

Halifax, NS
lukacs@AirPassengerRights.ca



May 29, 2013

VIA EMAIL

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

Attention: Mr. Mike Redmond, Chief, Tariff Investigations

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Air Transat
Complaint about Air Transat's International Tariff Rules 5.2(a) and 5.2(b)
File No.: M 4120-3/13-02438
Reply – Motion to expunge irrelevant, prejudicial, and scandalous materials**

Please accept the following submissions as a reply pursuant to s. 32(5) of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 to Air Transat's May 27, 2013 answer to the Applicant's May 26, 2013 motion to expunge irrelevant, prejudicial, and scandalous materials from the record, specifically,

- (a) the email of Mr. Petsikas, dated April 24, 2013, which was attached as an exhibit to Air Transat's May 21, 2013 answer; and
- (b) paragraphs 2, 3, 4 and 5 of Air Transat's May 21, 2013 answer.

In its answer to the motion, Air Transat reiterated its allegations related to abuse of process, and insisted that these considerations are relevant to the present proceeding.

I. The facts pleaded in Air Transat's answer do not amount to an "abuse of process"

Black's Law Dictionary (8th edition) defines "abuse of process" as follows (Exhibit "A"):

abuse of process. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope.

In its pleadings, Air Transat has failed to allege (let alone prove) any result sought in the present proceeding that is either unlawful or beyond the process's scope.

Indeed, the only result sought in the present proceeding is ensuring that Air Transat's International Tariff Rules are reasonable. This goal is certainly fully consistent with the purpose and scope of the Agency's complaint process.

Thus, it is submitted that none of the facts pleaded by Air Transat, even if they are assumed to be true, are capable of supporting a finding that the Applicant's complaint is an abuse of process. Therefore, the prejudicial document and pleadings related to these vexatious and scandalous allegations are irrelevant, and ought to be struck from the record.

II. Air Transat repeating allegations that are admittedly false and inappropriate is an abuse of the Agency's process

Mr. Petsikas made certain false and defamatory allegations in his April 24, 2013 10:50 am email.

In a subsequent email, dated April 24, 2013 2:28 pm, Mr. Petsikas retracted these allegations, and admitted that they were inappropriate.

In these circumstances, the Applicant is struggling to understand why Air Transat chose to repeat these admittedly false and inappropriate allegations in its pleadings, and why it insists reiterating these false allegations in its answer to the present motion.

The Applicant submits that Air Transat's conduct in the present proceeding is reprehensible, and amounts to abuse of process, because Air Transat is attempting to turn the Agency's complaint process into a forum to defame the Applicant, attack his character, and tarnish his reputation by submitting documents as exhibits that contain allegations that are known to be false and harmful.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. George Petsikas, Air Transat

Black's Law Dictionary®

Eighth Edition

Bryan A. Garner
Editor in Chief

THOMSON
—★—
WEST

abuse of discovery. See DISCOVERY ABUSE.

abuse of discretion. 1. An adjudicator's failure to exercise sound, reasonable, and legal decision-making. 2. An appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence. See DISCRETION. [Cases: Appeal and Error ⇨946; Criminal Law ⇨1147. C.J.S. *Appeal and Error* § 772.]

abuse of process. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. — Also termed *abuse of legal process*; *malicious abuse of process*; *malicious abuse of legal process*; *wrongful process*; *wrongful process of law*. Cf. MALICIOUS PROSECUTION. [Cases: Process ⇨168–171. C.J.S. *Process* §§ 106–114.]

"One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process." *Restatement (Second) of Torts* § 682 (1977).

abuse of rights. 1. *Int'l law.* A country's exercise of a right either in a way that impedes the enjoyment by other countries of their own rights or for a purpose different from that for which the right was created (e.g., to harm another country). 2. *Louisiana law.* A person's exercise of a right in an unneighborly spirit that, while of no benefit to that person, causes damage to the neighbor.

abuse-of-rights doctrine. *Civil law.* The principle that a person may be liable for harm caused by doing something the person has a right to do, if the right is exercised (1) for the purpose or primary motive of causing harm, (2) without a serious and legitimate interest that is deserving of judicial protection, (3) against moral rules, good faith, or elementary fairness, or (4) for a purpose other than its intended legal purpose. [Cases: Torts ⇨6. C.J.S. *Torts* §§ 5, 16–22.]

abuse of the elderly. See ABUSE.

abuse-of-the-writ doctrine. *Criminal procedure.* The principle that a petition for a writ of habeas corpus may not raise claims that should have been, but were not, asserted in a previous petition. Cf. SUCCESSIVE-WRIT DOCTRINE. [Cases: Habeas Corpus ⇨896.]

abuser (ə-byoo-zər), *n.* 1. One who abuses someone or something. 2. ABUSE (1).

abusive (ə-byoo-siv), *adj.* 1. Characterized by wrongful or improper use <abusive discovery tactics>. 2. (Of a person) habitually cruel, malicious, or violent <abusive parent>. — *abusively, adv.*

abusus (ə-byoo-səs), *n.* *Civil law.* The right to dispose of one's property.

abut (ə-bət), *vb.* To join at a border or boundary; to share a common boundary with <the company's land in Arizona abuts the Navajo Indian reservation>. — *abutment* (ə-bət-mənt), *n.*

abutments (ə-bət-əlz). Land boundaries; the boundary lines of a piece of land in relation to other contiguous lands. — Also termed (archaically) *buttals*.

abutter (ə-bət-ər). 1. The owner of adjoining land; one whose property abuts another's. [Cases: Adjoining Landowners ⇨1. C.J.S. *Adjoining Landowners* §§ 2, 6–8, 39.]

"The major right of [an abutter] is that of access to his property — a right of reasonable ingress and egress. He is entitled to compensation for any substantial impairment of this reasonable access. The right normally includes the right to have, at some point, a driveway onto his premises. An abutter does not have the right to the continued flow of traffic in the same amount or pattern past his premises." Osborne M. Reynolds Jr., *Handbook of Local Government Law* § 180, at 620 (1982).

2. Land that adjoins the land in question.

abutting foot. See FRONT FOOT.

a/c. abbr. ACCOUNT (4).

academic, adj. 1. Of or relating to a school or a field of study; esp., of or relating to a field of study that is not vocational or commercial, such as the liberal arts <academic courses>. 2. Theoretical; specif., not practical or immediately useful <academic question>.

academic freedom. The right (esp. of a university teacher) to speak freely about political or ideological issues without fear of loss of position or other reprisal. [Cases: Colleges and Universities ⇨8.1(3). C.J.S. *Colleges and Universities* § 25.]

academic lawyer. A law professor, usu. one who maintains a law practice on the side.

Académie de Droit International de La Haye. See HAGUE ACADEMY OF INTERNATIONAL LAW.

academy. 1. An institution of higher learning. 2. An association dedicated to the advancement of knowledge in a particular field, such as the American Academy of Matrimonial Lawyers. 3. A private high school. 4. (*cap.*) A garden near Athens where Plato taught; hence, the school of philosophy that he led.

a cancellando (ay kan-sə-lan-doh). [Law Latin] From canceling.

"It has its name of chancery, *cancellaria*, from the judge who presides here, the lord chancellor or *cancellarius*; who, Sir Edward Coke tells us, is so termed a *cancellando*, from cancelling the king's letters patents when granted contrary to law . . ." 3 William Blackstone, *Commentaries on the Laws of England* 46 (1768).

a cancellis (ay kan-sel-is), *n.* [Law Latin] *Hist.* A chancellor, so called because he performed the duties of office behind a *cancelli* ("lattice").

a cancellis curiae explodi (ay kan-sel-is kyoor-ee-ı ek-splōh-dı). [Law Latin] *Hist.* To be expelled from the bar of the court.

a cause de cy (ay kaw-zə də see), *adv.* [Law French] For this reason.

accedas ad curiam (ak-see-dəs ad kyoor-ec-əm), *n.* [Law Latin "you are to go to the court"] *Hist.* An original writ for removing a replevin action to a royal court from either of two feudal courts — a court baron or a hundred court. • It is a *recordare facias loquelam* for replevin actions. See RECORDARE FACIAS LOQUELAM.

accede (ak-see-d), *vb.* 1. To consent or agree. 2. To be added (to something else) through accession. 3. To adopt. See ADOPTION (6). 4. (Of a body politic) to