



**AIR CANADA**

**Kerianne Wilson**

Counsel – Regulatory & Litigation  
Direct Line: (514) 422-5959  
Facsimile: (514) 422-5829  
Email: kerianne.wilson@aircanada.ca

Law Branch  
P.O. Box 7000, Zip 1276  
Station Airport  
Dorval, Québec, Canada  
H4Y 1J2

**By Email**

January 20, 2016

The Secretary  
CANADIAN TRANSPORTATION AGENCY  
Complaints and Investigation Division  
15 Eddy Street, 19<sup>th</sup> Floor,  
Hull/Ottawa, Canada (K1A 0N9)

**Re: Complaint by Mr. Christopher Johnson and Dr. Gábor Lukács against  
Air Canada  
CTA file: 15-05627  
Our File: LIT-2015-544**

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**Request pursuant to Section 31 of the Canadian Transportation Agency  
Rules (Dispute Proceedings and Certain Rules Applicable to All  
Proceedings), SOR/2014-104 (“Dispute Adjudication Rules”)**

The present constitutes Air Canada’s request to have certain documents already filed and pending in the present case deemed confidential pursuant to s. 31 of the Dispute Adjudication Rules.

**1. Relief sought**

Air Canada hereby requests that the internal documents submitted in response to Dr. Lukács’s questions on January 11 and January 19, 2016, as well as the internal document referenced as annex **A-2** in Air Canada’s Response to the Complaint of January 20, 2016, be excluded from the Agency’s public record as per s. 31(5)(c) of the Dispute Adjudication Rules.

## 2. Summary of the facts

On January 11, 2016, Air Canada filed a document entitled “Expense Policy” dated April 4, 2013. On January 19, 2016, Air Canada filed excerpts of its updated expense policy and procedures entitled “Policy and Conditions” and “Compensation Grid”, dated December 2015. Air Canada also references a document entitled “Expense Policy” dated December 2015 as annex **A-2** to its Response to the Complaint of January 20, 2016. Annex **A-2** has not been filed, pending the Agency’s decision on the present confidentiality request. All three of these documents contain commercially sensitive information and privileged internal procedures.

## 3. The arguments in support of the request

The Supreme Court of Canada has repeatedly held that there is an implicit undertaking of confidentiality regarding documents exchanged during the discovery process (*Lac d’Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, 2001 SCC 51 at para. 60; *Juman c. Doucette*, 2008 SCC 8 at para. 25). As explained by the Supreme Court of Canada, “this undertaking is meant to allow the parties to obtain as full a picture of the case as possible, without the fear that disclosure of the information will be harmful to their interests, privacy-related or otherwise” (*Globe and Mail v. Canada (A.G.)*, 2010 SCC 41 at para. 77).

This is precisely Air Canada’s present concern. Air Canada is willing to share these documents with the Complainants, Mr. Christopher Johnson and Dr. Gábor Lukács for the purposes of the present Complaint provided that they sign a *Confidentiality and Non-Disclosure Undertaking*. However, should the Agency not deem these documents confidential, they would be released to the public, which would put Air Canada at a commercial disadvantage vis-à-vis its competitors regarding treatment of expense requests.

In *Lukács v. Canadian Transportation Agency et al.*, 2015 FCA 140, the Federal Court of Appeal examined section 31 of the Dispute Adjudication Rules, finding that no redacting of information was permitted as the parties had not requested a confidentiality order (*Lukács v. Canadian Transportation Agency et al.*, 2015 FCA 140 at para. 79). In contrast, Air Canada is hereby making such a request concerning documents provided during the discovery process to protect its commercial interests. Air Canada consistently treats Air Canada’s expense procedures and policies as confidential documents, the whole as confirmed by the Statement of Twyla Robinson, attached herewith as annex **A**. The documents in question are internally developed procedures and recommendations developed by Air Canada. These documents are unique to Air Canada and are commercially sensitive. This is notably evidenced by the fact that both Expense Policy documents clearly indicate that the document is for internal use only, not to be distributed. The excerpts are similarly commercially sensitive and for internal use only as they are found only on Air Canada’s internal portal ACPedia and are not downloadable, as they are intended only for internal consultation, as also confirmed by the Statement of Twyla Robinson.

As such, Air Canada respectfully requests that the three documents be deemed confidential and excluded from the Agency’s public record.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Kerianne Wilson". The signature is fluid and cursive, with the first name "Kerianne" written in a larger, more prominent script than the last name "Wilson".

**Kerianne Wilson**  
Counsel – Regulatory & Litigation