

**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)

---

**RECORD OF DR. GÁBOR LUKÁCS, RESPONDENT**  
(Pursuant to Rule 39 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

---

**DR. GÁBOR LUKÁCS**

Halifax, NS

Tel:

Email: [lukacs@airpassengerrights.ca](mailto:lukacs@airpassengerrights.ca)

**Respondent**

**BERSENAS JACOBSEN CHOUEST**

**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

## Table of Contents

### **PART I PLEADINGS, ORDERS, AND ENTRIES**

1. Submissions of Dr. Gábor Lukács to the Canadian Transportation Agency on the issue of standing, dated September 19, 2014 ..... 1
2. Submissions of Delta to the Canadian Transportation Agency on the issue of standing, dated September 26, 2014 ..... 16
3. Reply of Dr. Gábor Lukács to the Canadian Transportation Agency on the issue of standing, dated October 1, 2014 ..... 22
4. Minutes of Hearing of the Federal Court of Appeal, dated April 25, 2016 ..... 30
5. List of Recorded Entries for Federal Court of Appeal File No. A-135-15, retrieved on May 30, 2017 ..... 37

### **PART II EVIDENCE, INCLUDING EXCERPTS OF TRANSCRIPTS**

N/A

### **PART III EXHIBITS**

N/A

Halifax, NS

lukacs@AirPassengerRights.ca



September 19, 2014

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Delta Air Lines**  
**Complaint concerning discriminatory practices of Delta Air Lines relating to the transportation of large passengers**  
**File No.: M4120-3/14-04164**  
**Submissions concerning standing as per Decision No. LET-C-A-63-2014**

Please accept the following submissions concerning the issue of standing pursuant to the Agency's directions contained in Decision No. LET-C-A-63-2014.

**I. Overview**

The present proceeding is a complaint concerning the practices of Delta Air Lines set out in the August 20, 2014 email of Delta Air Lines' Customer Care department, which is attached and marked as Exhibit "A". (Since it appears that the Agency may not yet have received the document in question, it is attached here.) According to Exhibit "A":

1. in certain cases, Delta Air Lines refuses to transport large passengers on the flights on which they hold a confirmed reservation, and requires them to travel on later flights; and
2. Delta Air Lines requires large passengers to purchase additional seats to avoid the risk of being denied transportation.

The thrust of the complaint is that this practice is unjustly discriminatory, contrary to s. 111(2) of the *Air Transportation Regulations*, S.O.R./88-58 (the "ATR"). In Decision No. LET-C-A-63-2014, the Agency directed the parties to make submissions concerning the Applicant's standing.

## II. Preliminary matters

In order to meaningfully address the issue of standing, it is necessary to rectify the record with respect to the nature of the complaint.

### (a) Request to correct a material error in Decision No. LET-C-A-63-2014

Decision No. LET-C-A-63-2014 incorrectly labels the present complaint as one that concerns the transportation of “obese persons.” This is not the case.

The present complaint concerns discriminatory practice of Delta Air Lines relating to the transportation of large passengers, as stated in Exhibit “A”. The description of the practice makes no reference to “obese” persons, but speaks about “a large passenger,” and thus the complaint also refers to “large passengers.”

“Obese” is a subset of “large”, but the two are not equivalent: every obese person is large, but not every large person is obese; there are many ways, other than obesity, to be large. Consequently, discriminatory policies against “large” passengers also affect “obese” passengers (including passengers with obesity-related disabilities), but not vice versa.

Therefore, as a preliminary matter, the Applicant requests that the Agency correct Decision No. LET-C-A-63-2014 by replacing “obese” with “large” throughout the decision to adequately identify the nature of the complaint.

### (b) Limited scope of the complaint: no disability-related accommodation is being sought

The purpose of the present complaint is to stop a discriminatory practice of Delta Air Lines that singles out and subjects a category of passengers to substantially worse terms and conditions than the rest of the travelling public. The Applicant does not seek a better or special treatment for these passengers, nor any form of accommodation for any individual or group.

The present complaint does not directly raise any disability-related issues, nor does it seek any kind of accommodation to remove obstacles in transportation. The Applicant intends to rely on the Agency’s findings in Decision No. 6-AT-A-2008 for the limited purpose of lending further support to his position that the impugned practice is harmful and unduly discriminatory.

However, the Applicant does not ask in the present complaint to impose on Delta Air Lines the same terms and conditions that the Agency imposed in Decision No. 6-AT-A-2008, because such a disability-related accommodation would be beyond the scope of the present complaint.

### III. Section 111 of the *ATR* and standing

The present complaint alleges that Delta Air Lines' practices are unjustly discriminatory, contrary to subsection 111(2) of the *ATR*. In order to address the question of standing to bring a complaint pursuant to subsection 111(2) of the *ATR*, it is necessary to first review the legislative text, the context, and the purpose of subsection 111(2).

#### (a) Section 111 of the *ATR* and subsection 67.2(1) of the *CTA* are related

Section 111 of the *ATR* states that:

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

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

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

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

[Emphasis added.]

Subsection 67.2(1) of the *Canada Transportation Act*, S.C. 1996, c. 10 (the "*CTA*") states that:

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

The Agency held in *Public Health Agency of Canada and Queen's University v. Air Canada*, Decision No. 482-A-2012, that (para. 7):

The Agency notes that while the terminology used in subsection 67.2(1) of the CTA and section 111 of the ATR are not identical, this terminology broadly refers to the issue of unreasonable or unjust discrimination. Therefore, the Agency is of the opinion that the words "unreasonable" and "unjust discrimination" used in section 111 of the ATR encompass and capture the meaning of the terms used in subsection 67.2(1) of the CTA.

**(b) The purpose of s. 111 of the ATR and s. 67.2(1) of the CTA**

Section 111 of the ATR and subsection 67.2(1) of the CTA were both enacted to protect the travelling public at large against the unilateral setting of terms and conditions of carriage by air carriers. In *Anderson v. Air Canada*, 666-C-A-2001, the Agency held that:

In the Agency's opinion, the specific wording of subsection 67.2(1) of the CTA reflects a recognition by Parliament that regulation was needed in order to attain the stated objective of the national transportation policy found in section 5 of the CTA which provides, in part, that:

... each carrier or mode of transportation, as far as is practical, carries traffic to or from any point in Canada under fares, rates and conditions that do not constitute

(i) an unfair disadvantage in respect of any such traffic beyond the disadvantage inherent in the location or volume of the traffic, the scale of operation connected with the traffic or the type of traffic or service involved,

Thus, section 111 of the ATR and subsection 67.2(1) of the CTA serve a preventative function rather than merely offering remedies or compensation *post facto*. Indeed, in *Black v. Air Canada*, 746-C-A-2005, the Agency held that:

[7] Furthermore, it would be inappropriate to require a person to experience an incident that results in damages being sustained before being able to file a complaint. To require a "real and precise factual background" could very well dissuade persons from using the transportation network.

**(c) "Any person" can challenge the terms and conditions pursuant to s. 111 of the ATR**

The question of "standing" to challenge the terms or conditions of a carrier pursuant to s. 111 of the ATR has been addressed by the Agency in *Black v. Air Canada*, 746-C-A-2005:

[5] The Agency is of the opinion that it is not necessary for a complainant to present "a real and precise factual background involving the application of terms and con-

ditions” for the Agency to assert jurisdiction under subsection 67.2(1) of the CTA and section 111 of the ATR. In this regard, the Agency notes that subsection 67.2(1) of the CTA provides that, on the basis of a “complaint in writing to the Agency by any person”, the Agency may take certain action if the Agency determines that the terms or conditions at issue are unreasonable or unduly discriminatory. The Agency is of the opinion that the term “any person” includes persons who have not encountered “a real and precise factual background involving the application of terms and conditions”, but who wish, on principle, to contest a term or condition of carriage. With respect to section 111 of the ATR, the Agency notes that there is nothing in the provisions that suggests that the Agency only has jurisdiction over complaints filed by persons who may have experienced “a real and precise factual background involving the application of terms and conditions”.

[Emphasis added.]

These findings were reaffirmed by the Agency in *O’Toole v. Air Canada*, Decision No. 215-C-A-2006, *Lukács v. Air Canada*, Decision No. LET-C-A-155-2009, and most recently in Decision No. LET-C-A-104-2013.

Thus, it is submitted that “any person” has standing to challenge, pursuant to s. 111 of the ATR, the terms or conditions applied by a carrier.

#### **IV. Standing in the present case**

The present complaint alleges that Delta Air Lines’ practice is discriminatory, contrary to 111(2) of the ATR, and no allegations concerning undue obstacles in the transportation network to the mobility of persons with disabilities are being made.

For the purpose of the present complaint, it is less significant whether Delta Air Lines refuses to transport passengers or forces passengers to buy multiple seats due to their large body size, their eye color, or their race; the essential aspect of the allegation is that Delta Air Lines does so based on the personal characteristics of the individual or group.

In light of the public policy purpose of s. 111 of the ATR and its preventative nature, it is submitted that the Applicant is not required to be a member of the group discriminated against in order to have standing to bring a complaint about practices contrary to s. 111(2) of the ATR. Holding otherwise would render the phrase “any person” chosen by Parliament meaningless.

Nevertheless, in order to avoid any possible doubt, the Applicant will also address his private and public interest in the complaint.



**(a) Private interest**

As noted earlier, the complaint is not about the discrimination against “obese persons,” but rather about the discrimination against “large persons.”

The Applicant is 6 ft tall, and weighs approximately 175 lbs. As such, the Applicant is certainly a “large person” and would or could be viewed as such by Delta Air Lines’ agents.

In the absence of a clear and consistent statement from Delta Air Lines about the scope of the practice stated in Exhibit “A” and the precise meaning of “a large person,” it is impossible to conclude that the Applicant would not be personally subject to the discriminatory practices set out in Exhibit “A” due to his physical characteristics.

Therefore, the Applicant does have a private, personal interest in the Delta Air Lines’ practices relating to the transportation of “a large person.” Even if the Agency may have doubts with respect to this issue, it is not possible to conclude that the Applicant has no such interest at the present stage of the proceeding.

Fully addressing the question of private interest would require directing questions to Delta Air Lines and/or requiring Delta Air Lines to produce a wealth of documents, which the Applicant understands is not permitted in the present preliminary exchange of submissions.

**(b) Public interest**

As noted earlier, the Applicant submits that “any person” has standing to bring a complaint pursuant to s. 111 of the *ATR* and that he has a personal interest in the present complaint.

Alternatively, the Applicant submits that he has public interest standing to bring the present complaint. The legal test for public interest standing requires the consideration of three factors (see *Fraser v. Canada (Attorney General)*, 2005 CanLII 47783 (ON SC)):

- (i) Is there a serious issue to be tried?
- (ii) Does the party seeking public interest standing have a genuine interest in the matter?
- (iii) Is the proceeding a reasonable and effective means to bring the issue before the court (or the tribunal)?

When standing is raised as a preliminary matter, the burden is on the party opposing the granting of standing to demonstrate that the applicant cannot satisfy the test.

For the reasons set out below, the Applicant submits that all three factors favour granting him public interest standing, if necessary, to bring the present complaint.

**(i) Serious issue to be tried**

In *Anderson v. Air Canada*, Decision No. 666-C-2001, the Agency established a two-step test for determining whether terms or conditions are “unduly discriminatory”:

In the first place, the Agency must determine whether the term or condition of carriage applied is “discriminatory”. In the absence of discrimination, the Agency need not pursue its investigation. If, however, the Agency finds that the term or condition of carriage applied by the domestic carrier is “discriminatory”, the Agency must then determine whether such discrimination is “undue”.

In *Black v. Air Canada*, 746-C-A-2005, the Agency applied the same test for determining whether terms or conditions are “unjustly discriminatory” within the meaning of s. 111 of the *ATR*:

[35] The Agency is therefore of the opinion that in determining whether a term or condition of carriage applied by a carrier is “unduly discriminatory” within the meaning of subsection 67.2(1) of the CTA or “unjustly discriminatory” within the meaning of section 111 of the *ATR*, it must adopt a contextual approach which balances the rights of the travelling public not to be subject to terms and conditions of carriage that are discriminatory, with the statutory, operational and commercial obligations of air carriers operating in Canada. This position is also in harmony with the national transportation policy found in section 5 of the CTA.

With respect to the meaning of “discriminatory,” the Agency adopted the interpretation of the Supreme Court of Canada in *Andrews v. Law Society (British Columbia)*, [1989] 1 S.C.R. 143:

[...] discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burden, obligation, or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages, available to other members of society.

In the present case, the practice set out in Exhibit “A” is certainly discriminatory in that it imposes a disadvantage on a certain group of passengers based on their personal characteristics, namely, the size and/or shape of their body. Moreover, it is arguable that it is “unjustly discriminatory,” contrary to s. 111(2) of the *ATR*.

Thus, it is submitted that whether the practice set out in Exhibit “A” is “unjustly discriminatory” is a serious issue to be tried, meeting the first branch of the test.

**(ii) The Applicant has a long-standing, real, and continuing interest in the rights of air passengers**

The Applicant is a Canadian air passenger rights advocate. Since 2008, the Applicant has filed more than two dozen successful complaints against airlines with the Agency. The Applicant's complaints have led to substantial improvements and landmark decisions by the Agency in the following areas:

1. baggage liability and accuracy of information on airlines' websites:
  - (a) *Lukács v. Air Canada*, 208-C-A-2009;
  - (b) *Lukács v. WestJet*, 477-C-A-2010 (leave to appeal refused: 10-A-41);
  - (c) *Lukács v. WestJet*, 313-C-A-2010 & 483-C-A-2010 (leave to appeal refused: 10-A-42);
  - (d) *Lukács v. Air Canada*, 291-C-A-2011;
  - (e) *Lukács v. WestJet*, 418-C-A-2011;
  - (f) *Lukács v. United*, 182-C-A-2012;
  - (g) *Lukács v. United*, 200-C-A-2012;
  - (h) *Lukács v. United*, 335-C-A-2012;
  - (i) *Lukács v. United*, 467-C-A-2012;
  - (j) *Lukács v. Sunwing*, 249-C-A-2013;
  - (k) *Lukács v. British Airways*, 10-C-A-2014;
  
2. rebooking and/or refund for passengers in the case of flight delay, advancement, cancellation, and denied boarding:
  - (a) *Lukács v. Air Transat*, 248-C-A-2012;
  - (b) *Lukács v. WestJet*, 249-C-A-2012;
  - (c) *Lukács v. Air Canada*, 250-C-A-2012;
  - (d) *Lukács v. Air Canada*, 251-C-A-2012;
  - (e) *Lukács v. WestJet*, 252-C-A-2012;
  - (f) *Lukács v. Porter*, 16-C-A-2013;
  - (g) *Lukács v. Sunwing*, 313-C-A-2013;
  - (h) *Lukács v. Air Transat*, 327-C-A-2013;
  - (i) *Lukács v. Porter*, 344-C-A-2013;
  - (j) *Lukács v. Porter*, 31-C-A-2014 (involved also denied boarding compensation issues);
  
3. denied boarding compensation:
  - (a) *Lukács v. Air Canada*, 204-C-A-2013 & 342-C-A-2013;
  - (b) *Lukács v. WestJet*, 227-C-A-2013;
  - (c) *Lukács v. Porter*, 31-C-A-2014;
  - (d) *Lukács v. British Airways*, 201-C-A-2014;
  - (e) *Lukács v. Porter*, 249-C-A-2014.

Currently, one complaint of the Applicant is pending before the Agency, four proceedings are pending before the Federal Court of Appeal, and the Applicant is also acting as a representative for a passenger in a disability-related complaint before the Agency.

The Consumers' Association of Canada awarded the Applicant its Order of Merit in recognition of his work in the area of air passenger rights.

In an article entitled "Aviation Practice Area Review" and published in September 2013 (Exhibit "B"), Mr. Carlos Martins, one of the counsels for Delta Air Lines in the present proceeding, characterized the activities of the Applicant as follows:

In the consumer protection landscape, for the last several years, the field has largely been occupied by Gabor Lukács, a Canadian mathematician who has taken an interest in challenging various aspects of the tariffs filed by air carriers with the regulator, the Canadian Transportation Agency (the Agency). The majority of Mr Lukács' complaints centre on the clarity and reasonableness of the content of the filed tariffs, as well as the extent to which air carriers are applying their tariffs, as filed, in the ordinary course of business.

Mr Lukács' efforts have created a significant body of jurisprudence from the Agency - to the extent that his more recent decisions often rely heavily upon principles enunciated in previous complaints launched by him.

[Emphasis added.]

Mr. Martins' second observation is also very accurate: an electronic search among the Agency's decisions reveals a total of 46 decisions mentioning the Applicant and/or decisions by the Agency resulting from his complaints.

Based on these facts, the Applicant submits that he has a demonstrated long-standing, real, and continuing interest in the rights of air passengers, thus meeting the second branch of the test.

**(iii) Reasonable and effective means of bringing the issue before the Agency**

In *Fraser v. Canada (Attorney General)*, 2005 CanLII 47783 (ON SC), this branch of the test was explained as follows:

[109] Thus, in order to find that there is a reasonable and effective alternate means to litigate the issue, the A.G. must prove, on the balance of probabilities, that:

- (a) there is a person who is more directly affected than the applicants; and
- (b) that person might reasonably be expected to initiate litigation to challenge the legislation at issue.

In order to show there is a “reasonable and effective” alternative, it is necessary to show more than a possibility that such litigation might occur. The “mere possibility” of a challenge by a directly affected private litigant will not result in the denial of public interest standing: *Canadian Bar Association v. British Columbia (Attorney General)* 1993 CanLII 310 (BC SC), (1993), 101 D.L.R. (4th) 410 (B.C.S.C.) at 417; *Grant v. Canada (Attorney General)*, 1994 CanLII 9274 (FC), [1995] 1 F.C. 158 (F.C. T.D.), aff’d [1995] F.C.J. No. 830 (C.A.), leave to appeal refused [1995] S.C.C.A. No. 394 (S.C.C.) at pp. 198-9.

Recently, in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, the Supreme Court of Canada provided several examples of the types of interrelated matters that may be useful to take into account when assessing the third branch of the test (para. 51):

The court should consider the plaintiff’s capacity to bring forward a claim. In doing so, it should examine amongst other things, the plaintiff’s resources, expertise and whether the issue will be presented in a sufficiently concrete and well-developed factual setting.

The court should consider whether the case is of public interest in the sense that it transcends the interests of those most directly affected by the challenged law or action. Courts should take into account that one of the ideas which animates public interest litigation is that it may provide access to justice for disadvantaged persons in society whose legal rights are affected. Of course, this should not be equated with a licence to grant standing to whoever decides to set themselves up as the representative of the poor or marginalized.

The court should turn its mind to whether there are realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination. Courts should take a practical and pragmatic approach. The existence of other potential plaintiffs, particularly those who would have standing as of right, is relevant, but the practical prospects of their bringing the matter to court at all or by equally or more reasonable and effective means should be considered in light of the practical realities, not theoretical possibilities. [...]

[Emphasis added.]

The Applicant submits that these considerations militate in favour of granting him public interest standing, if such standing is necessary for bringing the present complaint.

First, the Applicant has demonstrated through his past activities his experience and expertise in the area of air passenger rights in general, and in matters involving s. 111 of the *ATR* in particular.

Second, there is a public interest in eliminating any discrimination, a conduct that is inconsistent with the Canadian values enshrined in the *Charter* and the *Canadian Human Rights Act*. This is particularly so with respect to “unjust discrimination,” alleged in the present case, which is an extreme form of discrimination.

Third, there is no realistic alternative means for bringing Delta Air Lines’ outrageous practice before the Agency. Such proceedings are legally complex, and as the present case demonstrates, airlines are represented by highly skilled counsels. The Applicant, due to the expertise he has accumulated in the area, is in a unique position to meaningfully respond to the legal arguments crafted by such skilled counsels. Any other complainant would necessarily be forced to hire a lawyer and incur very substantial expenses.

Fourth, the Applicant is also in a unique position to bring the present complaint because he has obtained evidence of Delta Air Lines’ discriminatory practice by way of Exhibit “A”. Individuals who have been discriminated against by Delta Air Lines pursuant to these practices may not know that they were singled out based on their physical characteristics, and would certainly be in a difficult position to prove that.

Finally, the issue in the present case is a question of law and not a question of fact. The question is whether Delta Air Lines’ practice stated in Exhibit “A” is unjustly discriminatory within the meaning of s. 111(2) of the *ATR*. The present setting is as adversarial as it can get. Since no accommodation is being sought, and the only remedy pursued is an order to extinguish the discriminatory practice, there would be no practical benefit if the present complaint were brought forward by a nominee complainant.

In light of these, it is submitted that the Applicant ought to be granted public interest standing to bring the present complaint if such a standing is necessary.

All of which is most respectfully submitted.

Dr. Gábor Lukács  
Applicant

Cc: Mr. Gerald Chouest, counsel for Delta Air Lines

**From:** Contact Delta ContactUs.Delta@delta.com  
**Subject:** Re: CC-Past Travel Compliment or Complaint-Complaint-Airport (KMM36513423V70481L0KM)  
**Date:** August 20, 2014 at 4:57 AM  
**To:** omer767@gmail.com

---

Hello Omer,

RE: Case Number 13384069

Thanks for letting us know the discomfort you were caused on your flight with us on August 12. I'm really sorry for the inconvenience you encountered while sitting next to a passenger who required additional space.

Being cramped during a long or a short flight is not a good experience. I realize how uncomfortable it must have been when you were unable to sit comfortably in your seat. Here are the guidelines we follow to help make a large passenger, and the people sitting nearby, comfortable. Sometimes, we ask the passenger to move to a location in the plane where there's more space. If the flight is full, we may ask the passenger to take a later flight. We recommend that large passengers purchase additional seats, so they can avoid being asked to rebook and so we can guarantee comfort for all. It's obvious, this was not the case.

**Delta Choice Gift**

As a goodwill gesture, I'm sending a \$50.00 Delta Choice gift. The Delta Choice gift code will arrive in a separate email within three business days. This will include a customer ID and instructions on how to redeem the gift. Please check your spam folder if you don't see the email in your inbox.

We appreciate the time you took to bring this experience to our attention. I hope that your next trip with us is pleasant in every way.

Regards,

Veron M. Fernandes  
You Share, We Care

Original Message Follows:

-----

Delta Air Lines Customer Care Form

## WHO'SWHOLEGAL

### AVIATION PRACTICE AREA REVIEW

SEPTEMBER 2013

**Carlos Martins** of Bersenas Jacobsen Chouest Thomson Blackburn outlines recent developments in aviation law in Canada.



There have been a number of developments in Canada in the realm of aviation law that promise to make for interesting times in the months ahead. In this review, we will consider some of these decisions, their implications and how they may play out in the coming year.

#### Warsaw/Montreal Liability

On the airline liability front, the Supreme Court of Canada will hear the appeal of the Federal Court of Appeal's decision in *Thibodeau v Air Canada*, 2012 FCA 246. This case involves a complaint by Michel and Lynda Thibodeau, passengers on a series of Air Canada flights between Canada and the United States in 2009. On some of the transborder legs of those journeys, Air Canada was not able to provide the Thibodeaus with French-language services at check-in, on board the aircraft or at airport baggage carousels. The substantive aspect of the case is of limited interest to air carriers because the requirement that air passengers be served in both official languages applies only to Air Canada as a result of the Official Languages Act (Canada), an idiosyncratic piece of legislation that continues to apply to Air Canada even though it was privatised in 1988.

However, from the perspective of other air carriers, the most notable facet of the Supreme Court's decision will be whether that Court will uphold the Federal Court of Appeal's "strong exclusivity" interpretation of the Warsaw/Montreal Conventions. If it does, it will incontrovertibly bring the Canadian law in line with that of the United States and the United Kingdom – meaning that passengers involved in international air travel to which either of the Conventions apply are restricted to only those remedies explicitly provided for in the Conventions. At present, the Federal Court of Appeal's decision in *Thibodeau* provides the most definitive statement to date that "strong exclusivity" is the rule in Canada.

#### YQ Fares Class Action

The battle over "YQ Fares" is expected to continue in a British Columbia class action. The case relates to the practice of several air carriers identifying the fuel surcharge levied on their tickets in a manner that may cause their passengers to believe that these charges are taxes collected on behalf of a third party when, in fact, fuel surcharges are collected by the air carrier for its own benefit. In the British Columbia action, the plaintiffs complain that this practice contravenes the provincial consumer protection legislation which provides that service providers shall not engage in a "deceptive act or practice".

Last year, an issue arose as to whether air carriers can be subject to the provincial legislation given that, in Canada, matters relating to aeronautics are in the domain of the federal government. Most recently, in *Unlu v Air Canada*, 2013 BCCA 112, the British Columbia Court of Appeal held that the complaint should be allowed to proceed on the basis that, among other things, there was no operational conflict between the workings of the provincial legislation and the regime imposed under the federal Air Transportation Regulations, SOR/88-58, that deal with airfare advertising. Leave to appeal the Court of Appeal's decision to the Supreme Court of Canada was denied in August 2013.

#### Regulatory/Passenger Complaints

In the consumer protection landscape, for the last several years, the field has largely been occupied by Gabor Lukács, a Canadian mathematician who has taken an interest in challenging various aspects of the tariffs filed by air carriers with the regulator, the Canadian Transportation Agency (the Agency). The majority of Mr Lukács' complaints centre on the clarity and reasonableness of the content of the filed tariffs, as well as the extent to which air carriers are applying their tariffs, as filed, in the ordinary course of business.

Mr Lukács' efforts have created a significant body of jurisprudence from the Agency – to the extent that his more recent decisions often rely heavily upon principles enunciated in previous complaints launched by him.

Since 2012, Mr Lukács has been involved in complaints arising from, among other things:

- air carriers' online and airport communications to the public as to the extent to which baggage claims involving "wear and tear" must be paid (*Lukács v United Airlines*, CTA Decision Nos. 182/200-C-A-2012);
- lack of compliance of tariff liability provisions with the Montreal liability regime (*Lukács v Porter Airlines*, CTA Decision No. 16-C-A-2013);



The Latest Legal News, Research and Legal Profiles - Wh... <http://whoswholegal.com/news/analysis/article/30800/avi...>

- the reasonableness of imposing releases of liability as a precondition for the payment of compensation provided for in a tariff (*Lukács v WestJet*, CTA Decision No. 227-C-A-2013);
- the reasonableness of air carriers engaging in overselling flights for commercial reasons (*Lukács v Air Canada*, CTA Decision No. 204-C-A-2013);
- the amount of denied boarding compensation to be paid to involuntarily bumped passengers in the event of a commercial overbooking (*Lukács v Air Canada*, CTA Decision No. 342-C-A-2013);
- the amount of compensation to be paid to passengers who miss their flight as a result of an early departure (*Lukács v Air Transat*, CTA Decision No. 327-C-A-2013); and
- the use of cameras by passengers onboard aircraft (*Lukács v United Airlines*, CTA Decision No. 311-C-A-2013)

It is expected that, in 2014, Mr Lukács will continue in his quest to ensure that air carrier tariffs are reasonable, clear and faithfully applied.

Although it may not be initiated by Mr Lukács, we expect that, in 2014, the Agency will consider the issue of whether air carriers should be able to charge a fee for booking a specific seat for a child travelling with a parent or guardian.

#### **Regulatory/ Notices to Industry**

##### *Wet Leasing*

On 30 August 2013, the Agency released its new policy on wet leasing of foreign aircraft. It applies to operators who wet lease foreign aircraft for use on international passenger services for arrangements of more than 30 days. The key changes are that, in order for the Agency to approve such an arrangement:

- the number of aircraft leased by an operator is capped at 20 per cent of the number of Canadian-registered aircraft on the lessees' Air Operator Certificate at the time the application was made;
- small aircraft are excluded from the number of Canadian-registered aircraft described above; and
- small aircraft is defined as an aircraft equipped for the carriage of passengers and having a certificated maximum carrying capacity of not more than 39 passengers.

In addition to the above, the lessee is required to provide a rationale as to why the wetlease arrangement (or its renewal) is necessary. The Agency has stated that it:

- will not deny an application solely on the basis of the rationale for the use of foreign aircraft with flight crew, as long as the cap is not exceeded; and
- may renew approvals of wet-lease applications of more than 30 days as long as the cap is not exceeded.

There is some flexibility for short-term arrangements and where unexpected events require an exception.

##### *All-Inclusive Fare Advertising*

In December 2012, the Agency approved new regulations with respect to all-inclusive fare advertising. Initially, the regulations were enforced through a "proactive and collaborative educational approach". The Agency has recently released a notice to the industry advising that it will now take a firmer stance in ensuring compliance. It has recently issued administrative monetary penalties (AMPs) against two online travel retailers for not advertising the total all-inclusive price on their online booking systems. In one case, the AMP amounted to \$40,000 due to the lack of initial response from the retailer. In another, the AMP was \$8,000 in a situation where that retailer complied in the case of booking through its main website, but not with respect to booking on its mobile website.

##### *Baggage Rules*

The Agency has recently completed a consultation process with the industry and with the public with respect to the issue of baggage rules. The issues under contemplation include à la carte pricing, regulatory change and carriers' attempts to further monetize the transportation of baggage. At present, there are two regimes being used in Canada: one of which was adopted by the International Air Transport Association (Resolution 302) and the other by way of recently promulgated

The Latest Legal News, Research and Legal Profiles - Wh... <http://whoswholegal.com/news/analysis/article/30800/avi...>

regulations to be enforced by the United States Department of Transportation (14 CFR part 399.87). The Agency has gone on the record to state that it expects to make a decision on the appropriate approach to apply for baggage being transported to/from Canada in the fall of 2013.

#### **Defining the Boundaries of Regulation**

In the arena of business aviation, the Appeal Panel of the Transportation Appeal Tribunal of Canada is expected to revisit the extent to which the Canadian Transportation Agency should regulate business-related aviation in Canada. The facts arise from the practice of a casino based in Atlantic City, New Jersey, offering voluntary air transfers to the casino to some of its most valued clients. In evidence that has already been led in these proceedings, the casino has asserted that the complimentary flights are at the sole discretion of the casino; no customer was entitled to such a service; and the provision of the flights is not based on the amount spent by the customers at the casino.

The core of the issue is whether the casino requires a licence from the Agency in order to offer this benefit to its customers. Under the applicable legislation, those who offer a "publicly available air service" in Canada require such a licence and are subject to all of the requirements imposed on licensees. In *Marina District Development Company v Attorney General of Canada*, 2013 FC 800, the Federal Court was asked by the casino, on a judicial review, to overturn the Appeal's panel's previous finding that the casino's air service did, in fact, trigger the Agency's oversight. The Federal Court found that the legal test imposed by the Appeal Panel for determining whether an air service was publicly available bordered on tautological but declined to answer the question itself. The matter was sent back to the Appeal Panel for reconsideration. A new decision is expected in 2014. In our view, it is likely that the matter will be sent back to the Federal Court, possibly before the end of 2014 as well, regardless of which party prevails.

---

Copyright © 2013 Law Business Research Ltd. All rights reserved. | <http://www.lbresearch.com>  
87 Lancaster Road, London, W11 1QQ, UK | Tel: +44 20 7908 1180 / Fax: +44 207 229 6910  
<http://www.whoswholegal.com> | [editorial@whoswholegal.com](mailto:editorial@whoswholegal.com)



33 Yonge Street  
Suite 201  
Toronto, Ontario  
Canada M5E 1G4  
T: 416-982-3800  
F: 416-982-3801  
Web: www.lexcanada.com

September 26, 2014

**Gerard Chouest**  
Direct Dial: 416-982-3804  
Direct Fax: 416-982-3801  
chouest@lexcanada.com

**Elliot P. Saccucci**  
Direct Dial: 416-982-3812  
Direct Fax: 416-982-3801  
esaccucci@lexcanada.com

VIA E-MAIL

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario K1A 0N9

Dear Madam Secretary:

**Re: Re: Dr. Gabor Lukács v. Delta Air Lines  
Complaint Concerning discriminatory practices of Delta Air Lines  
relating to the transportation of obese passengers**

**File No.: M4120-3/14-04164  
Submissions concerning Dr. Lukács' standing  
File No: 301351**

Please accept the following submissions concerning Dr. Lukács' standing pursuant to the Canadian Transportation Agency's (the "Agency") directions contained in Decision No. LET-C-A-63-2014.

### **I. Overview**

As highlighted in his September 19<sup>th</sup> submissions, Dr. Lukács' complaint pertains to an August 20<sup>th</sup>, 2014 e-mail responding to one passenger ("Omer")'s concern regarding a fellow passenger who "required additional space", and who therefore made Omer feel "cramped". Dr. Lukács attaches the e-mail as Exhibit "A" to his submissions.

Dr. Lukács alleges that the e-mail evidences a practice of the Respondent that is unjustly discriminatory contrary to s. 111(2) of the *Air Transportation Regulations*, S.O.R./88-58 (the "ATR") and has requested that the Agency grant him standing to lodge a complaint under that section.

It is submitted that Dr. Lukács does not have a direct interest in the policy he wishes to challenge and that the Agency should not accord him public interest standing.

## II. The “large passenger” issue

According to Dr. Lukács, the Agency’s Decision No. LET-C-A-63-2014 incorrectly labels his proposed complaint as one concerning the transportation of “obese persons”. It is Dr. Lukács’ submission that the complaint properly concerns “large persons”, which includes but is not limited to “obese persons”.

In fact, as is clear from Dr. Lukács’ own Exhibit “A”, the Agency’s characterization of the complaint as one concerning “obese persons” is entirely accurate and appropriate. The passenger complaint and the Respondent’s practice alluded to in the e-mail and excerpted below, which Dr. Lukács alleges are “unjustly discriminatory” contrary to section 111(2) of the *ATR*, clearly concern a passenger who cannot fit in a single seat.

For the Agency’s benefit and ease of reference, the Respondent’s public statement on its practice concerning passengers who cannot fit in a single seat states that:<sup>1</sup>

If you are unable to sit in your seat without encroaching into the seat next to you while the armrest is down, please ask the agent if they can reseat you next to an empty seat. You might also consider purchasing an upgrade to First/Business Class.

We will do all possible to ensure your comfort but you might consider booking an additional seat in order to ensure your best comfort during your travel. Please call Delta Reservations at 1-800-221-1212 and they will be glad to assist.

Clearly these practices address “obese persons” who cannot fit in a single seat, and in fact encroach onto a second seat by virtue of their condition.

It appears that the Agency has recognized the word “large” in Delta’s response to “Omer” for what it is—a euphemism. We submit that Dr. Lukács’ request for an amendment should be denied.

## III. Section 111(2) of the *ATR* and direct interest standing

It is Dr. Lukács’ submission that section 111(2) of the *ATR* ought to be read so as to grant “any person” standing to challenge the terms or conditions applied by a carrier pursuant to that provision. According to Dr. Lukács, the issue of “standing” to challenge the terms or conditions of a carrier pursuant to section 111(2) of the *ATR* was addressed in *Black v. Air Canada*, 746-C-A-2005.

---

<sup>1</sup>See <[http://www.delta.com/content/www/en\\_US/traveling-with-us/special-travel-needs/require-extra-seat-space.html](http://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/require-extra-seat-space.html)>

It is clear from the result that the Agency found that Mr. Black had standing. However, because of the basis of Air Canada's objection (i.e. the submission that there must be "a real and precise factual background") the reasons do not deal with the considerations normally reviewed in cases which address standing and there is no explicit holding respecting the basis of Mr. Black's standing. In the present case the issue is squarely raised and we will discuss the two bases upon which a person may have standing; direct interest standing and public interest standing.

In order to have direct standing to bring a complaint, Dr. Lukács must be directly affected by the Respondent's allegedly "unjustly discriminatory" practice. According to the Federal Court of Appeal in *Rothmans of Pall Mall Canada Ltd. v. Minister of National Revenue*, [1976] 2 F.C. 500 (Fed. C.A.) and *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116 (F.C.A.) to be "directly affected" – and thus have direct standing - means that the practice must affect Dr. Lukács' legal rights, impose legal obligations upon him, or else prejudicially affect him in some way.

We submit that the holding in *Black v. Air Canada* can be fully explained on the basis that Mr. Black had a direct interest in the matter of the complaint and had standing as of right. He had not been affected by the terms complained of, but he could have been the next day had he chosen to fly with Air Canada. The terms imposed by Air Canada affected his rights and would have prejudicially affected him had he elected to fly with Air Canada. The same analysis will explain all the cases which have followed *Black*. The Agency reasoned, and we take no exception to this reasoning, that a person who could be prejudicially affected by terms complained of should not be required to subject himself to those terms as a precondition of bringing a complaint.

By his own submission, Dr. Lukács is 6'0 tall and 175lbs in weight. According to Dr. Lukács this makes him "certainly a 'large person'".

However, a national survey conducted by Maclean's Magazine in 2012<sup>2</sup> reveals that the average Canadian male is 5'9 and 185lbs. Despite Dr. Lukács' submissions to the contrary, he is only approximately 4% taller than the average Canadian male, and is in fact approximately 4% lighter than the average Canadian male.

As the Agency properly characterized in Decision No. LET-C-A-63-2014, and as is clear from Dr. Lukács' own Exhibit "A", the proposed complaint is one that concerns persons who cannot fit in a single seat by virtue of being

---

<sup>2</sup> See <<http://www.macleans.ca/news/canada/how-canadian-are-you/>>.

obese. As someone who is lighter than the average Canadian, despite being slightly taller, it is patently clear that Dr. Lukács does not have a direct interest in the subject matter of the proposed complaint; his rights are not affected by the impugned practice nor would he suffer any prejudice if he elected to fly with Delta.

#### V. Public interest standing

In his submissions Dr. Lukács states that “when standing is raised as a preliminary matter, the burden is on the party opposing the granting of standing to demonstrate that the applicant cannot satisfy the test”. Dr. Lukács provides no legal basis for this submission.

In fact, the opposite is true as revealed by the Federal Court of Appeal in *Public Mobile Inc. v. Canada (Attorney General)*, [2012] 3 F.C.R. 344 (F.C.A.), where J.A. Sexton writing for a unanimous court at paragraph 54 clearly states that “an applicant for public interest standing must satisfy the court” that the test for public interest standing is met.

Thus, it is Dr. Lukács who bears the onus of satisfying the Agency that he is entitled to be granted public interest standing, and not the Respondent who bears the onus of disproving such entitlement.

Quite apart from the question of who has the onus of proving what, the Respondent submits that the essential issue in this case is whether, in the words of the Supreme Court of Canada in the case of *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, [2012] 2 S.C.R. 524 (S.C.C.), in a passage cited by the Applicant at page 15 of his Submissions, there are “realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination.”

Also at paragraph 51 of *Downtown Eastside*, the Court cautioned that:

Courts should take into account that one of the ideas which animates public interest litigation is that it may provide access to justice for disadvantaged persons in society whose legal rights are affected. Of course, this should not be equated with a licence to grant standing to whoever decides to set themselves up as the representative of the poor or marginalized.

[Emphasis added].

With this guidance from the Supreme Court in mind we submit it is helpful to consider certain information available on the Agency’s website. On the homepage (<https://www.otc-cta.gc.ca/eng>) and directly under the Maple Leaf we find a banner with the central entry “Complaints and disputes”. Any person who elects to click this item will be taken to a page at which she is

asked whether she wishes to submit a complaint. If the visitor clicks the button she is taken to a three step "Complaint Wizard" which provides an easy step by step tool for completing a complaint in approximately 15 minutes.

Thus there is an expedient method for filing a complaint. The Supreme Court of Canada also cautions that the alternative should "be considered in light of the practical realities, not the theoretical possibilities". The practical reality in this case is that, leaving aside complaints related to accessibility issues which Dr. Lukács does not wish to raise, in calendar year 2013 and the first nine months of 2014 the Agency has issued 36 Decisions in respect of Consumer Complaints, related to the air mode. Of these 11 relate to cases filed by Dr. Lukács and the balance of 25 relate to complaints filed by other individuals. The total number of persons who participated as complainants in these matters is approximately 105 (although it is conceded that one single case involved 83 complainants).

There is no discussion of standing in any of the 11 cases initiated by Dr. Lukács which led to Decisions in 2013 or 2014. It is submitted that the comments made above respecting the *Black* decision are applicable here. Each of the 11 decisions can be explained on the basis of an implicit finding that Dr. Lukács could potentially have been prejudicially affected by the practice, term or condition complained of. As in *Black* this justified direct interest standing.

We would like to underline the fact that in none of these cases was there any suggestion that Dr. Lukács should be granted public interest standing.

The Agency provides an accessible medium for lodging consumer complaints, and encourages the participation of self-represented complainants. Through its informal and non-binding dispute resolution services, the Agency provides experienced mediators at no cost to the complainant, while its rules and procedures are relatively informal by comparison to courts. A complainant need not be herself an expert litigant nor have the assistance of experienced counsel.

It is both practical and reasonable for a passenger who is unjustly affected by the practice, procedure, term or condition of an air carrier to bring her complaint to the Agency.

Furthermore, Dr. Lukács submits that he is in a privileged position because he has unique evidence of the allegedly "unjustly discriminatory" practice. However, as is noted above, the impugned practice is described on Delta's publicly available website.

We accordingly submit that his request for public interest standing should be denied.

Yours truly,  
Bersenas Jacobsen Chouest Thomson Blackburn LLP



GAC\EPS



Halifax, NS

lukacs@AirPassengerRights.ca



October 1, 2014

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Delta Air Lines**  
**Complaint concerning discriminatory practices of Delta Air Lines relating to the transportation of large passengers**  
**File No.: M4120-3/14-04164**  
**Reply submissions concerning standing as per Decision No. LET-C-A-63-2014**

Please accept the following submissions concerning the issue of standing as a reply to Delta Air Lines' submissions dated September 26, 2014.

**I. The practice complained of substantially differs from Delta Air Lines' public statement**

The Applicant strenuously objects to Delta Air Lines' attempt to obfuscate and sidestep the subject of the complaint, and conflate it with the contents of the statement appearing on Delta Air Lines' website (page 2 of Delta Air Lines' September 26, 2014 submissions).

The present complaint concerns Delta Air Lines' practices, as set out in Exhibit "A" of the Applicant's September 19, 2014 submissions, and not the public statement of Delta Air Lines.

**(a) Delta Air Lines' public statement substantially differs from Exhibit "A"**

There is a fundamental difference not only in the subject matter, but also in the nature of the statements appearing on Delta Air Lines' website and the practices set out in Exhibit "A". The

difference can be best illustrated as the difference between inviting a guest over for a weekend as opposed to forcibly confining a person for a weekend.

Delta Air Lines cites on page 2 of its September 26, 2014 submissions a statement that appears on Delta Air Lines' website, concerning Delta Air Lines' commitment to offer additional assistance to obese passengers. The public statement uses the permissive language of "you might also consider" and "you might consider," and is clearly a mere suggestion to passengers. There is nothing in these statements to pressure passengers to purchase an additional seat. The airline simply advises the passenger of an option available for the passenger's "best comfort" during their travel.

In sharp contrast, however, the practice complained about is not a recommendation to passengers, but rather a discriminatory practice that singles out "large" passengers:

[...] If the flight is full, we may ask the passenger to take a later flight. We recommend that large passengers purchase additional seats, so they can avoid being asked to rebook [...]

Unlike the public statement on Delta Air Lines' website, these practices do not leave it to the passenger to decide whether they wish to purchase additional seats; rather, Delta Air Lines targets "large" passengers as candidates for being denied transportation on full flights. Furthermore, according to Exhibit "A", Delta Air Lines does not recommend, but requires such passengers to purchase additional seats, lest they be denied transportation on full flights, and be forced to fly at a later time or date.

The Applicant submits that the public statement of Delta Air Lines is so substantially different on essential points from what is set out in Exhibit "A" that it is not possible to make any conclusions with respect to the intended meaning of Exhibit "A" based on the public statement of Delta Air Lines.

**(b) Lack of evidence**

It is important to note that Delta Air Lines has tendered no evidence as to its actual practices to demonstrate that its practices are not as set out in Exhibit "A" or to explain the meaning of "large" in Exhibit "A".

There would have been many ways for Delta Air Lines to provide evidence on this point, such as producing its training manuals, and providing a statement from a person with knowledge of the pertinent matters about Delta Air Lines' practices.

The Applicant submits that Delta Air Lines tendered no evidence whatsoever to support its contention that "large" in Exhibit "A" is an euphemism for "obese".

**(c) Procedural fairness concern**

The Applicant submits that it would be unfair to make any conclusions as to the meaning of “large” in Exhibit “A” in the framework of a preliminary question, where he is deprived from using the production and interrogatory mechanisms normally available pursuant to the Agency’s rules of procedures after pleadings are opened.

While Delta Air Lines may eventually tender evidence as to the meaning of “large” in Exhibit “A”, it would amount to denial of procedural fairness to accept bald allegations as facts at such a preliminary stage of the proceeding.

There is nothing in Exhibit “A” to show that the passenger was complaining about an “obese” passenger sitting next to him and not an exceptionally tall passenger or one with longer than average legs.

Therefore, the Applicant submits that for the purpose of the present preliminary matter concerning standing, and in the absence of any evidence to the contrary, the Agency should look at the words of Exhibit “A” as they stand. Exhibit “A” speaks of “large” and not “obese” passengers. Hence, the present complaint is concerning discrimination against “large” passengers, which can include a range of ways of being “large.”

**II. Section 111 of the ATR and standing**

The Applicant submits that Delta Air Lines is grossly misstating the law on standing with respect to section 67.2(1) of the *Canada Transportation Act* and section 111 of the *Air Transportation Regulations*, and the Agency’s jurisprudence on it.

**(a) Collective right of the travelling public: “any person”**

As noted by the Supreme Court of Canada in *A.G. (Que.) v. Carrières Ste-Thérèse Ltée*, [1985] 1 SCR 831 (at para. 28), Parliament does not speak in vain, and the phrase “any person” was inserted into the legislative text for a reason. Delta Air Lines has failed to address the argument of the Appellant, supported by a wealth of case law from the Agency, that the right to challenge terms and conditions pursuant to s. 67.2(1) of the *CTA* and s. 111 of the *ATR* is conferred upon “any person” and not only those who have been directly affected by the impugned terms and conditions.

Delta Air Lines failed to propose any alternative interpretation for the phrase “any person” that Parliament chose to include in s. 67.2(1) of the *CTA*. In the absence of submissions by Delta Air Lines on this point, the Applicant submits that the Agency should find that these rights are collective rights of the travelling public (similar to language rights pursuant to the *Official Languages Act*), which serve the travelling public at large, and as such, “any person” has standing to challenge terms and conditions.

**(b) Delta Air Lines misstates the Agency’s jurisprudence**

Delta Air Lines mistakenly argues that the issue of standing has not been squarely raised in *Black*, and that the Agency found in favour of the passenger in *Black*, because “he could have been” subject to the terms and conditions complained of “the next day had he chosen to fly with Air Canada.” The Applicant submits that Delta Air Lines’ contention with respect to *Black* and the subsequent cases raising the issue of standing is woefully misguided, and Delta Air Lines misstates the Agency’s decision in *Black*.

It is settled law that private interest standing cannot be founded on hypothetical possibilities. In *Downtown Eastside Sex Workers United Against Violence Society v. Attorney General (Canada)*, 2008 BCSC 1726, it was held that:

[47] Paragraph 10 of the statement of claim states that Ms. Kiselbach is not currently engaged in prostitution and does not at present intend to re-enter the sex trade. The fact that she cannot rule out the possibility that she may change her mind and may want to engage in sex work in the future does not distinguish her from any other member of the general public. Private interest standing cannot be founded on hypothetical possibilities: *Canadian Council for Refugees v. Canada* (2008), 74 Admin. L.R. (4th) 79, 2008 FCA 229 (CanLII) at paras. 99-102.

Consequently, the Agency could not have reached the conclusion that it did in *Black* based on speculations such as those proposed by Delta Air Lines. The Agency did not speculate that Mr. Black could be travelling on Air Canada the next day. Instead, the Agency correctly focused on the policy objective that s. 111 of the *ATR* serves, and held that:

To require a “real and precise factual background” could very well dissuade persons from using the transportation network.

[Emphasis added.]

It is important to note that the Agency used “persons” in plural, which demonstrates that the Agency was mindful of the public benefit of s. 111 of the *ATR*, and that the purpose of such challenges go well beyond the individual applicant’s personal benefit.

Any doubts that *Black* might have left as to standing to bring s. 111 challenges have been resolved in *Krygier*, where the applicant’s standing was directly challenged, and the Agency held that: “the principles outlined in Decision No. 746-C-A-2005 apply in this case as it is similar type of complaint.”

The Agency’s decision in *Krygier* has a number of additional features that are relevant to the question of standing in the present case. First, the Agency reached its conclusion without any reference to the personal circumstances of Mr. Krygier. There is no trace of any consideration of the nature suggested by Delta Air Lines that Mr. Krygier might be affected by the terms and conditions that he was challenging. Second, the Agency distinguished challenges pursuant to s.

111 of the *ATR* from challenges brought under subsection 172(1) of the *CTA*, which must be brought by a person with a disability or filed on behalf of such a person.

Although the Applicant provided counsel for Delta Air Lines with a copy of Decision No. LET-C-A-104-2013, the airline chose not to address this recent decision of the Agency concerning standing.

**(c) Conclusion**

In light of the Agency's jurisprudence on standing to challenge terms and conditions pursuant to s. 67.2(1) of the *CTA* and s. 111 of the *ATR*, it is submitted that "any person" may bring such challenges, and no further analysis of standing is required.

**III. Private interest standing in the present case**

Although Delta Air Lines accepts that the Applicant is 6 feet tall and 175 lbs in weight, and that his height is above the average, Delta Air Lines disputes that the Applicant is a "large person."

**(a) Inadmissible hearsay**

Delta Air Lines purports to rely on a national survey conducted by Maclean's Magazine in 2012 as the evidentiary basis for the claim that the average Canadian male is 5'9" tall and 185 lbs in weight.

The Applicant submits that information published in newspapers and magazines are archetypical examples of inadmissible hearsay, and the Agency should ignore the content of the Maclean's Magazine cited by Delta Air Lines.

**(b) Delta Air Lines has acknowledged that the Applicant is taller than average**

Regardless of the actual figures, Delta Air Lines has correctly acknowledged that the Applicant is taller than the average Canadian male. Thus, the Applicant is certainly a "large" passenger.

**(c) Lack of evidence as to the meaning of "large"**

Unfortunately, Delta Air Lines has provided no evidence as to the meaning of "large" in Exhibit "A": no statement from the author of Exhibit "A" nor from anyone else who could have provided some clarification were provided. Thus, at the present preliminary stage, it is impossible to conclude with certainty that the Applicant is not "large" and that the Applicant is not directly affected by the practices set out at Exhibit "A".

**(d) The scope of the proposed complaint**

Delta Air Lines cannot hijack and alter the present matter by stating that “the proposed complaint is one that concerns persons who cannot fit in a single seat by virtue of being obese.” As the Applicant stated on multiple occasions, the present application concerns discrimination and not accommodation for disability, and it concerns an allegation of discrimination against “large” passengers.

Whether such discrimination does exist and its extent are questions that can be answered only after pleadings are opened and evidence is tendered, including by way of productions and interrogatories.

**IV. Public interest standing**

Delta Air Lines does not dispute the Applicant’s submission that the legal test for public interest standing requires the consideration of three factors (see *Fraser v. Canada (Attorney General)*, 2005 CanLII 47783 (ON SC)):

- (i) Is there a serious issue to be tried?
- (ii) Does the party seeking public interest standing have a genuine interest in the matter?
- (iii) Is the proceeding a reasonable and effective means to bring the issue before the court (or the tribunal)?

Moreover, Delta Air Lines does not dispute that the Applicant meets the first two conditions of the test. Thus, the parties’ positions differ only on two points related to public interest standing: who has the burden of proof, and whether the third prong of the test is met.

**(a) Burden of proof on a preliminary determination of standing**

Contrary to what is stated in Delta Air Lines’ submissions, the Applicant did cite *Fraser v. Canada (Attorney General)*, 2005 CanLII 47783 as an authority with respect to burden of proof when standing is raised as a preliminary issue. Paragraph 55 of *Fraser* reads as follows:

[55] When the question of standing is raised in a preliminary motion, a court should only consider whether, on the materials before the court, the applicant has an arguable case or, putting it the other way, has no reasonable cause of action: *Sierra Club of Canada*, supra; *Energy Probe v. Canada (Attorney General)* (1989), 1989 CanLII 258 (ON CA), 68 O.R. (2d) 449 (C.A.); *Canadian Civil Liberties Assn. v. Canada (Attorney General)*, supra. The burden is on the party opposing the granting of standing to demonstrate that the applicant cannot satisfy even this low threshold test. [Emphasis added.]

Delta Air Lines confuses the question of burden of proof with respect to standing when such an issue is raised as a preliminary matter with determination of standing in a hearing of an application on its merits. The *Globalive Wireless Management Corp. v. Public Mobile Inc.*, 2011 FCA 194 case cited by Delta Air Lines concerned a judgment on the merits of an application for judicial review, which also addressed the issue of standing.

In the present case, however, standing was raised as a preliminary issue, before parties had an opportunity to tender evidence and fully test the evidence of the opposing party. Thus, the burden of proof is on Delta Air Lines to demonstrate that the Applicant cannot satisfy a low threshold test.

**(b) Reasonable and effective means of bringing the issue before the Agency**

Delta Air Lines appears to misconstrue the meaning of “alternative means” in the text for public interest standing. The correct interpretation of “alternative means” is the presence of another person who has private interest standing, and who is likely to challenge the impugned action, policy or law before the court or tribunal. It is submitted that the availability of various forms of non-binding dispute resolution is not a relevant, and certainly not a determinative, consideration in this context.

As noted in *Fraser*, at paragraph 109:

In order to show there is a “reasonable and effective” alternative, it is necessary to show more than a possibility that such litigation might occur. The “mere possibility” of a challenge by a directly affected private litigant will not result in the denial of public interest standing: *Canadian Bar Association v. British Columbia (Attorney General)* (1993), 1993 CanLII 310 (BC SC), 101 D.L.R. (4th) 410 (B.C.S.C.) at 417; *Grant v. Canada (Attorney General)*, 1994 CanLII 3507 (FC), [1995] 1 F.C. 158 (F.C. T.D.), aff’d reflex, [1995] F.C.J. No. 830 (C.A.), leave to appeal refused [1995] S.C.C.A. No. 394 (S.C.C.) at pp. 198-9.

[Emphasis added.]

Thus, Delta Air Lines has to do more than show the “mere possibility” of a challenge to the impugned practices by a directly affected private litigant.

Delta Air Lines’ argument that a complaint can be filed “in approximately 15 minutes” is based on the misconception that an average passenger is familiar with the *Air Transportation Regulations* and its section 111. A review of the Agency’s website reveals that completion of the online forms ask for the following:

- Provide a full description of the facts.
- Clearly state the issues.
- Identify any legislative provisions on which you are relying.

- Clearly set out the arguments in support of your application.
- Clearly set out the relief you are seeking.

It is submitted that while there may be particularly determined, dedicated, and able passengers who might possibly be able to answer these in a meaningful way in relation to an undue or unjust discrimination complaint, this remains a “mere possibility.”

Delta Air Lines’ claim as to the number of decisions released by the Agency with respect to Consumer Complaints does not help Delta Air Lines’ argument, as a number of these complainants were represented by counsel, precisely because of the complexity of the issues.

The fact that the Agency does not require individuals to be represented by counsel does not mean that passengers can effectively and successfully represent themselves before the Agency; most individuals cannot.

According to a recent filing with the Federal Court of Appeal (File No.: A-357-14), the Agency’s new Dispute Rules has a 90-page “companion document” explaining the rules. The Applicant submits that any procedure that requires a 90-page explanation cannot be simple or accessible for an average passenger.

There is no obligation to be represented by counsel before the Federal Court either, and most documents can be filed electronically using a rather simple interface. This fact, however, does not render legal representation unnecessary, and does not demonstrate in and on its own accessibility of the court and access to justice.

Finally, contrary to what Delta Air Lines claims, the practices set out in Exhibit “A” substantially differ from what is described on the airline’s website. Consequently, the Applicant is in a privileged position because he has unique evidence of the unjustly discriminatory practice of Delta Air Lines.

Therefore, the Applicant submits that while there may be a theoretical possibility of the present complaint being brought forward by another individual, it is no more than a “mere possibility,” and it cannot be a basis for denying the Applicant public interest standing.

All of which is most respectfully submitted.

Dr. Gábor Lukács  
Applicant

Cc: Mr. Gerald Chouest, counsel for Delta Air Lines



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

9:50

9:52

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

9:54

Refers to the Krygier case Tab 18, Page 213

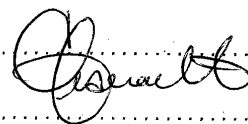
Refers to the Black case

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  
deTIME  
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 - Gavrilu 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

11:07

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

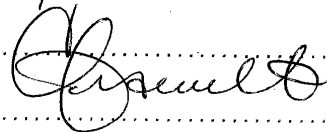
Refers to Air Canada Public Participation Act Tab 3

Refers to Official Languages Act Tab 2



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

TIME 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.

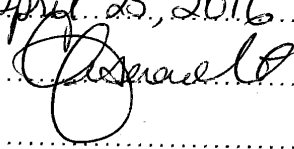
Justice Webb reminds him it's reply.

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

<b>Court Number :</b>	A-135-15		
<b>Style of Cause :</b>	DR GABOR LUKACS v. CANADIAN TRANSPORTATION AGENCY ET AL		
<b>Proceeding Category :</b>	Appeals	<b>Nature :</b>	Statutory Appeal - Canadian Transportation Agency
<b>Type of Action :</b>	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](#)



