

PRESS RELEASE
FOR IMMEDIATE RELEASE

Halifax, NS
lukacs@AirPassengerRights.ca



Federal Court of Appeal rules entire “public record” of complaint against Air Canada must be disclosed

Halifax, June 8, 2015 – In an unprecedented ruling, the Federal Court of Appeal rebuked the Canadian Transportation Agency (CTA) for limiting public access to documents on its “public record,” and ordered it to disclose documents relating to a complaint against Air Canada in their entirety.

The judgment vindicates Halifax-based air passenger rights advocate Dr. Gábor Lukács, who wanted to view the complete file of the complaint. The CTA, however, redacted portions of evidence and other details such as the names of Air Canada’s lawyers, under the pretext of compliance with privacy legislation.

Lukács challenged the redactions based on the fact that none of the documents were subject to a confidentiality order, and the “open court principle,” which requires adjudicative proceedings to be open and available for public scrutiny. This principle has been hailed by the Supreme Court of Canada as “one of the hallmarks of a democratic society,” held to be tied to the freedom of expression and press guaranteed by the *Charter*, and is frequently invoked by the media to gain access to court documents.

A panel of three judges unanimously agreed with Lukács in their 34-page decision, and concluded that the redactions were “impermissible.” The panel held that since the documents sought by Lukács were already on the CTA’s “public record,” they were “publicly available,” and thus the *Privacy Act* does not restrict their disclosure.

The CTA is a federal tribunal that adjudicates transportation-related disputes, such as passengers’ complaints against airlines. The CTA operates like a court, and its adjudicative members function like judges. According to the CTA’s own rules, all documents filed by parties must be placed on “public record,” unless a confidentiality order is granted.

“This is a landmark decision, bringing greater transparency and accountability to all federal tribunals, not only the CTA. It is a victory both for air passengers, and Canadian democracy,” says Dr. Lukács, who has won two dozen complaints about airlines’ policies before the CTA.

A copy of the ruling and related court documents are available online:

<http://docs.AirPassengerRights.ca/FCA/A-218-14/2015-06-05--FCA--REASONS.pdf>

http://docs.AirPassengerRights.ca/Federal_Court_of_Appeal/A-218-14/

For further information, please contact:

Dr. Gábor Lukács

Tel: (647) 724 1727

Email: lukacs@AirPassengerRights.ca

Twitter: @AirPassRightsCA

Web: <http://docs.AirPassengerRights.ca/>

Issue: Public access to evidence and documents on “public record”

Background

The “open court principle”

- A. Meaning
 - proceedings, including evidence and documents tendered, are open to the public;
 - decisions are delivered in public or in published form.
- B. Scope and limits
 - applies to all judicial and quasi-judicial proceedings;
 - can be limited to prevent “serious risk” (including identity theft or harm to victims).
- C. Constitutional protection
 - protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

The Canadian Transportation Agency (CTA)

- A. Functions
 - adjudicate complaints of passengers against airlines, like a court;
 - make determinations and issue licenses and permits, as an economic regulator.
- B. Written rules and policies
 - CTA is “bound by the constitutionally protected open-court principle”; and
 - documents filed are placed on the CTA’s “public record,” unless the CTA makes a confidentiality order.

Practices found to be “impermissible” by the Federal Court of Appeal

- allowing the public to view only redacted documents, even if no confidentiality order was sought by the parties or made by the CTA;
- claiming that “personal information” was removed to comply with the *Privacy Act*;
- blacking out information such as:
 - names and addresses of lawyers representing Air Canada before the CTA;
 - names of Air Canada employees involved in the complaint; and
 - portions of the submissions and evidence of the parties.