

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

(Application under section 28 of the *Federal Courts Act*, R.S.C. 1985, c. F-7)

**APPLICANT / MOVING PARTY
MOTION RECORD
(Motion for an extension to file response – on consent)**

Dated: August 8, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Applicant

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Odette Lalumière

Tel: 819-994-2226
Fax: 819-953-9269

**Solicitor for the Respondent,
Canadian Transportation Agency**

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Court File No.: A-218-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF MOTION

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

THE MOTION IS FOR:

1. An Order pursuant to Rule 8, extending the Applicant's deadline to September 30, 2014 to file his response to the Respondent's motion to quash the application for judicial review; and
2. Such further and other relief or directions as the Moving Party may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On August 3, 2014, the Applicant received the Respondent's motion record to quash the application for judicial review.
2. The Respondent's motion is supported by the affidavit of Ms. Patrice Bellerose, dated July 29, 2014.
3. The extension is sought to allow the Applicant to cross-examine Ms. Bellerose on her affidavit in support of the motion, because:
 - (a) Ms. Bellerose is currently unavailable for cross-examination, and her availabilities will not be known until after August 18, 2014; and
 - (b) preparation of transcripts of the cross-examination will take up to 10 business days.
4. The Agency consents to extending the Applicant's deadline to September 30, 2014 to file his response to the Agency's motion.

Statutes and regulations relied on

5. Rules 8 and 369 of the *Federal Court Rules*, S.O.R./98-106.
6. Such further and other grounds as the Moving Party may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used for the motion:

1. Affidavit of Dr. Gábor Lukács, affirmed on August 8, 2014.
2. Such further and additional materials as the Moving Party may advise and this Honourable Court may allow.

August 8, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Moving Party

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Odette Lalumière

Tel: 819-994-2226

Fax: 819-953-9269

**Solicitor for the Respondent,
Canadian Transportation Agency**

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

**AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: August 8, 2014)**

I, Dr. Gábor Lukács, of the City of Halifax in the Regional Municipality of Halifax, in the Province of Nova Scotia, AFFIRM THAT:

1. On April 22, 2014, I filed an application for judicial review with the Federal Court of Appeal in respect to:
 - (a) the practices of the Canadian Transportation Agency (“Agency”) related to the rights of the public, pursuant to the open court principle, to view information provided in the course of adjudicative proceedings; and
 - (b) the refusal of the Agency to allow me to view unredacted documents in adjudicative File No. M4120-3/13-05726 of the Agency, even though no confidentiality order had been sought or made in that file.

A copy of the Notice of Application is attached and marked as Exhibit “A”.

2. On April 28, 2014, the Agency acknowledged the receipt of my affidavit in support of the application.
3. On or around May 26, 2014, the Agency served me with its affidavit in opposition to the application, sworn by Ms. Patrice Bellerose (the “First Bellerose Affidavit”).
4. On June 24, 2014, I sought directions from the Federal Court of Appeal with respect to revision of the schedule for filing facta and the appropriate procedure to object to the First Bellerose Affidavit based on Rule 81(1). A copy of my request for directions, dated June 24, 2014, is attached and marked as Exhibit “B”.
5. To date, I have received no directions from the Federal Court of Appeal in response to my request.
6. On August 3, 2014, I received an electronic copy of the Respondent’s motion record to quash the application. The motion record contained a supporting affidavit sworn by Ms. Patrice Bellerose on July 29, 2014 (the “Second Bellerose Affidavit”).
7. On August 4, 2014, in response to my request of August 3, 2014 to cross-examine Ms. Bellerose on the Second Bellerose Affidavit, I was advised by Ms. Odette Lalumière, counsel for the Respondent, that

Patrice Bellerose is away from the office and back on August 18, 2014. I will confirm her availabilities when she returns and get back to you with dates.

A copy of Ms. Lalumière’s email is attached and marked as Exhibit “C”.

8. On August 5, 2014, I spoke to Ms. Emily Cavanagh, Manager at Gillespie Reporting Services in Ottawa. Ms. Cavanagh informed me and I do verily believe that it will take up to 10 business days to prepare transcripts of an examination.

9. On August 5, 2014, I sought and obtained the Respondent's consent for the present motion for an extension until September 30, 2014 of my deadline to file my response to the motion to quash the application. A copy of the consent is attached and marked as Exhibit "D".

AFFIRMED before me at the City of Halifax
in the Regional Municipality of Halifax
on August 8, 2014.

Dr. Gábor Lukács

Halifax, NS

lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on August 8, 2014

Signature

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court of Appeal in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date: April 22, 2014

Issued by: _____

Address of

local office: Federal Court of Appeal
1801 Hollis Street
Halifax, Nova Scotia

TO: **CANADIAN TRANSPORTATION AGENCY**

15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

APPLICATION

This is an application for judicial review in respect of:

- (a) the practices of the Canadian Transportation Agency (“Agency”) related to the rights of the public, pursuant to the open-court principle, to view information provided in the course of adjudicative proceedings; and
- (b) the refusal of the Agency to allow the Applicant to view unredacted documents in File No. M4120-3/13-05726 of the Agency, even though no confidentiality order has been sought or made in that file.

The Applicant makes application for:

- 1. a declaration that adjudicative proceedings before the Canadian Transportation Agency are subject to the constitutionally protected open-court principle;
- 2. a declaration that all information, including but not limited to documents and submissions, provided to the Canadian Transportation Agency in the course of adjudicative proceedings are part of the public record in their entirety, unless confidentiality was sought and granted in accordance with the Agency’s *General Rules*;
- 3. a declaration that members of the public are entitled to view all information, including but not limited to documents and submissions, provided to the Canadian Transportation Agency in the course of adjudicative proceedings, unless confidentiality was sought and granted in accordance with the Agency’s *General Rules*;
- 4. a declaration that information provided to the Canadian Transportation Agency in the course of adjudicative proceedings fall within the exceptions of subsections 69(2) and/or 8(2)(a) and/or 8(2)(b) and/or 8(2)(m) of the *Privacy Act*, R.S.C. 1985, c. P-21;

5. in the alternative, a declaration that provisions of the *Privacy Act*, R.S.C. 1985, c. P-21 are inapplicable with respect to information, including but not limited to documents and submissions, provided to the Canadian Transportation Agency in the course of adjudicative proceedings to the extent that these provisions limit the rights of the public to view such information pursuant to subsection 2(b) of the *Canadian Charter of Rights and Freedoms*;
6. a declaration that the power to determine questions related to confidentiality of information provided in the course of adjudicative proceedings before the Canadian Transportation Agency is reserved to Members of the Agency, and cannot be delegated to Agency Staff;
7. an order of *a mandamus*, directing the Canadian Transportation Agency to provide the Applicant with unredacted copies of the documents in File No. M4120-3/13-05726, or otherwise allow the Applicant and/or others on his behalf to view unredacted copies of these documents;
8. costs and/or reasonable out-of-pocket expenses of this application;
9. such further and other relief or directions as the Applicant may request and this Honourable Court deems just.

The grounds for the application are as follows:

1. The Canadian Transportation Agency (“Agency”), established by the *Canada Transportation Act*, S.C. 1996, c. 10 (“CTA”), has a broad mandate in respect of all transportation matters under the legislative authority of Parliament. The Agency performs two key functions:
 - (a) as a quasi-judicial tribunal, the Agency resolves commercial and consumer transportation-related disputes; and
 - (b) as an economic regulator, the Agency makes determinations and issues licenses and permits to carriers which function within the ambit of Parliament’s authority.

2. The present application challenges the failure of the Agency to comply, in practice, with the open-court principle and/or its own *General Rules* and/or Privacy Statement with respect to the open-court principle in the context of the right of the public to view information, including but not limited to documents and submissions, provided to the Agency in the course of adjudicative proceedings.

A. The Agency's *General Rules*

3. The *Canadian Transportation Agency General Rules*, S.O.R./2005-35, contain detailed provisions implementing the open-court principle, and provide for procedures for claiming confidentiality:

23. (1) The Agency shall place on its public record any document filed with it in respect of any proceeding unless the person filing the document makes a claim for its confidentiality in accordance with this section.

23. (5) A person making a claim for confidentiality shall indicate

- (a) the reasons for the claim, including, if any specific direct harm is asserted, the nature and extent of the harm that would likely result to the person making the claim for confidentiality if the document were disclosed; and
- (b) whether the person objects to having a version of the document from which the confidential information has been removed placed on the public record and, if so, shall state the reasons for objecting.

23. (6) A claim for confidentiality shall be placed on the public record and a copy shall be provided, on request, to any person.

24. (2) The Agency shall place a document in respect of which a claim for confidentiality has been made on the public record if the document is relevant to the proceeding and no specific direct harm would likely result from its disclosure or any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed.

24. (4) If the Agency determines that a document in respect of which a claim for confidentiality has been made is relevant to a proceeding and the specific direct harm likely to result from its disclosure justifies a claim for confidentiality, the Agency may

- (a) order that the document not be placed on the public record but that it be maintained in confidence;
- (b) order that a version or a part of the document from which the confidential information has been removed be placed on the public record;
- (c) order that the document be disclosed at a hearing to be conducted in private;
- (d) order that the document or any part of it be provided to the parties to the proceeding, or only to their solicitors, and that the document not be placed on the public record; or
- (e) make any other order that it considers appropriate.

B. The Agency's *Privacy Statement*

4. The Agency's *Privacy Statement* states, among other things, that:

Open Court Principle

As a quasi-judicial tribunal operating like a court, the Canadian Transportation Agency is bound by the constitutionally protected open-court principle. This principle guarantees the public's right to know how justice is administered and to have access to decisions rendered by administrative tribunals.

Pursuant to the General Rules, all information filed with the Agency becomes part of the public record and may be made available for public viewing.

5. A copy of the Agency's *Privacy Statement* is provided to parties at the commencement of adjudicative proceedings.

C. The Agency's practice

6. On February 14, 2014, the Applicant learned about Decision No. 55-C-A-2014 that the Agency made in File No. M4120-3/13-05726.
7. On February 14, 2014, the Applicant sent an email to the Agency with the subject line "Request to view file no. M4120-3/13-05726 pursuant to s. 2(b) of the Charter" and the email stated:

I would like to view the public documents in file no. M4120-3/13-05726.

Due the public interest in the case, in which a final decision has been released today, the present request is urgent.
8. On February 17, 2014, the Applicant wrote to the Agency to follow up on his request.
9. On February 17, 2014, Ms. Odette Lalumiere, Senior Counsel of the Agency, advised the Applicant that "Your request is being processed by Ms Bellerose's group."
10. On February 21 2014, the Applicant wrote to the Agency to follow up again on his request.
11. On February 24, 2014, Ms. Lalumiere wrote to the Applicant again that "your request is being processed by Ms. Bellerose's group." Ms. Patrice Bellerose is the "Information Services, Shared Services Projects & ATIP Coordinator" of the Agency.
12. On March 19, 2014, after multiple email exchanges, Ms. Bellerose sent an email to the Applicant stating:

Please find attached copies of records in response to your "request to view file 4120-3/13-05726".

The email had as an attachment a PDF file called "AI-2013-00081.PDF" that consisted of 121 numbered pages, and pages 1, 27-39, 41, 45, 53-56, 62-64, 66, 68-77, 81-87, 89, 90-113, and 115 were partially redacted ("Redacted File").

13. The Redacted File contained no claim for confidentiality as stipulated by section 23 of the Agency's *General Rules*, nor any decision by the Agency directing that certain documents or portions thereof be treated as confidential.
14. Information that was redacted from the Redacted File included, among other things:
 - (a) name and/or work email address of counsel acting for Air Canada in the proceeding (e.g., pages 1, 27, 28, 36, 37, 45, 72, 75);
 - (b) names of Air Canada employees involved (e.g., pages 29, 31, 62, 64, 84, 87, 90, 92); and
 - (c) substantial portions of submissions and evidence (e.g., pages 41, 54-56, 63, 68-70, 85, 94, 96, 100-112).
15. On March 24, 2014, the Applicant made a written demand to the Agency to be provided with unredacted copies of all documents in File No. M4120-3/13-05726 with respect to which no confidentiality order was made by a Member of the Agency.
16. On March 26, 2014, Mr. Geoffrey C. Hare, hair and Chief Executive Officer of the Agency, wrote to the Applicant, among other things, that:

The Canadian Transportation Agency (Agency) is a government institution which was included in the schedule to the *Privacy Act* (Act) in 1982. [...]

[...] Section 8 of the Act is clear that, except for specific exceptions found in that section, personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by that institution. [...]

Although Agency case files are available to the public for consultation in accordance with the open court principle, personal information contained in the files such as an individual's home address, personal email address, personal phone number, date of birth, financial details, social in-

urance number, driver's license number, or credit card or passport details, is not available for consultation.

The file you requested has such sensitive personal information and it has therefore been removed by the Agency as it required under the Act.

17. Even if the aforementioned interpretation of the *Privacy Act* were correct, which is explicitly denied, it does not explain the sweeping redactions in the Redacted File, which go beyond the types of information mentioned in Mr. Hare's letter.

D. The open-court principle

18. Long before the *Charter*, the doctrine of open court had been well established at common law. In *Scott v. Scott*, [1913] A.C. 419 (H.L.), Lord Shaw held that "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial." On the same theme, Justice Brandeis of the American Supreme Court has famously remarked that "Sunlight is the best disinfectant."
19. Openness of proceedings is the rule, and covertness is the exception; sensibilities of the individuals involved are no basis for exclusion of the public from judicial proceedings (*A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 SCR 175, at p. 185). The open court principle has been described as a "hallmark of a democratic society" and is inextricably tied to freedom of expression guaranteed by s. 2(b) of the *Charter* (*CBC v. New Brunswick (Attorney General)*, [1996] 3 SCR 480, paras. 22-23).
20. Since the adoption of the *Charter*, it is true that the open door doctrine has been applied to certain administrative tribunals. While the bulk of precedents have been in the context of court proceedings, there has been an extension in the application of the doctrine to those proceedings where tribunals exercise quasi-judicial functions, which is to say that, by statute, they have the jurisdiction to determine the rights and duties of the parties before them.

21. The open court principle also applies to quasi-judicial proceedings before tribunals (*Germain v. Automobile Injury Appeal Commission*, 2009 SKQB 106, para. 104).
22. Adjudicative proceedings before the Agency are quasi-judicial proceedings, because the *Canada Transportation Act* confers upon the Agency the jurisdiction to determine the rights and duties of the parties. Thus, the open-court principle applies to such proceedings before the Agency.
23. The Agency itself has recognized that it is bound by the open-court principle (*Tanenbaum v. Air Canada*, Decision No. 219-A-2009). Sections 23-24 of the Agency's *General Rules* reflect this principle: documents provided to the Agency are public, unless the person filing leads evidence and arguments that meet the test for granting a confidentiality order. Such determinations are made in accordance with the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
24. Thus, the open-court principle dictates that all documents in an adjudicative file of the Agency must be made available for public viewing, unless the Agency made a decision during the proceeding that certain documents or portions thereof be treated confidentially. Public viewing of documents is particularly important in files that have been heard in writing, without an oral hearing.

E. The *Privacy Act* does not trump the open-court principle

25. There can be many privacy-related considerations to granting a confidentiality order, such as protection of the innocent or protection of a vulnerable party to ensure access to justice (*A.B. v. Bragg Communications Inc.*, 2012 SCC 46); however, privacy of the parties in and on its own does not trump the open-court principle (*A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 SCR 175, at p. 185).
26. The *Privacy Act* cannot override the constitutional principles that are interwoven into the open court principle (*El-Helou v. Courts Administration Service*, 2012 CanLII 30713 (CA PSDPT), paras. 67-80).

27. Due to the open court principle as well as section 23(1) of the Agency's *General Rules*, personal information that the Agency received as part of its quasi-judicial functions, is publicly available.
28. Under subsection 69(2) of the *Privacy Act*, sections 7 and 8 do not apply to personal information that is publicly available. Therefore, personal information that is properly before the Agency in its quasi-judicial functions is not subject to the restrictions of the *Privacy Act*.
29. In the alternative, if section 8 of the *Privacy Act* does apply, then personal information that was provided to the Agency in the course of an adjudicative proceeding may be disclosed pursuant to the exceptions set out in subsections 8(2)(a) and/or 8(2)(b) and/or 8(2)(m) of the *Privacy Act* (*El-Helou v. Courts Administration Service*, 2012 CanLII 30713 (CA PSDPT), paras. 67-80).
30. In the alternative, if the *Privacy Act* does purport to limit the rights of the public to view information provided to the Agency in the course of adjudicative proceedings, then such limitation is inconsistent with subsection 2(b) of the *Canadian Charter of Right and Freedoms*, and it ought to be read down so as not to be applicable to such information.

F. Authority to determine what to redact

31. According to section 7(2) of the *CTA*, the Agency consists of permanent and temporary Members appointed in accordance with the *CTA*. Only these Members may exercise the quasi-judicial powers of the Agency, and the *Act* contains no provisions that would allow delegation of these powers.
32. Determination of confidentiality of documents provided in the course of an adjudicative proceeding before the Agency, including which portions ought to be redacted, falls squarely within the Agency's quasi-judicial functions. Consequently, these powers can only be exercised by Members of the Agency, and cannot be delegated to Agency Staff, as happened with the Applicant's request in the present case.

G. Statutory provisions

33. The Applicant will also rely on the following statutory provisions:
- (a) *Canadian Charter of Rights and Freedoms*, and in particular, sub-section 2(b) and section 24(1);
 - (b) *Canada Transportation Act*, S.C. 1996, c. 10;
 - (c) *Canadian Transportation Agency General Rules*, S.O.R./2005-35, and in particular, sections 23 and 24;
 - (d) *Federal Courts Act*, R.S.C. 1985, c. F-7, and in particular, sections 18.1 and 28; and
 - (e) *Federal Court Rules*, S.O.R./98-106, and in particular, Rule 300.
34. Such further and other grounds as the Applicant may advise and this Honourable Court permits.

This application will be supported by the following material:

- 1. Affidavit of Dr. Gábor Lukács, to be served.
- 2. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

April 22, 2014

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on August 8, 2014

Signature

Halifax, NS
lukacs@AirPassengerRights.ca



June 24, 2014

VIA EMAIL

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

Dear Madam or Sir:

**Re: Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-218-14
Request for directions**

I am the Applicant in the above-noted application for judicial review. I am writing to ask for directions and guidance from the Honourable Court in relation to two matters.

I. Revision of schedule for filing of facta (on consent)

I am currently on a family visit in Europe, and I will be travelling for personal and professional purposes throughout July 2014. These circumstances significantly inhibit my ability to file hard copies of my application record by the deadline set out in Rule 309 of the *Federal Court Rules*. (Indeed, it is my understanding that E-Filing of documents is available in the Federal Court, but not in the Federal Court of Appeal.)

I have conferred with Ms. Lalumière, counsel for the Canadian Transportation Agency, and we have agreed on the following proposed schedule for filing facta:

- Applicant's factum: August 15, 2014
- Respondent's factum: September 15, 2014

I respectfully request that the Honourable Court approve this schedule.

II. Appropriate time and procedure for objections based on Rule 81(1)

I would also like to seek the guidance of the Honourable Court as to the appropriate time and procedure to object to the contents of the affidavit served upon me by the Canadian Transportation Agency pursuant to Rule 307. The affidavit in question appears to contain paragraphs that do not conform to Rule 81(1) of the *Federal Court Rules*.

I found two different practices for dealing with such objections, but I am uncertain as to the principles that govern which of these two a party is expected to follow:

- (a) bringing a motion to strike an affidavit or portions thereof (*Ray v. Canada*, 2003 FCA 317 and *Canadian Tire Corporation v. Canadian Bicycle Manufacturers Association*, 2006 FCA 56);
- (b) raising the admissibility of the affidavit or portions thereof as a preliminary issue in the factum and at the hearing of the application (*Caba v. Canada (Attorney General)*, 2012 FC 1017 and *Kassab v. Bell Canada*, 2008 FC 1181).

While option (b) appears to be more efficient to conserve valuable judicial resources, I am concerned that I may be mistaken due to my inexperience and lack of formal legal training.

Therefore, I am asking for the guidance of the Honourable Court as to which of these two procedures I am to follow.

Sincerely yours,

Dr. Gábor Lukács

Cc: Ms. Odette Lalumière, counsel for the Canadian Transportation Agency

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on August 8, 2014

Signature

From Odette.Lalumiere@otc-cta.gc.ca Mon Aug 4 09:26:57 2014
 Date: Mon, 4 Aug 2014 12:26:48 +0000
 From: Odette Lalumiere <Odette.Lalumiere@otc-cta.gc.ca>
 To: Gabor Lukacs <lukacs@airpassengerrights.ca>
 Cc: Wendy Liston <Wendy.Liston@otc-cta.gc.ca>, Karen Kipper <kipper@airpassengerrights.ca>, Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>
 Subject: RE: Availabilities of Ms. Bellerose for cross-examination [Re: A-218-14 - Gabor Lukacs v. CTA]

[The following text is in the "iso-8859-1" character set.]
 [Your display is set for the "ISO-8859-2" character set.]
 [Some special characters may be displayed incorrectly.]

Good morning Mr. Lukacs
 Patrice Bellerose is away from the office and back on August 18, 2014. I will confirm her availabilities when she returns and get back to you with dates.

Odette Lalumiere
 Avocate principale/ Senior Counsel
 Office des transports du Canada/ Canadian Transportation Agency
 819 994-2226
 odette.lalumiere@otc-cta.gc.ca

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
 Sent: August-03-14 1:22 PM
 To: Odette Lalumiere; Alexei Baturin
 Cc: Wendy Liston; Karen Kipper
 Subject: Availabilities of Ms. Bellerose for cross-examination [Re: A-218-14 - Gabor Lukacs v. CTA]

Dear Ms. Lalumiere and Mr. Baturin,

I confirm the receipt of your message and the attached PDF file of the Agency's Motion Record.

I understand that the Agency's motion is supported by the affidavit of Ms. Bellerose.

Kindly please advise me about the availabilities of Mr. Bellerose for cross-examination on her affidavit.

Best wishes,
 Dr. Gabor Lukacs

On Fri, 1 Aug 2014, Alexei Baturin wrote:

>
 > Good Morning,
 >
 >
 >
 > Pursuant to Rule 369 of the Federal Courts Rules attached hereto is
 > the Motion Record of the Canadian Transportation Agency in the
 > above-noted matter.
 >
 >
 >
 > As usual, a bound hard copy of the Motion Record will be sent to you
 > by courier.
 >

>
>
>
>
> Sincerely,
>
>
>
> Alexei Baturin
>
> Paralegal
>
> Legal Services Branch
>
> Canadian Transportation Agency
>
> 819-953-3075
>
>
>

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on August 8, 2014

Signature

Court File No.: A-218-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant


– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

CONSENT TO MOTION PURSUANT TO RULES 8 AND 369

Further to the Applicant's motion pursuant to Rules 8 and 369 of the *Federal Court Rules*, the Respondent consents to the extension of the Applicant's deadline to September 30, 2014 to file his response to the Agency's motion to quash the application for judicial review.

August 5, 2014
ODETTE LALUMIÈRE
Counsel for the Respondent,
Canadian Transportation Agency

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

WRITTEN REPRESENTATIONS OF THE APPLICANT**PART I – STATEMENT OF FACTS****A. OVERVIEW**

1. The Respondent brought a motion to quash the Applicant's application for judicial review. The Respondent's motion is supported by an affidavit of an affiant who is currently unavailable for cross-examination.

2. The Applicant is seeking an extension until September 30, 2014 to file his response to the motion to quash the application. The extension is necessary to allow the Applicant to cross-examine the Respondent's affiant.

3. The Respondent consents to the Applicant's motion for an extension.

Lukács Affidavit, Ex. "D"**[Tab 2D, P26]**

B. PROCEDURAL HISTORY**(i) The application for judicial review (main proceeding)**

4. The present proceeding is an application for judicial review to enforce the rights of the Applicant and the public in general, pursuant to the open court principle enshrined in subsection 2(b) of the *Charter*, to view documents, including submissions and evidence, that were provided to the Canadian Transportation Agency (the “Agency”) in the course of adjudicative proceedings heard by the Agency. The Applicant’s position is that unless confidentiality was sought and granted in accordance with the Agency’s rules of procedure, documents in the Agency’s adjudicative files are part of the public record in their entirety, and the public is entitled to view them.

Lukács Affidavit, Ex. “A”

[Tab 2A, P10]

5. On or around May 26, 2014, the Respondent served an affidavit sworn by Ms. Patrice Bellerose (the “First Bellerose Affidavit”) on the Applicant.

Lukács Affidavit, para. 3

[Tab 2, P4]

6. On June 24, 2014, the Applicant sought directions from this Honourable Court with respect to revision of the schedule for filing facta and the appropriate procedure to object to the First Bellerose Affidavit based on Rule 81(1) of the *Federal Court Rules*.

Lukács Affidavit, Ex. “B”

[Tab 2B, P20]

7. To date, the Applicant has received no directions from the Honourable Court in response to his request.

Lukács Affidavit, para. 5

[Tab 2, P4]

(ii) **The Agency's motion to quash the application**

8. On August 3, 2014, the Applicant received an electronic copy of the Respondent's motion record to quash the application for judicial review. The Respondent's motion is supported by an affidavit sworn by Ms. Patrice Bellerose on July 29, 2014 (the "Second Bellerose Affidavit").

Lukács Affidavit, para. 6

[Tab 2, P4]

9. On August 3, 2014, upon receipt of the Respondent's motion record, the Applicant contacted counsel for the Respondent to inquire about the availabilities of Ms. Bellerose for cross-examination on the Second Bellerose Affidavit.

Lukács Affidavit, Ex. "C"

[Tab 2C, P23]

10. On August 4, 2014, counsel for the Respondent advised the Applicant that Ms. Bellerose was away from her office and would be back only on August 18, 2014, at which point counsel would be able to advise about her availabilities.

Lukács Affidavit, Ex. "C"

[Tab 2C, P23]

11. On August 5, 2014, the Applicant was advised by Gillespie Reporting Services in Ottawa that it will take up to 10 business days to prepare transcripts of an examination.

Lukács Affidavit, para. 8

[Tab 2, P4]

12. On August 5, 2014, the Applicant sought and obtained the Respondent's consent for the present motion for an extension until September 30, 2014 of the Applicant's deadline to file his response to the motion to quash the application.

Lukács Affidavit, Ex. "D"

[Tab 2D, P26]

PART II – STATEMENT OF THE POINTS IN ISSUE

13. The question to be decided is whether this Honourable Court should grant the Applicant an extension until September 30, 2014 to file his response to the Respondent's motion to quash the application.

PART III – STATEMENT OF SUBMISSIONS

14. The Applicant is seeking an extension to file his response to the motion to quash the application in order to exercise his right to cross-examine Ms. Bellerose on the Second Bellerose Affidavit.

15. The Applicant acted with due diligence, and contacted counsel for the Respondent to arrange for the cross-examination of Ms. Bellerose; however, due to the absence of Ms. Bellerose, even her availabilities are unknown, and will become known only after August 18, 2014. Thus, the cross-examination of Ms. Bellerose will likely take place in late August 2014.

Lukács Affidavit, Ex. "C"

[Tab 2C, P23]

16. Consequently, transcripts of the cross-examination of Ms. Bellerose will likely be available in mid-September 2014.

Lukács Affidavit, para. 8

[Tab 2, P4]

17. Therefore, in spite of his best efforts, the Applicant is unable to obtain the transcripts of Ms. Bellerose's cross-examination and respond to the motion to quash the application within the 10 days prescribed by Rule 369(2).

Rule 369(2)

[Tab 4, P37]

18. Pursuant to Rule 8, this Honourable Court may extend a period provided by the Rules; in particular, the Court may extend the period set out in Rule 369(2).

Rule 8

[Tab 4, P36]

19. Hence, the Applicant is asking for an extension until September 30, 2014 to file his response to the motion to quash the application. The extension is necessary to allow the Applicant to cross-examine Ms. Bellerose and incorporate her examination into his responding motion record and written representations.

20. The Respondent consents to the present motion.

Lukács Affidavit, Ex. "D"

[Tab 2D, P26]

PART IV – ORDER SOUGHT

21. The Applicant, Dr. Gábor Lukács, is seeking an Order:
- (a) extending the Applicant's deadline to September 30, 2014 to file his response to the Respondent's motion to quash the application for judicial review; and
 - (b) granting such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 8, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Applicant

PART V – LIST OF AUTHORITIES**STATUTES AND REGULATIONS**

Federal Courts Rules, S.O.R./98-106,
Rules 8 and 369



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Rules

Règles des Cours fédérales

SOR/98-106

DORS/98-106

Current to December 9, 2013

À jour au 9 décembre 2013

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|--|--|--|--|
| Extension by consent | 7. (1) Subject to subsections (2) and (3), a period provided by these Rules may be extended once by filing the consent in writing of all parties. | 7. (1) Sous réserve des paragraphes (2) et (3), tout délai prévu par les présentes règles peut être prorogé une seule fois par le dépôt du consentement écrit de toutes les parties. | Délai prorogé par consentement écrit |
| Limitation | (2) An extension of a period under subsection (1) shall not exceed one half of the period sought to be extended. | (2) La prorogation selon le paragraphe (1) ne peut excéder la moitié du délai en cause. | Limite |
| Exception | (3) No extension may be made on consent of the parties in respect of a period fixed by an order of the Court or under subsection 203(1), 304(1) or 339(1). | (3) Les délais fixés par une ordonnance de la Cour et ceux prévus aux paragraphes 203(1), 304(1) et 339(1) ne peuvent être prorogés par le consentement des parties. | Exception |
| Extension or abridgement | 8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order. | 8. (1) La Cour peut, sur requête, proroger ou abrégé tout délai prévu par les présentes règles ou fixé par ordonnance. | Délai prorogé ou abrégé |
| When motion may be brought | (2) A motion for an extension of time may be brought before or after the end of the period sought to be extended. | (2) La requête visant la prorogation d'un délai peut être présentée avant ou après l'expiration du délai. | Moment de la présentation de la requête |
| Motions for extension in Court of Appeal | (3) Unless the Court directs otherwise, a motion to the Federal Court of Appeal for an extension of time shall be brought in accordance with rule 369. SOR/2004-283, s. 32. | (3) Sauf directives contraires de la Cour, la requête visant la prorogation d'un délai qui est présentée à la Cour d'appel fédérale doit l'être selon la règle 369. DORS/2004-283, art. 32. | Requête présentée à la Cour d'appel fédérale |

PART 2

PARTIE 2

ADMINISTRATION OF THE COURT

ADMINISTRATION DE LA COUR

OFFICERS OF THE COURT

FONCTIONNAIRES DE LA COUR

9. to 11. [Repealed, SOR/2004-283, s. 4]

9. à 11. [Abrogés, DORS/2004-283, art. 4]

Court registrars

12. (1) The Administrator shall arrange that there be in attendance at every sitting of the Court a duly qualified person to act as court registrar for the sitting, who shall, subject to the direction of the Court,

(a) make all arrangements necessary to conduct the sitting in an orderly, efficient and dignified manner;

Greffiers

12. (1) Sous réserve des directives de la Cour, l'administrateur veille à ce qu'une personne qualifiée pour agir à titre de greffier de la Cour soit présente à chacune des séances de la Cour; cette personne :

a) prend les dispositions nécessaires pour assurer l'ordre, la bonne marche et la dignité de la séance;

(c) subject to rule 368, the portions of any transcripts on which the respondent intends to rely;

(d) subject to rule 366, written representations; and

(e) any other filed material not contained in the moving party's motion record that is necessary for the hearing of the motion.

SOR/2009-331, s. 6; SOR/2013-18, s. 13.

c) sous réserve de la règle 368, les extraits de toute transcription dont l'intimé entend se servir et qui ne figurent pas dans le dossier de requête;

d) sous réserve de la règle 366, les prétentions écrites de l'intimé;

e) les autres documents et éléments matériels déposés qui sont nécessaires à l'audition de la requête et qui ne figurent pas dans le dossier de requête.

DORS/2009-331, art. 6; DORS/2013-18, art. 13.

Memorandum of fact and law required

366. On a motion for summary judgment or summary trial, for an interlocutory injunction, for the determination of a question of law or for the certification of a proceeding as a class proceeding, or if the Court so orders, a motion record shall contain a memorandum of fact and law instead of written representations.

SOR/2002-417, s. 22; SOR/2007-301, s. 8; SOR/2009-331, s. 7.

366. Dans le cas d'une requête en jugement sommaire ou en procès sommaire, d'une requête pour obtenir une injonction interlocutoire, d'une requête soulevant un point de droit ou d'une requête en autorisation d'une instance comme recours collectif, ou lorsque la Cour l'ordonne, le dossier de requête contient un mémoire des faits et du droit au lieu de prétentions écrites.

Mémoire requis

Documents filed as part of motion record

367. A notice of motion or any affidavit required to be filed by a party to a motion may be served and filed as part of the party's motion record and need not be served and filed separately.

367. L'avis de requête ou les affidavits qu'une partie doit déposer peuvent être signifiés et déposés à titre d'éléments de son dossier de requête ou de réponse, selon le cas. Ils n'ont pas à être signifiés et déposés séparément.

Dossier de requête

Transcripts of cross-examinations

368. Transcripts of all cross-examinations on affidavits on a motion shall be filed before the hearing of the motion.

368. Les transcriptions des contre-interrogatoires des auteurs des affidavits sont déposés avant l'audition de la requête.

Transcriptions des contre-interrogatoires

Motions in writing

369. (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

369. (1) Le requérant peut, dans l'avis de requête, demander que la décision à l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites.

Procédure de requête écrite

Request for oral hearing

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if the respondent objects to disposition of

(2) L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il demande l'audition de la requête, inclut une mention à cet effet, accompagnée des rai-

Demande d'audience

the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.

sons justifiant l’audition, dans ses prétentions écrites ou son mémoire des faits et du droit.

Reply

(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).

(3) Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.

Réponse du requérant

Disposition of motion

(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.

(4) Dès le dépôt de la réponse visée au paragraphe (3) ou dès l’expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l’audition de la requête.

Décision

Abandonment of motion

370. (1) A party who brings a motion may abandon it by serving and filing a notice of abandonment in Form 370.

370. (1) La partie qui a présenté une requête peut s’en désister en signifiant et en déposant un avis de désistement, établi selon la formule 370.

Désistement

Deemed abandonment

(2) Where a moving party fails to appear at the hearing of a motion without serving and filing a notice of abandonment, it is deemed to have abandoned the motion.

(2) La partie qui ne se présente pas à l’audition de la requête et qui n’a ni signifié ni déposé un avis de désistement est réputée s’être désistée de sa requête.

Désistement présumé

Testimony regarding issue of fact

371. On motion, the Court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised on a motion.

371. Dans des circonstances particulières, la Cour peut, sur requête, autoriser un témoin à témoigner à l’audience quant à une question de fait soulevée dans une requête.

Témoignage sur des questions de fait

PART 8

PARTIE 8

PRESERVATION OF RIGHTS IN PROCEEDINGS

SAUVEGARDE DES DROITS

GENERAL

DISPOSITIONS GÉNÉRALES

Motion before proceeding commenced

372. (1) A motion under this Part may not be brought before the commencement of a proceeding except in a case of urgency.

372. (1) Une requête ne peut être présentée en vertu de la présente partie avant l’introduction de l’instance, sauf en cas d’urgence.

Requête antérieure à l’instance

Undertaking to commence proceeding

(2) A party bringing a motion before the commencement of a proceeding shall undertake to commence the proceeding within the time fixed by the Court.

(2) La personne qui présente une requête visée au paragraphe (1) s’engage à introduire l’instance dans le délai fixé par la Cour.

Engagement