

July 25, 2022

VIA EMAIL

Judicial Administrator, Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario K1A 0H9

Dear Madam or Sir,

RE: Air Passenger Rights v. AGC and CTA (A-102-20)

We are counsel for the Applicant. Please bring this letter to Gleason J.A.'s attention. Her Ladyship is seized of all pre-hearing issues for this Application, pursuant to the Order of July 19, 2022. The Applicant is writing to seek the Court's assistance to address the concern arising from the Canadian Transportation Agency [CTA] filing numerous defective certificate(s) of attestation or non-filing of a certificate, and in particular the most recent certificate filed on July 22, 2022.

The Applicant attempted to resolve the issue informally on July 22, 2022 after the CTA filed some documents for the March 24, 2020 Members Call without a certificate. The omission of a certificate was promptly brought to the CTA's attention and the CTA responded by filing a certificate that does not meet the legal requirements of "certification" found in section 24 of the [Canada Evidence Act](#), R.S.C., 1985, c. C-5 and section 23 of the [Canada Transportation Act](#), S.C. 1996, c. 10, and the procedural requirement in Rule 318(1)(a) for filing of "certified copies."

Nearly a decade ago, this Court has recognized that a "certification" is to come from the CTA's secretary.¹ The Applicant's concern was also raised in the Rule 97 motion, in paras. 115-120 of the Written Representations and para. 6 of the Notice of Motion, and remains to be dealt with.

The filing of a legally compliant certificate is not a mere technicality. Rather, in the absence of such certificate, the underlying documents may not be admissible and the panel hearing the Application may not be able to take judicial notice thereof. The CTA's omission opens the door to technical evidentiary objections at the hearing of the Application, and risks expenditure of scarce judicial resources on an issue that can easily be resolved by the CTA filing a compliant certificate.

With respect to the July 22, 2022 certificate, the CTA continues to misstate the position/title of its junior employees and seeks to pass them off as having greater authority in the CTA. In the July 22, 2022, Ms. Desnoyers' claimed the title of "Paralegal Officer". However, in the two emails she sent to the Federal Court of Appeal Registry on the same day to file the documents and the certificate, her e-mail signature clearly shows her title as "Hearing Registrar". The title of "Hearing

¹ Order (Mainville J.A., *Lukacs v. CTA, et al.*, A-460-12), second last paragraph in p. 3 and Order para. 2.

Registrar” was also indicated in her affidavit filed on April 29, 2020 (Doc. 16). Ms. Desnoyers’ title on the Government Electronic Directory Services ([GEDS](#)) is “Hearing Coordinator and Paralegal.”

Ms. Desnoyers’ certificate does not have a seal and is materially different than a compliant certificate signed and sealed by the Secretary, although both bear the title “Certification”.

Ms. Desnoyers’ July 22, 2022 Certification	CTA Secretary’s December 13, 2021 Certification
<p>I, Meredith Desnoyers, of the City of Ottawa, Province of Ontario, Paralegal Officer of the Canadian Transportation Agency, DO HEREBY ATTEST that the documents listed below are true and correct copies:</p> <p>...</p> <p>at Gatineau, Province of Quebec, this 22nd day of July, 2022.</p>	<p>I, Valerie Lagace, of the city of Gatineau, province of Quebec, Secretary of the Canadian Transportation Agency, DO HEREBY CERTIFY that attached hereto are true and correct copies of the following documents which are <u>in the custody of the Secretary</u>:</p> <p>...</p> <p>IN WITNESS THEREOF I have hereunto set my hand and affixed the Official Seal of the Canadian Transportation Agency at Gatineau, province of Quebec, this 13 of December 2021.</p>

Interestingly, Ms. Desnoyers’ use of the word “ATTEST” rather than “CERTIFY” is *ipso facto* an acknowledgement that she has no legal authority to “certify” a document on behalf of the CTA. To “certify” is the solemn act required by the two federal statutes and *Federal Courts Rules* cited above, not “attest”. The CTA appears to be circumventing the law with the deficient certification.

Up to now, the CTA refused to provide any reasonable explanation why its Secretary is refusing to perform her statutory obligations in the [Canada Transportation Act](#) 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. The CTA’s Secretary is also a lawyer by trade and officer of this court.

The Applicant respectfully requests that the Court provide the parties with directions on this matter, to avoid the risk of technical evidentiary debates at the merits hearing of the Application. Should the Court have any directions, we would be pleased to comply.

Yours truly,
EVOLINK LAW GROUP



SIMON LIN, Barrister & Solicitor

Cc: (1) Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Attorney General of Canada, and (2) Mr. Kevin Shaar, counsel for the Canadian Transportation Agency

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.