



July 26, 2022

VIA EMAIL: FCARegistry-CAFGreffe@cas-satj.gc.ca

The Judicial Administrator
Federal Court of Appeal
90 Sparks Street, Main floor
Ottawa, Ontario
K1A 0H9

Dear Sir/Madam:

Re: *Air Passenger Rights v Attorney General of Canada*
Court File No.:A-102-20

The letter is in response to the letter sent by the Applicant on July 25, 2022. Please bring this letter to Gleason J.A.'s attention.

In his letter, the Applicant claims that the Agency "refused to provide any reasonable explanation why its Secretary is refusing to perform her statutory obligations in the *Canada Transportation Act* (CTA) to sign and seal a certificate confirming the authenticity of various documents, including those referred to in paragraph 114-120 of the Applicant's Rule 97 motion and also the July 22, 2022 set of documents for the March 24, 2020 Members call."

As was explained to the Applicant, section 23 of the CTA does not apply in the circumstances. The Applicant's latest request is based on an erroneous understanding of the role and duties of the Canadian Transportation Agency's Secretary as set out in the CTA.

Section 23 of the CTA must be read in conjunction with sections 21 and 22. The documents referred to in section 23 of the CTA, those that "judicial notice shall be taken of" are the documents that the Secretary has the duty to maintain a record of under section 21, namely every rule, order, decision and regulation of the Agency, and for which a certified copy may be issued under section 22. The documents at issue do not fall under the Secretary's responsibilities. Similarly, the documents at issue are not "official" documents for which a certified copy is required under section 24 of the *Canada Evidence Act*.

The Applicant's claim that this Court has recognized that a "certification" is to come from the Agency's Secretary is misleading. The 2013 Order by Mainville J.A., cited by the Applicant and attached to this letter, required the Agency to serve and file a copy of the document certified by the Secretary because the document had been provided to the Applicant in an email exchange with the Secretary. This was done to "avoid any further argument" on the matter and despite there being "no reason to doubt the authenticity". Since that Order, the Applicant has, over the years, made several requests of the Agency under Rule 317 of the *Federal Courts Rules* and is well aware that it is neither this Court's, nor the Agency's practice to have the Agency's Secretary certify requested materials that do not fall under section 21 of the CTA.

In the present case, Ms. Desnoyers provided the certificate under Rule 318 because she was the person who prepared the materials for disclosure and is therefore able to attest that they are true and correct copies.

The Agency submits that the manner in which the Agency has disclosed the requested materials is perfectly valid and that the directions sought by the Applicant are not required.

Yours truly,



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Federal Court of Appeal



Cour d'appel fédérale

Date: 20130208

Docket: A-460-12

Ottawa, Ontario, February 08, 2013

Present: MAINVILLE J.A.

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

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

Respondents

ORDER

UPON a motion of the respondent, the Canadian Transportation Agency (the “Agency”), to include in the Appeal Book a document entitled “Redacted version of the Minutes of the [Agency] Member’s Meeting of September 20, 2011” (the “Minutes”) and to extend the time to serve and file its memorandum of fact and law;

AND UPON reviewing the motion record of the Agency, the motion record of the appellant and the written representations of the Agency in reply;

AND CONSIDERING that the underlying appeal was brought with leave of this Court on the sole issue of whether the Agency exceeded its jurisdiction or erred in law by making its Decision No. LET-C-A-126-2012 dated August 9, 2012 without a quorum of two members, as required by subsection 16(1) of the *Canadian Transportation Act*. S.C. 1996, c. 10;

AND CONSIDERING the parties' agreement that the Appeal Book would include, under item 9, the email exchange between Ms. Cathy Murphy, Secretary of the Agency, and the appellant dated August 9 – August 13, 2012;

AND CONSIDERING that the appellant prepared the Appeal Book, and served and filed it on or about December 6, 2012, without including the Minutes with the email exchange;

AND CONSIDERING that on January 11, 2013, the Agency's legal counsel became aware that the Minutes had not been included in the Appeal Book, and attempted thereafter unsuccessfully to correct the situation with the appellant, hence the present motion;

AND WHEREAS the appellant submits that the Minutes (a) were not identified in the agreement as to the contents of the Appeal Book; (b) were not disclosed prior to the Agency's decision (c) were not part of the record before the Agency, (d) their authenticity is questionable, (e) they are so heavily redacted that no weight can be given to these, and (f) that they are irrelevant;

AND WHEREAS item 9 of the Agreement as to the content of the Appeal Book reads as follows: “Email exchange between Ms. Cathy Murphy, Secretary of the Canadian Transportation Agency and Gábor Lukács dated August 9 – August 13, 2012”;

AND WHEREAS insofar as the Minutes were provided to the appellant in the context of this email exchange, they form part of the Appeal Book;

AND WHEREAS it is abundantly clear from the emails exchanged between August 9, 2012 and August 13, 2012 that the Minutes were provided to the Appellant in the course of the exchange;

AND WHEREAS though the Minutes were not formally included in the record of the hearing leading to the Agency’s impugned Decision No.: LET-C-A-126-2012 dated August 9, 2012, the Agency clearly referred to the meeting to which the Minutes pertained at page 2 of its decision;

AND WHEREAS there is no reason to doubt the authenticity of these Minutes, but to avoid any further argument on this matter, the Agency will be required to serve and file a copy of the Minutes (as redacted) certified by its Secretary;

AND WHEREAS the panel of this Court hearing the appeal shall determine the weight and relevance to be given to the Minutes for the purposes of this appeal;

AND WHEREAS the appellant further alleges that he is prejudiced since he has already served and filed his memorandum of fact and law;

AND WHEREAS any alleged prejudice suffered as a result can easily be cured by allowing the appellant to serve and file a written response not exceeding 5 pages dealing solely with the relevance of, and the weight to be given to, the Minutes;

THIS COURT ORDERS that

1. The Agency's motion is allowed.
2. The Agency shall serve and file within 5 days of this Order a copy of the Minutes (as redacted) certified by its Secretary.
3. The Registry shall include a copy of the said Minutes in each copy of the appeal book filed with the Court under Tab 9, and shall mark these Minutes as pages 58A, 58B and 58C of the Appeal Book.
4. The parties shall include accordingly the Minutes in their respective copies of the Appeal Book.
5. The Agency shall serve and file its memorandum of fact and law within 7 days of this Order.

6. Within 10 days after service of the Agency's memorandum of fact and law, the appellant may serve and file a written response not exceeding 5 pages in length dealing solely with the relevance of, and the weight to be given to, the said Minutes.

7. Within 20 days after service of the Agency's memorandum of fact and law, the appellant shall serve and file a requisition in Form 347 requesting that a date be set for the hearing of the appeal. Prior to serving and filing this requisition, the appellant shall communicate with the respondents (through their counsel) in order to ascertain their availability for the hearing.

"Robert M. Mainville"

J.A.