou partie du tarif refusé en application de l'alinéa a).

113.1 Si un transporteur aérien n'applique pas les prix, taux, frais ou conditions de transport applicables au service international qu'il offre et figurant à son tarif, l'Office peut lui enjoindre :

a) de prendre les mesures correctives qu'il estime indiquées;

b) de verser des indemnités à quiconque pour toutes dépenses qu'il a supportées en raison de la non-application de ces prix, taux, frais ou conditions de transport.

SECTION III - Vols affrétés transfrontaliers

Pouvoirs de l'Office

Powers of the Agency

135.4 Where the Agency, on receiving a complaint or of its own motion, determines that any term or condition of carriage set out in a tariff is unjust or unreasonable, the Agency may

- (a) suspend or disallow the tariff or a portion thereof;
- (b) establish and substitute another tariff or portion thereof for the suspended or disallowed tariff or portion thereof; or
- (c) prohibit an air carrier from advertising, offering or applying the suspended or disallowed tariff or portion thereof.

135.4 Si l'Office détermine, à la suite d'une plainte ou de son propre chef, que des conditions de transport figurant dans un tarif sont injustes ou déraisonnables, il peut :

- a) suspendre ou refuser tout ou partie du tarif;
- b) établir un autre tarif ou partie de tarif et le substituer au tarif ou à la partie de tarif suspendu ou refusé;
- c) interdire au transporteur aérien d'annoncer, d'offrir ou d'appliquer tout ou partie du tarif suspendu ou refusé.

Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings), SOR/2014-104

Interpretation

Definitions

1 The following definitions apply in these Rules.

application means a document that is filed to commence a proceeding before the Agency under any legislation or regulations that are administered in whole or in part by the Agency. (*demande*)

dispute proceeding means any contested matter that is commenced by application to the Agency. (*instance de règlement des différends*)

Règles de l'Office des transports du Canada (Instances de règlement des différends et certaines règles applicables à toutes les instances), DORS/2014-104

Définitions

Définitions

1 Les définitions qui suivent s'appliquent aux présentes règles.

demande Document introductif d'une instance déposé devant l'Office en vertu d'une loi ou d'un règlement qu'il est chargé d'appliquer en tout ou en partie. (*application*)

instance de règlement des différends Affaire contestée qui est introduite devant l'Office au moyen d'une demande. (*dispute proceeding*)

Application

Dispute proceedings

2 Subject to sections 3 and 4, these Rules apply to dispute proceedings other than a matter that is the subject of mediation.

Application

Instances de règlement des différends

2 Sous réserve des articles 3 et 4, les présentes règles s'appliquent aux instances de règlement des différends, à l'exception de toute question qui fait l'objet d'une médiation.

Official Languages Act, RSC 1985, c.31 (4th Supp)

Investigations

Investigation of complaints

58 (1) Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission to the effect that, in any particular instance or case,

- (a) the status of an official language was not or is not being recognized,
- (b) any provision of any Act of Parliament or regulation relating to the status or use of the official languages was not or is not being complied with, or
- (c) the spirit and intent of this Act was not or is not being complied with

Loi sur les langues officielles, LRC (1985), ch. 31 (4^e suppl)

Plaintes et enquêtes

Plaintes

58 (1) Sous réserve des autres dispositions de la présente loi, le commissaire instruit toute plainte reçue — sur un acte ou une omission — et faisant état, dans l'administration d'une institution fédérale, d'un cas précis de non-reconnaissance du statut d'une langue officielle, de manquement à une loi ou un règlement fédéraux sur le statut ou l'usage des deux langues officielles ou encore à l'esprit de la présente loi et à l'intention du législateur.

Dépôt d'une plainte

(2) Tout individu ou groupe a le droit de porter plainte devant le commissaire, indépendamment de la langue officielle parlée par le ou les

in the administration of the affairs of any federal institution.

Who may make complaint

(2) A complaint may be made to the Commissioner by any person or group of persons, whether or not they speak, or represent a group speaking, the official language the status or use of which is at issue.

Discontinuance of investigation

(3) If in the course of investigating any complaint it appears to the Commissioner that, having regard to all the circumstances of the case, any further investigation is unnecessary, the Commissioner may refuse to investigate the matter further.

Right of Commissioner to refuse or cease investigation

(4) The Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the Commissioner

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the subject-matter of the complaint does not involve a contravention or failure to comply with the spirit and intent of this Act, or does not for any other reason come within the authority of the Commissioner under this Act.

Complainant to be notified

(5) Where the Commissioner decides to refuse to investigate or cease to investigate any complaint, the Commissioner shall inform the complainant of that decision and shall give the reasons therefor.

plaignants.

Interruption de l'instruction

(3) Le commissaire peut, à son appréciation, interrompre toute enquête qu'il estime, compte tenu des circonstances, inutile de poursuivre.

Refus d'instruire

(4) Le commissaire peut, à son appréciation, refuser ou cesser d'instruire une plainte dans l'un ou l'autre des cas suivants :

- a) elle est sans importance;
- b) elle est futile ou vexatoire ou n'est pas faite de bonne foi;
- c) son objet ne constitue pas une contravention à la présente loi ou une violation de son esprit et de l'intention du législateur ou, pour toute autre raison, ne relève pas de la compétence du commissaire.

Avis au plaignant

(5) En cas de refus d'ouvrir une enquête ou de la poursuivre, le commissaire donne au plaignant un avis motivé.

Canadian Human Rights Act, RSC 1985, c. H-6

Complaints

40 (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

Consent of victim

(2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.

Investigation commenced by Commission

Loi canadienne sur les droits de la personne, LRC (1985), ch. H-6

Plaintes

40 (1) Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.

Consentement de la victime

(2) La Commission peut assujettir la recevabilité d'une plainte au consentement préalable de l'individu présenté comme la victime de l'acte discriminatoire.

Autosaisine de la Commission

(3) La Commission peut prendre l'initiative de la plainte dans les cas où elle a des motifs raisonnables de croire qu'une personne a

(3) Where the Commission has reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice, the Commission may initiate a complaint.

Commission to deal with complaint

41 (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

- (a)** the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;
- (b)** the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;
- (c)** the complaint is beyond the jurisdiction of the Commission;
- (d)** the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (e)** the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

commis un acte discriminatoire.

Irrecevabilité

41 (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :

- a)** la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;
- b)** la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;
- c)** la plainte n'est pas de sa compétence;
- d)** la plainte est frivole, vexatoire ou entachée de mauvaise foi;
- e)** la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.