

**FEDERAL COURT OF APPEAL**

BETWEEN:

**DR. GÁBOR LUKÁCS**

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and  
BRITISH AIRWAYS PLC**

Respondents

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**APPELLANT / RESPONDING PARTY  
MOTION RECORD  
(Agency's motion for an extension)**

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Dated: October 17, 2014

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**WRITTEN REPRESENTATIONS OF THE APPELLANT****PART I – STATEMENT OF FACTS**

1. The within appeal raises no issue of jurisdiction, but calls upon the Honourable Court to decide two questions of law.

- (a) Did the Agency err in law and render an unreasonable decision by imposing on British Airways a denied boarding compensation policy that is silent about flights departing from abroad to Canada?
- (b) Did the Agency deny Lukács procedural fairness by ordering him to delete the vast majority of his reply to British Airways' response to the Show Cause Decision?

The first of the two questions is intimately related to the obligations imposed by subsection 122(c)(iii) of the *Air Transportation Regulations*.

**Notice of Appeal**  
**Appellant's Memorandum**  
**of Fact and Law, paras. 24-26**

**Agency's Motion Rec'd, p. 17**  
**Agency's Motion Rec'd, p. 41**

**PART II – STATEMENT OF THE POINTS IN ISSUE**

2. The questions to be decided on this motion are:
  - (i) Is it appropriate for the Agency to file a Memorandum of Fact and Law in the present appeal?
  - (ii) If so, would granting the Agency an extension to serve and file its Memorandum of Fact and Law serve a legitimate purpose?
  - (iii) If so, should this Honourable Court exercise its discretion and grant the Agency the sought extension?
  
3. The Appellant submits that all three questions should be answered in the negative.

### PART III – STATEMENT OF SUBMISSIONS

#### A. IT IS INAPPROPRIATE FOR THE AGENCY TO FILE A MEMORANDUM IN THE PRESENT APPEAL

4. Notwithstanding the standing that an administrative tribunal may have at an appeal from its own decision, the permitted scope of its submissions on such an appeal is very limited, because of the need to maintain the appearance of impartiality of the tribunal and the finality of the tribunal's decision.

5. The Appellant agrees with the Agency that *Air Canada v. Canada (Canadian Transportation Agency)* governs the permitted scope of the Memorandum of Fact and Law of an administrative tribunal in relation to an appeal from the tribunal's own decision. This Honourable Court held that:

[11] [...] If the reasonableness of a decision is a function of its transparency and intelligibility, in other words, of the quality of the reasons given to support it, then it seems to me that a decision which can only be supported by facts or arguments which are not found in the reasons themselves is unreasonable. To hold otherwise is to give a tribunal an opportunity to file supplementary reasons in the guise of a Memorandum of Fact and Law every time one of its decisions is challenged. [...]

[13] [...] Given that the Agency has admitted that the appeal raises no issue of jurisdiction, properly speaking, no useful purpose will be served by allowing to file a further Memorandum.

***Air Canada v. Canada (Canadian Transportation Agency)*, 2008 FCA 168, paras. 11, 13**

**Agency's Motion Record, pp. 70-71**

6. The Agency does not argue that the appeal raises a question of jurisdiction, and indeed, it is apparent on the face of the record that it does not.

7. Therefore, it is inappropriate for the Agency to file a Memorandum of Fact and Law in the present appeal.

**B. THE EXTENSION WOULD SERVE NO LEGITIMATE PURPOSE**

8. In an appeal with multiple respondents, each respondent may respond to the appellant's submissions, but respondents are not entitled to reply to each others' submissions, which is what the Agency seems to intend to do.

9. The Agency's desire to "have the benefit of reviewing the Memoranda of Fact and Law of both parties" (emphasis added) before filing its own Memorandum of Fact and Law demonstrates that the Agency fails to recognize that it is a respondent in the present appeal, and not an umpire.

**Written Representations, para. 14**

**Agency's Motion Rec'd, p. 59**

10. The submissions of a tribunal in relation to an appeal from its own decision must exclude not only those arguments that were made by the other respondents, but also those that could have been made by them.

***Air Canada v. Canada (Canadian Transportation Agency)*, 2008 FCA 168, para. 9**

**Agency's Motion Record, p. 70**

11. Thus, even if it had been appropriate for the Agency to file a Memorandum of Fact and Law in the present appeal (which is disputed by the Appellant), it could not contain any arguments that could be made by British Airways. Determining whether an argument could be made by British Airways does not require knowing the content of British Airways' Memorandum of Fact and Law.

12. Therefore, granting the Agency the sought extension serves no legitimate purpose, and the Agency should have been able to decide whether to file a Memorandum of Fact and Law and its proper scope by reviewing the Notice of Appeal and the Appellant's Memorandum of Fact and Law, bearing in mind the above-noted principles.

**C. THE AGENCY SHOULD NOT BE GRANTED AN EXTENSION**

13. The Agency's reasons for seeking an extension are generic in the sense that they make no reference to any circumstance that is specific to the present appeal. The same arguments could be made with respect to any appeal from a decision of the Agency, or any other administrative tribunal.

14. Thus, the Agency is effectively asking the Honourable Court to amend its rules governing the conduct of statutory appeals from the Agency's decisions. The Appellant submits that the appropriate forum for putting forward such a request is the Rules Committee, established pursuant to section 45.1 of the *Federal Courts Act*, and not by way of a motion for an extension, which involves a case-by-case consideration.

15. There is nothing special in the present appeal that would distinguish it from any other appeal from the Agency's decisions, and which would explain the Agency's delay in preparing its Memorandum of Fact and Law.

16. Furthermore, subsection 41(3) of the *Canada Transportation Act*, requiring appeals from decisions of the Agency to be heard "as quickly as practicable," strongly militates against granting the sought extension based on boilerplate arguments, which do not disclose any special circumstance specific to the present appeal.

***Canada Transportation Act, s. 41(3)***

**Tab 3: 12**

17. Therefore, it is submitted that the Agency's motion should be dismissed.



**D. COSTS**

18. Rule 410(2) of the *Federal Courts Rules* provides that, subject to the Court's discretion, the costs of a motion for an extension of time shall be borne by the party bringing the motion.

***Federal Courts Rules, Rule 410(2)***

**Tab 2: 10**

19. The Appellant submits that there are no special circumstances in the present case that would warrant departing from the principle established by Rule 410(2). Thus, the Agency ought to be required to pay the Appellant the costs of the present motion.

20. It is further submitted that because of the dilatory nature of the present motion, the Agency ought to be required to pay costs forthwith and in any event of the cause.

**PART IV – ORDER SOUGHT**

21. The Appellant, Dr. Gábor Lukács, is seeking an Order:
- (a) dismissing the Agency's motion for an extension of time for the service and filing of its Memorandum of Fact and Law;
  - (b) directing the Agency to pay Dr. Lukács the costs of the present motion forthwith and in any event of the cause; and
  - (c) granting such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 17, 2014

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**DR. GÁBOR LUKÁCS**

Halifax, NS

*lukacs@AirPassengerRights.ca*

**Appellant**

## PART V – LIST OF AUTHORITIES

### CASES

*Air Canada v. Canada (Canadian Transportation Agency)*,  
2008 FCA 168

### STATUTES AND REGULATIONS

*Federal Courts Rules*, S.O.R./98-106  
Rule 410(2)

*Canada Transportation Act*, S.C. 1996, c. 10,  
s. 41



CANADA

CONSOLIDATION

CODIFICATION

# Federal Courts Rules

# Règles des Cours fédérales

SOR/98-106

DORS/98-106

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	<p>assessment by filing a bill of costs, a copy of the order or other document giving rise to the party's entitlement to costs and any reasons, including dissenting reasons, given in respect of that order.</p>	<p>pour la taxation en déposant un mémoire de dépens et une copie de l'ordonnance — ainsi que les motifs, le cas échéant, y compris toute dissidence — ou autre document lui donnant droit aux dépens.</p>	
Notice of appointment	<p>(2) A notice of appointment for assessment and the bill of costs to be assessed shall be served on every other interested party at least 10 days before the date fixed for the assessment.</p> <p>SOR/2006-219, s. 15.</p>	<p>(2) L'avis de convocation et le mémoire de dépens sont signifiés à toute autre partie intéressée au moins 10 jours avant la date prévue pour la taxation.</p> <p>DORS/2006-219, art. 15.</p>	Avis de convocation
Assessment according to Tariff B	<p><b>407.</b> Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.</p>	<p><b>407.</b> Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.</p>	Tarif B
Directions	<p><b>408.</b> (1) An assessment officer may direct the production of books and documents and give directions for the conduct of an assessment.</p>	<p><b>408.</b> (1) L'officier taxateur peut ordonner la production de registres et documents et donner des directives sur le déroulement de la taxation.</p>	Directives
Set-off of costs	<p>(2) Where parties are liable to pay costs to each other, an assessment officer may adjust those costs by way of set-off.</p>	<p>(2) Lorsque des parties sont tenues de payer des dépens les unes aux autres, l'officier taxateur peut en faire le rajustement par compensation.</p>	Compensation
Costs of assessment	<p>(3) An assessment officer may assess and allow, or refuse to allow, the costs of an assessment to either party.</p>	<p>(3) L'officier taxateur peut taxer et accorder ou refuser d'accorder les dépens de la taxation à l'une ou l'autre partie.</p>	Taxation des dépens
Factors in assessing costs	<p><b>409.</b> In assessing costs, an assessment officer may consider the factors referred to in subsection 400(3).</p>	<p><b>409.</b> L'officier taxateur peut tenir compte des facteurs visés au paragraphe 400(3) lors de la taxation des dépens.</p>	Facteurs à prendre en compte
Costs of amendment	<p><b>410.</b> (1) Unless the Court orders otherwise, the costs occasioned by an amendment to a pleading made without leave shall be borne by the party making the amendment.</p>	<p><b>410.</b> (1) Sauf ordonnance contraire de la Cour, les dépens afférents à la modification d'un acte de procédure faite par une partie sans autorisation sont à la charge de la partie.</p>	Dépens afférents aux modifications
Costs of motion to extend time	<p>(2) Unless the Court orders otherwise, the costs of a motion for an extension of time shall be borne by the party bringing the motion.</p>	<p>(2) Sauf ordonnance contraire de la Cour, les dépens afférents à une requête visant la prolongation d'un délai sont à la charge du requérant.</p>	Dépens afférents à une requête en prolongation



CANADA

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CODIFICATION

# Canada Transportation Act

# Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

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Appeal from Agency	<p><b>41.</b> (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.</p>	<p><b>41.</b> (1) Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.</p>	Appel
Time for making appeal	<p>(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.</p>	<p>(2) Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.</p>	Délai
Powers of Court	<p>(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.</p>	<p>(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.</p>	Pouvoirs de la cour
Agency may be heard	<p>(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.</p>	<p>(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.</p>	Plaidoirie de l'Office
<i>Report of Agency</i>		<i>Rapport de l'Office</i>	
Agency's report	<p><b>42.</b> (1) Each year the Agency shall, before the end of July, make a report on its activities for the preceding year and submit it, through the Minister, to the Governor in Council describing briefly, in respect of that year,</p> <p>(a) applications to the Agency and the findings on them; and</p> <p>(b) the findings of the Agency in regard to any matter or thing respecting which the Agency has acted on the request of the Minister.</p>	<p><b>42.</b> (1) Chaque année, avant la fin du mois de juillet, l'Office présente au gouverneur en conseil, par l'intermédiaire du ministre, un rapport de ses activités de l'année précédente résumant :</p> <p>a) les demandes qui lui ont été présentées et ses conclusions à leur égard;</p> <p>b) ses conclusions concernant les questions ou les objets à l'égard desquels il a agi à la demande du ministre.</p>	Rapport de l'Office
Assessment of Act	<p>(2) The Agency shall include in every report referred to in subsection (1) the Agency's assessment of the operation of this Act and any difficulties observed in the administration of this Act.</p>	<p>(2) L'Office joint à ce rapport son évaluation de l'effet de la présente loi et des difficultés rencontrées dans l'application de celle-ci.</p>	Évaluation de la loi
Tabling of report	<p>(3) The Minister shall have a copy of each report made under this section laid before each House of Parliament on any of the first thirty</p>	<p>(3) Dans les trente jours de séance de chaque chambre du Parlement suivant la réception du rapport par le ministre, celui-ci le fait déposer devant elle.</p>	Dépôt

1996, ch. 10, art. 42; 2013, ch. 31, art. 2.