

Halifax, NS

lukacs@AirPassengerRights.ca



February 16, 2015

**VIA FAX**

Judicial Administrator  
Federal Court of Appeal  
Ottawa, ON K1A 0H9

Dear Madam or Sir:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency and British Airways Plc  
Federal Court of Appeal File No.: A-366-14  
Request for directions**

I am writing to seek directions from the Honourable Court with respect to the present appeal, which is set down to be heard on March 19, 2015.

**I. New authorities affecting the standard of review of procedural fairness issues**

One of the two grounds raised by the present appeal is denial of procedural fairness. Since the filing of the Memorandum of Fact and Law of the Appellant, this Honourable Court released its decision in *Air Canada v. Greenglass*, 2014 FCA 288, where it was held that:

26 As indicated above, I intend to restrict my analysis to the procedural fairness issues raised by Air Canada. In this respect, there can be no doubt that these issues must be assessed against a standard of correctness (See *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at paragraphs 79 and 83).

In light of this new development, I am seeking the permission of this Honourable Court to depart from the position I took at paragraph 27 of the Memorandum of Fact and Law of the Appellant, and to argue at the hearing of the appeal that the issue of procedural fairness be reviewed on a standard of correctness.

## II. Treaty cited by British Airways is not in force

British Airways refers to an “air services agreement” between Canada and the European Union (the “Agreement”) at paragraph 43 of its Memorandum of Fact and Law.

According to the October 28, 2014 email of Ms. Heather Bystryk, a Senior Trade Policy Analyst at the Office of the Chief Air Negotiator at FATDC (Foreign Affairs, Trade and Development Canada):

The agreement is not yet in force because some European Union Member States have not yet completed their domestic procedures to be bound by the treaty.

⋮

The Government of Canada can provide you with the official authentic text of the treaty only after the treaty enters into force. Once the agreement has entered into force, you will be able to find the text on the Canada Treaty Information website (<http://www.treaty-accord.gc.ca/>).

I have made a total of six (6) attempts to communicate with Ms. McCall, counsel for British Airways, in order to obtain an authentic copy of the Agreement and/or to confirm that she would advise this Honourable Court that the Agreement is currently not in force and was not in force at all material times. Unfortunately, my attempts have been unsuccessful.

Since the Agreement was not included in the Appeal Book nor in British Airways’ book of authorities, it is unclear how British Airways intends to rely on the Agreement; however, I remain concerned about the possibility that British Airways may nevertheless attempt to rely on the Agreement at the hearing of the appeal, even though it is not in force and no authentic copy is available.

I am therefore asking for the guidance of this Honourable Court as to how the issue of the Agreement should be handled.

Sincerely yours,

Dr. Gábor Lukács  
Appellant

Enclosed: Email of Ms. Heather Bystryk, dated October 28, 2014

Cc: Mr. Allan Matte, counsel for the Canadian Transportation Agency  
Ms. Carol McCall, counsel for British Airways

From Heather.Bystryk@international.gc.ca Wed Oct 29 11:54:42 2014  
Date: Wed, 29 Oct 2014 14:54:19 +0000  
From: Heather.Bystryk@international.gc.ca  
To: dr.gabor.lukacs@gmail.com  
Cc: Keith.Kan@international.gc.ca  
Subject: RE: Agreement on Air Transport between Canada and the European Community and its Member States

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[ Your display is set for the "ISO-8859-2" character set. ]  
[ Some special characters may be displayed incorrectly. ]

Dear Dr. Lukacs

Thank you for your email requesting information on the Agreement on Air Transport between Canada and the European Community and its Member States, done 17 December 2009.

The agreement is not yet in force because some European Union Member States have not yet completed their domestic procedures to be bound by the treaty.

For Canada, the agreement was tabled in the House of Commons on 8 May 2013 in accordance with the Policy on Tabling of Treaties in Parliament. The required 21 sitting day waiting period expired on 14 June 2013. An Order in Council, authorizing Canada to ratify the agreement was granted by the Governor General on 10 April 2014 (PC Number 2014-0426). Canada subsequently notified the European Union, through diplomatic note, of the completion of Canada's internal procedures on 7 May 2014.

The Government of Canada can provide you with the official authentic text of the treaty only after the treaty enters into force. Once the agreement has entered into force, you will be able to find the text on the Canada Treaty Information website (<http://www.treaty-accord.gc.ca/>).

Sincerely,

Heather Bystryk  
Senior Trade Policy Analyst / Agente principale des politiques commerciales  
Office of the Chief Air Negotiator / Bureau du Négociateur en chef des accords aériens  
Foreign Affairs, Trade and Development Canada / Affaires étrangères, Commerce et Développement Canada  
John G. Diefenbaker Building/Edifice John G. Diefenbaker  
111 Sussex Drive / 111 Promenade Sussex  
Ottawa, ON K1A 0G2  
Tel/Tél: 343-203-4487  
Fax/Télécop: 613-944-0679  
Email/Courriel: heather.bystryk@international.gc.ca

-----Original Message-----

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs  
Sent: October-21-14 10:01 AM  
To: Kan, Keith -TMS  
Subject: Agreement on Air Transport between Canada and the European Community and its Member States

Dear Mr. Kan,

I am looking for information about the above-noted treaty:

1. Its entry into force date.
2. The date it was ratified by Parliament.
3. The official, authentic text of the treaty.

I would like to thank you in advance for your time and help.

Best wishes,  
Dr. Gabor Lukacs

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Dr. Gabor Lukacs  
Air Passenger Rights  
Tel: (647) 724 1727

[ Part 2, "Canada-EU Signed Agreement\_December 2009.pdf" ]  
[ Application/PDF (Name: "Canada-EU Signed Agreement\_December  
[ 2009.pdf") 5.4 MB. ]  
[ Unable to print this part. ]