

Halifax, NS

lukacs@AirPassengerRights.ca



December 19, 2014

VIA FAX

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

Dear Madam or Sir:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-218-14
Letter of the Privacy Commissioner, dated December 18, 2014**

I am writing to reply to the December 18, 2014 letter filed on behalf of the Privacy Commissioner.

I am concerned by what transpires as the Commissioner implicitly renegeing on his clear and unequivocal agreement that I should be permitted to file a responding motion record in regard to the motion for leave to intervene, communicated on page 40 of his motion record dated November 24, 2014, at paragraph 51 (attached). Since I relied not only on the Directions of the Court dated November 14, 2014, but also on these representations, the Commissioner should not be permitted to change his position from an agreement to a “no position” several weeks later.

I respectfully disagree with the Commissioner’s suggestion that the disposition of my November 14, 2014 motion (to compel answers and for an extension) can be maintained and severed from the decision to grant leave to intervene (which was made without affording me an opportunity to file a responding record). Indeed, according to paragraph 3 of the Reasons for Order dated December 10, 2014, the “reasoning concerning the Privacy Commissioner’s motion to intervene affects [the] determination of the applicant’s motion.”

In my respectful submission, the correct sequence of events that was envisaged by the Directions of the Court dated November 14, 2014 was as follows:

- (a) determination of the November 14, 2014 motion, while the Court is informed that the Commissioner's motion for leave to intervene is being held in abeyance, and thus has not been perfected yet;
- (b) serving and filing of my responding motion record in regard to the Commissioner's motion for leave to intervene, pursuant to Rule 369(2);
- (c) serving and filing of the Commissioner's reply, pursuant to Rule 369(3); and
- (d) determination of the Commissioner's motion for leave to intervene.

It would appear to be natural to follow this sequence of events after the December 10, 2014 Order is rescinded. In particular, I agree that the Commissioner should be allowed to exercise his right of reply in accordance with Rule 369(3).

Finally, I consent to the Commissioner's request for an extension of the timeline for filing the Commissioner's memorandum of fact and law.

Sincerely yours,

Dr. Gábor Lukács

Enclosed: Page 40 of the Commissioner's motion record, dated November 24, 2014

Cc: Ms. Odette Lalumière, counsel for the Canadian Transportation Agency
Ms. Jennifer Seligy, counsel for the Privacy Commissioner of Canada

48. Ms. Kosseim answered these questions with as much precision as possible in light of the fact that neither the Applicant nor the CTA had filed its submissions in the judicial review application. The degree of detail sought by the Applicant could only be provided if a proposed intervener prepared its intervener submissions in advance of the parties' own written arguments, based on speculation as to what these might contain, and in advance of knowing whether intervener status would be obtained. This level of specificity is not required.

Canada (Attorney General) v. Pictou Landing First Nation 2014 FCA 21, at para. 11, **Applicant's Record, p. 200.**

49. Accordingly, Ms. Kosseim should not be required to provide additional answers to any of questions 53-54, 56, 60-61, or 67 from the cross-examination on her affidavit.

D. Remedy and costs

i) Remedy

50. The Privacy Commissioner submits that the Applicant's motion should be dismissed.

51. The Privacy Commissioner submits that the Applicant should have 10 days from the date on which the Court disposes of this motion to serve and file his response to the Privacy Commissioner's motion for leave to intervene, in accordance with the period set out in Rule 369(2) of the *Federal Court Rules*.

52. Alternatively, should the Court consider that any of the questions in issue should be answered, the appropriate remedy in the circumstances would be to order Ms. Kosseim to answer those specific questions in writing, or alternatively, to re-attend for cross-examination on such questions.

53. The relief sought by the Applicant in paragraphs 1 and 2 of Part IV of his motion (dismissal of the Privacy Commissioner's motion for leave to intervene or striking of Ms.