

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

DELTA AIR LINES INC.

APPELLANT
(Respondent)

– and –

DR. GÁBOR LUKÁCS

RESPONDENT
(Appellant)

RESPONSE OF DR. GÁBOR LUKÁCS, RESPONDENT
TO THE MOTION FOR INTERVENTION AND ADDUCING FURTHER EVIDENCE
OF THE CANADIAN TRANSPORTATION AGENCY
(Pursuant to Rule 49 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

DR. GÁBOR LUKÁCS

Halifax, NS

Tel:

Email: lukacs@airpassengerrights.ca

Respondent

**BERSENAS JACOBSEN CHOUET
THOMSON BLACKBURN LLP**

33 Yonge St, Suite 201
Toronto, ON M5E 1G4

Carlos P. Martins

Tel.: (416) 982-3808
Fax: (416) 982-3801
Email: *cmartins@lexcanada.com*

**Counsel for the Appellant,
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*

**Ottawa Agent for Counsel for the Appellant,
Delta Air Lines Inc.**

CANADIAN TRANSPORTATION AGENCY

15 Eddy Street, 17th Floor
Gatineau, Quebec K1A 0N9

Allan Matte

Tel: 819-994-2226
Fax: 819-953-9269
Email: *Allan.Matte@otc-cta.gc.ca*

**Counsel for the Proposed Intervener,
Canadian Transportation Agency**

Mante Molepo

Tel: 819-994-4283
Fax: 819-953-9269
Email: *Mante.Molepo@otc-cta.gc.ca*

Ottawa Agent for the Proposed Intervener

Table of Contents

| | | |
|---|--|----|
| 1 | RESPONSE TO THE MOTION FOR INTERVENTION AND ADDUCING FURTHER EVIDENCE | 1 |
| | Part I Overview & Statement of Facts | 1 |
| | Part II Questions in Issue | 6 |
| | Part III Statement of Argument | 6 |
| | Part IV Submissions concerning costs | 10 |
| | Part V Order Sought | 10 |
| | Part VI Table of Authorities | 11 |
| 2 | CROSS EXAMINATION OF MS. SIMONA SASOVA (EXCERPT) | 12 |
| 3 | CONTINUED CROSS EXAMINATION OF MS. SIMONA SASOVA (EXCERPT) | 16 |
| 4 | MINUTES OF HEARING OF THE FEDERAL COURT OF APPEAL, DATED APRIL 25, 2016 | 19 |
| 5 | LIST OF RECORDED ENTRIES FOR FEDERAL COURT OF APPEAL FILE NO. A-135-15 | 26 |
| 6 | AFFIDAVIT OF DR. GÁBOR LUKÁCS, AFFIRMED ON JUNE 25, 2017 | 31 |
| | A List of decisions and determinations relating to air travel, retrieved from the official website of the Canadian Transportation Agency on June 24, 2017 | 40 |
| | B Email sent by Ms. Anna Bartel to Ms. Yinka A. Aiyede, Director, Air Travel Complaints at the Canadian Transportation Agency, dated May 13, 2014 | 44 |
| | C Email correspondence between Mr. Tony Mariani and Mr. Robert Armitage, Case Officer, Dispute Resolution Branch at the Canadian Transportation Agency, dated between April 1 and May 13, 2016 | 50 |
| | D Email sent by Ms. Debra Orr, Senior Complaints Officer, Air & Accessibility ADR Directorate at the Canadian Transportation Agency, to Mr. Frank Morris, dated July 29, 2016 | 58 |

| | | |
|---|--|----|
| E | Email sent by Mr. Robert Armitage, Case Officer, Dispute Resolution Branch at the Canadian Transportation Agency, to Mr. Jonathan Hislop, dated October 6, 2016 | 61 |
| F | Email sent by Mr. Gerard Cooke to Mr. Douglas W. Smith, Chief Dispute Resolution Officer, Dispute Resolution Branch at the Canadian Transportation Agency, dated January 2, 2017 | 64 |
| G | Email sent by Mr. Cooke to Mr. Smith, dated January 11, 2017 | 67 |
| H | Chain of emails between Ms. Angela Gaetano and Ms. Isabelle Lacroix, a technician at the Canadian Transportation Agency, between February 1 and 6, 2017 | 74 |
| I | Members of the Canadian Transportation Agency, retrieved from the official website on June 24, 2017 | 79 |
| J | Discipline History Information relating to Mr. Douglas W. Smith, Chief Dispute Resolution Officer at the Agency, retrieved from the official website of the Law Society of Upper Canada on February 22, 2017 | 85 |

**RESPONSE TO THE MOTION FOR INTERVENTION
AND ADDUCING FURTHER EVIDENCE**

PART I – OVERVIEW & STATEMENT OF FACTS

A. Overview

1. On the present motion, the Canadian Transportation Agency (the “Agency”) is seeking leave to intervene in the appeal for the purpose of:

- (a) making additional arguments in support of its decision; and
- (b) adducing further evidence that was not before the Federal Court of Appeal (“FCA”).

2. The appeal before this Court is between two adversarial parties, the Appellant, Delta Air Lines (“Delta”), and the Respondent, Dr. Gábor Lukács (“Dr. Lukács”); it is *not* unopposed.

3. The Agency was only a nominal participant to the appeal before the FCA: it did not file a factum nor did it seek to adduce any evidence.¹ The Agency was represented by counsel at the hearing of the appeal before the FCA, but counsel made no oral submissions.²

4. Dr. Lukács opposes the Agency’s motion to adduce further evidence and submits that if the Agency is granted leave to intervene, such intervention ought to be limited in scope to the issue of standard of review. It would be inappropriate to permit the Agency to become an adversary or supplement the reasons for its original decision by making additional arguments on appeal.³

5. Dr. Lukács submits that the Agency should not be permitted to supplement the record. It would be unfair and prejudicial to Dr. Lukács if the affidavit of Ms. Bellerose were admitted into the record without allowing Dr. Lukács to submit evidence in response, in particular to paras. 2 and 5-7, which are contested. In order to provide procedural fairness to the parties to this appeal, a full response to Ms. Bellerose’s affidavit would require filing further affidavits, the production of a substantial number of documents, and for Mr. Bellerose to submit to cross-examination about the

¹ List of Recorded Entries for Federal Court of Appeal File No. A-135-15 [Tab 5, p. 26].

² Minutes of Hearing (Apr. 25, 2016) [Tab 4, p. 19].

³ *VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2005 FCA 79 at para. 94.

facts asserted in her affidavit, which raise new contested issues, including: (a) the Agency’s practice of discouraging and turning away complainants without issuing any decision or order about their complaint; and (b) the Agency’s lack of independence.

6. For the purpose of demonstrating how the admission of Ms. Bellerose’s affidavit would be prejudicial for Dr. Lukács, the highly contested nature of her evidence is discussed below. Dr. Lukács submits that the admission of this evidence into the record would raise new issues, distract from the resolution of important questions of law presented in this case, and ultimately unnecessarily complicate the disposition of this appeal. As a result, the Agency’s request to supplement the record should be dismissed.

7. In the alternative, if this Court grants leave to the Agency to supplement the record on this appeal by admitting Ms. Bellerose’s affidavit, Dr. Lukács respectfully requests leave to file responding affidavits and to cross-examine Ms. Bellerose on her affidavit, pursuant to Rule 90(1) of the *Rules of the Supreme Court of Canada*.

B. The legislative framework and the Agency’s mandate

8. In enacting the *Canada Transportation Act* (the “Act”),⁴ Parliament chose to create a regulatory scheme for the national transportation system in order to achieve certain policy objectives, which are identified in section 5 of the *Act*.

9. The Agency is an administrative body—not a court. It administers the regulatory scheme, and fulfills a dual role: (i) as a regulator, it ensures that the policies determined by Parliament are carried out; and (ii) as a quasi-judicial tribunal, it adjudicates transportation-related disputes. The two roles substantially overlap.

10. Part II of the *Act* governs commercial transportation by air within Canada (domestic service), and to and from Canada (international service); establishes licensing requirements for operating such services; and confers broad regulation-making powers upon the Agency.⁵ The *Air Transportation Regulations* (the “ATR”)⁶ were promulgated pursuant to these powers.

⁴ *Canada Transportation Act*, SC 1996, c. 10 (the “Act”).

⁵ The *Act*, s. 86.

⁶ *Air Transportation Regulations*, SOR/88-58 (the “ATR”).

11. Air carriers operating a domestic or international service are required to create and publish a tariff setting out the terms and conditions of carriage.⁷ The tariff is a contract of carriage between the carrier and its passengers, and the carrier must apply the terms and conditions set out therein.⁸

12. Unreasonable terms and conditions and undue (or unjust) discrimination are prohibited in domestic service pursuant to s. 67.2(1) of the *Act* and in international service pursuant to s. 111 of the *ATR*. The prohibition against discrimination in transportation by air includes all forms of discrimination. It is broader than and complements the Agency’s general powers to eliminate undue obstacles for passengers with disabilities in the transportation network.⁹

13. The Agency has both *restitutional* and *preventive* remedial powers to give effect to the consumer protection and human rights provisions of the scheme. The Agency may offer restitution by way of compensation to those who have been “adversely affected” by the failure of a carrier to apply the terms and conditions set out in its tariff, and by ordering the carrier to take corrective measures.¹⁰ The Agency may also prevent harm to the public before it happens by disallowing or substituting terms and conditions that are unreasonable or unduly (unjustly) discriminatory.¹¹

14. Section 85.1 of the *Act* governs complaints under Part II of the *Act*, relating to transportation by air. Pursuant to s. 85.1(1), the Agency must (“shall”) review such complaints, and may attempt to resolve them informally (facilitation or mediation). If the complaint is not resolved informally, then the complainant may request, pursuant to s. 85.1(3), that the Agency deal with the complaint formally, “in accordance with the provisions of this Part under which the complaint has been made.”

C. Evidence necessary to respond if the affidavit of Ms. Patrice Bellerose is admitted into the record on this appeal

i. The Agency’s practice of discouraging and turning away complainants

15. The evidence of Ms. Bellerose about the number of “consumer complaints” purportedly “resolved by the Agency”¹² is highly contested and ought not be permitted into the record for this

⁷ The *Act*, s. 67 for domestic service; *ATR*, ss. 110, 116, and 116.1 for international service.

⁸ The *Act*, s. 67(3) for domestic service; *ATR*, s. 110(4) for international service.

⁹ The *Act*, s. 172 of the *Act*.

¹⁰ The *Act*, s. 67.1 for domestic service; *ATR*, s. 113.1 for international service.

¹¹ The *Act*, s. 67.2(1) for domestic service; *ATR*, s. 113 for international service.

¹² Bellerose Affidavit, [Agency’s Motion Record, Tab 2, p. 6, paras. 5-7].

appeal on the merits. Such evidence is belied by the Agency’s own publication,¹³ evidence about Agency staff discouraging complainants from pursuing their rights or turning away complaints,^{14,15} and allegations by complainants that Agency staff fabricated and backdated records.¹⁶

16. Between 2000 and 2017, the Agency issued a total of 369 final decisions and determinations relating to air travel, that is, 21 per year on average.¹⁷ In 2016 and 2017, the Agency issued only 11 such decisions and determinations per year.¹⁸ This begs the question of the fate of the other thousands of complaints, purportedly “resolved” by the Agency.

17. For example, Ms. Anna Bartell, who filed a complaint with the Agency against Air Canada in 2013, wrote to Ms. Yinka A. Aiyede, Director, Air Travel Complaints, in May 2014:¹⁹

I will say I have been deeply disturbed by your attempt to dissuade me from filing a formal complaint, which is, as I understand, is my right as a citizen. And Lastly I have been also troubled by your attempt to dissuade me from associating with Mr. Lukacs and from involving him in my case.

18. Similarly, Mr. Gerard Cooke, who filed a complaint with the Agency against Air Canada in 2015, complained to Mr. Douglas W. Smith, Chief Dispute Officer, Dispute Resolution Branch in January 2017 about the conduct of the case officer that was assigned to his complaint:²⁰

[...] Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

19. The cases of Ms. Bartell and Mr. Cooke are not unique. Starting in 2013, Agency staff began to turn away complainants, who were unceremoniously advised that their complaint filed with the Agency would be closed. Common features of these cases are that:^{21,22} (a) the complaint file was closed by a case officer reviewing the complaint under s. 85.1(1) of the *Canada Transportation Act* (the “*Act*”), not a Member of the Agency; (b) the Agency did not make a decision or order

¹³ Lukács Affidavit, Exhibit “A” [Tab 6A, p. 40].

¹⁴ Lukács Affidavit, paras. 9-14 [Tab 6, pp. 33-36].

¹⁵ Lukács Affidavit, Exhibits “B” and “F” [Tabs 6B and 6F, pp. 44 and 64].

¹⁶ Lukács Affidavit, Exhibits “G” and “H” [Tabs 6G and 6H, pp. 67 and 74].

¹⁷ Lukács Affidavit, Exhibit “A” [Tab 6A, p. 40].

¹⁸ *Ibid.*

¹⁹ Lukács Affidavit, Exhibit “B” [Tab 6B, p. 44].

²⁰ Lukács Affidavit, Exhibit “F” [Tab 6F, p. 64].

²¹ Lukács Affidavit, paras. 9-14 [Tab 6, pp. 33-36].

²² Lukács Affidavit, Exhibits “B”-“H” [Tabs 6B-6H, pp. 44-74].

dismissing the complaint, yet complainants were made to understand that their complaint had been dismissed; and (c) complainants were either not informed about their right under s. 85.1(3) of the *Act* to ask for formal adjudication of their complaints or were discouraged by Agency staff to exercise that right.

ii. Lack of independence and integrity of the Agency

20. The statements in the affidavit of Ms. Bellerose regarding the independence of the Agency are also disputed.²³ In Dr. Lukács’s submission, the Agency lost its independence in 2013, and the integrity of its consumer protection activities have been compromised.

21. Current Members of the Agency, who exercise the quasi-judicial functions, have close ties to the transportation industry or the government, or both.²⁴ For example, Mr. Sam Barone was appointed Vice-Chair and Member of the Agency in March 2013. Prior to his appointment to the Agency, Mr. Barone was President and CEO of the Canadian Business Aviation Association (2008-2013) and President and CEO of the Air Transport Association of Canada (2006-2008).²⁵

22. As another example, Ms. Simona Sasova, the manager of the enforcement division of the Agency,²⁶ has acknowledged that she is on a “first-name basis with executives of corporations against whom” she takes enforcement actions.²⁷

23. As the Agency has put this at issue in Ms. Bellerose’s affidavit, it is necessary to note that the Agency’s integrity is also contested. Mr. Douglas W. Smith, the Chief Dispute Resolution Officer of the Agency, is a suspended lawyer. The Law Society of Upper Canada found that Mr. Smith “engaged in professional misconduct,” suspended Mr. Smith, and imposed numerous conditions on his reinstatement.²⁸ Mr. Smith has remained suspended since 2004, and has been either unable or unwilling to comply with the terms of his reinstatement.²⁹ The appointment of a person with an unresolved disciplinary record such as Mr. Smith’s to a key position in the resolution of air travel complaints speaks to the nature of the Agency’s impartiality and integrity.

²³ Bellerose Affidavit, [Agency’s Motion Record, Tab 2, p. 5, para. 2].

²⁴ Lukács Affidavit, Exhibit “I” [Tab 6I, p. 79].

²⁵ Ibid.

²⁶ Cross Examination of Ms. Simona Sasova, Q. 4 [Tab 2, p. 2].

²⁷ Continued Cross Examination of Ms. Simona Sasova, Q. 423 [Tab 3, p. 3].

²⁸ Lukács Affidavit, Exhibit “J” [Tab 6J, p. 85].

²⁹ Ibid.

PART II – QUESTIONS IN ISSUE

24. The questions to be decided on this motion are: (A) the appropriate scope for the Agency's intervention; and (B) whether the Agency should be permitted to adduce further evidence.

25. Dr. Lukács submits that if the Agency's motion for leave to intervene is granted, the Agency should be restricted to addressing the legal question of the standard of review, and should not be permitted to address the merits of the appeal, defend its own decision, or supplement the record with its proposed further evidence.

PART III – STATEMENT OF ARGUMENT

A. The Agency should be restricted to addressing the standard of review

i. Applicable legal principles

26. When the enabling statute provides an administrative tribunal standing to be heard on an appeal, but is silent about the tribunal's role on the appeal, the reviewing court must rely on its discretion to define the tribunal's role.³⁰

27. As a general rule, the role of the tribunal is limited to making submissions on questions of jurisdiction and on standard of review.³¹ This judicial policy is grounded on two fundamental principles: (a) preservation of the impartiality of the tribunal if the matter is referred back to it or in future proceedings involving similar interests and issues or the same parties;³² and (b) finality of decisions and their reasons.³³

28. Nevertheless, the reviewing court may, in the exercise of its discretion, permit the tribunal to argue the merits of the decision on appeal. Such discretion must be informed by the following factors:³⁴ (1) whether the appeal would otherwise be unopposed; (2) whether the parties opposing the appeal have the necessary knowledge and expertise to fully respond to the arguments on appeal; and (3) whether the tribunal adjudicates individual conflicts between two adversarial parties, or

³⁰ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, [2015] 3 SCR 147 at para. 59.

³¹ *Northwestern Utilities Ltd. and al. v. Edmonton*, [1979] 1 SCR 684 at p. 709.

³² *Ibid.*

³³ *Canada (Attorney General) v. Quadrini*, 2010 FCA 246 at para. 16.

³⁴ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, [2015] 3 SCR 147 at para. 59.

whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest. An additional consideration is (4) whether the tribunal seeks to supplement its decision with new reasons (“bootstrapping”).³⁵

ii. Application to the Agency’s motion for leave to intervene

29. The central issue on the appeal is whether the Agency abused its discretion by basing its decision to refuse to hear a complaint on irrelevant considerations that are inconsistent with the policy objectives of the regulatory scheme. The Agency’s jurisdiction is not in issue. Thus, save exceptional circumstances, the Agency’s submissions should be limited to the standard of review.

30. The Agency seeks to intervene for the purpose of addressing the merits of the appeal, making additional arguments in support of its decision that were not set out in its reasons nor made before the Federal Court of Appeal, and taking a position adversarial to Dr. Lukács.³⁶

The Agency proposes to intervene on the issue of whether it should be entitled to apply the law of standing. The Agency’s position is that an administrative tribunal should have the ability to apply the law of standing, and decline to hear a case where the applicant does not have sufficient interest in the matter he or she proposes to litigate.

31. The proposed intervention is an impermissible attempt, contrary to the principle of finality, to supplement the Agency’s reasons for its decision under appeal by new grounds that were neither stated nor implied in its reasons, and were not before the Federal Court of Appeal. For example, the Agency seeks to rely on its purported “unprecedented caseload of consumer complaints”³⁷ in 2016 and 2017 in order to defend the reasonableness of its 2014 decision under appeal.

32. The Agency presented no arguments as to why this Court should depart from the general rule restricting the role of tribunals, and permit the Agency to argue the merits of its decision on appeal. The Agency has not addressed any of the factors identified in *Ontario (Energy Board)*; instead, it seeks to establish that it has an “interest” in the appeal³⁸ based on [subsection 41\(4\)](#) of the *Canada Transportation Act*, which provides the Agency standing to be heard, but does not authorize the Agency entering the adversarial fray and arguing the merits of its own decision. This

³⁵ *Ibid.*, at para. 69.

³⁶ Agency’s Memorandum, para. 30 [Agency’s Motion Record, p. 14].

³⁷ Agency’s Memorandum, para. 38 [Agency’s Motion Record, p. 16].

³⁸ Agency’s Memorandum, paras. 25-26 [Agency’s Motion Record, p. 13].

is improper and ought not be permitted by this Court. As stated by the Federal Court of Appeal:³⁹

The Agency cannot be an adversary in a matter on appeal wherein the decisions being appealed were rendered by the Agency itself. The Agency should take note of this for future proceedings.

33. The factors identified in *Ontario (Energy Board)* militate against permitting the Agency to address the merits of the appeal: (1) The appeal is between two adversarial parties, Delta and Dr. Lukács, and is *not* unopposed. (2) Delta has the necessary knowledge and expertise to fully argue the appeal, and has done so in its factum. (3) The Agency has a dual role, which includes (but is not limited to) adjudicating individual conflicts between adversarial parties.

34. Therefore, the Agency's intervention should be restricted to the issue of standard of review.

B. The Agency should not be permitted to supplement the record

i. Applicable legal principles

35. Intervenors must, as a general rule, take the case as they find it and are prohibited from adducing further evidence or otherwise supplementing the record of the parties.⁴⁰ The only exception to this rule is “legislative facts,” relating to the purpose and background of legislation; this exception, however, is not a licence to put before the court controversial evidence to the prejudice of the opposing party, particularly without providing a proper opportunity for its truth to be tested.⁴¹

36. The test for admitting fresh evidence on appeal calls for considering the following factors:⁴² (1) the evidence should generally not be admitted if, by due diligence, it could have been adduced at an earlier stage; (2) the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial; (3) the evidence must be credible; and (4) it must be such that, if believed, it could reasonably be expected to have affected the result, when taken with the other evidence adduced at trial. In addition, fairness to the opposing parties is an overarching concern in determining whether to admit fresh evidence on appeal. A person seeking to adduce fresh evidence must be precise about the points sought to be established by the fresh evidence.⁴³

³⁹ *VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2005 FCA 79 at para. 94.

⁴⁰ *RJR - MacDonald Inc. v. Attorney General of Canada*, SCC File No. 23460, Order dated June 7, 1994; *Anderson, et al. v. Amoco Canada Oil and Gas*, SCC File No. 29370, Order dated March 9, 2004.

⁴¹ *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 2 at paras. 4-5.

⁴² *Ibid.* at paras. 6-8, citing *Palmer v. The Queen*, [1980] 1 S.C.R. 759 at p. 775.

⁴³ *Ibid.* at para. 10.

ii. Application to the Agency's motion to adduce further evidence

37. The Agency seeks to adduce the affidavit of Ms. Bellerose as fresh evidence on the appeal⁴⁴ without making any submissions in support of such an extraordinary remedy or stating the points sought to be established by it. This fatal flaw in and on its own warrants dismissal of the motion.

38. Dr. Lukács submits that the Agency's motion to adduce the affidavit of Ms. Bellerose lacks any basis at law. The Agency failed to demonstrate that the affidavit falls within the "legislative facts" exception, and it is plain and clear that it does not. Thus, as an intervener, the Agency must take the case as it finds it, and cannot adduce fresh evidence or otherwise supplement the record.

39. Even if the Agency had been a party to the appeal, it is submitted that the affidavit of Ms. Bellerose does not meet the test for admitting fresh evidence on appeal: (1) The Agency could have adduced the evidence (with the exception of purported numbers referring to 2017), by due diligence, in the course of the appeal before the Federal Court of Appeal, but failed to do so. (2) The Agency failed to demonstrate the relevance of the evidence. (3) The evidence is not credible. The number of air travel-related decisions and determinations issued by the Agency has decreased in 2016 and 2017 to 11 per year compared to the average of 21 per year in 2000-2017.⁴⁵ In particular, among the 2,195 complaints that the Agency purportedly "resolved" in 2016-2017, only 22 at most are accounted for (11 in 2016 and 11 in 2017); thus, at least 2,173 "resolved" complaints are unaccounted for. (4) Even if the evidence of Ms. Bellerose were credible, the Agency failed to demonstrate that it could reasonably be expected to have affected the result.

40. Furthermore, admitting the controversial affidavit of Ms. Bellerose about the purported number of "complaints resolved by the Agency" and the Agency's purported independence⁴⁶ would open a Pandora's box of issues that otherwise would not have to be addressed by this Court. Procedural fairness dictates that *if* the affidavit is admitted, then Dr. Lukács should be afforded the opportunity to lead evidence in response, and have Ms. Bellerose and a substantial number of documents produced for cross-examination about: (i) the discrepancy between the numbers in Ms. Bellerose's affidavit and the number of air travel decisions and determinations according to the Agency's own publication; (ii) the Agency's practices relating to the handling of air travel complaints, including

⁴⁴ Agency's Notice of Motion, para. 3 [Agency's Motion Record, Tab 1, p. 1].

⁴⁵ Lukács Affidavit, Exhibit "A" [Tab 6A, p. 40].

⁴⁶ Bellerose Affidavit, [Agency's Motion Record, Tab 2, pp. 5-6, paras. 2 and 5-7].

the discouraging and turning away of complainants without issuing any decision or order about their complaint; and (iii) the Agency's lack of independence.

41. Dr. Lukács submits that in the interest of conserving the scarce and valuable judicial resources of this Court, this Pandora's box should remain closed, and the Agency's motion to adduce the affidavit of Ms. Bellerose should be dismissed.

PART IV – SUBMISSIONS CONCERNING COSTS

42. Dr. Lukács submits that the Agency should bear Dr. Lukács's costs and disbursements relating to responding to the present motion. The relief of adducing further evidence sought by the Agency has unnecessarily complicated the present motion, and necessitated the filing of the present responding motion record and numerous documents instead of a 2-page letter.

PART V – ORDER SOUGHT

43. Dr. Lukács seeks an order dismissing the Agency's motion to adduce further evidence, with costs, and if the Agency is granted leave to intervene, imposing the the following terms:

- (a) the Agency's intervention shall be restricted to the issue of standard of review, and the Agency may not add to the record or advance arguments based on unproven factual assertions;
- (b) the Agency may submit a memorandum of no longer than 10 pages; and
- (c) the Respondent may file a factum of no longer than 5 pages in response to the Agency's factum, 28 days after receipt of the last intervener's factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of June, 2017.

DR. GÁBOR LUKÁCS
Respondent

PART VI – TABLE OF AUTHORITIES

| Case Law | Para. No. |
|--|------------------|
| <i>Anderson, et al. v. Amoco Canada Oil and Gas</i> , SCC File No. 29370 , Order dated March 9, 2004. | 35 |
| <i>Canada (Attorney General) v. Quadrini</i> , 2010 FCA 246 | 27 |
| <i>Northwestern Utilities Ltd. and al. v. Edmonton</i> , [1979] 1 SCR 684 | 27 |
| <i>Ontario (Energy Board) v. Ontario Power Generation Inc.</i> , [2015] 3 SCR 147 | 26, 28, 32, 33 |
| <i>Public School Boards' Assn. of Alberta v. Alberta (Attorney General)</i> , 2000 SCC 2 | 35, 36 |
| <i>RJR - MacDonald Inc. v. Attorney General of Canada</i> , SCC File No. 23460 , Order dated June 7, 1994 | 35 |
| <i>VIA Rail Canada Inc. v. Canadian Transportation Agency</i> , 2005 FCA 79 | 4, 32 |
| | |
| Legislative Enactments | Para. No. |
| <i>Air Transportation Regulations</i> , SOR/88-58 / Règlement sur les transports aériens , DORS/88-58 | 10 |
| s. 110 / art. 110 | 11 |
| s. 111 / art. 111 | 12 |
| s. 113 / art. 113 | 13 |
| s. 113.1 / art. 113.1 | 13 |
| s. 116 / art. 116 | 11 |
| s. 116.1 / art. 116.1 | 11 |
| <i>Canada Transportation Act</i> , SC 1996, c. 10 / Loi sur les transports au Canada , L.C. 1996, ch. 10 | |
| s. 5 / art. 5 | 8 |
| s. 41 / art. 41 | 32 |
| s. 67 / art. 67 | 11 |
| s. 67.1 / art. 67.1 | 13 |
| s. 67.2 / art. 67.2 | 12, 13 |
| s. 85.1 / art. 85.1 | 14, 19 |
| s. 86 / art. 86 | 10 |
| s. 172 / art. 172 | 12 |

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

Examination No. 14-0812

Court File No. A-167-14

FEDERAL COURT OF APPEAL

B E T W E E N:

DR. GABOR LUKACS

APPLICANT

- and -

CANADIAN TRANSPORTATION AGENCY

RESPONDENT

CROSS-EXAMINATION OF SIMONA SASOVA ON HER AFFIDAVIT sworn
May 20th, 2014, pursuant to an appointment made on consent
of the parties, to be reported by Gillespie Reporting
Services, on the 4th day of September, 2014, commencing at
the hour of 10:30 in the forenoon.

APPEARANCES:

Dr. Gabor Lukacs,

for the Applicant

Mr. John Dodsworth,

for the Respondent

This Cross-Examination was digitally recorded by Gillespie
Reporting Services at Ottawa, Ontario, having been duly appointed
for the purpose.

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

(i)

INDEX

NAME OF WITNESS: SIMONA SASOVA

CROSS-EXAMINATION BY: DR. GABOR LUKACS

NUMBER OF PAGES: 2 THROUGH 92 INCLUSIVE

EXHIBITS

EXHIBIT NO. 1: Affidavit of Simona Sasova sworn May 20, 2014. 2

EXHIBIT NO. 2: Direction to Attend dated June 6, 2014.2

EXHIBIT NO. 3: Direction to Attend dated August 21, 2014 . . .2

EXHIBIT NO. 4: *Re: Scandinavian Airlines System*, Decision No. 8-A-2014 of the Canadian Transportation Agency16

EXHIBIT NO. 5: Incomplete chain of emails starting with the email of Mr. de Blois, dated April 4, 2014 (total of 2 numbered pages). 66

EXHIBIT NO. 6: Incomplete chain of emails starting with "I will loop back with an update before May 19th" (total of 8 consecutively numbered pages, from page 3 to 10, inclusive). .76

EXHIBIT NO. 7: Chain of emails starting with the email of Mr. de Blois, dated April 4, 2014 (4 unnumbered pages)81

DATE TRANSCRIPT ORDERED: September 4, 2014

DATE TRANSCRIPT COMPLETED: September 25, 2014

1 **SIMONA SASOVA, AFFIRMED:**

2 **CROSS-EXAMINATION BY DR. GABOR LUKACS:**

3 1. Q. Ms. Sasova, I understand that on May 20th,
4 2014, you swore an Affidavit.

5 A. That is correct.

6 DR. LUKACS: Let's mark that Affidavit as Exhibit
7 No. 1.

8 **EXHIBIT NO. 1:** Affidavit of Simona Sasova, sworn
9 May 20, 2014.

10 DR. LUKACS:

11 2. Q. I understand that you received a Direction to
12 Attend dated June 6th, 2014.

13 A. Yes.

14 DR. LUKACS: Let's mark that as Exhibit No. 2.

15 **EXHIBIT NO. 2:** Direction to Attend dated June 6,
16 2014.

17 DR. LUKACS:

18 3. Q. And I understand that you received a Direction
19 to Attend dated August 21st, 2014.

20 A. Yes.

21 DR. LUKACS: Let's mark that as Exhibit 3.

22 **EXHIBIT NO. 3:** Direction to Attend dated August
23 21, 2014.

24 DR. LUKACS:

25 4. Q. For how long have you been working with the

1 Canadian Transportation Agency and in what roles?

2 A. I started in December 2010 so it has been
3 three and a half years or a little bit more, and since
4 December when I started, 2010, I work as a manager of
5 enforcement.

6 5. Q. So I understand that you are designated as an
7 enforcement officer.

8 A. That is correct, and I have been designated
9 since December 2010.

10 6. Q. Who provided you with that designation?

11 A. It is the Chair. It is the Agency that
12 provides the designation.

13 7. Q. The Chair of the Agency?

14 A. You asked me this question -- yes.

15 8. Q. Who else has such a designation at the Agency?

16 A. There are five more--well under--in my section
17 there are five more officers. They have that designation
18 and I believe there is some other staff that has been
19 designated as well in the Agency.

20 9. Q. In your unit who are those other enforcement
21 officers?

22 A. They are my staff: enforcement officers,
23 senior investigators that work on the programs that I
24 supervise, that I oversee.

25 10. Q. So, for example, Cordoza, Daniel, would be one

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

Examination No. 14-0857

Court File No. A-167-14

FEDERAL COURT OF APPEAL

B E T W E E N:

DR. GABOR LUKACS

APPLICANT

- and -

CANADIAN TRANSPORTATION AGENCY

RESPONDENT

CONTINUED CROSS-EXAMINATION OF SIMONA SASOVA ON HER
AFFIDAVIT sworn May 20th, 2014, pursuant to an appointment
made on consent of the parties, to be reported by Gillespie
Reporting Services, on the 15th day of September, 2014,
commencing at the hour of 11:29 in the forenoon.

APPEARANCES:

Dr. Gabor Lukacs,

for the Applicant

Mr. John Dodsworth,

for the Respondent

This continued Cross-Examination was digitally recorded by
Gillespie Reporting Services at Ottawa, Ontario, having been duly
appointed for the purpose.

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

(i)

INDEX

NAME OF WITNESS: SIMONA SASOVA

CONTINUED CROSS-EXAMINATION BY: DR. GABOR LUKACS

NUMBER OF PAGES: 93 THROUGH 153 INCLUSIVE

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 97, 98, 99, 100, 101, 105, 107, 108, 147, 148, 150, 151

EXHIBITS

EXHIBIT NO. 8: Bundle of email correspondence between March 11, 2014 and May 27, 2014 between Agency Staff and Expedia, 84 numbered pages..... 94

EXHIBIT NO. 9: Bundle of email correspondence between June 9, 2014 and August 21, 2014 between Agency staff and Expedia, 16 numbered pages..... 112

EXHIBIT NO. A FOR IDENTIFICATION: Email correspondence from Dr. Lukacs to Mr. Dodsworth, marked 'Without Prejudice'..... 150

DATE TRANSCRIPT ORDERED: SEPTEMBER 15, 2014

DATE TRANSCRIPT COMPLETED: OCTOBER 06, 2014

1 also be objecting to.

2 423. Q. Is it your practice to be on a first-name
3 basis with executives of corporations against whom you
4 take enforcement actions?

5 A. Yes.

6 DR. LUKACS: So, counsel, now that I have that
7 answer would you withdraw your objection to answer this
8 specific question about Expedia?

9 MR. DODSWORTH: Yes, I withdraw my objection.

10 DR. LUKACS: Okay.

11 424. Q. So for how long have you been on a first-name
12 basis with Mr. de Blois of Expedia?

13 A. Probably since we started communicating. It
14 is a common practice.

15 425. Q. Now let's look at page 49. On May 1, 2014,
16 Expedia had further questions for Mr. Lynch, correct?

17 MR. DODSWORTH: Before you ask your question, we
18 will just confirm that this is in fact a new document.

19 DR. LUKACS: Please take your time.

20 THE WITNESS: Yes, go ahead. That is a new one,
21 yes. That is a new one. I am sorry, what was the
22 question again?

23 DR. LUKACS:

24 426. Q. The question was: Expedia had further
25 questions for Mr. Lynch on May 1, 2014.

FEDERAL COURT OF APPEAL / COUR D'APPEL FÉDÉRALE

MINUTES OF HEARING
PROCÈS-VERBAL

Page : 1 of / de 7

Halifax, Nova Scotia this 25th day of April 2016
Halifax, Nouvelle-Écosse le 25 avril 2016

Present /
En présence de : The Honourable Mr. Justice Webb
The Honourable Mr. Justice Scott
The Honourable Mr. Justice de Montigny

File Number/
Dossier n° : A-135-15

Between /
Entre : DR GABOR LUKACS v. CANADIAN TRANSPORTATION AGENCY ET AL

Counsel /
Avocats : Dr. Gabor Lukacs for /
and / et _____ pour HIS OWN BEHALF
Telephone
Numbers /
Numéros de _____ for /
Téléphone : _____ pour _____

ALAN MATTIE for /
(819) 994-2226 pour Canadian Transportation Agency

_____ for /
_____ pour _____
Gerard Chouest for /
(416) 982-3804 pour Delta Air Lines

Court Registrar /
Greffier de la Cour : Carolyn Arsenault

Reporter /
Sténographe : N/A

Senior Usher /
Huissier audiencier principal: Russell FARRILL
Courtroom /
Salle d'audience : COURTROOM # 501

A-135-15

MINUTES OF HEARING

(File Number) (Dossier n°)

PROCÈS-VERBAL

Page 2 of 7
deTIME
HEURE

Before the Court: Appeal of decision of Canadian Transportation Agency dated November 25, 2014

9:35

Court opened
Matter called

Justice Webb addresses Dr. Lukacs re: time

9:36

Dr. Lukacs begins his submissions

- Pg. 21, Appeal Book Tab 3
- Tab 11, Page 99, Subsection 67.2(1)
- Appeal Book, Page 15, Paragraph 51
- Page 25, Tab 2, Section 174 of the Act
- Tab 19, Page 220

9:50

- Tab 29, Page 446, Paragraph 30
- Tab 21, Page 300

9:52

Submits document to the court
Decision No. 390-A-2013

9:54

Refers to the Krygier case, Tab 18, Page 213

Refers to the Black case

9:55

Justice Webb addresses Dr. Lukacs re: Black case

9:57

Justice de Montigny addresses Dr. Lukacs re: Black case



A-135-15

(File Number) (Dossier n°)

MINUTES OF HEARING

PROCÈS-VERBAL

Page

3

of

7

de

TIME
HEURE

10:03 Justice de Montigny addresses Dr. Lukacs

10:04 Dr. Lukacs continues with his submissions

- Tab 27, Page 424, Paragraph 40

- Page 17, Section 67.1 of the Act

- Refers to the Telecommunications Act

Tab 3, Pg. 28 of Book of Authorities

- Refers to Tab 38

10:11 Justice de Montigny addresses Dr. Lukacs

10:12 Dr. Lukacs refers to Tab 6, Standing Committee on
Transport

10:19 Justice de Montigny addresses Dr. Lukacs re: Public Interest

10:21 Dr. Lukacs continues with his submissions

- Tab 17 Book of Authorities - Gavriila Case

- Tab 22, Page 310, 330

10:25 Justice Scott addresses Dr. Lukacs re: the
application of official languages Act10:26 Justice de Montigny addresses Dr. Lukacs
re: Paragraph 28

Joseph

A-135-15

MINUTES OF HEARING

(File Number) (Dossier n°)

PROCÈS-VERBAL

Page

4

of

7

de

TIME
HEURE

10:30

Dr. Lukacs continues with his submissions

- refers to Appeal book Tab 6, Pages 41-43

10:32

Justice Webb addresses Dr. Lukacs re:

- email that was sent by a

foreign journalist - Homer

10:35

Justice deMontigny addresses Dr. Lukacs re: complaint
to the Agency

10:37

Dr. Lukacs continues submissions

- turned to the agency for determination
of its merits

- Costs - Tab 25, Paragraph 62, Page 368

- Modest allowance for time

- issue not frivolous

- not asking Agency to investigate

10:41

Dr. Lukacs concludes his submissions

10:42

Mr. Chouest begins his submissions

refers to quotation from Ms. Greene

refers to rail not air

10:44

Dr. Lukacs submits Bill C-101 to counsel

and the Court



A-135-15

MINUTES OF HEARING

(File Number) (Dossier n°)

PROCÈS-VERBAL

Page 5 of 7
deTIME
HEURE

10:45

Mr. Chouest continues his submissions

- refers to Bill C-101, Section 27

- great deal of bill deals with rail

10:52

Recess

10:07

Court Resumes

11:08

Mr. Chouest continues his submissions

- refers to Thibodeau case

- refers to Appellant's Book of Authorities

Tab 13, Page 121, Paragraph 2

Justice Cromwell

- Paragraph 39 of the Respondent's factum

- Refers to Paragraph 41 of the factum

- Finlay case

11:20

Mr. Chouest refers to Tab 13, Page 130 of Appellant's

Book of Authorities

- Applying the three factors

- refers to Borowski case, Finlay case

Hy and Zel's case

11:24

Refers to Air Canada Public Participation Act Tab 3

Refers to Official Languages Act Tab 2



A-135-15
(File Number) (Dossier n°)MINUTES OF HEARING
PROCÈS-VERBALPage 6 of 7
deTIME
HEURE

- 11:28 Justice de Montigny addresses Mr. Chouest regarding Delta and Air Canada and policies.
- 11:29 Mr. Chouest continues with submissions.
- 11:40 Justice Webb - subject to the regulations.
- 11:40 Mr. Chouest continues with submissions.
- 11:43 Justice de Montigny refers to Krygier case.
- 11:43 Mr. Chouest continues with submissions.
- 11:46 Mr. Chouest refers to Tab 2 of the Appeal Book paragraph 74.
- 11:51 costs be in the event and if Delta is successful.
- 11:52 Mr. Chouest concludes his submissions.
- 11:53 Mr. Lukacs begins his rebuttal-reply.
- Page 39 of the Appeal Book.
- 11:55 Justice Webb states 6.7.2 doesn't apply to Delta.



A-135-15
(File Number) (Dossier n°)MINUTES OF HEARING
PROCÈS-VERBALPage 7 of 7
deTIME
HEURE

11:55

Dr. Lukacs continues his rebuttal-reply.

Mr. Chouest interrupts - Agency → Duty.

12:01

Dr. Lukacs continues his reply.

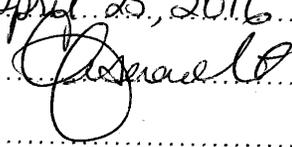
Justice Webb reminds him it's reply.

12:05

Matter under reserve and decision will
be made as soon as possible.

12:05

Court concludes for this matter.

Court Registrar
Carolyn Arsenault
April 25, 2016


PROCEEDINGS QUERIES

Recorded entry(ies) for A-135-15

[\(Close\)](#)

Court number information

| | | | |
|------------------------------|---|-----------------|---|
| Court Number : | A-135-15 | | |
| Style of Cause : | DR GABOR LUKACS v. CANADIAN TRANSPORTATION AGENCY ET AL | | |
| Proceeding Category : | Appeals | Nature : | Statutory Appeal - Canadian Transportation Agency |
| Type of Action : | Non-Action | | |

40 records found for A-135-15

| Doc | Date Filed | Office | Recorded Entry Summary |
|-----|------------|--------|--|
| - | 2017-03-28 | Ottawa | Copy of a notice of appeal to the Supreme Court dated 27-MAR-2017 received on 28-MAR-2017 |
| 27 | 2017-03-14 | Ottawa | Certified French translation of the reasons for judgment / doc. # 26 delivered 07-SEP-2016 filed on 14-MAR-2017 |
| - | 2017-03-08 | Ottawa | Memorandum to Webb, Scott and de Montigny JJ.A. from the Registry of the Federal Court of Appeal dated 08-MAR-2017 forwarding a copy of the Judgment of the SCC dated February 23, 2017, placed on file. |
| - | 2017-03-08 | Ottawa | Copy of a decision of the Supreme Court delivered 23-FEB-2017 allowing the application for leave to appeal received on 08-MAR-2017 |
| - | 2016-11-16 | Ottawa | Corrections to page(s) 14 of the Reasons of The Honourable Mr. Justice de Montigny that were dated 07-SEP-2016 received on 16-NOV-2016 Corrected pages sent to parties |
| - | 2016-11-07 | Ottawa | Communication from Registry to Judicial Administrator dated 07-NOV-2016 re: Letter from Appellant dated October 31, 2016 |
| - | 2016-10-31 | Ottawa | Letter from the appellant dated 31-OCT-2016 requesting a correction to the Reasons for Judgment received on 31-OCT-2016 |

| | | | |
|----|------------|---------|---|
| - | 2016-09-07 | Ottawa | Acknowledgment of Receipt received from the Appellant by email and both Respondents by fax with respect to Judgment and Reasons for Judgment (doc.25 and Doc.26) placed on file on 07-SEP-2016 |
| 26 | 2016-09-07 | Ottawa | Reasons for Judgment rendered by The Honourable Mr. Justice de Montigny concurred in by The Honourable Mr. Justice Webb The Honourable Mr. Justice Scott dated 07-SEP-2016 The Court's decision is with regard to Appeal Filed on 07-SEP-2016 Copies sent to parties |
| 25 | 2016-09-07 | Ottawa | Judgment dated 07-SEP-2016 rendered by The Honourable Mr. Justice Webb The Honourable Mr. Justice Scott The Honourable Mr. Justice de Montigny Matter considered with personal appearance The Court's decision is with regard to Appeal Result: granted Filed on 07-SEP-2016 certified copies sent to parties entered in J. & O. Book, volume 296 page(s) 201 - 201 (Final decision) |
| - | 2016-04-25 | Halifax | This matter comes on for hearing on 25-APR-2016 at Halifax before The Honourable Mr. Justice Webb The Honourable Mr. Justice Scott The Honourable Mr. Justice de Montigny Appearances: Dr. Gabor Lukacs (647)724-**** for himself Allan Matte (819)994-2226 for Canadian Transportation Agency Gerard Chouest (Bersen Jacobsen Chouest Thomson Blackburn LLP) (416)982-3804 for Delta Air Lines, Inc. Language of Hearing: E Court Usher: Russell Farrell Duration: on 25-APR-2016 from 09:35 to 12:05 Courtroom : Courtroom - Law Courts Building, Halifax Court Registrar Atchison & Denman Reporting Se Total duration: 2h30min Before the Court: appeal Appeal of a decision of the Canadian Transportation Agency dated November 25, 2014 (425-C-A-2014) Result: reserved Comments: Court Registrar: Carolyn Arsenault Minutes of Hearing entered in Vol. 218 page(s) 419 - 425 Abstract of Hearing placed on file |
| 24 | 2016-04-19 | Halifax | Amended Notice of Consent to Electronic Service on behalf of the Canadian Transportation Agency filed on 19-APR-2016 |
| 23 | 2016-03-29 | Toronto | Affidavit of Susan Gonsalves on behalf of Respondent (Delta) sworn on 29-MAR-2016 confirming service of doc 22 on the appellant by courier & email on 29-MAR-2016 confirming service doc 22 on Respondent (Canada Transport Agency) |

| | | | |
|----|------------|---------|--|
| | | | by courier & email on 29-MAR-2016 filed on 29-MAR-2016 |
| 22 | 2016-03-29 | Toronto | Book of Authorities consisting of 1 volume(s) on behalf of Respondent (Delta) Filed on 29-MAR-2016 3 copy(ies) for the Court stored in Ottawa |
| 21 | 2016-03-29 | Halifax | Affidavit of Dr. Gábor Lukács on behalf of the appellant sworn on 29-MAR-2016 confirming service of the Appellant's Book of Authorities on the Respondents by electronic service (e-mail) on 28-MAR-2016 filed on 29-MAR-2016 |
| 20 | 2016-03-29 | Halifax | Book of Authorities consisting of 1 volume(s) on behalf of Appellant Filed on 29-MAR-2016 3 copy(ies) for the Court stored in Ottawa |
| - | 2016-03-11 | Ottawa | Transmission of the hearing date order: to Mr. Lukacs (the A.), by e- mail, receipt acknowledged; to Mr. Matte (for R., CTA), by fax, successful transmission; and to Mr. Chouest (for R., Delta Air Lines), by fax, successful transmission placed on file on 11-MAR-2016 |
| 19 | 2016-03-08 | Ottawa | Order (time and place) dated 08-MAR-2016 rendered by S. Bazinet, Judicial Administrator and signed by Judicial Administrator fixing Appeal to be heard at Special Sitting in Halifax on 25-APR-2016 to begin at 09:30 Filed on 08-MAR-2016 cc's sent to parties and to the Halifax local office entered in J. & O. Book, volume 293 page(s) 403 - 403 Transmittal letters placed on file |
| - | 2015-12-02 | Ottawa | Letter from the applicant dated 29-NOV-2015 providing availability dates for the hearing of this matter received on 02-DEC-2015 |
| - | 2015-08-13 | Ottawa | Covering letter from the Respondent (Delta Air Lines) dated 12-AUG-2015 concerning the enclosed CD containing the Respondent's Memorandum of Fact and Law placed on file on 13-AUG-2015 |
| - | 2015-07-10 | Ottawa | Communication from Registry to Judicial Administrator dated 10-JUL-2015 re: fixing the date and time for the hearing. |
| 18 | 2015-07-06 | Halifax | Requisition for hearing - Appeal from Appellant with proof of service upon all parties on 06-JUL-2015 filed on 06-JUL-2015 |
| 17 | 2015-06-18 | Toronto | Affidavit of Susan Gonsalves on behalf of the respondent sworn on 18-JUN-2015 confirming service of doc 16 on the appellant by mail on |

| | | | |
|----|------------|---------|--|
| | | | 18-JUN-2015 filed on 18-JUN-2015 |
| 16 | 2015-06-18 | Toronto | Memorandum of fact and law on behalf of the respondent filed on 18-JUN-2015 3 judges' copies stored in Ottawa |
| - | 2015-06-02 | Ottawa | Copies of all documents from Court File No. 14-A-70 have been placed in Annex B of this file in accordance with Rule 24(2), placed on file on 02-JUN-2015 |
| 15 | 2015-05-20 | Halifax | Affidavit of Dr. Karen Kipper on behalf of the appellant sworn on 20-MAY-2015 confirming service of the Appellant's Memorandum of Fact and Law on the Respondents by electronic service on 20-MAY-2015 filed on 20-MAY-2015 |
| 14 | 2015-05-20 | Halifax | Memorandum of fact and law on behalf of the appellant filed on 20-MAY-2015 3 judges' copies stored in Ottawa |
| 13 | 2015-04-20 | Halifax | Appeal Book consisting of 1 volume(s) prepared by the appellant filed on 20-APR-2015 with proof of service on Respondents: Delta Air Lines. Inc. and the Cdn. Transportation Agency on 14-APR-2015 3 judges' copies stored in Ottawa |
| 11 | 2015-04-02 | Halifax | Agreement as to the content of the Appeal book from the appellant and the respondents filed on 02-APR-2015 |
| 12 | 2015-03-30 | Halifax | Copy of doc #1 with proof of service on the respondent on 30-MAR-2015 filed on 30-MAR-2015 |
| 8 | 2015-03-23 | Toronto | Affidavit of service of Susan Gonsalves on behalf of the respondent sworn on 20-MAR-2015 confirming service of doc. #7 on the appellant the respondent by electronically on 20-MAR-2015 filed on 23-MAR-2015 |
| 7 | 2015-03-23 | Toronto | Consent to electronic service of documents that are not required to be served personally on behalf of Delta Air Lines, Inc. on behalf of the respondent filed on 23-MAR-2015 |
| 6 | 2015-03-20 | Ottawa | Consent to electronic service on behalf of Canadian Transportation Agency filed on 20-MAR-2015 |
| 10 | 2015-03-19 | Halifax | Acknowledgment of Receipt received from Delta Air Lines Inc. with respect to the Notice of Appeal received on March 19, 2015 filed on 19-MAR-2015 |
| 9 | 2015-03-19 | Halifax | Acknowledgment of Receipt received from Canadian Transportation Agency with respect to the Notice of |

| | | | |
|---|------------|---------|--|
| | | | Appeal received on March 19 filed on 19-MAR-2015 |
| 5 | 2015-03-19 | Ottawa | Affidavit of Alexei Baturin on behalf of CTA sworn on 19-MAR-2015 confirming service of doc. 4 on all parties by email on 19-MAR-2015 filed on 19-MAR-2015 |
| 4 | 2015-03-19 | Ottawa | Notice of appearance on behalf of Canadian Transportation Agency filed on 19-MAR-2015 |
| 3 | 2015-03-19 | Toronto | Affidavit of Susan Gonsalves on behalf of Respondent - DELTA AIR LINES, INC. sworn on 19-MAR-2015 confirming service of Doc 2 on the appellant the respondent by email on 19-MAR-2015 filed on 19-MAR-2015 |
| 2 | 2015-03-19 | Toronto | Notice of appearance on behalf of Respondent - DELTA AIR LINES, INC. filed on 19-MAR-2015 |
| 1 | 2015-03-12 | Halifax | Notice of Appeal filed on 12-MAR-2015 against a decision of the Canadian Transportation Agency dated November 25, 2014 (Decision no. 425-C-A-2014) Certified copy(ies)/copy(ies) transmitted to Director of the Regional Office of the Department of Justice Tariff fee of \$50.00 received: yes |

The last database update occurred on 2017-05-30 16:33

[Top of page](#)

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

DELTA AIR LINES INC.

APPELLANT
(Respondent)

– and –

DR. GÁBOR LUKÁCS

RESPONDENT
(Appellant)

AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: June 25, 2017)

I, **DR. GÁBOR LUKÁCS**, of the City of Halifax in the Regional Municipality of Halifax, in the Province of Nova Scotia, AFFIRM THAT:

1. I am the Respondent in the present appeal. I have personal knowledge of the matters to which I depose, except as to those matters stated to be on information and belief, which I believe to be true.

A. Advocacy activities and experience

2. Since 2008, I have been an air passenger rights advocate, and I have been volunteering my time and expertise for the benefit of the travelling public.

3. I have filed approximately two dozen successful regulatory complaints with the Canadian Transportation Agency that resulted in airlines being ordered to amend their terms and conditions and/or their websites, and to offer better protection to passengers. The following list contains only the most significant final decisions arising from these successful complaints:

- (1) *Lukács v. Air Canada*, Decision No. 208-C-A-2009;
- (2) *Lukács v. WestJet*, Decision No. 313-C-A-2010;
- (3) *Lukács v. WestJet*, Decision No. 477-C-A-2010 (leave to appeal denied, Federal Court of Appeal File No.: 10-A-41);

- (4) *Lukács v. WestJet*, Decision No. 483-C-A-2010 (leave to appeal denied, Federal Court of Appeal File No.: 10-A-42);
 - (5) *Lukács v. Air Canada*, Decision No. 291-C-A-2011;
 - (6) *Lukács v. WestJet*, Decision No. 418-C-A-2011;
 - (7) *Lukács v. United Airlines*, Decision No. 182-C-A-2012;
 - (8) *Lukács v. Air Canada*, Decision No. 250-C-A-2012;
 - (9) *Lukács v. Air Canada*, Decision No. 251-C-A-2012;
 - (10) *Lukács v. Air Transat*, Decision No. 248-C-A-2012;
 - (11) *Lukács v. WestJet*, Decision No. 249-C-A-2012;
 - (12) *Lukács v. WestJet*, Decision No. 252-C-A-2012;
 - (13) *Lukács v. United Airlines*, Decision No. 467-C-A-2012;
 - (14) *Lukács v. Porter Airlines*, Decision No. 16-C-A-2013;
 - (15) *Lukács v. Air Canada*, Decision No. 204-C-A-2013;
 - (16) *Lukács v. WestJet*, Decision No. 227-C-A-2013;
 - (17) *Lukács v. Sunwing Airlines*, Decision No. 249-C-A-2013;
 - (18) *Lukács v. Sunwing Airlines*, Decision No. 313-C-A-2013;
 - (19) *Lukács v. Air Transat*, Decision No. 327-C-A-2013;
 - (20) *Lukács v. Air Canada*, Decision No. 342-C-A-2013;
 - (21) *Lukács v. Porter Airlines*, Decision No. 344-C-A-2013;
 - (22) *Lukács v. British Airways*, Decision No. 10-C-A-2014;
 - (23) *Lukács v. Porter Airlines*, Decision No. 31-C-A-2014;
 - (24) *Lukács v. Porter Airlines*, Decision No. 249-C-A-2014;
 - (25) *Lukács v. WestJet*, Decision No. 420-C-A-2014; and
 - (26) *Lukács v. British Airways*, Decision No. 49-C-A-2016.
4. I have successfully challenged the legality of the actions and decisions of the Canadian Transportation Agency in the Federal Court of Appeal on a number of occasions, and the Federal Court of Appeal recognized my work and public interest litigation in a number of judgments, including:
- (a) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, relating to the open court principle in proceedings before the Canadian Transportation Agency; and

- (b) *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, relating to denied boarding compensation.
5. I have been offering *pro bono* assistance and representation to passengers in their disputes with airlines to the extent that I am permitted to do so given that I am not a member of the bar in any capacity.
 6. I have been promoting air passenger rights and referring passengers mistreated by airlines to legal information and resources through the press and the social media.
 7. I am a co-founder and administrator of the “Air Passenger Rights (Canada)” Facebook Group, which numbers over 4,000 members, and serves as a discussion forum for passengers to exchange information about their travel and disputes with airlines.

B. The Agency’s practice of discouraging and turning away complainants

8. Between 2000 and 2017, the Agency issued a total of 369 final decisions and determinations relating to air travel, that is, 21 per year on average. In 2016 and 2017, the Agency issued 11 such decisions and determinations per year. A printout of the Agency’s official website on decisions and determinations is attached and marked as **Exhibit “A”**.
9. Starting in 2014, I began to receive communications from passengers not only about their disputes with airlines, but also about Canadian Transportation Agency (“Agency”) staff turning them away and advising them that their complaint filed with the Agency would be closed. Common features of these cases are that:
 - (a) the complaint file was closed by a case officer reviewing the complaint under s. 85.1(1) of the *Canada Transportation Act* (the “Act”), not a Member of the Agency;
 - (b) the Agency did not make a decision or order dismissing the complaint, yet complainants were made to understand that their complaint had been dismissed; and
 - (c) complainants were either not informed about their right under s. 85.1(3) of the *Act* to ask for formal adjudication of their complaints or were discouraged by Agency staff to exercise that right.

10. Ms. Anna Bartell advised me and I do verily believe that:

- (a) In 2013, Ms. Bartell filed a complaint with the Agency against Air Canada.
- (b) In August 2013, an Agency case officer advised her by telephone that in the case officer's opinion, Air Canada acted properly.
- (c) Ms. Bartell received no written communication about the outcome of her complaint.
- (d) On or around May 7, 2014, Ms. Bartell contacted the Agency to follow up on her complaint, and spoke on the telephone to Ms. Yinka A. Aiyede, Director, Air Travel Complaints at the Agency. During the conversation, Ms. Aiyede attempted to dissuade Ms. Bartell from proceeding to formal adjudication under s. 85.1(3), and also attempted to dissuade her from associating with me.
- (e) On or around May 13, 2014, Ms. Bartell put her concerns about the conduct of Agency staff into writing, and wrote to Ms. Aiyede, among other things, that:

I will say I have been deeply disturbed by your attempt to dissuade me from filing a formal complaint, which is, as I understand, is my right as a citizen. And Lastly I have been also troubled by your attempt to dissuade me from associating with Mr. Lukacs and from involving him in my case.

A copy of Ms. Bartell's email, which was carbon copied to me, is attached and marked as **Exhibit "B"**.

11. Mr. Tony Mariani advised me and I do verily believe that:

- (a) On September 8, 2015, Mr. Mariani filed a complaint with the Agency against Air Canada.
- (b) On April 1, 2016, Mr. Robert Armitage, Case Officer, Dispute Resolution Branch at the Agency, called Mr. Mariani and advised him that the complaint would be closed. On the same day, Mr. Armitage informed Mr. Mariani by email that:

For the reasons discussed, it would appear that Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce. As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its domestic tariff, the complaint you filed with the Agency will be closed.

- (c) On May 13, 2016, in response to further inquiries about the reasons for the closing of his complaint, Mr. Armitage repeated that:

[...] it would appear that the airline has acted in a manner that is consistent with the provisions and regulations which the Agency has the authority to enforce. Because the Agency's role in the review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions in its tariff, the complaint you filed with the Agency has been closed.

- (d) Neither Mr. Armitage nor anyone else at the Agency informed Mr. Mariani about his right pursuant to s. 85.1(3) of the *Act* to ask that the Agency deal with his complaint by way of formal adjudication.

A copy of the chain of emails between Mr. Mariani and Mr. Armitage is attached and marked as **Exhibit "C"**.

12. Mr. Frank Morris advised me and I do verily believe that:

- (a) On or around June 13, 2016, Mr. Morris filed a complaint with the Agency against WestJet.
- (b) On July 29, 2016, Ms. Debra Orr, Senior Complaints Officer, Air & Accessibility ADR Directorate at the Agency, informed Mr. Morris that:

As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its international tariff, the complaint you filed with the Agency will be closed.

A copy of Ms. Orr's email, which is notably lacking any information about the right of Mr. Morris under s. 85.1(3) of the *Act*, is attached and marked as **Exhibit "D"**.

- (c) It was only after Ms. Sophia Harris, a reporter at the Canadian Broadcasting Corporation (CBC), inquired into the Agency's practice of turning away complaints that Mr. Morris's file was swiftly reopened and resolved.

13. Mr. Jonathan Hislop advised me and I do verily believe that:

- (a) In 2016, Mr. Hislop filed a complaint with the Agency against Air Transat.
- (b) Mr. Hislop was contacted by Mr. Armitage by telephone.

(c) Mr. Armitage stated that in his opinion there was no evidence that Air Transat did not follow the tariff. Mr. Armitage declined to answer whether the Agency had any role in ensuring that the tariff was clear.

(d) On October 6, 2016, Mr. Armitage wrote to Mr. Hislop that:

Despite our efforts to resolve your complaint with Air Transat, we were unable to facilitate a resolution to your full satisfaction. In light of this outcome, we are closing your facilitation complaint file.

A copy of Mr. Armitage's email, which is notably lacking any information about the right of Mr. Hislop under s. 85.1(3) of the *Act*, is attached and marked as **Exhibit "E"**.

14. Mr. Gerard Cooke advised me and I do verily believe that:

(a) In May 2015, Mr. Cooke filed a complaint with the Agency against Air Canada.

(b) In October 2015, Ms. Angela Gaetano, Case Officer, Air Travel Complaints Division, Dispute Resolution Branch at the Agency, contacted Mr. Cooke by telephone and advised him that his complaint had been closed. Ms. Gaetano communicated to Mr. Cooke that the closing of his file was final, and did not inform Mr. Cooke about the possibility of taking his complaint to mediation or formal adjudication under s. 85.1(3) of the *Act*.

(c) On January 2, 2017, Mr. Cooke complained to Mr. Douglas W. Smith, Chief Dispute Resolution Officer, Dispute Resolution Branch at the Agency, about the conduct of Ms. Gaetano:

I am writing to complaint about the conduct of Angela Gaetano who was assigned to my complaint case No. 15-50516 against Air Canada, dated May 5, 2015.

First, Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

I have recently found out that this was clearly not the case. Gaetano is not a Member of the Agency within the meaning of s. 7(2) of the *Canada Transportation Act*, and as such she has no authority to rule on my complaint.

Second, Gaetano misrepresented to me the obligations of Air Canada

under its Tariff. She neither considered nor informed me about the liability of Air Canada under Article 19 of the *Montreal Convention*, which is incorporated in Air Canada's International Tariff Rule 105(B)(5).

A copy of Mr. Cooke's email, which was carbon copied to me, is attached and marked as **Exhibit "F"**.

- (d) Mr. Cooke denies receiving email communication from Ms. Gaetano with information about his right under s. 85.1(3) of the *Act* to seek formal adjudication. On January 11, 2017, Mr. Cooke wrote to Mr. Smith:

I dispute the authenticity of Ms. Gaetano's email purporting to be dated October 14, 2015. I have grounds to believe that this document has been fabricated recently and backdated to fraudulently cover up the misconduct of Ms. Gaetano.

1. I have no record of said email and substantial portions of its content have never been communicated to me.

2. Ms. Gaetano communicated to me orally the opposite, namely, that the closing of my case is final, and the end of the road. She did not advise me about the possibility of taking my issue to mediation or formal adjudication.

A copy of Mr. Cooke's email, which was carbon copied to me, is attached and marked as **Exhibit "G"**.

- (e) On February 1, 2017, Ms. Gaetano wrote to Ms. Isabelle Lacroix, a technician at the Agency:

Are you able to open my case (15-50516-Cooke) that has already been certified so that I can save some documents into it.

[Emphasis Added.]

On February 3, 2017, Ms. Lacroix confirmed that the case had been reopened. On February 6, 2017, Ms. Gaetano asked for the file to be closed, and it was closed on the same day. A copy of the chain of correspondence between Ms. Gaetano and Ms. Lacroix, which was obtained by Mr. Cooke under the *Access to Information Act*, is attached and marked as **Exhibit "H"**.

C. Lack of independence and integrity of the Agency

15. Mr. Sam Barone was appointed Vice-Chair and Member of the Agency in March 2013. Prior to his appointment to the Agency, Mr. Barone was President and CEO of the Canadian Business Aviation Association (2008-2013) and President and CEO of the Air Transport Association of Canada (2006-2008). A printout of the Agency's official website on its Members and their biographies is attached and marked as **Exhibit "I"**.

16. Mr. Douglas W. Smith, the Chief Dispute Resolution Officer of the Agency, is a suspended lawyer. According to the records of the Law Society of Upper Canada ("LSUC"):

Douglas William Smith was found to have engaged in professional misconduct for: failing to serve 4 clients in a conscientious, diligent and efficient manner; failing to complete the settlement in a matrimonial matter by failing to make a prompt application for a consent divorce judgment, as had been agreed to by him and his client, another lawyer, and his client; failing to respond in a timely and complete fashion to written and oral communications from another lawyer; and breaching his Undertaking given to the Law Society on November 15, 1994 to respond promptly to Law Society. The Hearing Panel ordered that the Member be suspended for nine months to commence not later than August 15, 2004 subject to four conditions of reinstatement: (1) prior to reinstatement, the Member shall obtain the written approval of the Secretary of the Law Society of a plan of supervision to last not less than two years after reinstatement, and to feature a supervisor who is not a member of his current (as of the date of the Order) firm; (2) prior to reinstatement, the Member shall obtain the written approval of the Secretary of the Law Society of a recognized health care practitioner who will treat the Member for, in the discretion of the Secretary, not less than two years, and who shall file reports with the Secretary at roughly six month intervals; (3) prior to reinstatement, the Member shall provide evidence satisfactory to the Secretary of having written letters of apology to MH, BD'A, DW and JS and to PM in respect of his client, BHB; and (4) prior to reinstatement, the Member shall pay the Law Society's costs of \$2,000.00.

A copy of Mr. Smith's Discipline History Information obtained from the official website of LSUC is attached and marked as **Exhibit "J"**.

17. According to the records of LSUC (Exhibit "J"), Mr. Smith has been suspended since 2004, and has not been reinstated.

AFFIRMED before me at the City of Halifax in the
Regional Municipality of Halifax on June 25, 2017.

Louis Béliveau, LL.B.
A Commissioner, etc., and Notary Public (Ontario)

Dr. Gábor Lukács

Halifax, NS

Tel:

lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature



[Canadian Transportation Agency](#)

[Home](#) → [Air travel](#)

Decisions and determinations



Showing 1-10 of 373 decisions.

[Lev Marder against Jet Airways \(India\) Limited - consumer complaint](#)

73-C-A-2017 | Decision | 2017-05-18

[Natasha Nesturi against Alitalia – Società Aerea Italiana S.p.A. - consumer complaint](#)

72-C-A-2017 | Decision | 2017-05-02

[Jeffrey Cuthbert and Robert Cuthbert against Air Canada carrying on business as Air Canada rouge and as Air Canada Cargo - consumer complaint](#)

71-C-A-2017 | Decision | 2017-05-01

[Isaac Robert Issug against British Airways Plc carrying on business as British Airways - consumer complaint](#)

69-C-A-2017 | Decision | 2017-04-13

[Manpreet Kaur against China Eastern Airlines Corporation Limited also carrying on business as China Eastern Airlines and as China Eastern - consumer complaint](#)

63-C-A-2017 | Decision | 2017-03-29

[Geethaa Yoganathanng against Emirates - consumer complaint](#)

61-C-A-2017 | Decision | 2017-03-28

[Boniface Nimbona against Air Canada - consumer complaint](#)

59-C-A-2017 | Decision | 2017-03-24

[Aymen Zammel against EPE SPA Air Algérie carrying on business as Air Algérie - consumer complaint](#)

55-C-A-2017 | Decision | 2017-03-21

[Sheila Simpson, on behalf of herself and Greg Brown against WestJet - Accessible transportation and consumer complaint](#)

42-AT-C-A-2017 | Decision | 2017-02-27

[Gilbert Nkubili against Air China Limited - consumer complaint](#)

27-C-A-2017 | Decision | 2017-02-13

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|--------|--------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | next › | last » |
|---|---|---|---|---|---|---|---|---|--------|--------|

| Mandate | |
|----------------------------|---|
| Air travel | x |

| Date | |
|----------------------|----|
| 2017 | 11 |
| 2016 | 11 |
| 2015 | 17 |
| 2014 | 24 |
| 2013 | 22 |
| 2012 | 20 |
| 2011 | 18 |
| 2010 | 20 |
| 2009 | 15 |
| 2008 | 19 |
| 2007 | 28 |
| 2006 | 34 |
| 2005 | 27 |
| 2004 | 15 |
| 2003 | 13 |
| 2002 | 32 |
| 2001 | 34 |

| | |
|----------------------------|---|
| 2000 | 9 |
| 1995 | 2 |
| 1991 | 2 |
| Show fewer | |

| Ruling type | |
|---------------------------------|-----|
| Decision | 358 |
| Letter Decision | 8 |
| Order | 7 |

| Sector | |
|---|-----|
| Air | 366 |
| Accessible Transportation | 6 |
| Rail | 1 |

| Subject | |
|-------------------------------------|-----|
| Consumer Complaints | 324 |
| Price Complaints | 49 |

| Topic | |
|-----------------------------------|---|
| Baggage liability | 1 |

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From ambartell@hotmail.com Tue May 13 08:09:33 2014
 Date: Tue, 13 May 2014 06:09:22 -0500
 From: anna bartell <ambartell@hotmail.com>
 To: Yinka Aiyede <yinka.aiyede@otc-cta.gc.ca>
 Cc: "lukacs@airpassengerrights.ca" <lukacs@airpassengerrights.ca>
 Subject: RE: Correspondence # 14-02429

[The following text is in the "Windows-1252" character set.]
 [Your display is set for the "ISO-8859-2" character set.]
 [Some special characters may be displayed incorrectly.]

Good Morning Yinka,

I have never received such an email. Otherwise I would have used the information from it and continued my complaint. Instead of calling in again to tell you I wanted to proceed with a formal complaint.

As I advised you, it is my intent to proceed by way of a formal complaint; however, I would like to draft said complaint, and I will be forwarding it to the Secretary of the Agency on my own. Thus, at the moment, no action is sought or required on your part in this regard

I will say I have been deeply disturbed by your attempt to dissuade me from filing

a formal complaint, which is, as I understand, is my right as a citizen. And Lastly I have been also troubled by your attempt to dissuade me from associating with Mr. Lukacs and from involving him in my case. I would be grateful if you clarified, in writing, your reasons for this view.

Sincerely yours,
 Anna Bartell

> Date: Thu, 8 May 2014 11:36:10 -0400
 > From: Yinka.Aiyede@otc-cta.gc.ca
 > To: ambartell@hotmail.com
 > Subject: RE: Correspondence # 14-02429

>
 > Good morning, Anna:
 >
 > It was a pleasure speaking with you yesterday also.

>
 > The letter to which I was referring was the email that Susan Mayo, the
 > case officer assigned to your complaint, sent on September 25, 2013. Ms.
 > Mayo's correspondence provided you with the results of her review of
 > your complaint through the Agency's informal facilitation process. I
 > have attached a copy for your records.

>
 > As discussed yesterday, upon receipt by the Canadian Transportation
 > Agency (Agency) of a consumer complaint about an air carrier, Agency
 > staff will initially review and attempt to resolve the matter through
 > its informal facilitation process. Agency staff evaluate all air travel
 > complaints against the provisions included in an air carrier's tariff -
 > the contract of carriage between the air carrier and its passengers. By
 > law, carriers must apply those provisions at all times and upon receipt
 > of a complaint, it is the Agency's responsibility to ensure that it
 > does.

>
 > In addition, the law in Canada states that carriers cannot offer a
 > remedy or relief to the passenger that is less than that established in
 > its tariff. Therefore, in facilitating the resolution of an air travel
 > complaint, Agency staff will review the matter up to the point where it
 > appears that the passenger has received the remedy or relief to which
 > he/she is legally entitled.

>
 > When the consumer advises in writing that the complaint has not been

> resolved informally to his/her satisfaction, he/she may request the
> Agency to deal with the matter through other dispute resolution
> methods.
>
> I mentioned yesterday that, where appropriate, consumer complaints
> about an air carrier may be mediated. The Agency offers mediation as an
> alternative to both its informal facilitation and formal adjudication
> process. Although you stated that you were not interested in having your
> complaint mediated, I wanted to make sure that you were fully informed
> about the Agency's mediation process before you made a final decision.
>
> To that end, I should advise that mediation is an informal, voluntary
> and confidential process. It is also a collaborative process that
> enables parties to come to a mutually agreeable solution that might not
> otherwise be available under either the informal facilitation or formal
> adjudication process.
>
> Both parties to a dispute must agree to mediation before the mediation
> process is initiated. If one party is agreeable to try mediation and
> submits a mediation request, the Agency will contact the other party to
> gain its consent.
>
> Information about the mediation process and associated forms can be
> found on the Agency's web site at
> <https://www.otc-cta.gc.ca/eng/mediation-docs>. Please note that
> mediation is another dispute resolution process offered by the Agency
> that is free of charge.
>
> If you are interested in attempting to resolve your complaint with Air
> Canada through mediation, please send me a quick email before Wednesday,
> May 14th advising me of your interest.
>
> Alternatively, should you wish to pursue your complaint further, you
> may consider advising the Agency that your complaint about Air Canada
> (Case No. 13-03817) was not resolved to your satisfaction through its
> informal process and requesting the Agency deal with the matter through
> its formal process. As a quasi-judicial tribunal, the Agency, through
> formal adjudication, resolves a range of transportation-related disputes
> including those related to air travel. The Agency operates like a court
> when adjudicating disputes. Information about adjudication of disputes
> is available on the Agency's web site at the following link:
> <https://www.otc-cta.gc.ca/eng/decision-making-process>.
>
> To have your complaint addressed through the Agency's formal process,
> you will need to file a written submission with the Agency to set out
> your complaint against the air carrier.
>
> In your submission, you should request that the Agency investigate your
> complaint:
>
> a) if you believe that the air carrier has not applied the fares,
> rates, charges or terms and conditions of carriage set out in its
> tariff; or
> b) if you believe that the carrier's terms and conditions of carriage
> are unclear, unreasonable or unduly discriminatory.
>
> To ensure that your submission to the Agency is complete, you will need
> to outline the reasons why you find that the carrier has acted in a
> manner that is inconsistent with the provisions of its tariff or why you
> find that the terms and conditions of carriage in the carrier's tariff
> are unclear, unreasonable or unduly discriminatory.
>

> Upon the Agency's receipt of your complete submission, the Chair will
> appoint a minimum of one Member to consider it. The Member(s) will
> consider all of the evidence in each case and reach a decision. Agency
> complaints are treated on a case-by-case basis. Each decision is based
> solely on the individual merits of the case. In the course of the
> process, the Agency assesses relevant facts and circumstances, by way of
> written submissions, weighs the various factors and makes these
> decisions based on law, rules of natural justice and evidence presented
> by the parties involved in the cases.
>
> Agency decisions are provided in writing and posted on the web site at:
> <https://www.otc-cta.gc.ca/eng/rulings-lists-and-search>. An Agency
> decision is binding on all parties to the decision.
>
> If the Agency agrees that the carrier failed to apply the provisions of
> its tariff, it can order the carrier to do so. The Agency can also order
> the carrier to compensate you for out-of-pocket expenses incurred as a
> result of the incident and take any other corrective actions it
> considers appropriate. However, the Agency cannot order the carrier to
> compensate you for things such as pain, suffering or loss of enjoyment
> or loss of income.
>
> If the Agency agrees that the carrier's terms and conditions of
> carriage are unclear, unreasonable or unduly discriminatory, it can
> suspend or disallow those terms or conditions and substitute other terms
> or conditions in their place. The Agency cannot, however, order a
> carrier to compensate you in such instances.
>
> Additional information about the Agency's formal process for
> resolving air travel complaints and information about filing a complaint
> via the formal process is available on the web site at:
> <https://www.otc-cta.gc.ca/eng/air-travel-complaints-1>.
>
> I also recommend that you review the information linked to the Agency's
> March 14, 2014 news release
> <https://www.otc-cta.gc.ca/eng/air-passenger-rights-and-recourse-at-a-glance>
> to determine your next course of action.
>
> I trust that you find the above to be helpful.
>
> Feel free to contact me should you require additional information about
> any of the above.
>
> Have a great day,
> Yinka
>
> >>> anna bartell <ambartell@hotmail.com> May 7, 2014 10:37 PM >>>
>
> Dear Yinka ,
> It was so nice chatting to you. I am a little confused though because
> you said something about a letter from someone at the agency called I
> think Susan? concerning ,the decision of the CTA,I cant find that could
> you resend it please.thanks anna
>
> > Date: Wed, 7 May 2014 13:52:01 -0400
> > From: Yinka.Aiyede@otc-cta.gc.ca
> > To: ambartell@hotmail.com
> > Subject: Fwd: Correspondence # 14-02429
> >
> > Dear Ms. Bartell:
> >
> > Further to the request you made to the call centre for the Canadian

> > Transportation Agency for a call back (see below), I just left you a
> > voice mail message to clarify what you are seeking.
> >
> > If you could please let me know when, between 8 am and 4:30 pm this
> > week, you are available for a telephone conversation, I will contact
> you
> > directly.
> >
> > I look forward to hearing from you.
> >
> > Yours truly,
> >
> > Ms. Yinka A. Aiyede
> > Directrice, Direction des plaintes, transport aérien | Director, Air
> > Travel Complaints
> > Direction générale du règlement des différends | Dispute Resolution
> > Branch
> > Office des transports du Canada | Canadian Transportation Agency
> > 15, rue Eddy, Gatineau QC K1A 0N9 | 15 Eddy Street, Gatineau QC
> K1A
> > 0N9
> > Yinka.Aiyede@cta-otc.gc.ca
> > Téléphone | Telephone 819-953-9936
> > Télécopieur | Facsimile 819-953-5686
> > Téléimprimeur | Teletypewriter 800-669-5575
> > Gouvernement du Canada | Government of Canada
> >
> > >>> Info May 7, 2014 1:21 PM >>>
> >
> > Time of Call / Heure de l'appel
> > 07 May 2014 8:38 AM / 07 mai 2014 08:38
> >
> > Client / Client
> > Name / Nom: ANNA BARTELL
> > Organization / Organisme: N/A
> > Language / Langue: ENGLISH
> >
> > Address / Adresse
> > N/A
> >
> > Contact Information / Coordonnées
> > Telephone (1st) / Téléphone (1e): (416) 709-8691
> > (tel:4167098691)
> > Telephone (2nd) / Téléphone (2e): N/A
> > Email / Courriel: N/A
> >
> > Preferred Callback Time / Heure propice pour le rappel
> > N/A
> >
> > Comments / Commentaires
> > The caller filled an informal complaint with the CTA and was not
> > satisfied with how her case was handled. Consequently, she would now
> > like to file a formal complaint. The caller terminated the call
> without
> > providing a case number and indicated that she would have that
> > information for the representative who would contact her. The issue
> is
> > in regards to a refusal to transport from Air Canada who claimed she
> was
> > late to check-in. A callback would be appreciated.
>
>

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Robert Armitage <Robert.Armitage@otc-cta.gc.ca>
Date: May 13, 2016 at 9:56:43 AM CDT
To: TONY MARIANI <tonymariani@shaw.ca>
Subject: RE: Canadian Transportation Agency-Case No.:15-61084

Dear Mr. Tony Mariani:

This is a follow-up to the closing letter sent to you on April 1, 2016 and our phone conversation today May 4, 2016 regarding case no.:15-61084 you had filed with the Canadian Transportation Agency (Agency) regarding the difficulties you experienced with Air Canada on September 8, 2015.

We had previously discussed the Agency's role and mandate. The law in Canada requires that air carriers operating air services to and from Canada file a tariff with the Agency clearly outlining their terms and conditions of carriage. These terms and conditions of carriage cover a number of topics including the carrier's procedures with respect to, among others, flight cancellations and delays, refunds, check-in time limits, etc.. While air carriers are free to set their own terms and conditions of carriage as they see fit, the law requires that each carrier file a tariff and apply it at all times. Part of our mandate is to ensure that each carrier does so.

When reviewing a consumer travel complaint, the Agency's role is neutral and an assessment on whether or not a carrier has properly applied its tariff is based on the information provided by both parties and the carrier's provision as outlined in its tariff with the Agency.

Regarding your case, your flight AC8406 from Kelowna to Calgary was scheduled to leave at 9:30 on September 8 and was delayed, due to late arrival of equipment caused by a systems issue, until 11:40 and as a result you would have missed your connecting flight in Calgary to Winnipeg. Air Canada re-protected you and your wife to fly out the following morning September 9 at 7:30 AC 8128 to Calgary connecting with AC8334 Calgary to Winnipeg. Per the airline's domestic tariff related to flight delays, flight times and schedules are not guaranteed, their obligation is to fly the passenger from point A to point B. For flight delays lasting longer than 4 hours, the airline will provide food vouchers for use, where available, in the airport. Air Canada did provide you and your wife food vouchers, and as you overnighted in Kelowna, Air Canada offered as well to review for re-imbusement any receipts you had for out of pocket expenses related to the delay and the over- night stay in Kelowna. You have advised that you did not incur additional expenses. You and your wife were flown to your final destination, albeit later than originally scheduled. As such, it would appear that the airline has respected the provisions of its tariff regarding schedule irregularities and flight delays. By Air Canada's goodwill offer to you of Air Canada gift cards or non-status Aeroplan points they appear to have exceeded their responsibilities.

You have indicated in your complaint your discontent related to the way your situation was handled by the Air Canada employees in Kelowna. This would be considered a quality service issue which falls strictly under the purview of the airline's management as it does not form any part of the airline tariff.

In light of the above, it would appear that the airline has acted in a manner that is consistent with the provisions and regulations which the Agency has the authority to enforce. Because the Agency's role in the review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions

in its tariff, the complaint you filed with the Agency has been closed.

Sincerely,

Robert Armitage

Agent principal aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : [\(819\) 953-9905](tel:(819)953-9905)

Robert.Armitage@otc-cta.gc.ca

From: Robert Armitage

Sent: May-13-16 10:33 AM

To: 'TONY MARIANI'

Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Hello Mr. Mariani, I will send you the explanation you requested in an e-mail to follow and therefore do not require an additional conversation with you.

Thank you,

Robert

From: Robert Armitage
Sent: May-13-16 8:02 AM
To: 'TONY MARIANI'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Thank you for your e-mail, I will certainly send this out but as indicated last week I would like to speak with you again first. Please let me know if today will work for you. I am in the office until about 15:00EST.

Best regards,

Robert

From: TONY MARIANI [<mailto:tonymariani@shaw.ca>]
Sent: May-12-16 6:02 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

Robert

I am still waiting for that further explanation.

Sent from my iPhone

Tony Mariani

On May 5, 2016, at 12:14 PM, Robert Armitage <Robert.Armitage@otc-cta.gc.ca> wrote:

Hello Mr. Mariani,

I have left you a message a few minutes ago and would like to speak with you briefly if possible. I am scheduled for a meeting from 1:30pm your time to the end of the day today but if you were available earlier or perhaps tomorrow, if that works better for you, that would be great.

Thank you in advance

Robert

From: Robert Armitage
Sent: May-04-16 2:33 PM
To: 'TONY MARIANI'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Thank you, I will call you.

Robert

From: TONY MARIANI [<mailto:tonymariani@shaw.ca>]
Sent: May-04-16 2:31 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

I have a 10 minute window now.

Sent from my iPhone

Tony Mariani

On May 4, 2016, at 9:05 AM, Robert Armitage <Robert.Armitage@otc-cta.gc.ca> wrote:

Mr. Mariani,

Please let me know the best time to call you.

Thanks very much,

Robert

From: Robert Armitage
Sent: May-04-16 9:47 AM
To: 'tonymariani@shaw.ca'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Dear Mr. Mariani,

Thank you for your e-mail. I will give you a call before sending you the explanation by e-mail.

Best regards,

Robert

From: tonymariani@shaw.ca [<mailto:tonymariani@shaw.ca>]
Sent: May-03-16 6:12 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

Dear Mr. Armitage,

I remained puzzled about the reasons that you believe that "Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce."

Kindly please provide further explanation by email, so that I will have an opportunity to study your reasons.

Sincerely yours,
Tony Mariani

From: [Robert Armitage](#)

Sent: Friday, April 1, 2016 12:53 PM

To: tonymariani@shaw.ca

Subject: Canadian Transportation Agency-Case No.:-15-61084

Dear Mr. Tony Mariani:

This is with reference to our telephone conversation of today, April 1, 2016, regarding the complaint you filed with the Canadian Transportation Agency (Agency) about the difficulties you encountered with Air Canada on September 8, 2015

For the reasons discussed, it would appear that Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce. As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its domestic tariff, the complaint you filed with the Agency will be closed.

Thank you for bringing your concerns to the Agency's attention.

Sincerely,

Robert Armitage

Robert Armitage

Agent responsable du cas, Direction générale du règlement des différends

Office des transports du Canada / Gouvernement du Canada
robert.armitage@otc-cta.gc.ca / Tél. : 819-953-9905 / ATS :
1-800-669-5575

Case Officer, Dispute Resolution Branch
Canadian Transportation Agency / Government of Canada
robert.armitage@otc-cta.gc.ca / Tel: 819-953-9905 / TTY:
1-800-669-5575

c.c.'d: Air Canada Customer Relations- Reference no:
ABDA-15YB9LH

(under separate cover)

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Debra Orr <Debra.Orr@otc-cta.gc.ca>
Date: July 29, 2016 at 1:39:46 PM EDT
To: "f.morris@eastlink.ca" <f.morris@eastlink.ca>
Subject: Canadian Transportation Agency / Case # 16-61579

Dear Mr. Morris,

This is further to the complaint you filed with the Canadian Transportation Agency (Agency) concerning the difficulties you encountered with Westjet Airlines Ltd. (Westjet) in March of this year. While I was unable to reach you by telephone on July 27, I have completed my review and am providing the outcome to you by email. If you have any questions, I can be reached either by email or telephone.

With respect to your request for denied boarding compensation, allow me to explain that part of the Agency's mandate when reviewing a consumer air travel complaint is to ensure that the air carrier resolves the passengers concerns in a manner consistent with the carriers terms and conditions of carriage outlined in its tariff. The tariff is the contract of carriage between the passenger and their carrier – it covers the rights and responsibilities of an airline passenger and the air carrier's rights and obligations to the passenger. The terms and conditions of carriage outlined include matters such as schedule irregularities, refusal to transport, denied boarding, and baggage claims.

On that note, Westjet's tariff defines denied boarding as a flight that is overbooked with the result that a ticketed passenger is not transported on a flight for which he held confirmed space. In this instance Westjet has confirmed that flight WS2651 from Puerto Vallarta to Toronto on March 2, 2016 was not oversold and further that due to a booking error, you and Mrs. Morris were never confirmed on the flight in question.

While we understand you are of a different opinion, as it would appear that this was not a case of denied boarding, we have no basis on which to request that Westjet consider your request for compensation. We note, however that Westjet in recognizing this error has offered each of you \$350.00 Westjet dollars.

As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its international tariff, the complaint you filed with the Agency will be closed.

Thank you for bringing your concerns to the Agency's attention.

Kind regards,

Debra Orr

Agente principale aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : [\(819\) 934-2774](tel:(819)934-2774)

c.c.: Westjet Airlines Customer Relations (under separate email)

| Reference: HPNR VCCOCS

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Robert Armitage <Robert.Armitage@otc-cta.gc.ca>
Subject: Canadian Transportation Agency Case No.:-16-62696
Date: October 6, 2016 at 5:54:43 AM PDT
To: "jonathan.hislop@gmail.com" <jonathan.hislop@gmail.com>

Dear Dr. Jonathan Hislop:

Subject: Your complaint about Air Transat-Case No.:-16-62696

This is further to your air travel complaint filed with the Canadian Transportation Agency (Agency) regarding your travel booked with Air Transat for travel November 5, 2016, concerning the schedule and routing changes the carrier applied to your itinerary .

Despite our efforts to resolve your complaint with Air Transat, we were unable to facilitate a resolution to your full satisfaction. In light of this outcome, we are closing your facilitation complaint file.

Having said this, should you wish to pursue your complaint further, you may consider requesting the Agency deal with the matter through mediation.

Mediation is a collaborative process that enables parties, with the aid of an Agency mediator, to come to a mutually agreeable solution. Both parties to a dispute must agree to mediation before the Agency initiates the mediation process. If one party is agreeable to try mediation and sends in a mediation request, the Agency will contact the other party to gain its consent. The outcome of mediation must be kept strictly confidential.

Information about the mediation process is available on the Agency's web site at: <https://services.otc-cta.gc.ca/eng/mediation>.

I hope you will find this information useful.

Please advise by October 14, 2016 whether you are interested in attempting to resolve your complaint through the Agency's mediation process.

Yours truly,

Robert Armitage

Agent principal aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —
Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : (819) 953-9905

Robert.Armitage@otc-cta.gc.ca

This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

CTA Officer Complaint

Gerard Cooke <gerardcooke@hotmail.com>

Mon, Jan 2, 2017 at 1:42 PM

To: "Douglas.Smith@otc-cta.gc.ca" <Douglas.Smith@otc-cta.gc.ca>

Cc: "Marc.Garneau@parl.gc.ca" <Marc.Garneau@parl.gc.ca>, "lukacs@airpassengerrights.ca" <lukacs@airpassengerrights.ca>

Dear Mr Smith,

I am writing to complaint about the conduct of Angela Gaetano who was assigned to my complaint case No. 15-50516 against Air Canada, dated May 5, 2015.

First, Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

I have recently found out that this was clearly not the case. Gaetano is not a Member of the Agency within the meaning of s. 7(2) of the *Canada Transportation Act*, and as such she has no authority to rule on my complaint.

Second, Gaetano misrepresented to me the obligations of Air Canada under its Tariff. She neither considered nor informed me about the liability of Air Canada under Article 19 of the *Montreal Convention*, which is incorporated in Air Canada's International Tariff Rule 105(B)(5).

In these circumstances, I am requesting that:

(a) you investigate why I was misled by Gaetano about my rights;

(b) take steps to ensure that complainants, such as myself, are not misled as to our rights and the Agency's procedures; and

(c) you assign another officer to conduct facilitation of my complaint properly.

Sincerely yours,

Gerard Cooke

This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

Re: CTA Officer Complaint

Gerard Cooke <gerardcooke@hotmail.com>

Wed, Jan 11, 2017 at 9:30 PM

To: Douglas Smith <Douglas.Smith@otc-cta.gc.ca>

Cc: "Marc.Garneau@parl.gc.ca" <Marc.Garneau@parl.gc.ca>, "lukacs@airpassengerrights.ca" <lukacs@airpassengerrights.ca>

Mr. Smith:

I am in receipt of your email of January 9, 2017 and the email of Ms. Gaetano of the same date.

I dispute the authenticity of Ms. Gaetano's email purporting to be dated October 14, 2015. I have grounds to believe that this document has been fabricated recently and backdated to fraudulently cover up the misconduct of Ms. Gaetano.

1. I have no record of said email and substantial portions of its content have never been communicated to me.
2. Ms. Gaetano communicated to me orally the opposite, namely, that the closing of my case is final, and the end of the road. She did not advise me about the possibility of taking my issue to mediation or formal adjudication.
3. The document's format appears to follow a recent template of the Agency, not the one that was used by case officers in 2015 or early 2016.

On a going forward basis, I am requesting that you provide me with:

- (a) logs from the Agency's email servers relating to the transmission of the document purporting to be an email from October 14, 2015;
- (b) all emails purportedly sent or received by Ms. Gaetano in relation to my complaint.

Sincerely yours,
Gerard Cooke

From: Douglas Smith <Douglas.Smith@otc-cta.gc.ca>

Sent: January 6, 2017 12:49 PM

To: Gerard Cooke
Cc: Paul Kelly
Subject: RE: CTA Officer Complaint

Mr. Cooke:

I have had an opportunity to personally review your file and most especially the email correspondence of Oct. 14, 2017. In anticipation of our speaking with one another, it would be beneficial if you took the time to once again review this rather fullsome email from Ms. Gaetano.

As indicated in my initial email, I am more than willing to review your file with you. That said, it is apparent that your most recent e-mail correspondence to our offices was little more than a 'cut and paste' of a generic form letter that was posted on-line. Because the 'form letter' was not drafted in response to your specific fact situation, I would ask that you take the time to more clearly identify those issues you would like to have addressed. I am making this request in light of the express content of Ms. Gaetano's email of October 14th which would appear to me as to not have 'mislead' you in any manner whatsoever as to her role, your rights and your options to pursue the matter further.

I would ask that you provide me with a telephone number with which I can reach you and a time either today or early next week that we may be able to talk.

Thank you and I look forward to our conversation.

Douglas W. Smith, LL.B.

Dirigeant principal, Direction générale du règlement des différends
Office des transports du Canada / Gouvernement du Canada
douglas.smith@otc-cta.gc.ca Tél. : 819-953-5074

Chief Dispute Officer, Dispute Resolution Branch

Canadian Transportation Agency / Government of Canada
douglas.smith@otc-cta.gc.ca Tel: 819-953-5074

From: Douglas Smith
Sent: January-03-17 9:14 AM
To: Gerard Cooke
Cc: Paul Kelly
Subject: Re: CTA Officer Complaint

Good morning Mr. Cooke.

Thank you for your email message.

I am just returning to the office today from the Christmas holiday period.

As you can imagine, I have no knowledge whatsoever of either your complaint of this past May or of the actions of Ms. Gaetano. I will state at the outset that Ms. Gaetano is an excellent case officer and I am not inclined to engage in any sort of investigation as to the 'alleged' misbehavior of Ms. Gaetano or any of my staff simply because you may not have been satisfied with the resolution of your complaint against Air Canada.

That said, I am more than willing to have a look at your file and discuss it with you at a later date. I will endeavor to have a look at the file later this week and reach out to you again early next week.

I trust that this is satisfactory.

Doug Smith

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Gerard Cooke

Sent: Monday, January 2, 2017 12:42 PM

To: Douglas Smith

Cc: Marc.Garneau@parl.gc.ca; lukacs@airpassengerrights.ca

Subject: CTA Officer Complaint

Dear Mr Smith,

I am writing to complaint about the conduct of Angela Gaetano who was assigned to my complaint case No. 15-50516 against Air Canada, dated May 5, 2015.

First, Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

I have recently found out that this was clearly not the case. Gaetano is not a Member of the Agency within the meaning of s. 7(2) of the

Canada Transportation Act, and as such she has no authority to rule on my complaint.

Second, Gaetano misrepresented to me the obligations of Air Canada under its Tariff. She neither considered nor informed me about the liability of Air Canada under Article 19 of the *Montreal Convention*, which is incorporated in Air Canada's International Tariff Rule 105(B)(5).

In these circumstances, I am requesting that:

- (a) you investigate why I was misled by Gaetano about my rights;
- (b) take steps to ensure that complainants, such as myself, are not misled as to our rights and the Agency's procedures; and
- (c) you assign another officer to conduct facilitation of my complaint properly.

Sincerely yours,

Gerard Cooke

This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

Angela Gaetano

From: Services ministériels - Corporate services <TrackIt-autorep@otc-cta.gc.ca>
Sent: February-06-17 3:22 PM
To: Angela Gaetano
Subject: Mise à jour / Update - Reopen - [[WO#48937]]

***** Vous pouvez répondre à ce courriel pour rajouter de l'information au billet # [[WO#48937]]. Ceci avisera le technicien qu'une mise à jour est disponible. Prière de toujours utiliser la fonction "Répondre" et non "Transférer".

You can reply to this email to add information to work order # [[WO#48937]]. This will also advise the technician that an update is available. Please always use the "Reply" function rather the "Forward" function.

Hi Angela,

It's closed now! :)

Regards,
Isabelle

TECHNICIEN / TECHNICIAN

Isabelle Lacroix

COURRIELS ÉCHANGÉS PRÉCÉDEMMENT / PREVIOUSLY EXCHANGED EMAILS

Monday, February 06, 2017 1:58:32 PM by MailMonitor-VW-APPS-02
Additional information submitted 06/02/2017 1:58:25 PM by Angela Gaetano < Angela.Gaetano@otc-cta.gc.ca >:

This can now be closed. Thank you.

From: Services ministériels - Corporate services [mailto:TrackIt-autorep@otc-cta.gc.ca]
Sent: February-03-17 9:10 AM
To: Angela Gaetano
Subject: Fermé/Closed - Reopen - [[WO#48937]]

TECHNICIEN / TECHNICIAN

Isabelle Lacroix

COURRIELS ÉCHANGÉS PRÉCÉDEMMENT / PREVIOUSLY EXCHANGED EMAILS

Friday, February 03, 2017 9:06:45 AM by ILacroix 76
Hi Angela,

It's now re-open. :)

Cheers,
Isabelle L.

DESCRIPTION INITIALE / INITIAL DESCRIPTION

Wednesday, February 01, 2017 9:46:03 AM by EmailRequestManagement
Work Order created via E-mail Monitor Policy: Services-GI-IM

From: Angela.Gaetano@otc-cta.gc.ca
To: Services-GI-IM@otc-cta.gc.ca <+Services-GI-IM>
CC:
Subject: Reopen

Information submitted 01/02/2017 9:45:09 AM by Angela Gaetano <Angela.Gaetano@otc-cta.gc.ca>:

Hello,

Are you able to open my case (15-50516-Cooke) that has already been certified, so that I can save some more documents into it.

Thank you,

Angela Gaetano

Agente principale aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : (819) 994-7687/ Télécopieur/facsimile:(819) 997-6727/ATS/TTY 800-669-5575

courriel/e-mail: angela.gaetano@otc-cta.gc.ca

WITHOUT PREJUDICE

E-mail received with no Attachments

(Edited Monday, February 06, 2017 3:20:23 PM by ILacroix)

Friday, February 03, 2017 9:06:45 AM by ILacroix
Hi Angela,

It's now re-open. :)

Cheers,
Isabelle L.

DESCRIPTION INITIALE / INITIAL DESCRIPTION

Wednesday, February 01, 2017 9:46:03 AM by EmailRequestManagement
Work Order created via E-mail Monitor Policy: Services-GI-IM

From: Angela.Gaetano@otc-cta.gc.ca
To: Services-GI-IM@otc-cta.gc.ca <+Services-GI-IM>
CC:
Subject: Reopen

Information submitted 01/02/2017 9:45:09 AM by Angela Gaetano <Angela.Gaetano@otc-cta.gc.ca>:

Hello,

Are you able to open my case (15-50516-Cooke) that has already been certified, so that I can save some more documents into it.

Thank you,

Angela Gaetano
Agente principale aux plaintes - Senior Complaints Officer
Direction des MARC relatifs au transport aérien et aux transports accessibles —
Air & Accessibility ADR Directorate
Office des transports du Canada — Canadian Transportation Agency
Gouvernement du Canada — Government of Canada
T. : (819) 994-7687/ Télécopieur/facsimile:(819) 997-6727/ATS/TTY 800-669-5575
courriel/e-mail: angela.gaetano@otc-cta.gc.ca

WITHOUT PREJUDICE

E-mail received with no Attachments

78

This is **Exhibit ‘I’** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature



Members

- Scott Streiner, Chair and CEO
- Sam Barone, Vice-Chair and Member
- Stephen Campbell, Member
- Peter Paul Fitzgerald, Member
- William G. McMurray, Member

Scott Streiner, Chair and CEO



Scott Streiner became Chair and CEO of the Canadian Transportation Agency on July 20, 2015. Since that time, he has taken a series of steps to enhance the Agency's ability to respond to the needs of a rapidly evolving national transportation system, its customers, and the communities in which the system operates. These steps include: realigning the Agency's organizational structure and recruiting top-notch talent to serve on the executive team; putting in place an action plan to foster a healthy, respectful, high-performing workplace; increasing public awareness of the Agency's roles and services through speeches, media interviews and social media; introducing innovative approaches to delivering the Agency's regulatory and adjudication mandates; and launching a broad review of the full suite of regulations administered by the Agency.

Prior to joining the Agency, Scott had a 25-year career in the federal public service. As Assistant Secretary to the Cabinet, Economic and Regional Development Policy, he served as Secretary to the Cabinet Committee on Economic Prosperity and played a key role in preparing advice to the Prime Minister on economic, environmental and trade matters, including in the areas of transportation and infrastructure. As Assistant Deputy Minister, Policy with Transport Canada, he led the development of policy options and advice on issues touching all modes of the national transportation system, and ran the Department's international, intergovernmental and data analysis functions.

Earlier positions included Executive Director of the Aerospace Review; Assistant Deputy Minister with

the Labour Program; Vice President, Program Delivery with the Canadian Environmental Assessment Agency; Director General, Human Resources with the Department of Fisheries and Oceans; Director of Operations for the Reference Group of Ministers on Aboriginal Policy; Machinery of Government Officer at the Privy Council Office; and Director of Pay Equity with the Canadian Human Rights Commission.

Scott has led Canadian delegations abroad, including to India, China, and the International Labour Organization, and has served as the Government Member with NAV Canada, Chair of the Council of Governors of the Canadian Centre for Occupational Health and Safety, and a Director on the Board of the Soloway Jewish Community Centre.

Scott received a bachelor's degree in East Asian Studies from the Hebrew University, a master's degree in International Relations from the Norman Paterson School of International Affairs, and a PhD in Political Science from Carleton University. He spent a year at Carleton University as a Public Servant in Residence and has taught courses, published articles, and made conference presentations on human rights, Middle Eastern history and politics, and public policy.

Sam Barone, Vice-Chair and Member



Mr. Sam Barone became a Member and Vice-Chair of the Canadian Transportation Agency on March 18, 2013.

Mr. Barone has more than 30 years of transportation leadership experience in a wide variety of positions in the public, private and not-for-profit sectors.

Prior to joining the Agency, he was President and CEO of the Canadian Business Aviation Association; and from 2006-2008, was President and CEO of the Air Transport Association of Canada.

His previous roles include that of Regional Vice-President of InterVISTAS Transportation Consulting Inc. and President and CEO of the Canadian Trucking Human Resources Council.

Mr. Barone holds a B.A. in Economics from McMaster University in Hamilton, Ontario and completed graduate studies as an Executive Fellow of Business Administration at the Canadian School of Management in Toronto. He is a Fellow of the Chartered Institute of Logistics & Transport, an organization representing transport and logistics industries worldwide. Mr. Barone also completed

executive management programs at the Queens University and Harvard University graduate schools of business. He also completed the Alternative Dispute Resolution program at the Faculty of Law, University of Windsor.

He has also served on many boards, such as the Canadian Council for Aviation & Aerospace, the Hope Air Charity, the Chartered Institute of Logistics and Transport in North America, and the Canada Safety Council. Mr. Barone was awarded the Queen's Golden Jubilee Medal in 2002.

Stephen Campbell, Member



Stephen D. Campbell became a Member of the Canadian Transportation Agency on July 7, 2014.

Prior to joining the Agency, he served as Chairman of the Saint John Port Authority for six years, and played an instrumental role in developing the Atlantic Gateway Advisory Council, a private sector organization dedicated to transportation issues. During his tenure, the Port significantly increased its container and cargo volumes, and became one of the country's premier cruise destinations. Under his leadership, the Authority also overhauled its tariff regime, restructured management, and engaged in significant capital improvements.

Mr. Campbell has also served as an advisor to the federal government on marine issues and policies specific to the Canadian Coast Guard.

For 26 years, Mr. Campbell had an extensive career in investment banking. He served as a director and senior officer for some of Canada's largest financial institutions. He is a former Chairman of the National Advisory Board of the Investment Dealers Association, and has extensive experience in pension fund and fiduciary administration.

Mr. Campbell holds three professional designations in investment management and has been a leader in numerous industry and community organizations. He notably served as a Director of NB Power and the Saint John Development Corporation; a member of the New Brunswick Assessment and Planning Appeal Board; Director of Operations for the Atlantic Provinces Chamber of Commerce and Secretary to the Atlantic Provinces Transportation Commission; and was elected Deputy Mayor of Quispamsis, New Brunswick.

Peter Paul Fitzgerald, Member



Dr. Peter Paul Fitzgerald became a Member of the Canadian Transportation Agency on June 18, 2014.

Dr. Fitzgerald handled legal files related to the Air India Flight 182 disaster and has published for over 25 years in peer-reviewed law journals in Canada, the United States and Europe. He has presented papers at international conferences in Canada, the United States, Europe and Asia. Dr. Fitzgerald has taught aviation law to students at McGill University's Institute of Air and Space Law and Chicago's DePaul University College of Law.

He has served as an advisor to government on aviation, rail and marine matters. He championed Canada's Blue Skies policy and helped promote changes to the *Canada Transportation Act* and the *Canada Marine Act*. He was awarded the Queen's Golden Jubilee Medal in 2003 and the Queen's Diamond Jubilee Medal in 2012.

Dr. Fitzgerald holds an earned doctorate in Law at McGill University's Institute of Air and Space Law. He holds a master of business administration from the Richard Ivey School of Business at the University of Western Ontario, a joint bachelor of common and civil law from McGill University and a bachelor of political science from Université Laval. He is a Fellow of the Royal Aeronautical Society and also a Fellow of the Chartered Institute of Logistics and Transport.

William G. McMurray, Member



William G. McMurray became a Member of the Canadian Transportation Agency on July 28, 2014.

Prior to his appointment to the Agency, he served as Vice-Chairperson of the Canada Industrial Relations Board.

A lawyer, Mr. McMurray practised administrative law and litigation in the private sector for over 23 years. He acted as counsel for some of Canada's largest employers in the federal transportation industry. He successfully pleaded complex cases before a number of federal administrative tribunals, including the Agency and its predecessors. He has argued cases, in both official languages, before the Federal Court, the Federal Court of Appeal and has appeared in all levels of the civil courts.

While practising law, he also taught "transportation law and regulation" at McGill University in Montréal for over ten years.

He studied common law and civil law at the University of Ottawa and studied political economy at Université Laval in Québec City and at the University of Toronto. Mr. McMurray completed his articles of clerkship while working in the Law Department of the former Canadian Transport Commission.

He has been a member of the Law Society of Upper Canada since 1986.

△ Related pages

[Code of Conduct for Members of the Agency](#)

Date modified:

2017-02-07

This is **Exhibit “J”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature



The Law Society
of Upper Canada

Barreau du
Haut-Canada

Lawyer and Paralegal Directory

Discipline History Information

[New Search](#)

[Back to Discipline Summary Page](#)

Douglas William Smith , Lawyer, Suspended

Conduct Proceeding: 21-Jun-2004

Douglas William Smith was found to have engaged in professional misconduct for: failing to serve 4 clients in a conscientious, diligent and efficient manner; failing to complete the settlement in a matrimonial matter by failing to make a prompt application for a consent divorce judgment, as had been agreed to by him and his client, another lawyer, and his client; failing to respond in a timely and complete fashion to written and oral communications from another lawyer; and breaching his Undertaking given to the Law Society on November 15, 1994 to respond promptly to Law Society. The Hearing Panel ordered that the Member be suspended for nine months to commence not later than August 15, 2004 subject to four conditions of reinstatement: (1) prior to reinstatement, the Member shall obtain the written approval of the Secretary of the Law Society of a plan of supervision to last not less than two years after reinstatement, and to feature a supervisor who is not a member of his current (as of the date of the Order) firm; (2) prior to reinstatement, the Member shall obtain the written approval of the Secretary of the Law Society of a recognized health care practitioner who will treat the Member for, in the discretion of the Secretary, not less than two years, and who shall file reports with the Secretary at roughly six month intervals; (3) prior to reinstatement, the Member shall provide evidence satisfactory to the Secretary of having written letters of apology to MH, BD'A, DW and JS and to PM in respect of his client, BHB; and (4) prior to reinstatement, the Member shall pay the Law Society's costs of \$2,000.00.

Let Right Prevail

[More Info](#)

- [Home](#)
- |
- [Legal Notice](#)
- |
- [Sitemap](#)
- |
- [Contact Us](#)
- |

- [Media Room](#)

© 2015 The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N6