

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B

prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: August 26, 2013

Issued by: _____

Address of
local office: Federal Court of Appeal
1801 Hollis Street, Suite 1720
Halifax, Nova Scotia, B3J 3N4

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Simon-Pierre Lessard

Tel: 819-953-2955
Fax: 819-953-9269

**Solicitor for the Respondent,
Canadian Transportation Agency**

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the *Rules Amending the Canadian Transportation Agency General Rules*, S.O.R./2013-133 (the “Quorum Rules”) made by the Canadian Transportation Agency (the “Agency”) and published in the *Canada Gazette* on July 3, 2013.

THE APPELLANT ASKS that:

- (i) this Honourable Court declare that it is *ultra vires* the powers of the Agency to make, without the approval of the Governor in Council, rules governing practice or procedure in adjudicative proceedings before the Agency;
- (ii) this Honourable Court declare that it is *ultra vires* the powers of the Agency to amend, without the approval of the Governor in Council, regulations that were approved by the Governor in Council;
- (iii) this Honourable Court declare that the Agency exceeded its jurisdiction in making the Quorum Rules without the approval of the Governor in Council;
- (iv) this Honourable Court declare that the Quorum Rules are invalid, and are of no force or effect;
- (v) the Appellant be awarded costs and/or reasonable out-of-pocket expenses incurred in relation to the appeal; and
- (vi) this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. The Appellant is an air passenger rights advocate. He is a party in numerous proceedings before the Agency.
2. The Agency exceeded its jurisdiction and/or erred in law by purporting to make the Quorum Rules without the approval of the Governor in Council, because:
 - (a) subsection 36(1) of the *Canada Transportation Act*, S.C. 1996, c. 10 provides that every regulation made by the Agency under the Act must be made with the approval of the Governor in Council;
 - (b) pursuant to s. 2(1) of the *Statutory Instruments Act*, R.S.C., 1985, c. S-22 and s. 2 of the *Interpretation Act*, R.S.C., 1985, c. I-21, rules governing the practice or procedure in any proceedings before a quasi-judicial body, such as the Agency, are regulations;
 - (c) the Quorum Rules purport:
 - i. to alter the quorum requirement set out in subsection 16(1) of the *Canada Transportation Act*, S.C. 1996, c. 10; and
 - ii. to amend regulations that were properly approved by the Governor in Council, namely, the *Canadian Transportation Agency General Rules*, S.O.R./2005-35;
 - (d) the Quorum Rules were not approved by the Governor in Council.
3. In *North Coast Air Services Limited et al. v. Canadian Transport Commission*, [1968] S.C.R. 940, the Supreme Court of Canada held that regulations made without the approval of the Governor in Council are invalid if such an approval was required by statute.

4. Sections 16, 17, 36, 40, and 41 of the *Canada Transportation Act*, S.C. 1996, c. 10, section 2 of the *Interpretation Act*, R.S.C., 1985, c. I-21, and subsection 2(1) of the *Statutory Instruments Act*.
5. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

August 26, 2013

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Appellant