

Court File No.:

**FEDERAL COURT OF APPEAL**

BETWEEN:

**RAYMOND PAUL NAWROT and  
KRISTINA MARIE NAWROT and  
KAROLYN THERESA NAWROT**

Moving Parties

– and –

**SUNWING AIRLINES INC. and  
CANADIAN TRANSPORTATION AGENCY**

Respondents

**NOTICE OF MOTION**

**TAKE NOTICE THAT THE MOVING PARTIES** will make a motion in writing to the Court under Rules 352 and 369 of the *Federal Court Rules*, S.O.R./98-106.

**THE MOTION IS FOR AN ORDER:**

1. granting the Moving Parties leave, pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10, to appeal a decision made by the Canadian Transportation Agency (the “Agency”) dated November 15, 2013 and bearing decision no. 432-C-A-2013 (the “Decision”);
2. granting the Moving Parties their costs of this motion; and
3. granting such further relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Decision dismissed the complaint of Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot (the “Nawrots”) against Sunwing Airlines in part, and refused to order Sunwing Airlines to:
  - (a) reimburse the Nawrots for out-of-pocket expenses incurred;
  - (b) pay the Nawrots denied boarding compensation;
  - (c) pay the Nawrots their legal costs.

**Failure to order payment of undisputed portion of claim**

2. Sunwing Airlines conceded [**Tab 8, P228**] that:
  - (a) the Nawrots’ flight was delayed by approximately 14 hours;
  - (b) the *Montreal Convention* applies with respect to the delay of the Nawrots’ flight;
  - (c) pursuant to Article 19 of the *Montreal Convention*, Sunwing Airlines is liable for out-of-pocket expenses caused by the delay;
  - (d) during the 14-hour delay, the Nawrots incurred hotel accommodation expenses and reasonable meal expenses.
3. The Agency erred in law and rendered an unreasonable decision by failing to consider these admissions in its Decision, and failing to order Sunwing Airlines to reimburse the Nawrots for out-of-pocket expenses that Sunwing Airlines explicitly admitted to owing.

**Failure to give adequate reasons and to consider and analyze important relevant evidence**

4. The Agency erred in law by:
  - (a) failing to consider and analyze important relevant evidence in its analysis **[Tab 2, P15, para. 44]**, including the documentary evidence tendered by the Nawrots;
  - (b) failing to provide adequate reasons with respect to the impugned portion of the Decision **[Tab 2, P15, paras. 44-47]**.

**Misstatement of the civil standard of proof**

5. The Agency erred in law by holding **[Tab 2, P14, para. 42]** that the Nawrots:

have a greater burden of proof than simply presenting facts.

**Failure to consider delay and apply the *Montreal Convention***

6. The Nawrots explicitly pleaded delay within the meaning of the *Montreal Convention* as a legal basis for their claim for compensation for out-of-pocket expenses.
7. The Agency erred in law and/or exceeded its jurisdiction by:
  - (a) failing to consider and dispose of the Nawrots' claim for compensation based on the *Montreal Convention*;
  - (b) placing the burden of proof on the Nawrots **[Tab 2, P14, para. 42]**, contrary to Articles 19 and 20 of the *Montreal Convention*.

### **Fettering discretion with respect to costs**

8. In refusing to award costs to the Nawrots, the Agency fettered its discretion by taking into account irrelevant considerations, ignoring relevant considerations, and adhering to the practice **[Tab 2, P31, para. 136]** that:

an award of costs is warranted only in special or exceptional circumstances.

### **Statutes and regulations relied on**

9. Sections 25, 25.1, 78, and 41 of the *Canada Transportation Act*, S.C. 1996, c. 10.
10. Articles 19, 20, and 29 of the *Montreal Convention* (Schedule VI to the *Carriage by Air Act*, R.S.C., 1985, c. C-26).
11. *Air Transportation Regulations*, S.O.R./88-58.
12. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
13. Rules 352 and 369 of the *Federal Court Rules*, S.O.R./98-106.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used for the motion:

1. Affidavit of Raymond Paul Nawrot, sworn on November 29, 2013.
2. Such further and additional materials as counsel may advise and this Honourable Court may allow.

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