

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
VOLUME 1**

Dated: October 14, 2014

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Applicant / Moving Party

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Court File No.: A-167-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF MOTION

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

THE MOTION IS FOR:

1. An order pursuant to Rules 96(3) and 97 of the *Federal Courts Rules*, S.O.R./98-106, requiring the Canadian Transportation Agency and/or its affiant, Ms. Simona Sasova, to pay the Applicant the costs of the September 15, 2014 continuation of Ms. Sasova's cross-examination on her affidavit sworn on May 20, 2014, which were incurred due to their failure to produce documents on the September 4, 2014 cross-examination.
2. An order pursuant to Rules 91, 94, 96, and 97 of the *Federal Courts Rules*, S.O.R./98-106, requiring Ms. Sasova to re-attend at her own expense or the expense of the Agency, for cross-examination on her affidavit sworn on May 20, 2014, and at the said re-attendance:

- (a) answer questions 393-397 and further questions in the line of questioning to which counsel for the Agency objected on September 15, 2014 (p. 99, l. 6-8 of the transcript), and any follow-up questions;
 - (b) produce all emails sent by Mr. Paul Lynch, a subordinate of Ms. Sasova, to Expedia on July 28, 2014, including those that were allegedly sent in error (referred to on page 14 of Exhibit No. 9 to the cross-examination), and answer questions in relation to them, including any follow-up questions; and
 - (c) answer questions related to Exhibit No. A for Identification and its content, including any follow-up questions.
3. An order setting a schedule for the remaining steps in this proceeding, and permitting the Applicant 30 days from the receipt of the transcripts of Ms. Sasova's re-attendance to serve and file the applicant's record.
4. The costs of this motion.
5. 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 March 28, 2014, the Applicant, Dr. Gábor Lukács, filed an application for judicial review with the Federal Court of Appeal in respect of the refusal of the Canadian Transportation Agency (the “Agency”) to hear and/or render a decision in his complaint, dated February 24, 2014, concerning price advertising on the Canadian website of Expedia, Inc. The Applicant is seeking a *mandamus* requiring the Agency to render a decision in his complaint.
2. On May 22, 2014, the Agency served Lukács with the affidavit of Ms. Simona Sasova, the manager of the Agency’s Enforcement Division, in opposition of the application.
3. On May 26, 2014, Lukács advised the Agency about his intention to cross-examine Ms. Sasova on her affidavit. The cross-examination, scheduled for June 9, 2014, was postponed at the request of the Agency to allow it additional time to consider the issue of producing documents.
4. Subsequently, the parties entered into settlement discussions, resulting in further postponement of the cross-examination. Lukács informed the Court about the settlement discussions, and asked that the application be held in abeyance.
5. On July 3, 2014, Madam Justice Sharlow, J.A. extended the deadline to file the applicant’s record until September 30, 2014.

6. On August 21, 2014, Lukács renewed his request to cross-examine Ms. Sasova, as there had been no progress toward a settlement. Lukács served Ms. Sasova and the Agency with a revised Direction to Attend, requiring attendance for cross-examination on September 4, 2014 and the production of certain documents, including “all correspondence between Agency staff and Expedia” related to the matter.

Failure to produce documents on September 4, 2014

7. Ms. Sasova failed to produce documents on September 4, 2014 as directed. She produced the first two pages of a chain of emails (Exhibit No. 5), and pages 3-8 of another chain of emails (Exhibit No. 6). When asked about the missing portions, Ms. Sasova stated, among other things, that:
 - (a) “This is what we have included in our–this is our case. We don’t have anything else for the case.” (p. 65, l. 16-18);
 - (b) “we did not keep that for the reason that what is important for our case is what is above it and on the page” (p. 66, l. 14-16);
 - (c) “I did not keep it” (p. 67, l. 3);
 - (d) “We have a lot of emails and very small mailboxes” (p. 71, l. 23-24); and
 - (e) “anything that precedes it is actually past the–past the Affidavit so it is not relevant to this” (p. 74, l. 13-15).

8. When pressed further, Ms. Sasova produced the pages missing from the chain of emails in Exhibit No. 5, making one complete chain of emails (Exhibit No. 7), but not the pages missing from Exhibit No. 6. Ms. Sasova also admitted to having had further email correspondence with Expedia (p. 85, l. 17-23), but it was not produced either.
9. Since the productions of Ms. Sasova were so grossly incomplete that it was impossible to conduct meaningful cross-examination on them, Lukács adjourned the cross-examination of Ms. Sasova pursuant to Rule 96(2) of the *Federal Courts Rules* (p. 91, l. 19-25).

Refusal to answer questions and produce documents at the continued cross-examination on September 15, 2014

10. On September 7, 2014, counsel for the Agency advised Lukács that Ms. Sasova would be producing documents that she failed to produce on September 4, 2014, and that she would be available for further cross-examination. Counsel for the Agency improperly insisted that the scope of the continued cross-examination be limited to documents that had not been provided on September 4, 2014.
11. On September 7, 2014, Lukács advised counsel for the Agency that while he welcomed the production of documents and the opportunity to continue the cross-examination of Ms. Sasova, he did not agree to the proposed limitation of its scope.

12. The continuation of Ms. Sasova's cross-examination was scheduled for September 10, 2014, but it had to be postponed until September 15, 2014 at the request of counsel for the Agency.
13. Between September 8, 2014 and September 12, 2014, Lukács repeatedly requested that either the Agency or Ms. Sasova produce all email correspondence in relation to Expedia's website between Agency Staff and Expedia since February 24, 2014, and that the Agency or Ms. Sasova reimburse him for the costs of the continuation of her cross-examination.
14. On September 15, 2014, during the continued cross-examination of Ms. Sasova:
 - (a) counsel for the Agency objected to questions 393-397, as well as to the entire line of questioning, on the improper basis that fragments of the documents were already produced on September 4, 2014, and that Lukács could have asked the questions back then;
 - (b) emails sent by Mr. Paul Lynch, a subordinate of Ms. Sasova, to Expedia on July 28, 2014, allegedly in error, were not produced, nor did Ms. Sasova inform herself about their content, and counsel for the Agency objected to their production without stating his reasons (p. 146, l. 11-25 and Exhibit No. 9, p. 14);
 - (c) Ms. Sasova frequently referred in her answers to the settlement discussions between the parties as well as the alleged content of these discussions (p. 114, l. 10 and 24; p. 115, l. 6 and 24; p. 116, l. 17; p. 128, l. 25; p. 130, l. 7 and 25; p. 132, l. 6; p. 138, l. 6, 15, and 24; p. 139, l. 4, 16, and 24);

- (d) nevertheless, counsel for the Agency objected to Ms. Sasova answering questions with respect to Exhibit No. A for Identification, which is an email sent by Lukács to counsel for the Agency in relation to settlement discussions, and which was marked “without prejudice”;
 - (e) Lukács adjourned the continued cross-examination of Ms. Sasova pursuant to Rule 96(2) of the *Federal Courts Rules* (p. 152, l. 8-12).
15. Although Lukács ordered the transcripts of the examinations promptly, they were completed only on September 25, 2014 and October 6, 2014, respectively.

Costs of the September 15, 2014 continued cross-examination

16. Ms. Sasova and the Agency had been aware of the intent of Lukács to cross-examine and the request to produce documents since June 2014. Nevertheless, they took no steps to seek relief from production pursuant to Rule 94(2) or to ascertain the scope and/or completeness of the productions.
17. The email correspondence that was not produced on September 4, 2014, and which was subsequently produced, was relevant and damaging to the Agency’s case, because it contradicted and/or raised doubts about the truth of the statements in Ms. Sasova’s affidavit and her testimony.

18. The failure of Ms. Sasova and/or the Agency to produce documents on September 4, 2014 as directed and the production of incomplete and truncated documents necessitated the continuation of the cross-examination on September 15, 2014, unnecessarily delayed the proceeding, and caused unnecessary expenses to Lukács.

The Agency's objection to questions 393-397 and the line of questioning is improper

19. The Agency did not dispute the relevance of these questions, but objected to them on September 15, 2014 on the basis that they could have been asked on September 4, 2014.
20. The Agency's objection is improper, because the September 15, 2014 examination was a continuation of the September 4, 2014 one, which was adjourned precisely because of the failure to adequately produce documents, which made it impossible to properly cross-examine.
21. Ms. Sasova and/or the Agency are attempting to benefit from their own failure to adequately produce documents on September 4, 2014. The gross inadequacy and incompleteness of the productions on September 4, 2014 made it impossible to assess the documents and their logical interrelation, and to ask all relevant questions about them.

Relevance of the sought documents (dated July 28, 2014)

22. Lukács, who is seeking a *mandamus*, will have to address at the hearing of the application on its merits all eight conditions set out in *Apotex Inc. v. Canada (Attorney General) (C.A.)*, [1994] 1 F.C. 742 (para. 45), including the sixth on (“some practical value or effect”) .
23. Ms. Sasova stated in her affidavit that by May 20, 2014, Expedia’s website had become compliant with the *Air Transportation Regulations* as a result of the enforcement actions taken by Agency Staff (paras. 14-16).
24. Communications between Agency Staff and Expedia about the need to make changes to Expedia’s website, dated after May 20, 2014, are relevant, because they demonstrate that Ms. Sasova misstated the facts related to the compliance of Expedia in her affidavit, and that granting a *mandamus* will have some practical value or effect.

Questions related to Exhibit No. A for Identification

25. In her answers to questions, Ms. Sasova not only referred to the fact that settlement discussions were ongoing between the parties, but also purported to testify about the content of these discussions (p. 132, l. 5-6).
26. The Agency waived its settlement privilege by sharing details of the settlement discussions with Ms. Sasova, who is not a Member of the Agency, but only an Agency Staff, and by its affiant, Ms. Sasova, purporting to make reference to the content of these discussions.

27. Questioning Ms. Sasova with respect to Exhibit No. A for Identification is necessary in order to rectify the record and to challenge Ms. Sasova's credibility as a witness.

Statutes and regulations relied on

28. Rules 8, 91, 94, 96, 97, and 369 of the *Federal Courts Rules*, S.O.R./98-106.
29. 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 October 9, 2014.
2. Such further and additional materials as the Moving Party may advise and this Honourable Court may allow.

October 14, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

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Applicant / Moving Party

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

FEDERAL COURT OF APPEAL

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Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

**AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: October 9, 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 or around February 24, 2014, I made a formal complaint to the Agency alleging that Expedia, Inc. has been advertising prices of air services on its Canadian website, *expedia.ca*, in a manner contrary to sections 135.8 and 135.91 of the *Air Transportation Regulations*. As a remedy, I asked the Agency to order Expedia, Inc. to amend its Canadian website to comply with Part V.1 of the *Air Transportation Regulations*. A copy of my complaint is attached and marked as Exhibit "A".
2. On March 11, 2014, I received an email from Ms. Cathy Murphy, the Secretary of the Agency, concerning my complaint. Ms. Murphy advised me, among other things, that:

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

A copy of Ms. Murphy's email, dated March 11, 2014, is attached and marked as Exhibit "B".

3. On March 15, 2014, I wrote to Ms. Murphy and requested that:
 - (a) the Agency clarify whether Ms. Murphy's email was a decision of the Agency; and
 - (b) my complaint concerning Expedia, Inc. be placed before a Panel of the Agency.

A copy of my letter, dated March 15, 2014, is attached and marked as Exhibit "C".

4. On March 21, 2014, Ms. Murphy advised me by email that:

The message I sent was a staff message simply setting out the process that is followed for alleged contraventions to the Air Service Price Advertising Regulations. A response with additional information will be provided to you next week.

A copy of Ms. Murphy's email, dated March 21, 2014, is attached and marked as Exhibit "D".

5. On March 27, 2014, Ms. Murphy sent me an email that read:

Please find attached a letter from the Chair and Chief Executive Officer with respect to the Expedia matter.

The attachment to Ms. Murphy's email was a letter by Mr. Geoffrey C. Hare, Chair and Chief Executive Officer of the Agency, addressed to me, and dated March 27, 2014, in which he wrote, among other things, that:

To be clear, no decision by an Agency Panel is required for the DEO to undertake an investigation of a potential contravention of a provision listed in the Designated Provisions Regulations. Therefore, the Agency will not be conducting an inquiry into the matter you have raised. Further, there is no role for the public to participate in an investigation, should the DEO decide that an investigation is warranted, except as requested by the DEO where the DEO determines that information relevant to the investigation is required. The role of the public is limited to apprising the DEO of concerns that they may have with respect to compliance. [...]

[...] the General Rules do not require the Agency to conduct an inquiry into a matter filed by the public with respect to alleged non-compliance with Part V.1 of the ATR or of other provisions of the ATR or the CTA which do not specifically provide for a complaint mechanism.

A copy of Ms. Murphy's email and its attachment, dated March 27, 2014, is attached and marked as Exhibit "E".

6. On March 28, 2014, I filed an application for judicial review with the Federal Court of Appeal in respect to the refusal of the Agency to hear and/or render a decision in my February 24, 2014 complaint, as required by subsection 29(1) of the *Canada Transportation Act*, S.C. 1996, c. 10. A copy of the Notice of Application is attached and marked as Exhibit "F".
7. On April 22, 2014, I served the Agency with my affidavit in support of the application.
8. On May 22, 2014, I was served by the Agency with the affidavit of Ms. Simona Sasova, sworn on May 20, 2014, in opposition of the application. A copy of Ms. Sasova's affidavit (with exhibits omitted) is attached and marked as Exhibit "G".

9. On May 26, 2014, I wrote to Mr. John Dodsworth, counsel for the Agency, to advise him that I intended to cross-examine Ms. Sasova and to seek his cooperation in the scheduling and conduct of the examination. A copy of my email to Mr. Dodsworth, dated May 26, 2014, is attached and marked as Exhibit "H".
10. On June 2, 2014, I wrote to Mr. Dodsworth to request that Ms. Sasova attend for cross-examination on June 9, 2014 and that she produce all relevant documents for inspection. A copy of my email, dated June 2, 2014, is attached and marked as Exhibit "I".
11. On June 5, 2014, I wrote to Mr. Dodsworth to request the production of specific documents by Ms. Sasova, including, but not limited to, all related correspondence between Agency Staff and Expedia. A copy of my email, dated June 5, 2014, is attached and marked as Exhibit "J".
12. On June 5, 2014, Mr. Dodsworth advised me that communications between Ms. Sasova and Expedia would not be produced for inspection at the cross-examination. A copy of Mr. Dodsworth's email, dated June 5, 2014, is attached and marked as Exhibit "K".
13. On June 6, 2014, I sent an email to Mr. Dodsworth and Ms. Sasova with a Direction to Attend attached to the email. A copy of my email and its attachment, dated June 6, 2014, is attached and marked as Exhibit "L".
14. On June 6, 2014, Mr. Dodsworth wrote to me to request that the cross-examination of Ms. Sasova be postponed. A copy of Mr. Dodsworth's email, dated June 6, 2014, is attached and marked as Exhibit "M".

15. On June 6, 2014, I advised Mr. Dodsworth that I would agree to postponing the cross-examination of Ms. Sasova subject to certain terms. A copy of of my second email, dated June 6, 2014, is attached and marked as Exhibit "N".
16. On June 6, 2014, I entered into settlement discussions with the Agency, and on June 13, 2014, I wrote to the Court to ask that the application be held in abeyance pending the settlement discussions. A copy of the Direction of Sharlow, J.A., extending my deadline to file the applicant's record until September 30, 2014 is attached and marked as Exhibit "O".
17. On August 21, 2014, in light of the lack of progress in reaching a settlement with the Agency, I sent an email to Mr. Dodsworth and Ms. Sasova with a Direction to Attend attached to the email. A copy of my email and its attachment, dated August 21, 2014, is attached and marked as Exhibit "P".
18. On September 4, 2014, I cross-examined Ms. Sasova on her affidavit sworn on May 20, 2014 (Exhibit "G"), and adjourned the examination to seek directions from the Court (Rule 96(2) of the *Federal Courts Rules*)).
19. On September 7, 2014, Mr. Dodsworth advised me that Ms. Sasova would be producing documents that she failed to produce for her cross-examination on September 4, 2014, and that she would be available for further cross-examination, but insisted that that the scope of the cross-examination be limited to documents that had not been provided on September 4, 2014. A copy of Mr. Dodsworth's email, dated September 7, 2014, is attached and marked as Exhibit "Q".

20. On September 7, 2014, I advised Mr. Dodsworth that while I welcomed the production of documents and the opportunity to continue the cross-examination of Ms. Sasova, I did not agree to the proposed limitation of its scope. A copy of my email, dated September 7, 2014, is attached and marked as Exhibit "R".

21. Between September 8, 2014 and September 12, 2014, I repeatedly requested that either the Agency or Ms. Sasova produce all email correspondence in relation to Expedia's website between Agency Staff and Expedia since February 24, 2014, and that the Agency or Ms. Sasova reimburse me for the costs of the continuation of her cross-examination:
 - (a) A copy of my email to Mr. Dodsworth, dated September 8, 2014 at 15:26:33 (Atlantic Time), is attached and marked as Exhibit "S".
 - (b) A copy of my email to Mr. Dodsworth, dated September 8, 2014 at 16:35:23 (Atlantic Time), is attached and marked as Exhibit "T".
 - (c) A copy of my email to Mr. Dodsworth, dated September 10, 2014 at 13:31:45 (Atlantic Time), is attached and marked as Exhibit "U".
 - (d) A copy of my email to Mr. Dodsworth, dated September 12, 2014 at 15:16:41 (Atlantic Time), is attached and marked as Exhibit "V".
 - (e) A copy of my email to Mr. Dodsworth, dated September 12, 2014 at 16:15:24 (Atlantic Time), is attached and marked as Exhibit "W".

22. On September 15, 2014, I continued to cross-examine Ms. Sasova on her affidavit sworn on May 20, 2014 (Exhibit "G"), but had to adjourn the examination again to seek directions from the Court with respect to the conduct of the examination.
23. I ordered the transcript of the September 4, 2014 cross-examination on the day of the examination, and it was completed on September 25, 2014.
24. I ordered the transcript of the September 15, 2014 cross-examination on the day of the examination, and it was completed on October 6, 2014.

AFFIRMED before me at the City of Halifax
in the Regional Municipality of Halifax
on October 9, 2014.

Dr. Gábor Lukács

Halifax, NS

lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature



AIR
PASSENGER
RIGHTS

Halifax, NS

lukacs@AirPassengerRights.ca

February 24, 2014

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Expedia, Inc.
Complaint concerning advertising prices – violations of Part V.1 of the ATR**

Please accept the following submissions as a formal complaint pursuant to Rule 40 of the *Canadian Transportation Agency General Rules* concerning violations of Part V.1 of the *Air Transportation Regulations* (the “ATR”), governing advertising prices, by Expedia, Inc.

Since attempts to address the issues described below informally have not been successful, the Complainant is asking the Agency to open pleadings in the matter without delay.

OVERVIEW

The Complainant alleges that Expedia, Inc. has been advertising prices on its Canadian Website, `expedia.ca`, contrary to ss. 135.8 of the *ATR* by:

- (a) failing to include fuel surcharges in “Air Transportation Charges”; and
- (b) improperly including and listing airline-imposed charges in “Taxes, Fees and Charges” under the name “YR - Service Charge.”

The Complainant is asking the Agency to order Expedia, Inc. to amend its Canadian Website to comply with Part V.1 of the *ATR*.

FACTS

1. Expedia, Inc. is an Internet-based travel agency, operating websites that offer, among other things, flights from and within Canada.
2. Expedia, Inc. operates a website dedicated to Canadian travellers, namely, *expedia.ca* (the “Canadian Website”).
3. Users of the Canadian Website seeking to book flights are shown, among other things, a trip details page that displays the “Trip Summary,” which lists the various fees and charges making up the total price of the flight. For greater clarity, this information is displayed to prospective travellers prior to the actual booking.
4. A screenshot of the Canadian Website, displaying the trip details for an Ottawa-London (LHR)-Ottawa itinerary is attached and marked as Exhibit “A”.
5. A screenshot of the Canadian Website, displaying the trip details for a Halifax-Budapest-Halifax itinerary is attached and marked as Exhibit “B”.
6. A screenshot of the Canadian Website, displaying the trip details for a Halifax-Budapest-Halifax itinerary, displaying what purports to be a break-down for “Taxes, Fees, and Charges,” is attached and marked as Exhibit “C”.
7. A screenshot of the Canadian Website, displaying the trip details for a Halifax-Toronto-Halifax itinerary, displaying what purports to be a break-down for “Taxes, Fees, and Charges,” is attached and marked as Exhibit “D”.
8. On February 9, 2014, the Complainant wrote to senior executives of Expedia, Inc. to express concerns over lack of compliance with Part V.1 of the *ATR*.
9. On February 21, 2014, Mr. Andy Dyer, Senior Director, Legal of Expedia, Inc. advised the Complainant that:

Expedia’s current pre-purchase display has been reviewed and approved by the Canadian Transportation Agency.

A copy of Mr. Dyer’s email, dated February 21, 2014, is attached and marked as Exhibit “E”.

10. Although the Complainant made further attempts to address the concerns informally, on February 24, 2014, Mr. Dyer advised the Complainant that:

At this time, Expedia considers this matter closed.

A copy of Mr. Dyer’s email, dated February 24, 2014, is attached marked as Exhibit “F”.

ISSUES

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B. Screenshot of Canadian Website: Halifax-Budapest-Halifax itinerary 11

C. Screenshot of Canadian Website: Halifax-Budapest-Halifax itinerary, displaying purported break-down for “Taxes, Fees, and Charges,” 12

D. Screenshot of Canadian Website: Halifax-Toronto-Halifax itinerary, displaying purported break-down for “Taxes, Fees, and Charges,” 13

E. Email of Mr. Dyer to Dr. Lukács, dated February 21, 2014 14

F. Email of Mr. Dyer to Dr. Lukács, dated February 24, 2014 17

I. Prior communications between Expedia, Inc. and the Agency

Mr. Dyer claimed in his communications with the Complainant (Exhibit “E”) that the Agency has reviewed and approved the Canadian Website of Expedia, Inc.

The Complainant is unaware of such communications between Expedia, Inc. and the Agency, and has been unable to locate any decision or order of the Agency approving the Canadian Website of Expedia, Inc.

If communications as indicated by Mr. Dyer did indeed take place, then it appears that some employees or Members of the Agency may have already made up their minds as to the subject matter of the present complaint, and consequently, it would be inappropriate for them to take part in the adjudication of the present complaint. Furthermore, the prior communications between Expedia, Inc. and the Agency may give Expedia, Inc. an unfair advantage in the present proceeding.

Thus, the Complainant is asking that the Agency:

- (a) provide the Complainant with copies of prior communications between Expedia, Inc. and the Agency in relation to the Canadian Website, if there are any, or alternatively, order Expedia, Inc. to produce same;
- (b) identify the staff and/or Members who had prior involvement with the issue of the Canadian Website of Expedia, Inc.; and
- (c) ensure that no staff and/or Member who has had prior involvement with the issue of the Canadian Website of Expedia, Inc. is involved in any way in the adjudication of the present complaint.

II. The applicable law

Section 135.5 of the *ATR* defines “air transportation charge” and “third party charge” as follows:

“air transportation charge” means, in relation to an air service, every fee or charge that must be paid upon the purchase of the air service, including the charge for the costs to the air carrier of providing the service, but excluding any third party charge.

“third party charge” means, in relation to an air service or an optional incidental service, any tax or prescribed fee or charge established by a government, public authority or airport authority, or by an agent of a government, public authority or airport authority, that upon the purchase of the service is collected by the air carrier or other seller of the service on behalf of the government, the public or airport authority or the agent for remittance to it.

Section 135.7 of the *ATR* provides that Part V.1 of the *ATR* applies to all advertising activities for air services as long as it is within Canada or originates in Canada:

135.7 (1) Subject to subsection (2), this Part applies to advertising in all media of prices for air services within, or originating in, Canada.

Section 135.7(2) exempts package travel services from the price advertising regulations, and for greater clarity, the present complaint is focused on flight-only bookings advertised on the Canadian Website.

Section 135.8 of the *ATR* requires advertisers to clearly identify and distinguish between air transportation charges and third party charges:

135.8 (1) Any person who advertises the price of an air service must include in the advertisement the following information:

- (a) the total price that must be paid to the advertiser to obtain the air service, expressed in Canadian dollars and, if it is also expressed in another currency, the name of that currency;
- (b) the point of origin and point of destination of the service and whether the service is one way or round trip;
- (c) any limitation on the period during which the advertised price will be offered and any limitation on the period for which the service will be provided at that price;
- (d) the name and amount of each tax, fee or charge relating to the air service that is a third party charge;

- (e) each optional incidental service offered for which a fee or charge is payable and its total price or range of total prices; and
 - (f) any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.
- (2) A person who advertises the price of an air service must set out all third party charges under the heading “Taxes, Fees and Charges” unless that information is only provided orally.
- (3) A person who mentions an air transportation charge in the advertisement must set it out under the heading “Air Transportation Charges” unless that information is only provided orally.

[Emphasis added.]

Section 135.91 of the *ATR* explicitly forbids misrepresenting air transportation charges as if they were third party charges:

135.91 A person must not set out an air transportation charge in an advertisement as if it were a third party charge or use the term "tax" in an advertisement to describe an air transportation charge.

III. Failure to include fuel surcharges in “Air Transportation Charges”

Expedia, Inc. does not include fuel surcharges under the heading “Air Transportation Charges,” but rather lists it as a separate item called “Airline Fuel Surcharge” (see Exhibits “A” and “B”):

| Trip Summary | |
|------------------------------------------------|------------------|
| Ottawa to London | |
| Mon 28/Apr/2014 - Tue 15/Jul/2014 | |
| ! Departure: Arrives on April 29, 2014 | |
| 1 Ticket: Return | |
| <hr/> | |
| Traveller 1: Adult | C\$887.29 |
| Air Transportation | C\$195.00 |
| Charges | |
| Taxes, Fees and | C\$260.29 |
| Charges | |
| Airline Fuel Surcharge | C\$432.00 |
| <hr/> | |
| Total: C\$887.29 | |
| All prices quoted in Canadian dollars . | |

| Trip Summary | |
|------------------------------------------------------------------------------------------------------------------------|------------------|
| Halifax to Budapest | |
| Mon 28/Apr/2014 - Tue 15/Jul/2014 | |
|  Departure: Arrives on April 29, 2014 | |
|  Return: Arrives on July 16, 2014 | |
| 1 Ticket: Return | |
| Traveller 1: Adult | C\$985.12 |
| Air Transportation | C\$406.00 |
| Charges | |
| Taxes, Fees and Charges  | C\$363.62 |
| Airline Fuel Surcharge | C\$215.50 |
| Total: C\$985.12 | |
| All prices quoted in Canadian dollars . | |

In *Re: Scandinavian Airlines System*, 8-A-2014, the Agency considered fuel surcharges in the context of Part V.1 of the *ATR*, and held that:

[55] The fare is an air transportation charge, as is the fuel surcharge, yet the two charges are not grouped together on SAS's Web site. Further, these two charges are not grouped together under the heading "Air Transportation Charges" as required by the *ATR*. The *ATR* are clear that the appropriate headings are to be used and that the relevant charges are to be found under the appropriate headings.

The Complainant adopts the aforementioned findings of the Agency as his own position, and submits that Expedia, Inc. has violated s. 135.8 of the *ATR* by failing to include fuel surcharges under the heading of "Air Transportation Charges" on its Canadian Website.

IV. Inclusion of airline charges in “Taxes, Fees and Charges”

Expedia, Inc. improperly includes certain airline-imposed charges, entitled “YR - Service Charge,” under the heading “Taxes, Fees and Charges” (see Exhibits “C” and “D”):

The screenshot shows a breakdown of taxes, fees, and charges for a flight. A callout box titled "A breakdown of taxes, fees and charges" lists the following items:

| Charge Code | Description | Amount |
|-------------|------------------------------------------|-----------|
| CA | Air Travellers Security Charge | C\$25.91 |
| RC | Harmonized PST/GST/HST (HST) | C\$4.79 |
| SQ | Airport Improvement Fee (AIF) | C\$33.00 |
| YR | Service Charge | C\$208.00 |
| UB | United Kingdom: Passenger Service Charge | C\$40.52 |
| HU | | C\$36.91 |
| FE | | C\$4.72 |
| XU | | C\$1.89 |
| WL | | C\$7.88 |

The total amount shown is C\$985.12. The callout box also indicates that the amount is "quoted in Canadian dollars."

The screenshot shows a breakdown of taxes, fees, and charges for a flight. A callout box titled "A breakdown of taxes, fees and charges" lists the following items:

| Charge Code | Description | Amount |
|-------------|--------------------------------|----------|
| CA | Air Travellers Security Charge | C\$14.25 |
| RC | Harmonized PST/GST/HST (HST) | C\$54.84 |
| SQ | Airport Improvement Fee (AIF) | C\$45.00 |
| YR | Service Charge | C\$36.00 |

The total amount shown is C\$423.09. The callout box also indicates that the amount is "quoted in Canadian dollars."

The “YR - Service Charge” is imposed by the airline, and not by any third party, and as such it ought to have been listed under the heading “Air Transportation Charges.”

Therefore, it is submitted that Expedia, Inc. contravened ss. 135.8 and 135.91 of the *ATR* by setting out an air transportation charge in an advertisement as if it were a third party charge.

V. Relief sought

The Complainant is asking the Agency to order Expedia, Inc. to amend its Canadian Website to comply with Part V.1 of the *ATR*.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Complainant


Cc: Mr. Barry Diller, Chairman and Senior Executive, Expedia, Inc.
Mr. Robert Dzielak, Executive VP, General Counsel and Secretary, Expedia, Inc.
Mr. Andy Dyer, Senior Director, Legal, Expedia, Inc.

Your Trip to London, England, UK

Mon 28/Apr/2014 - Tue 15/Jul/2014 | Total price: **C\$887^{.29}** Only 4 tickets left at this price!

! Price Change

Your ticket price changed from C\$885.09 to C\$887.29. The airline could not confirm the original price due to pricing or availability changes that occurred after we posted the latest prices on our site. Continue booking or look for a different flight.

| Flights | | Change Flights | Show Details |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------|--------------|
| April 28, 2014 - Departure Nonstop Total travel time : 6h 45m | | | |
|  Ottawa YOW 6:50pm → Lufthansa 6837 Operated by Air Canada Economy/Coach (K) | | London LHR 6:35am + 1 day Arrives on April 29, 2014 | 6h 45m |
| July 15, 2014 - Return Nonstop Total travel time : 7h 40m | | | |
|  London LHR 1:05pm → Lufthansa 6836 Operated by Air Canada Economy/Coach (K) | | Ottawa YOW 3:45pm | 7h 40m |

CONTINUE BOOKING ▶

Save this Itinerary

Trip Summary

Ottawa to London

Mon 28/Apr/2014 - Tue 15/Jul/2014

1 Departure: Arrives on April 29, 2014

1 Ticket: Return

| | |
|-------------------------------------------------------------------------------------------------------------|------------------|
| Traveller 1: Adult | C\$887.29 |
| Air Transportation | C\$195.00 |
| Charges | |
| Taxes, Fees and Charges  | C\$260.29 |
| Airline Fuel Surcharge | C\$432.00 |

Total: **C\$887^{.29}**

All prices quoted in Canadian dollars.

Important Flight Information

We want you to know the airline you're travelling with has the following restrictions regarding your flight.

- Tickets are **nonrefundable** and **nontransferable**. Name changes are not allowed.
- The airline may charge **additional fees** for checked baggage or other optional services.
- This airline may charge additional fees depending on your payment method.
- Airlines may change flight schedules and terminals at any time.
- Correct travel documents are required. It's your responsibility to check your documents before you travel. Please click [here](#) for up-to-date passport, visa and health information.

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Home Flights Vacation Packages Hotels Las Vegas Deals Disney Car rental Cruises Things to Do Insurance

Your Trip to Budapest, Hungary

Mon 28/Apr/2014 - Tue 15/Jul/2014 | Total price: **C\$985¹²** Only 5 tickets left at this price!

Flights Change Flights Show Details

| April 28, 2014 - Departure | | 2 stops | Total travel time : 15h 55m |
|-----------------------------------------------------------------------------------------------|---|-------------------------------------------------------------------|-----------------------------|
| Halifax YHZ 3:25pm British Airways 6463 Operated by WestJet Economy/Coach (O) | → | Toronto YYZ 4:44pm | 2h 19m |
| Layover: 2h 1m | | | |
| Toronto YYZ 6:45pm | → | London LHR 6:40am + 1 day Arrives on April 29, 2014 | 6h 55m |
| Layover: 2h 10m | | | |
| London LHR 8:50am Departs on April 29, 2014 British Airways 866 Economy/Coach (S) | → | Budapest BUD 12:20pm Arrives on April 29, 2014 | 2h 30m |
| July 15, 2014 - Return | | 2 stops | Total travel time : 17h 47m |
| Budapest BUD 11:40am Finnair 754 Economy/Coach (Q) | → | Helsinki HEL 3:00pm | 2h 20m |
| Layover: 2h 0m | | | |
| Helsinki HEL 5:00pm Finnair 31 Economy/Coach (Q) | → | Toronto YYZ 6:45pm | 8h 45m |
| Layover: 2h 40m | | | |
| Toronto YYZ 9:25pm WestJet 438 Economy/Coach (P) | → | Halifax YHZ 12:27am + 1 day Arrives on July 16, 2014 | 2h 2m |

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Trip Summary

Halifax to Budapest
Mon 28/Apr/2014 - Tue 15/Jul/2014

Departure: Arrives on April 29, 2014
 Return: Arrives on July 16, 2014

1 Ticket: Return

| | |
|-----------------------------------|------------------|
| Traveller 1: Adult | C\$985.12 |
| Air Transportation | C\$406.00 |
| Charges | |
| Taxes, Fees and Charges | C\$363.62 |
| Airline Fuel Surcharge | C\$215.50 |
| Total: C\$985¹² | |

All prices quoted in **Canadian dollars**.

Important Flight Information

We want you to know the airline you're travelling with has the following restrictions regarding your flight.

- Tickets are **nonrefundable** and **nontransferable**. A fee of US\$275.00 per ticket is charged for itinerary changes. Name changes are not allowed.
- The airline may charge **additional fees** for checked baggage or other optional services.
- Airlines may change flight schedules and terminals at any time.
- Correct travel documents are required. It's your responsibility to check your documents before you travel. Please click [here](#) for up-to-date passport, visa and health information.

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Your Trip to Budapest, Hungary

Mon 28/Apr/2014 - Tue 15/Jul/2014 | Total price: **C\$985.12** Only 5 tickets left at this price!

Flights Change Flights Show Details

| April 28, 2014 - Departure | | 2 stops | Total travel time : 15h 55m |
|----------------------------|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------|
| | Halifax YHZ 3:25pm British Airways 6463 Operated by WestJet Economy/Coach (O) | Toronto YYZ 4:44pm | 2h 19m |
| Layover: 2h 1m | | | |
| | Toronto YYZ 6:45pm British Airways 92 Economy/Coach (O) | London LHR 6:40am Arrives on Apr | |
| | London LHR 8:50am Departs on April 29, 2014 British Airways 866 Economy/Coach (S) | Budapest BUD 12:2 Arrives on Apr | |
| July 15, 2014 - Return | | 2 stops | Total travel time : 17h 47m |
| | Budapest BUD 11:40am Finnair 754 Economy/Coach (Q) | Helsinki HEL 3:00pm | 2h 20m |
| Layover: 2h 0m | | | |
| | Helsinki HEL 5:00pm Finnair 31 Economy/Coach (Q) | Toronto YYZ 6:45pm | 8h 45m |
| Layover: 2h 40m | | | |
| | Toronto YYZ 9:25pm WestJet 438 Economy/Coach (P) | Halifax YHZ 12:27am + 1 day Arrives on July 16, 2014 | 2h 2m |

A breakdown of taxes, fees and charges

| | |
|-----------------------------------------------|-----------|
| CA - Air Travellers Security Charge | C\$25.91 |
| RC - Harmonized PST/GST/HST (HST) | C\$4.79 |
| SQ - Airport Improvement Fee (AIF) | C\$33.00 |
| YR - Service Charge | C\$208.00 |
| UB - United Kingdom: Passenger Service Charge | C\$40.52 |
| HU | C\$36.91 |
| FE | C\$4.72 |
| XU | C\$1.89 |
| WL | C\$7.88 |

| Trip Summary | |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Halifax to Budapest | |
| Mon 28/Apr/2014 - Tue 15/Jul/2014 | |
| 1 Departure: Arrives on April 29, 2014 1 Return: Arrives on July 16, 2014 | |
| 1 Ticket: Return | |
| Traveller 1: Adult | C\$985.12 |
| Air Transportation | C\$406.00 |
| Charges | |
| Taxes, Fees and Charges | C\$363.62 |
| Airline Fuel Surcharge | C\$215.50 |
| Total: C\$985.12 | |
| Total in Canadian dollars. | |

Flight Information

Know the airline you're flying on and the following information regarding your flight.

Non-refundable and non-transferable. A fee of US\$275.00 per ticket is charged for itinerary changes. Name changes are not allowed.

- The airline may charge additional fees for checked baggage or other optional services.
- Airlines may change flight schedules and terminals at any time.
- Correct travel documents are required. It's your responsibility to check your documents before you travel. Please click [here](#) for up-to-date passport, visa and health information.

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Home Flights Vacation Packages Hotels Las Vegas Deals Disney Car rental Cruises Things to Do Insurance

Your Trip to Toronto, ON

Mon 28/Apr/2014 - Tue 15/Jul/2014 | Total price: **C\$423.09**

Flights Change Flights Show Details

| | | | |
|-----------------------------------|---------------------------------------------------------------------------|--------|----------------------------------------|
| April 28, 2014 - Departure | | 1 stop | Total travel time : 4h 15m |
| porter | Halifax YHZ 1:15pm Porter Airlines 418 Economy/Coach (A) | → | Montreal YUL 2:05pm 1h 50m |
| porter | Montreal YUL 3:20pm Porter Airlines 420 Economy/Coach (A) | → | Toronto YTZ 4:30pm |
| July 15, 2014 - Return | | 1 stop | Total travel time : 3h 15m |
| porter | Toronto YTZ 11:15am Porter Airlines 253 Economy/Coach (A) | → | Ottawa YOW 12:11pm 0h 56m |
| Layover: 0h 29m | | | |
| porter | Ottawa YOW 12:40pm Porter Airlines 253 Economy/Coach (A) | → | Halifax YHZ 3:30pm 1h 50m |

A breakdown of taxes, fees and charges

| | |
|-------------------------------------|----------|
| CA - Air Travellers Security Charge | C\$14.25 |
| RC - Harmonized PST/GST/HST (HST) | C\$54.84 |
| SQ - Airport Improvement Fee (AIF) | C\$45.00 |
| YR - Service Charge | C\$36.00 |

Trip Summary

Halifax to Toronto
Mon 28/Apr/2014 - Tue 15/Jul/2014

1 Ticket: Return

Traveller 1: Adult **C\$423.09**

| | |
|--------------------------------|------------------|
| Air Transportation | C\$273.00 |
| Charges | |
| Taxes, Fees and Charges | C\$150.09 |

Total: **C\$423.09**
Total quoted in **Canadian dollars**.

Flight Information

We want you to know the airline you're travelling with has the following restrictions regarding your flight.

- Tickets are **nonrefundable** and **nontransferable**. Name changes are not allowed.
- The airline may charge **additional fees** for checked baggage or other optional services.
- Airlines may change flight schedules and terminals at any time.
- Correct travel documents are required. It's your responsibility to check your documents before you travel. Please click [here](#) for up-to-date passport, visa and health information.

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2014-02-21--Dyer-to-Lukacs--re_CTA_approval.txt

Page 1 of 3

From adyer@expedia.com Fri Feb 21 14:05:49 2014
Date: Fri, 21 Feb 2014 18:05:14 +0000
From: "Andy Dyer (ELCA)" <adyer@expedia.com>
To: Gabor Lukacs <lukacs@AirPassengerRights.ca>
Subject: RE: Expedia Display Concerns

Dr. Lukacs,

Expedia's current pre-purchase display has been reviewed and approved by the Canadian Transportation Agency. Thank you for your attention to this issue.

Best regards,

Andy Dyer

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

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: Thursday, February 20, 2014 2:58 PM
To: Andy Dyer (ELCA)
Subject: Re: Expedia Display Concerns

Mr. Dyer,

Thank you for your message, which unfortunately, fails to address my concerns.

My concern is primarily about the advertising (i.e., pre-purchase) of the prices, as documented in the attached PDF files:

(1) In two of the attached three files, there is a "YR - Service Charge" item shown among the "Taxes, Fees and Charges," even though all airline-charged fees ought to be listed under "Air Transportation Charges."

(2) In two of the attached three files, there is also an "Airline Fuel Surcharge" item listed, even though such charges ought to be listed as part of the "Air Transportation Charges."

While these issues exist also with respect to post-purchase information provided, the thrust of my concern is focused actually on advertising and on the information displayed on Expedia's website *prior* to the purchase (as shown on the attached PDF files).

The obligation to comply with the Air Transportation Regulations applies to Expedia regardless of how its partners enter information into their databases. Certainly, now that you have been made aware of the issues, Expedia has an obligation to take remedial actions.

I would like to draw your attention to the Notice to the Industry of the Canadian Transportation Agency from last Friday:

"The Agency considers each day that an advertisement remains in non-compliance to constitute a contravention of the regulations. Consequently, an advertiser is subject to monetary penalties each and every day of its non-compliance."

<http://www.otc-cta.gc.ca/eng/notice-industry-enforcement-all-inclusive-air-price-advertising-regulations-aspar>

Therefore, I urge you to take remedial action without delay, and make changes to Expedia's website.

Kindly please confirm the receipt of this message, and advise as to when Expedia's website will be amended to conform to the Air Transportation Regulations in general, and ss . 135.8 and 135.91 in particular.

I look forward to hearing from you.

2014-02-21--Dyer-to-Lukacs--re_CTA_approval.txt

Page 3 of 3

> Expedia is making a recommendation to our GDS partner to update that
> glossary definition to ?Default validating carrier fee.?
>
>
>
> Although the regulations to which you refer apply to the advertisement
> and promotion of airfares to consumers in the pre-purchase context, we
> are keenly interested in providing customers with a clear
> understanding of their charges when they request a post-purchase
> breakdown. In addition to making the above-mentioned recommendations
> to third-party systems providers, I have asked our internal teams to
> update our e-mail communications to inform customers as to the
> inclusion of all non-base fare amounts, including carrier-imposed
> charges, under the headings described above. I hope that the
> foregoing explanation provides you with some clarity as to the format
> of the reports you received, the nature of the charges on your
> itinerary, and the steps we are taking to increase transparency of these charges goin
g forward.
>
>
>
> Once again, I appreciate your bringing this to my attention as I
> believe it will allow Expedia to provide better service to our
> customers going forward. If you have any questions, please contact me.
>
>
>
> Best regards,
>
>
>
> Andy Dyer
>
>
>
>
>

2014-02-24--Dyer-to-Lukacs--matter_closed.txt

Page 1 of 4

From adyer@expedia.com Mon Feb 24 13:06:45 2014
Date: Mon, 24 Feb 2014 17:06:33 +0000
From: "Andy Dyer (ELCA)" <adyer@expedia.com>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: RE: Expedia Display Concerns

Dr. Lukacs,

Thank you for your correspondence and interest in this matter. As indicated in my previous e-mail, Expedia does not release internal or external correspondence to the public and we believe our display is compliant with Canadian regulations. At this time, Expedia considers this matter closed.

Best regards,

Andy Dyer

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

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: Friday, February 21, 2014 7:12 PM
To: Andy Dyer (ELCA)
Cc: Bob Dzielak (ELCA); barry.diller@iac.com
Subject: RE: Expedia Display Concerns

Mr. Dyer,

I am profoundly disappointed by Expedia's lack of cooperation in this matter. I have approached Expedia in attempt to resolve this matter amicably, but it appears that Expedia prefers to deal with matters through formal adjudication.

I am hereby making a final attempt to resolve this matter: please change Expedia's website to comply with the Air Transportation Regulations, or alternatively, provide me with a copy of the alleged approval that Expedia has allegedly received from the Agency.

Failing these, I am afraid, I will have no choice but to file a formal complaint against Expedia with the Canadian Transportation Agency.

Yours very truly,
Dr. Gabor Lukacs

On Sat, 22 Feb 2014, Andy Dyer (ELCA) wrote:

> Dr. Lukacs,
>
> Expedia does not make copies of internal or external correspondence
> available to the public.
>
> Best regards,
>
> Andy Dyer

> -----Original Message-----

> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
> Gabor Lukacs
> Sent: Friday, February 21, 2014 10:15 AM
> To: Andy Dyer (ELCA)
> Cc: Bob Dzielak (ELCA); barry.diller@iac.com
> Subject: RE: Expedia Display Concerns

> Mr. Dyer,

> Unfortunately, I could not find any trace of any approval of Expedia's website among the decisions of the Canadian Transportation Agency.

2014-02-24--Dyer-to-Lukacs--matter_closed.txt

Page 2 of 4

>
> Would you please be so kind to provide me with a copy of the approval of Expedia's current pre-purchase display by the Canadian Transportation Agency?
>
> I look forward to hearing from you.
>
> Best wishes,
> Dr. Gabor Lukacs
>
>
> On Fri, 21 Feb 2014, Andy Dyer (ELCA) wrote:
>
>> Dr. Lukacs,
>>
>> Expedia's current pre-purchase display has been reviewed and approved
>> by the Canadian Transportation Agency. Thank you for your attention
>> to this issue.
>>
>> Best regards,
>>
>> Andy Dyer
>>
>> -----Original Message-----
>> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
>> Gabor Lukacs
>> Sent: Thursday, February 20, 2014 2:58 PM
>> To: Andy Dyer (ELCA)
>> Subject: Re: Expedia Display Concerns
>>
>> Mr. Dyer,
>>
>> Thank you for your message, which unfortunately, fails to address my concerns.
>>
>> My concern is primarily about the advertising (i.e., pre-purchase) of the prices, as documented in the attached PDF files:
>>
>> (1) In two of the attached three files, there is a "YR - Service Charge" item shown among the "Taxes, Fees and Charges," even though all airline-charged fees ought to be listed under "Air Transportation Charges."
>>
>> (2) In two of the attached three files, there is also an "Airline Fuel Surcharge" item listed, even though such charges ought to be listed as part of the "Air Transportation Charges."
>>
>> While these issues exist also with respect to post-purchase information provided, the thrust of my concern is focused actually on advertising and on the information displayed on Expedia's website *prior* to the purchase (as shown on the attached PDF files).
>>
>> The obligation to comply with the Air Transportation Regulations applies to Expedia regardless of how its partners enter information into their databases. Certainly, now that you have been made aware of the issues, Expedia has an obligation to take remedial actions.
>>
>> I would like to draw your attention to the Notice to the Industry of the Canadian Transportation Agency from last Friday:
>>
>> "The Agency considers each day that an advertisement remains in non-compliance to constitute a contravention of the regulations. Consequently, an advertiser is subject to monetary penalties each and every day of its non-compliance."
>>
>> <http://www.otc-cta.gc.ca/eng/notice-industry-enforcement-all-inclusive-air-price-advertising-regulations-aspar>
>>
>>

2014-02-24--Dyer-to-Lukacs--matter_closed.txt

Page 3 of 4

>> Therefore, I urge you to take remedial action without delay, and make changes to Expedia's website.

>>

>> Kindly please confirm the receipt of this message, and advise as to when Expedia's website will be amended to conform to the Air Transportation Regulations in general, and ss. 135.8 and 135.91 in particular.

>>

>> I look forward to hearing from you.

>>

>>

>> Best wishes,

>> Dr. Gabor Lukacs

>>

>>

>>

>> On Thu, 20 Feb 2014, Andy Dyer (ELCA) wrote:

>>

>>>

>>> Dr. Lukacs,

>>>

>>>

>>>

>>> Thank you for your patience as I have researched your concern. As a summary, you raise two issues: (1) the inclusion of carrier-imposed charges (e.g. YQ fuel surcharges) under the heading "Taxes" in Expedia's post-purchase itemized fare breakdowns, and (2) the descriptor "Default Validating Carrier Tax" in reference to YR charges. I will address each below.

>>>

>>>

>>>

>>> Itemized fare breakdowns may be requested in two ways: (1) online through Expedia.ca and (2) telephonically via our call center. You requested an itemized fare breakdown both online and through the call center. Online requests are routed to the operations group or partner responsible for ticketing a given itinerary, and that team produces a report through its accounting system that separately states the taxes paid with respect to the given itinerary. The accounting system used by that team will determine the format of the report. In your case, the accounting system's report format uses a column header of "Taxes"

>>> to identify all charges other than the base fare, while separately

>>> stating HST, GST and QST (as applicable) as line items under the

>>> generic heading "Taxes." Although that system is owned and

>>> maintained by a third party, Expedia is making a recommendation to them that they update the column header to "Taxes/Fees."

>>>

>>>

>>>

>>> Telephonic requests are handled by call center agents, who access individual itineraries that are stored in large third-party databases known as global distribution systems ("GDSs"), which act as data clearinghouses for the global airline reservations community. Upon request, agents access an itinerary, produce a report through the GDS and e-mail that report to the customer. As you can see from the e-mails provided to you, the GDS reports generally contain a greater level of detail with respect to the taxes and fees applied to a given itinerary. Because those taxes and fees are identified by 2-letter codes, the GDS report also contains a glossary to help users understand the nature of each charge. That glossary is also included in Expedia's e-mails. The format of that report and the glossary definitions are both determined by the GDS. In your case, the report includes all charges other than the base fare under a heading of "Taxes" and a roll-up of all such charges under a heading of "Total Taxes." Expedia is making a recommendation to our GDS pa

2014-02-24--Dyer-to-Lukacs--matter_closed.txt

Page 4 of 4

rtner to update those headings to ?Taxes/Fees? and ?Total Taxes/Fees? respectively.

>>>

>>>

>>>

>>> The glossary definition for ?YR? as provided by the GDS and

>>> subsequently passed to you was ?Default validating carrier tax.?

>>> Based on my research, YR charges appear to be charges imposed by a

>>> carrier, similar to a YQ fuel surcharge. In your case, the YR charge was a surchar
ge imposed by Finnair.

>>> Expedia is making a recommendation to our GDS partner to update that

>>> glossary definition to ?Default validating carrier fee.?

>>>

>>>

>>>

>>> Although the regulations to which you refer apply to the

>>> advertisement and promotion of airfares to consumers in the

>>> pre-purchase context, we are keenly interested in providing

>>> customers with a clear understanding of their charges when they

>>> request a post-purchase breakdown. In addition to making the

>>> above-mentioned recommendations to third-party systems providers, I

>>> have asked our internal teams to update our e-mail communications to

>>> inform customers as to the inclusion of all non-base fare amounts,

>>> including carrier-imposed charges, under the headings described

>>> above. I hope that the foregoing explanation provides you with some

>>> clarity as to the format of the reports you received, the nature of

>>> the charges on your itinerary, and the steps we are taking to increase transparency
of these charges going forward.

>>>

>>>

>>>

>>> Once again, I appreciate your bringing this to my attention as I

>>> believe it will allow Expedia to provide better service to our

>>> customers going forward. If you have any questions, please contact me.

>>>

>>>

>>>

>>> Best regards,

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>>> Andy Dyer

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This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From Cathy.Murphy@otc-cta.gc.ca Tue Mar 11 17:17:41 2014
Date: Tue, 11 Mar 2014 16:17:25 -0400
From: Cathy Murphy <Cathy.Murphy@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: Letter dated February 24, 2014 re: Expedia, Inc.

[The following text is in the "Windows-1252" character set.]
[Your display is set for the "ISO-8859-1" character set.]
[Some characters may be displayed incorrectly.]

The Canadian Transportation Agency (the Agency) acknowledges receipt of your letter of February 24, 2014 wherein you allege that Expedia, Inc. has been advertising prices on its Canadian Web site, expedia.ca, contrary to section 135.8 of the Air Transportation Regulations (ATR) by:

- (a) Failing to include fuel surcharges in ?Air Transportation Charges?; and
- (b) Improperly including and listing airline-imposed charges in ?Taxes, Fees and Charges? under the name ?YR * Service Charge.?

In your letter you ask the Agency, among other matters, to open pleadings on the issue and to order Expedia, Inc. to amend its Canadian Web site to comply with Part V.1 of the ATR.

Part V.1 of the ATR is enforced by way of administrative monetary penalties (AMPs). AMPs is not a complaint process conducted by the Agency. Instead, a Designated Enforcement Officer (DEO) may investigate whether a person has violated a provision identified in the Canadian Transportation Agency Designated Provisions Regulations. Section 135.8 is listed in those regulations. Where the DEO believes that a person has committed a violation, he or she may issue an administrative monetary penalty of up to \$25,000 for a corporation.

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

Your letter and all attachments have been referred to a Designated Enforcement Officer of the Agency for an investigation and the taking of appropriate enforcement actions as required.

Please confirm receipt of this message.

Sincerely,

Cathy Murphy
819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
800-669-5575
cathy.murphy@cta-otc.gc.ca
Secrétaire de l'Office des Transports du Canada/ Secretary of the
Canadian Transportation Agency
15, rue Eddy, Hull QC K1A 0N9/
15 Eddy St., Hull QC K1A 0N9
Gouvernement du Canada | Government of Canada

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature



AIR
PASSENGER
RIGHTS

Halifax, NS

lukacs@AirPassengerRights.ca

March 15, 2014

VIA EMAIL and FAX

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Expedia, Inc.
Complaint concerning advertising prices – violations of Part V.1 of the ATR
Email of March 11, 2014 (the “Email”)**

Thank you for acknowledging the receipt of my complaint dated February 24, 2014 concerning violations of Part V.1 of the *Air Transportation Regulations* (the “ATR”), governing advertising prices, by Expedia, Inc. (the “Complaint”).

I am deeply concerned by the following statement found in your email of March 11, 2014 (the “Email”):

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

1. It is unclear whether the Email is a decision of the Agency. Indeed, the Email contains no reference to any Panel or Members of the Agency. Since only Members of the Agency may render decisions, such as dismissal of a complaint, this potential confusion is a source of serious concern with respect to the Email.

Thus, I am requesting that you clarify the nature of the Email. If the Email is a decision of the Agency, then I am requesting that you specify the names of the Members that rendered it, and provide me with a certified copy of the decision pursuant to s. 22 of the *Canada Transportation Act*.

2. The Email makes no reference to any legislation that would preclude formal complaint and adjudicative process with respect to violations of the *Air Transportation Regulations*. Indeed, I have been a party as a complainant to several proceedings concerning violations of the *Air Transportation Regulations*.
3. Section 1 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the “*General Rules*”) states that:

“application” means an application, made to the Agency, that commences a proceeding under the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, and includes a complaint, [...]

“complaint” means a complaint made to the Agency that alleges anything to have been done or omitted to have been done in contravention of the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, [...]

[Emphasis added.]

As you have correctly noted in the Email, the Complaint alleges contravention of the *ATR*. Consequently, the Complaint meets the definition of “complaint” in the *General Rules*, and as such it is an “application” within the meaning of the *General Rules*.

4. Section 38 of the *General Rules* states that:

Unless otherwise provided in these Rules, this Part applies to proceedings in respect of any application to the Agency except a notice of objection under Part 5.

[Emphasis added.]

Therefore, in the absence of a decision of the Agency dismissing the Complaint, I am struggling to see any basis for refusing to follow the *General Rules* and commence pleadings.

5. Subsection 29(1) of the *Canada Transportation Act* imposes a duty upon the Agency to render a decision within 120 days:

The Agency shall make its decision in any proceedings before it as expeditiously as possible, but no later than one hundred and twenty days after the originating documents are received, unless the parties agree to an extension or this Act or a regulation made under subsection (2) provides otherwise.

This duty is enforceable by way of an application for judicial review for an order of *mandamus*.

6. Given that Expedia, Inc. claims to have obtained the approval for its website from certain unspecified individuals at the Agency, there is a serious possibility for a conflict of interest, or at least the appearance of same. This can be alleviated only by a proper and public proceeding before a Panel of the Agency.

In these circumstances, I am requesting clarification of the nature of the Email, namely, whether it is a decision of the Agency.

If the Email is a decision of the Agency, then I am also seeking the names of the Members that rendered it, and a certified copy of the decision.

If the Email is not a decision of the Agency, then I request that the Complaint and the present letter be placed before a Panel of the Agency without delay.

Kindly please confirm the receipt of this letter.

Yours very truly,

Dr. Gábor Lukács
Complainant

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From Cathy.Murphy@otc-cta.gc.ca Fri Mar 21 11:44:07 2014
 Date: Fri, 21 Mar 2014 10:43:48 -0400
 From: Cathy Murphy <Cathy.Murphy@otc-cta.gc.ca>
 To: Gabor Lukacs <lukacs@airpassengerrights.ca>
 Subject: Re: Letter dated February 24, 2014 re: Expedia, Inc.

[The following text is in the "Windows-1252" character set.]
 [Your display is set for the "ISO-8859-1" character set.]
 [Some characters may be displayed incorrectly.]

The message I sent was a staff message simply setting out the process that is followed for alleged contraventions to the Air Service Price Advertising Regulations. A response with additional information will be provided to you next week.

Please confirm receipt.

Sincerely,

Cathy Murphy
 819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
 800-669-5575
 cathy.murphy@cta-otc.gc.ca
 Secrétaire de l'Office des Transports du Canada/ Secretary of the
 Canadian Transportation Agency
 15, rue Eddy, Hull QC K1A 0N9/
 15 Eddy St., Hull QC K1A 0N9
 Gouvernement du Canada | Government of Canada

>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 15/03/2014 8:55 PM >>>
 Dear Madam Secretary:

Please refer to the attach letter in response to your email below.

Yours very truly,
 Dr. Gabor Lukacs

On Tue, 11 Mar 2014, Cathy Murphy wrote:

> The Canadian Transportation Agency (the Agency) acknowledges receipt
 of
 > your letter of February 24, 2014 wherein you allege that Expedia,
 Inc.
 > has been advertising prices on its Canadian Web site, expedia.ca,
 > contrary to section 135.8 of the Air Transportation Regulations
 (ATR)
 > by:
 >
 > (a) Failing to include fuel surcharges in ?Air Transportation
 > Charges?; and
 >
 > (b) Improperly including and listing airline-imposed charges in
 > ?Taxes, Fees and Charges? under the name ?YR * Service
 > Charge.?
 >
 > In your letter you ask the Agency, among other matters, to open
 > pleadings on the issue and to order Expedia, Inc. to amend its

Canadian

> Web site to comply with Part V.1 of the ATR.
>
> Part V.1 of the ATR is enforced by way of administrative monetary
> penalties (AMPs). AMPs is not a complaint process conducted by the
> Agency. Instead, a Designated Enforcement Officer (DEO) may
investigate
> whether a person has violated a provision identified in the Canadian
> Transportation Agency Designated Provisions Regulations. Section
135.8
> is listed in those regulations. Where the DEO believes that a
person
> has committed a violation, he or she may issue an administrative
> monetary penalty of up to \$25,000 for a corporation.
>
> As this is an enforcement matter and not a matter that is subject to
a
> formal complaint and adjudicative process, the Agency will not be
> commencing a formal pleadings process.
>
> Your letter and all attachments have been referred to a Designated
> Enforcement Officer of the Agency for an investigation and the taking
of
> appropriate enforcement actions as required.
>
> Please confirm receipt of this message.
>
> Sincerely,
>
>
> Cathy Murphy
> 819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
> 800-669-5575
> cathy.murphy@cta-otc.gc.ca
> Secrétaire de l'Office des Transports du Canada/ Secretary of the
> Canadian Transportation Agency
> 15, rue Eddy, Hull QC K1A 0N9/
> 15 Eddy St., Hull QC K1A 0N9
> Gouvernement du Canada | Government of Canada
>
>
>

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From Cathy.Murphy@otc-cta.gc.ca Thu Mar 27 17:44:31 2014
Date: Thu, 27 Mar 2014 16:44:20 -0400
From: Cathy Murphy <Cathy.Murphy@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: Letter from the Chair and Chief Executive Officer

[The following text is in the "Windows-1252" character set.]
[Your display is set for the "ISO-8859-1" character set.]
[Some characters may be displayed incorrectly.]

Please find attached a letter from the Chair and Chief Executive Officer with respect to the Expedia matter.

Please confirm receipt.

Sincerely,

Cathy Murphy
Secretary of the Canadian Transportation Agency

Cathy Murphy
819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
800-669-5575
cathy.murphy@cta-otc.gc.ca
Secrétaire de l'Office des Transports du Canada/ Secretary of the
Canadian Transportation Agency
15, rue Eddy, Hull QC K1A 0N9/
15 Eddy St., Hull QC K1A 0N9
Gouvernement du Canada | Government of Canada

[Part 2, Application/PDF (Name: "lettertoDr.Lukacs.pdf") 1 MB.]
[Unable to print this part.]



Bureau du
Président

Office of the
Chairman

March 27, 2014

Mr. Gábor Lukács

Halifax, NS

lukacs@AirPassengerRights.ca

Dear Mr. Lukács:

This is in response to your letters dated February 24 and March 15, 2014 to the Secretary of the Agency, wherein you refer to alleged non-compliance by Expedia Inc. with Part V.1 of the *Air Transportation Regulations* (ATR).

The Federal Court of Appeal has recently confirmed that the Agency performs two distinct roles, first as an adjudicative body, and second, as an economic regulator. The matter that you have raised falls squarely within the second part of the mandate of the Agency.

Enforcement of the air pricing advertising provisions of the ATR is being achieved by application of the administrative monetary penalty provisions of the *Canada Transportation Act* (CTA). The *Canadian Transportation Agency Designated Provisions Regulations* (Designated Provisions Regulation) were amended specifically for that purpose. The DEO is empowered to exercise discretion and judgement in deciding how best to achieve compliance and where necessary enforce through the imposition of administrative monetary penalties. For your information, this approach has been highly successful in achieving compliance with the regulations amongst advertisers of air services.

To be clear, no decision by an Agency Panel is required for the DEO to undertake an investigation of a potential contravention of a provision listed in the Designated Provisions Regulations. Therefore, the Agency will not be conducting an inquiry into the matter you have raised. Further, there is no role for the public to participate in an investigation, should the DEO decide that an investigation is warranted, except as requested by the DEO where the DEO determines that information relevant to the investigation is required. The role of the public is limited to apprising the DEO of concerns they may have with respect to compliance. The Agency's Web site provides an e-mail address for this purpose.

I note that you refer to the *Canadian Transportation Agency General Rules* (General Rules) as the basis for having an Agency Panel assigned. However, the General Rules do not require the Agency to conduct an inquiry into a matter filed by the public with respect to alleged non-compliance with Part V.1 of the ATR or of other provisions of the ATR or the CTA which do not specifically provide for a complaint mechanism.

Furthermore, with respect to your concern that the DEO may have advised Expedia that it was in compliance, this does not create a conflict of interest. The DEO would simply be performing their duties by liaising with industry to ensure compliance with the provisions. This would not amount to a conflict of interest.

We are pleased to provide a portal to allow the public to advise the DEO of any concerns they may have with respect to compliance.

Consistent with our existing practices, if you have additional information about carriers or other advertisers not being in compliance, please feel free to provide such information at conformite-compliance@otc-cta.gc.ca and the Agency's DEO will take any measures the DEO deems appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoffrey C. Hare', with a stylized flourish at the end.

Geoffrey C. Hare
Chair and Chief Executive Officer

This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 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: March 28, 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 the refusal of the Canadian Transportation Agency to hear and/or render a decision in the complaint of the Applicant dated February 24, 2014, as required by subsection 29(1) of the *Canada Transportation Act*, S.C. 1996, c. 10.

The Applicant makes application for:

1. an order of *mandamus*, requiring the Canadian Transportation Agency to render a decision in the Complaint;
2. costs and/or reasonable out-of-pocket expenses of this application;
3. 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 Applicant, Dr. Gábor Lukács, is an air passenger rights advocate and a frequent traveller.

A. The statutory framework and statutory duty

2. 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, making determinations and issuing licenses and permits to carriers which function within the ambit of Parliament’s authority.

3. Section 26 of the Act confers power upon the Agency to order a person to do an act or refrain from an act related to any Act of Parliament that is administered in whole or in part by the Agency. The Agency has exercised these powers, for example, to order carriers to remove misleading signage at airports or misleading information from their websites.
4. Pursuant to subsection 27(1) of the Act, a person may make an application to the Agency. The term “application” is defined in section 1 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the “*General Rules*”) as follows:

“application” means an application, made to the Agency, that commences a proceeding under the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, and includes a complaint, [...]

[Emphasis added.]

5. Section 1 of the the Agency’s *General Rules* states:

“complaint” means a complaint made to the Agency that alleges anything to have been done or omitted to have been done in contravention of the Act, any Regulations made under the Act or any other Act of Parliament under which the Agency has authority, [...]

[Emphasis added.]

6. Subsection 29(1) of the Act imposes on the Agency the statutory duty to make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received (unless the parties agree otherwise or the Governor in Council shortens the time frame by regulation).
7. Subsection 86.1(1) of the Act requires the Agency to make regulations with respect to advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada.

8. Part V.1 of the *the Air Transportation Regulations*, S.O.R./88-58 (the “*ATR*”), comprising of ss. 135.5, 135.6, 135.7, 135.8, 135.9, 135.91, and 135.92, was promulgated pursuant to subsection 86.1(1) of the Act.
9. Section 135.8 of the *ATR* requires advertisements to clearly distinguish air transportation charges from other fees and taxes.
10. Section 135.91 of the *ATR* explicitly prohibits misrepresenting air transportation charges as if they were third party charges or taxes.

B. The Applicant’s Complaint

11. On or around February 24, 2014, the Applicant made a complaint to the Agency, alleging that Expedia, Inc. has been advertising prices of air services on its Canadian website, expedia.ca, contrary to sections 135.8 and 135.91 of the *ATR* (the “Complaint”); the Applicant asked that the Agency order Expedia, Inc. to amend its Canadian website to comply with Part V.1 of the *ATR*.

C. Refusal of the Agency to render a decision

12. On March 11, 2014, Ms. Cathy Murphy, the Secretary of the Canadian Transportation Agency, contacted the Applicant by email concerning the Complaint, and advised, among other things that:

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

13. On March 15, 2014, the Applicant request in writing that:
 - (a) the Agency clarify whether Ms. Murphy’s email was a decision of the Agency; and
 - (b) the Complaint be placed before a Panel of the Agency.

14. On March 21, 2014, Ms. Murphy advised the Applicant that:

The message I sent was a staff message simply setting out the process that is followed for alleged contraventions to the Air Service Price Advertising Regulations. A response with additional information will be provided to you next week.

15. On March 27, 2014, Mr. Geoffrey C. Hare, Chair and Chief Executive Officer of the Agency, wrote in a letter addressed to the Applicant, among other things, that:

[...] the Agency will not be conducting an inquiry into the matters you have raised.

D. Jurisdiction of this Honourable Court

16. The refusal of the Agency to render a decision in the Complaint of the Applicant falls outside the scope of the statutory appeal pursuant to section 41 of the *Act*.
17. Thus, the present application is brought under sections 18.1 and 28 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, and the *Federal Courts Rules*, 1998.
18. 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.

March 28, 2014

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

DR. GABOR LUKACS

Applicant

-and-

CANADIAN TRANSPORTATION AGENCY

Respondent

**AFFIDAVIT OF SIMONA SASOVA,
SWORN MAY 20, 2014**

I, Simona Sasova, resident of the City of Gatineau, in the Province of Quebec, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Manager of the Enforcement Division in the Regulatory Approvals and Compliance Directorate of the Industry Regulations and Determinations Branch of the Canadian Transportation Agency and, as such, have personal knowledge of the matters hereinafter deposed to.
2. I am designated as an Enforcement Officer pursuant to paragraph 178(1)(a) of the *Canada Transportation Act*, S.C. 1996, c. 10. Attached hereto and marked as Exhibit "A" to my

Affidavit is a copy of section 178 of the *Canada Transportation Act*. Attached hereto and marked as Exhibit "B" to my Affidavit is a copy of my Designated Enforcement Officer Badge No. 1013; Authorization No. CTA-2010-0003 dated November 30, 2010.

3. The Agency's Enforcement Division administers the Agency's Inspections and Investigations Program. This program is designed to encourage voluntary compliance with the *Canada Transportation Act*, the *Air Transportation Regulations*, and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. The Inspections and Investigations Program consists of four elements: periodic inspections, targeted investigations, compliance verifications and special field projects.
4. Agency Designated Enforcement Officers often carry out investigations based on their own observations and knowledge of the industry. However, they may also instigate such investigations as a result of information they receive from outside sources, such as other law enforcement bodies, the general public, or another carrier.
5. On May 29, 1996, the *Canada Transportation Act*, which modernized the transportation regulatory framework, received royal assent. The legislation introduced, among other things, more effective enforcement powers for the Canadian Transportation Agency across all modes of transportation, including the ability to levy fines for non-compliance. The Administrative Monetary Penalty (AMPs) provisions of the Act gave the Agency the power to designate, by regulation, provisions or regulations under the Act which may be proceeded

with as a violation subject to an administrative monetary penalty. The legislation also set limits to the amount of penalties to be assessed against individuals and corporations. These provisions are found in Part VI of the Act at sections 173 through 181. Attached hereto and marked as Exhibit "C" to my Affidavit is a copy of Part VI of the *Canada Transportation Act*.

6. On June 11, 1999, the *Canadian Transportation Agency Designated Provisions Regulations*, SOR/99-244, came into force. These regulations designate provisions, requirements and conditions set out in column 1 of the schedule for the purposes of subsections 177(1) and (1.1) of the *Canada Transportation Act*. Attached hereto and marked as Exhibit "D" to my Affidavit is a copy of the *Canadian Transportation Agency Designated Provisions Regulations*.
7. On December 14, 2012, amendments to the *Air Transportation Regulations* (ATR), SOR/88-58, came into force. These amendments added Part V.1 to the ATR which Part relates to air services price advertising. The *Canadian Transportation Agency Designated Provisions Regulations* were also amended to include the provisions of the ATR relating to air services price advertising on December 14, 2012. Attached hereto and marked as Exhibit "E" to my Affidavit is a copy of Part V.1 of the ATR and a copy of SOR/2012-298 which adds Part V.1 to the ATR and the related provisions to the *Canadian Transportation Agency Designated Provisions Regulations*.

8. In order to assist any person who advertises prices of air services within, or originating in, Canada, in interpreting Part V.1 of the ATR, the Agency issued an interpretation note entitled "Air Transportation Regulations – Air Services Price Advertising Interpretation Note". Attached hereto and marked as Exhibit "F" to my Affidavit is a copy of the Air Transportation Regulations – Air Services Price Advertising Interpretation Note.

9. After the coming into force of the new air price advertising provisions, on December 18, 2012, the Agency informed the industry of the new requirements. Attached hereto and marked as Exhibit "G" to my Affidavit is a copy of the notice which was sent out to the industry relating to the air services price advertising provisions.

10. After that time, the Designated Enforcement Officer conducted online compliance verifications in order to ensure compliance with Part V.1 of the ATR. Enforcement of the requirements of the air price advertising regulations has been achieved entirely by the Enforcement Division through the issuance of warning letters and the imposition of administrative monetary penalties in accordance with sections 173 through 181 of Part VI of the Act and the *Canadian Transportation Agency Designated Provisions Regulations*. As a result of the compliance verifications, one hundred and thirty two (132) warning letters were sent to advertisers and twenty two (22) notices of violation were issued with fines amounting to \$365,750.

11. One of those warning letters was sent to Expedia Canada (Expedia). In particular, on January 21, 2013, a warning letter was sent to Expedia advising that results of a compliance verification conducted on January 14, 2013 revealed that Expedia was in contravention of paragraphs 135.8(1)(d), 135.8(1)(e), subsections 135.8(2), 135.8(3) and section 135.91 of the ATR as it relates to its online booking system (Expedia.ca). Attached hereto and marked as Exhibit "H" to my Affidavit is a copy of the January 31, 2013 warning letter.

12. As in all cases, after the warning letter was sent, the Designated Enforcement Officer worked with the advertiser to assist it to become compliant. As a result, Expedia made the required changes to its Web site and thus, at the time, became compliant with the regulations and was informed accordingly.

13. On February 24, 2014, the Agency received information concerning advertising prices of Expedia from the Applicant, Dr. Gabor Lukacs. Dr. Lukacs' letter states that Expedia failed to include fuel surcharges in "Air Transportation Charges" and improperly included and listed airline-imposed charges in "Taxes, Fees and Charges" under the name "YR – Service Charge". Attached hereto and marked as Exhibit "I" to my Affidavit is a copy of Dr. Lukacs' letter.

14. Subsequently, a Designated Enforcement Officer conducted a compliance verification and discovered that Expedia was non-compliant with the regulations. In particular, Expedia's

service charge was listed under the heading "Taxes, Fees, and Charges" and not under the heading "Air Transportation Charges", as required by the regulations. As this was a new violation, a warning letter was issued to Expedia on March 27, 2014, advising that it was in contravention of section 135.92 of the ATR. Expedia was given until April 30, 2014 to become compliant. Attached hereto and marked as Exhibit "J" to my Affidavit is a copy of the March 27, 2014 warning letter.

15. Expedia has since rectified the problem; the issue has now been resolved; and therefore, Expedia has complied with the requirements identified in the warning letter.

16. In his letter dated February 24, 2014, Dr. Lukacs also submits that the "Airline Fuel Surcharge" was improperly listed under the heading "Taxes, Fees and Charges"; however, an online verification indicated that the "Airline Fuel Surcharge", while physically located below (or underneath) the heading "Taxes, Fees and Charges" on Expedia's website, was not, in fact, included in the breakdown under the heading "Taxes, Fees and Charges". There is no requirement under the regulations to break out the "Air Transportation Charges" and list airline fuel surcharges under that heading. The "Air Transportation Regulations – Air Services Price Advertising Interpretation Note" states: "An advertiser may voluntarily choose to break out the air transportation charges, such as base fare or any payment that must be made to a travel agent upon the purchase of an air service, and itemize the respective amounts for each of these items in their advertisement. *If a breakdown of these charges is provided* in writing in the advertisement, it must appear under the heading "Air

Transportation Charges", not under "Taxes, Fees and Charges". In this case, Expedia listed the "Airline Fuel Surcharge" separately, which is acceptable because it makes it clear to the consumer that it is not a third party charge. Nevertheless, Expedia was requested to physically move the "Airline Fuel Surcharge" heading so that it appears under the "Air Transportation Charges", which Expedia has done. Attached hereto and marked as Exhibit "K" to my Affidavit is a screenshot of an Expedia online ad taken on May 20, 2014.

17. This Affidavit is made at the request of counsel to the Canadian Transportation Agency in support of the Agency's Reply to the application for judicial review in this matter and for no other or improper purpose.

DATED at the City of Gatineau, in the Province of Quebec, this 20th day of May, 2014



SWORN BEFORE ME at the City of Gatineau
in the Province of Quebec, this 20th day of
May, 2014.



Commissioner of Oaths



This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Mon May 26 07:25:34 2014
Date: Mon, 26 May 2014 12:25:31 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: Cross examiantions [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

Dear Mr. Dodsworth,

I am in receipt of the affidavit of Ms. Sasova on behalf of the Agency.

I am writing to seek your cooperating in the scheduling and conduct of cross-examinations:

1. Do you intend to cross-examine me on my affidavit?
2. I do wish to cross-examine Ms. Sasova on her affidavit.

I propose that all cross-examinations be conducted by video-conference using Skype. Please advise whether you are in agreement with this arrangement, as well as about your and Ms. Sasova's availabilities for cross-examination during then next 2 weeks.

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

This is **Exhibit “I”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Mon Jun 2 10:15:48 2014
Date: Mon, 2 Jun 2014 15:15:41 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: PLEASE CONFIRM: Cross-examination of Ms. Sasova at 8:30am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dear Mr Dodsworth,

I have spoken to Gillespie Reporting Services (located at 130 Slater Street, 2nd Floor, Ottawa, Ontario, K1P 6E2). They have facilities for examination over a video-conference in their offices.

Thus, I am requesting that Ms. Sasova attend at the above-noted address at 8:30am Ottawa's time on Monday, June 9, 2014 for cross-examination on her affidavit. (I am sorry that I have been unable to accommodate your time preference. I am currently in Europe, six hours ahead of Ottawa, and "afternoon Ottawa time" would have been already in the late evening in Europe.)

I am also requesting that Ms. Sasova produce for inspection before or at the examination all documents and other material in her possession, power or control that are relevant to the application.

Kindly please confirm as soon as possible that Ms. Sasova will be available at the above-noted date, time, and venue.

Best wishes,
Dr. Gabor Lukacs

On Fri, 30 May 2014, John Dodsworth wrote:

> Mr. Lukacs
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> Ms. Sasova and I will be available for cross-examinations on her
> affidavit either June 9, 10 or 13th, preferably in the afternoon Ottawa
> time.
>
> I would be interested in knowing more detail about the court reporter
> arrangements you intend to make.
>
> Furthermore, I would not support video-taping the video conference for
> any reason.
>
> Regards
>
> John
>
> Senior Counsel/Avocat principal
> Legal Services Directorate/Direction des services juridiques
> Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
> 0N9
> Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A
> 0N9

>
> 819-997-9324
> john.dodsworth@otc-cta.gc.ca
>
> AVIS DE CONFIDENTIALITÉ : Le contenu de ce courrier électronique est
> confidentiel et strictement réservé ? l'usage des personnes auxquelles
> il s'adresse. Ce message peut contenir de l'information protégée par le
> secret professionnel de l'avocat. Si vous avez reçu ce message par
> erreur, veuillez communiquer immédiatement avec son auteur et détruire
> le message original ainsi que toute copie. Veuillez noter qu'il est
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>
>
>
>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 28/05/2014 10:49 AM
>>>>
> Mr. Dodsworth,
>
> Thank you for your message. I am currently, in Budapest, Hungary. I
> expect
> to be at a location with a fast Internet connection during the
> cross-examination, likely, either the home of a relative or a friend
> here.
>
> Since you have not provided me with your and your affiant's
> availabilities
> yet, I have been unable to arrange for a court reporter. It appear to
> me
> the most courteous conduct on my part to first explore your
> availabilities, and only then contact a court report; however, if you
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> In terms of the logistics, I will be happy to speak to the Agency's IT
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> affidavit. Should this change, please do advise.
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> I would like to thank you again for your cooperation. I look forward to
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> hearing from you.

>
> Best wishes,
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>
>
>
> On Wed, 28 May 2014, John Dodsworth wrote:
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>> Mr. Lukacs
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>> I confirm receipt of your email and will get back to you later this
>> week regarding the schedule and our view regarding the format of
>> cross-examinations. You will appreciate that the Agency has not
>> previously been requested to participate in cross-examination by
> skype
>> such that we are looking at the options and logistics of proceeding
> this
>> way.
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>> Please advise as to the availability of a court reporter and your
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>> Sincerely
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>>
>>
>>

>>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 28/05/2014 6:47 AM
>>>>
>> Dear Mr. Dodsworth,
>>
>> I am writing to follow-up on my message below, concerning cross
>> examinations.
>>
>> Kindly please confirm the receipt of this message, and advise as
> soon
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>> possible about your and your affiant's availabilities, and the
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>> On Mon, 26 May 2014, Gabor Lukacs wrote:
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>>> during then next 2 weeks.
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>>> I look forward to hearing from you.
>>>
>>> Best wishes,
>>> Dr. Gabor Lukacs
>>>
>>
>

This is **Exhibit “J”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Thu Jun 5 14:28:40 2014
Date: Thu, 5 Jun 2014 14:28:14 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, Simona.Sasova@otc-cta.gc.ca
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: DOCUMENTS TO PRODUCE FOR INSPECTION: Cross-examination of Ms. Sasova at 8:30 am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

Dear Ms. Sasova and Mr. Dodsworth,

I am writing concerning the cross-examination of Ms. Sasova scheduled, on consent, for this coming Monday (June 9, 2014).

Further to my earlier request that Ms. Sasova produce for inspection before or at the examination all documents and other material in her possession, power or control that are relevant to the application, I am specifically requesting that the following documents be produced:

(a) complete enforcement file of the enforcement action(s) referred to in paragraph 14 of Ms. Sasova's affidavit and/or related documents, including, but not limited to

- (i) all correspondence between Agency staff and Expedia;
- (ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;
- (ii) evidence on file, referred to on page 2 of Exhibit "J";

(b) communication of Agency staff with Expedia referred to in paragraph 16 of Ms. Sasova's affidavit.

Since the examination is taking place via video-conference, I requesting that you provide me with these documents in advance, by way of scanning and emailing them to me.

I would like to thank you both in advance for your cooperation.

Best wishes,
Dr. Gabor Lukacs

On Tue, 3 Jun 2014, John Dodsworth wrote:

> Yes - she will attend monday, June 9 at 8:30 am at gillespie reporting
> services.
>
> Regards
>
> John
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gabor Lukacs
> Sent: Tuesday, June 3, 2014 9:44 AM
> To: John Dodsworth

> Cc: Alexei Baturin; Wendy Liston
> Subject: Follow-up: PLEASE CONFIRM: Cross-examination of Ms. Sasova at
> 8:30am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian
> Transportation Agency]
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> Mr. Dodsworth:
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> I am writing to follow up on my message below.
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> I am requesting that you confirm that Ms. Sasova will be present for
> cross-examination at the date, time, and venue set out below.
>
> Sincerely yours,
> Dr. Gabor Lukacs
>
>
> On Mon, 2 Jun 2014, Gabor Lukacs wrote:
>
> > Dear Mr Dodsworth,
> >
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> Street,
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> >> Regards

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> >>> 0N9
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> >>> 819-997-9324
> >>> john.dodsworth@otc-cta.gc.ca
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> >>>
> >>>
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> >
>

This is **Exhibit “K”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From John.Dodsworth@otc-cta.gc.ca Thu Jun 5 18:40:24 2014
Date: Thu, 05 Jun 2014 12:40:02 -0400
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>, Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: DOCUMENTS TO PRODUCE FOR INSPECTION: Cross-examination of Ms. Sasova at 8:30 am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

[The following text is in the "Windows-1252" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Lukacs

In response to your email below, in your application, you seek an order of mandamus requiring the CTA to render a decision in the matter you raised with the Agency.

Please note that any communications that might have occurred between Ms. Sasova and Expedia in the conduct of her investigation, as Designated Enforcement Officer, are irrelevant to the issue you have raised in your application and will not be provided.

Regards

John Dodsworth

Senior Counsel/Avocat principal
Legal Services Directorate/Direction des services juridiques
Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
0N9
Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A
0N9

819-997-9324
john.dodsworth@otc-cta.gc.ca

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>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 05/06/2014 8:28 AM >>>
Dear Ms. Sasova and Mr. Dodsworth,

I am writing concerning the cross-examination of Ms. Sasova scheduled, on consent, for this coming Monday (June 9, 2014).

Further to my earlier request that Ms. Sasova produce for inspection before or at the examination all documents and other material in her possession, power or control that are relevant to the application, I am specifically requesting that the following documents be produced:

(a) complete enforcement file of the enforcement action(s) referred to in paragraph 14 of Ms. Sasova's affidavit and/or related documents, including, but not limited to

(i) all correspondence between Agency staff and Expedia;

(ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;

(ii) evidence on file, referred to on page 2 of Exhibit "J";

(b) communication of Agency staff with Expedia referred to in paragraph 16 of Ms. Sasova's affidavit.

Since the examination is taking place via video-conference, I requesting that you provide me with these documents in advance, by way of scanning and emailing them to me.

I would like to thank you both in advance for your cooperation.

Best wishes,
Dr. Gabor Lukacs

On Tue, 3 Jun 2014, John Dodsworth wrote:

> Yes - she will attend monday, June 9 at 8:30 am at gillespie reporting services.
>
> Regards
>
> John
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gabor Lukacs
> Sent: Tuesday, June 3, 2014 9:44 AM
> To: John Dodsworth

> Cc: Alexei Baturin; Wendy Liston
> Subject: Follow-up: PLEASE CONFIRM: Cross-examination of Ms. Sasova
at
> 8:30am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian
> Transportation Agency]
>
> Mr. Dodsworth:
>
> I am writing to follow up on my message below.
>
> I am requesting that you confirm that Ms. Sasova will be present for
> cross-examination at the date, time, and venue set out below.
>
> Sincerely yours,
> Dr. Gabor Lukacs
>
>
> On Mon, 2 Jun 2014, Gabor Lukacs wrote:
>
> > Dear Mr Dodsworth,
> >
> > I have spoken to Gillespie Reporting Services (located at 130
Slater
> Street,
> > 2nd Floor, Ottawa, Ontario, K1P 6E2). They have facilities for
examination
> > over a video-conference in their offices.
> >
> > Thus, I am requesting that Ms. Sasova attend at the above-noted
address at
> > 8:30am Ottawa's time on Monday, June 9, 2014 for cross-examination
on her
> > affidavit. (I am sorry that I have been unable to accommodate your
time
> > preference. I am currently in Europe, six hours ahead of Ottawa,
and
> > "afternoon Ottawa time" would have been already in the late evening
in
> > Europe.)
> >
> > I am also requesting that Ms. Sasova produce for inspection before
or at
> the
> > examination all documents and other material in her possession,
power or
> > control that are relevant to the application.
> >
> > Kindly please confirm as soon as possible that Ms. Sasova will be
> available
> > at the above-noted date, time, and venue.
> >
> > Best wishes,
> > Dr. Gabor Lukacs
> >
> >
> >
> > On Fri, 30 May 2014, John Dodsworth wrote:
> >
> >> Mr. Lukacs
> >>
> >> Ms. Sasova and I will be available for cross-examinations on her

> >> affidavit either June 9, 10 or 13th, preferably in the afternoon
Ottawa
> >> time.
> >>
> >> I would be interested in knowing more detail about the court
reporter
> >> arrangements you intend to make.
> >>
> >> Furthermore, I would not support video-taping the video conference
for
> >> any reason.
> >>
> >> Regards
> >>
> >> John
> >>
> >> Senior Counsel/Avocat principal
> >> Legal Services Directorate/Direction des services juridiques
> >> Canadian Transportation Agency / 15, Eddy St., Gatineau, Qu??bec
K1A
> >> ON9
> >> Office des Transports du Canada / 15 rue Eddy, Gatineau (Qu??bec)
K1A
> >> ON9
> >>
> >> 819-997-9324
> >> john.dodsworth@otc-cta.gc.ca
> >>
> >> AVIS DE CONFIDENTIALIT?? : Le contenu de ce courrier ??lectronique
est
> >> confidentiel et strictement r??serv?? ?? l'usage des personnes
auxquelles
> >> il s'adresse. Ce message peut contenir de l'information prot??g??e
par le
> >> secret professionnel de l'avocat. Si vous avez re??u ce message
par
> >> erreur, veuillez communiquer imm??diatement avec son auteur et
d??truire
> >> le message original ainsi que toute copie. Veuillez noter qu'il
est
> >> strictement interdit d'utiliser, de divulguer ou de reproduire le
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information
> >> is strictly prohibited. Thank you.
> >>
> >>
> >>
> >>
> >>>> Gabor Lukacs 28/05/2014 10:49 AM
> >>>>
> >> Mr. Dodsworth,
> >>

> >> Thank you for your message. I am currently, in Budapest, Hungary.
I
> >> expect
> >> to be at a location with a fast Internet connection during the
> >> cross-examination, likely, either the home of a relative or a
friend
> >> here.
> >>
> >> Since you have not provided me with your and your affiant's
> >> availabilities
> >> yet, I have been unable to arrange for a court reporter. It appear
to
> >> me
> >> the most courteous conduct on my part to first explore your
> >> availabilities, and only then contact a court report; however, if
you
> >> prefer, we can do it the other way around.
> >>
> >> In terms of the logistics, I will be happy to speak to the
Agency's IT
> >>
> >> experts and provide some guidance about setting up a Skype
> >> video-conference. (It is so simple that even my 84-year-old
grandmother
> >>
> >> has been able to use it without difficulty.)
> >>
> >> I would also like to offer to have a brief teleconference with
you
> >> today
> >> or tomorrow in the late afternoon (Ottawa's time) to discuss any
> >> logistic
> >> issues.
> >>
> >> Finally, I understand that you do not intend to cross-examine me
on my
> >>
> >> affidavit. Should this change, please do advise.
> >>
> >> I would like to thank you again for your cooperation. I look
forward to
> >>
> >> hearing from you.
> >>
> >> Best wishes,
> >> Dr. Gabor Lukacs
> >>
> >>
> >> On Wed, 28 May 2014, John Dodsworth wrote:
> >>
> >>> Mr. Lukacs
> >>>
> >>> I confirm receipt of your email and will get back to you later
this
> >>> week regarding the schedule and our view regarding the format of
> >>> cross-examinations. You will appreciate that the Agency has not
> >>> previously been requested to participate in cross-examination by
> >> skype
> >>> such that we are looking at the options and logistics of
proceeding
> >> this

> >>> way.
> >>>
> >>> Please advise as to the availability of a court reporter and
your
> >>> location at the time of cross-examination.
> >>>
> >>> Sincerely
> >>>
> >>> John
> >>>
> >>> Senior Counsel/Avocat principal
> >>> Legal Services Directorate/Direction des services juridiques
> >>> Canadian Transportation Agency / 15, Eddy St., Gatineau, Qu??bec
K1A
> >>> 0N9
> >>> Office des Transports du Canada / 15 rue Eddy, Gatineau (Qu??bec)
K1A
> >>> 0N9
> >>>
> >>> 819-997-9324
> >>> john.dodsworth@otc-cta.gc.ca
> >>>
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> >>>
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> >>> well as all copies. Any use, disclosure or copying of the
> >> information
> >>> is strictly prohibited. Thank you.
> >>>
> >>>
> >>>
> >>>
> >>>>> Gabor Lukacs 28/05/2014 6:47 AM
> >>>>>
> >>> Dear Mr. Dodsworth,
> >>>
> >>> I am writing to follow-up on my message below, concerning cross
> >>> examinations.

> >>>
> >>> Kindly please confirm the receipt of this message, and advise as
> >> soon
> >>> as
> >>> possible about your and your affiant's availabilities, and the
> >>> technical
> >>> information necessary for establishing a video-conference over
> >> Skype.
> >>>
> >>> I would like to thank you in advance for your cooperation. I
look
> >>> forward
> >>> to hearing from you.
> >>>
> >>> Best wishes,
> >>> Dr. Gabor Lukacs
> >>>
> >>>
> >>> On Mon, 26 May 2014, Gabor Lukacs wrote:
> >>>
> >>>> Dear Mr. Dodsworth,
> >>>>
> >>>> I am in receipt of the affidavit of Ms. Sasova on behalf of the
> >>> Agency.
> >>>>
> >>>> I am writing to seek your cooperating in the scheduling and
conduct
> >>> of
> >>>> cross-examinations:
> >>>>
> >>>> 1. Do you intend to cross-examine me on my affidavit?
> >>>>
> >>>> 2. I do wish to cross-examine Ms. Sasova on her affidavit.
> >>>>
> >>>> I propose that all cross-examinations be conducted by
> >>> video-conference using
> >>>> Skype. Please advise whether you are in agreement with this
> >>> arrangement, as
> >>>> well as about your and Ms. Sasova's availabilities for
> >>> cross-examination
> >>>> during then next 2 weeks.
> >>>>
> >>>> I look forward to hearing from you.
> >>>>
> >>>> Best wishes,
> >>>> Dr. Gabor Lukacs
> >>>>
> >>>>
> >>>>
> >>>>
> >>>>
> >>>>

This is **Exhibit “L”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Fri Jun 6 13:14:04 2014
Date: Fri, 6 Jun 2014 13:13:54 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: DIRECTION TO ATTEND: Cross-examination of Ms. Sasova at 8:30am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dear Ms. Sasova and Mr. Dodsworth,

Enclosed please find a Direction to Attend, which requires Ms. Sasova to produce certain documents.

I respectfully disagree with your position that the sought communications are not relevant. In an application for judicial review, where there are no pleadings, the issues are defined by the affidavits which are filed by the parties.

Thus, the communications sought are relevant, because they are directly related to the facts sworn to by Ms. Sasova. If the affidavit of Ms. Sasova contains facts and documents that are irrelevant to the issue raised in the application, then the affidavit ought to be withdrawn. But the Agency cannot have it both ways, and it is inappropriate for the Agency to cherry pick certain communications, while refusing to disclose others.

Should you wish to withdraw the affidavit of Ms. Sasova and/or reschedule the examination to allow you additional time to produce the requested documents, please advise Gillespie Reporting Services and myself without delay.

Yours very truly,
Dr. Gabor Lukacs

On Thu, 5 Jun 2014, John Dodsworth wrote:

> Mr. Lukacs
>
> In response to your email below, in your application, you seek an order
> of mandamus requiring the CTA to render a decision in the matter you
> raised with the Agency.
>
> Please note that any communications that might have occurred between
> Ms. Sasova and Expedia in the conduct of her investigation, as
> Designated Enforcement Officer, are irrelevant to the issue you have
> raised in your application and will not be provided.
>
>
> Regards
>
> John Dodsworth

>
>
>
>
> Senior Counsel/Avocat principal
> Legal Services Directorate/Direction des services juridiques
> Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
> 0N9
> Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A
> 0N9
>
> 819-997-9324
> john.dodsworth@otc-cta.gc.ca
>
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> well as all copies. Any use, disclosure or copying of the information
> is strictly prohibited. Thank you.
>
>
>
>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 05/06/2014 8:28 AM >>>
> Dear Ms. Sasova and Mr. Dodsworth,
>
>
> I am writing concerning the cross-examination of Ms. Sasova scheduled,
> on
> consent, for this coming Monday (June 9, 2014).
>
> Further to my earlier request that Ms. Sasova produce for inspection
> before or at the examination all documents and other material in her
> possession, power or control that are relevant to the application, I am
>
> specifically requesting that the following documents be produced:
>
> (a) complete enforcement file of the enforcement action(s) referred to
> in
> paragraph 14 of Ms. Sasova's affidavit and/or related documents,
> including, but not limited to
>
> (i) all correspondence between Agency staff and Expedia;
>
> (ii) all memos and/or notes and/or documentation concerning
> oral communications between Agency staff and Expedia;
>
> (ii) evidence on file, referred to on page 2 of Exhibit "J";
>
> (b) communication of Agency staff with Expedia referred to in paragraph
> 16

> of Ms. Sasova's affidavit.
>
> Since the examination is taking place via video-conference, I
> requesting
> that you provide me with these documents in advance, by way of scanning
>
> and emailing them to me.
>
> I would like to thank you both in advance for your cooperation.
>
>
> Best wishes,
> Dr. Gabor Lukacs

[Part 2: ""]

The following attachment was sent,
but NOT saved in the Fcc copy:

A Application/PDF (Name="2014-06-06--Direction_to_Attend--Simona_Sasova.pdf") segment of about 44,150 bytes.

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

DIRECTION TO ATTEND

TO: Simona Sasova

YOU ARE REQUIRED TO ATTEND AN EXAMINATION for cross-examination on your affidavit sworn on May 20, 2014 on behalf of the Canadian Transportation Agency on Monday, June 9, 2014 at 8:30 am at the office of Gillespie Reporting Services, located at 130 Slater Street, 2nd Floor, Ottawa, Ontario, K1P 6E2 (Tel: 613-238-8501).

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

1. all documents and other material in your possession, power or control that are relevant to the present application;
2. complete enforcement file of the enforcement action(s) referred to in paragraph 14 of your affidavit and/or related documents, including, but not limited to:
 - (i) all correspondence between Agency staff and Expedia;
 - (ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;
 - (iii) evidence on file, referred to on page 2 of Exhibit “J” of your affidavit;

3. communication of Agency staff with Expedia referred to in paragraph 16 of your affidavit.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Dr. Gábor Lukács (lukacs@AirPassengerRights.ca).

June 6, 2014

"Dr. Gábor Lukács"

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

This is **Exhibit “M”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From John.Dodsworth@otc-cta.gc.ca Fri Jun 6 16:47:54 2014
Date: Fri, 06 Jun 2014 10:47:30 -0400
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>, Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: DIRECTION TO ATTEND: Cross-examination of Ms. Sasova at 8:30am on June 9, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

[The following text is in the "Windows-1252" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Lukacs

Only documents that are relevant to the application must be produced. While the fact of Expedia's current compliance with the Air Transportation Regulations, a fact that is established in Ms. Sasova's affidavit, is relevant to your application, her communications during her investigation with Expedia are not.

Given that we will need some time to resolve this issue, and, in any case, given that you have only just today provided the Direction to Attend, including request for the aforementioned documents, I believe that it is necessary to postpone the cross-examinations scheduled for Monday, which I request that you do.

Sincerely,

John Dodsworth

Senior Counsel/Avocat principal
Legal Services Directorate/Direction des services juridiques
Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A 0N9
Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A 0N9

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john.dodsworth@otc-cta.gc.ca

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>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 06/06/2014 7:13 AM >>>
Dear Ms. Sasova and Mr. Dodsworth,

Enclosed please find a Direction to Attend, which requires Ms. Sasova to produce certain documents.

I respectfully disagree with your position that the sought communications are not relevant. In an application for judicial review, where there are no pleadings, the issues are defined by the affidavits which are filed by the parties.

Thus, the communications sought are relevant, because they are directly related to the facts sworn to by Ms. Sasova. If the affidavit of Ms. Sasova contains facts and documents that are irrelevant to the issue raised in the application, then the affidavit ought to be withdrawn. But the Agency cannot have it both ways, and it is inappropriate for the Agency to cherry pick certain communications, while refusing to disclose others.

Should you wish to withdraw the affidavit of Ms. Sasova and/or reschedule the examination to allow you additional time to produce the requested documents, please advise Gillespie Reporting Services and myself without delay.

Yours very truly,
Dr. Gabor Lukacs

On Thu, 5 Jun 2014, John Dodsworth wrote:

> Mr. Lukacs
>
> In response to your email below, in your application, you seek an order
> of mandamus requiring the CTA to render a decision in the matter you
> raised with the Agency.
>
> Please note that any communications that might have occurred between
> Ms. Sasova and Expedia in the conduct of her investigation, as
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> raised in your application and will not be provided.
>
>
> Regards
>
> John Dodsworth

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>
>
>
> Senior Counsel/Avocat principal
> Legal Services Directorate/Direction des services juridiques
> Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
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> john.dodsworth@otc-cta.gc.ca
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>
>
>
>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 05/06/2014 8:28 AM
>>>>
> Dear Ms. Sasova and Mr. Dodsworth,
>
>
> I am writing concerning the cross-examination of Ms. Sasova
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> before or at the examination all documents and other material in her
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am
>
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>
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> of Ms. Sasova's affidavit.
>
> Since the examination is taking place via video-conference, I
> requesting
> that you provide me with these documents in advance, by way of
scanning
>
> and emailing them to me.
>
> I would like to thank you both in advance for your cooperation.
>
>
> Best wishes,
> Dr. Gabor Lukacs

This is **Exhibit “N”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Fri Jun 6 22:25:03 2014
Date: Fri, 6 Jun 2014 22:24:51 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>, Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: POSTPONEMENT of cross-examination of Ms. Sasova [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dear Mr. Dodsworth,

I am writing to confirm that we have agreed as follows:

1. The cross-examination of Ms. Sasova is postponed to a later date permitted by the rules on consent.
2. The Agency will provide me with a letter of consent, pursuant to Rule 7, for a 10-day extension of my deadline, pursuant to Rule 308, to cross-examine Ms. Sasova.
3. The Agency accepts the Direction to Attend served today as satisfying the requirements of Rule 91(3), and will not object to the examination and/or the request to produce documents on this basis.

In order to reschedule the examination, kindly please advise about the availabilities of Ms. Sasova in the period between June 10 and June 20, 2014.

Best wishes,
Dr. Gabor Lukacs

On Fri, 6 Jun 2014, John Dodsworth wrote:

> Mr. Lukacs
>
> Only documents that are relevant to the application must be produced.
> While the fact of Expedia's current compliance with the Air
> Transportation Regulations, a fact that is established in Ms. Sasova's
> affidavit, is relevant to your application, her communications during
> her investigation with Expedia are not.
>
> Given that we will need some time to resolve this issue, and, in any
> case, given that you have only just today provided the Direction to
> Attend, including request for the aforementioned documents, I believe
> that it is necessary to postpone the cross-examinations scheduled for
> Monday, which I request that you do.
>
> Sincerely,
>
> John Dodsworth
>
>
>
> Senior Counsel/Avocat principal

> Legal Services Directorate/Direction des services juridiques
> Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
> 0N9
> Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A
> 0N9
>
> 819-997-9324
> john.dodsworth@otc-cta.gc.ca
>
> AVIS DE CONFIDENTIALITÉ : Le contenu de ce courrier électronique est
> confidentiel et strictement réservé ? l'usage des personnes auxquelles
> il s'adresse. Ce message peut contenir de l'information protégée par le
> secret professionnel de l'avocat. Si vous avez reçu ce message par
> erreur, veuillez communiquer immédiatement avec son auteur et détruire
> le message original ainsi que toute copie. Veuillez noter qu'il est
> strictement interdit d'utiliser, de divulguer ou de reproduire le
> contenu de ce message. Merci.
>
> CONFIDENTIALITY NOTICE: The contents of this electronic mail message
> are confidential and strictly reserved for the sole use of its intended
> recipients. This message may contain information protected by
> solicitor-client privilege. If you receive this message in error,
> please notify the sender immediately and destroy the original message as
> well as all copies. Any use, disclosure or copying of the information
> is strictly prohibited. Thank you.
>
>
>
>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 06/06/2014 7:13 AM >>>
> Dear Ms. Sasova and Mr. Dodsworth,
>
>
> Enclosed please find a Direction to Attend, which requires Ms. Sasova
> to
> produce certain documents.
>
> I respectfully disagree with your position that the sought
> communications
> are not relevant. In an application for judicial review, where there
> are
> no pleadings, the issues are defined by the affidavits which are filed
> by
> the parties.
>
> Thus, the communications sought are relevant, because they are directly
>
> related to the facts sworn to by Ms. Sasova. If the affidavit of Ms.
> Sasova contains facts and documents that are irrelevant to the issue
> raised in the application, then the affidavit ought to be withdrawn.
> But
> the Agency cannot have it both ways, and it is inappropriate for the
> Agency to cherry pick certain communications, while refusing to
> disclose
> others.
>
> Should you wish to withdraw the affidavit of Ms. Sasova and/or
> reschedule
> the examination to allow you additional time to produce the requested
> documents, please advise Gillespie Reporting Services and myself
> without
> delay.

>
>
> Yours very truly,
> Dr. Gabor Lukacs
>
>
>
>
> On Thu, 5 Jun 2014, John Dodsworth wrote:
>
>> Mr. Lukacs
>>
>> In response to your email below, in your application, you seek an
> order
>> of mandamus requiring the CTA to render a decision in the matter you
>> raised with the Agency.
>>
>> Please note that any communications that might have occurred between
>> Ms. Sasova and Expedia in the conduct of her investigation, as
>> Designated Enforcement Officer, are irrelevant to the issue you have
>> raised in your application and will not be provided.
>>
>>
>> Regards
>>
>> John Dodsworth
>>
>>
>>
>> Senior Counsel/Avocat principal
>> Legal Services Directorate/Direction des services juridiques
>> Canadian Transportation Agency / 15, Eddy St., Gatineau, Québec K1A
>> 0N9
>> Office des Transports du Canada / 15 rue Eddy, Gatineau (Québec) K1A
>> 0N9
>>
>> 819-997-9324
>> john.dodsworth@otc-cta.gc.ca
>>
>> AVIS DE CONFIDENTIALITÉ : Le contenu de ce courrier électronique est
>> confidentiel et strictement réservé ? l'usage des personnes
> auxquelles
>> il s'adresse. Ce message peut contenir de l'information protégée par
> le
>> secret professionnel de l'avocat. Si vous avez reçu ce message par
>> erreur, veuillez communiquer immédiatement avec son auteur et
> détruire
>> le message original ainsi que toute copie. Veuillez noter qu'il est
>> strictement interdit d'utiliser, de divulguer ou de reproduire le
>> contenu de ce message. Merci.
>>
>> CONFIDENTIALITY NOTICE: The contents of this electronic mail
> message
>> are confidential and strictly reserved for the sole use of its
> intended
>> recipients. This message may contain information protected by
>> solicitor-client privilege. If you receive this message in error,
>> please notify the sender immediately and destroy the original message
> as
>> well as all copies. Any use, disclosure or copying of the
> information

>> is strictly prohibited. Thank you.
>>
>>
>>
>>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 05/06/2014 8:28 AM
>>>>
>> Dear Ms. Sasova and Mr. Dodsworth,
>>
>>
>> I am writing concerning the cross-examination of Ms. Sasova
> scheduled,
>> on
>> consent, for this coming Monday (June 9, 2014).
>>
>> Further to my earlier request that Ms. Sasova produce for inspection
>> before or at the examination all documents and other material in her
>> possession, power or control that are relevant to the application, I
> am
>>
>> specifically requesting that the following documents be produced:
>>
>> (a) complete enforcement file of the enforcement action(s) referred
> to
>> in
>> paragraph 14 of Ms. Sasova's affidavit and/or related documents,
>> including, but not limited to
>>
>> (i) all correspondence between Agency staff and Expedia;
>>
>> (ii) all memos and/or notes and/or documentation concerning
>> oral communications between Agency staff and Expedia;
>>
>> (ii) evidence on file, referred to on page 2 of Exhibit "J";
>>
>> (b) communication of Agency staff with Expedia referred to in
> paragraph
>> 16
>> of Ms. Sasova's affidavit.
>>
>> Since the examination is taking place via video-conference, I
>> requesting
>> that you provide me with these documents in advance, by way of
> scanning
>>
>> and emailing them to me.
>>
>> I would like to thank you both in advance for your cooperation.
>>
>>
>> Best wishes,
>> Dr. Gabor Lukacs
>

This is **Exhibit “O”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

Federal Court of Appeal



Cour d'appel fédérale

TO: Judicial Administrator

FROM: Sharlow J.A.

DATE: July 3, 2014

RE: A-167-14 Dr. Gábor Lukács v. Canadian Transportation Agency

DIRECTION

The applicant has requested that this matter be held in abeyance pending settlement discussions.

The time for filing the applicant's record is extended to September 30, 2014.

"KS"

This is **Exhibit “P”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Thu Aug 21 17:26:01 2014
Date: Thu, 21 Aug 2014 17:25:54 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>, John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: DIRECTION TO ATTEND: Cross-examination of Ms. Sasova at 10:30am on September 4, 2014 [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

Dear Ms. Sasova and Mr. Dodsworth,

Enclosed please find a Direction to Attend to cross examine Ms. Sasova on her affidavit.

As you recall, Ms. Sasova's cross-examination was postponed at your request, and was further postponed in order to explore the possibility of a settlement.

As I see no progress at all and Expedia's Canadian website continues to be non-compliant with the Air Transportation Regulations, I am afraid I have no choice but to proceed with the application.

Should you become aware of a material change in Expedia's website, please do let me know, and we can discuss the possibility of postponing the examination again.

Best wishes,
Dr. Gabor Lukacs

[Part 2: ""]

The following attachment was sent,
but NOT saved in the Fcc copy:

A Application/PDF (Name="2014-08-21--Direction_to_Attend--Simona_Sasova.pdf") segment of about 32,483 bytes.

Court File No.: A-167-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

DIRECTION TO ATTEND

TO: Simona Sasova

YOU ARE REQUIRED TO ATTEND AN EXAMINATION for cross-examination on your affidavit sworn on May 20, 2014 on behalf of the Canadian Transportation Agency on ~~Monday, June 9, 2014 at 8:30 am~~ Thursday, September 4, 2014 at 10:30 am at the office of Gillespie Reporting Services, located at 130 Slater Street, 2nd Floor, Ottawa, Ontario, K1P 6E2 (Tel: 613-238-8501).

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

1. all documents and other material in your possession, power or control that are relevant to the present application;
2. complete enforcement file of the enforcement action(s) referred to in paragraph 14 of your affidavit and/or related documents, including, but not limited to:
 - (i) all correspondence between Agency staff and Expedia;
 - (ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;
 - (iii) evidence on file, referred to on page 2 of Exhibit “J” of your affidavit;

3. communication of Agency staff with Expedia referred to in paragraph 16 of your affidavit.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Dr. Gábor Lukács (lukacs@AirPassengerRights.ca).

June 6, 2014 August 21, 2014

"Dr. Gábor Lukács"

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

This is **Exhibit “Q”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From John.Dodsworth@otc-cta.gc.ca Sun Sep 7 16:26:37 2014
Date: Sun, 7 Sep 2014 19:26:27 +0000
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: Documents

Mr. Lukacs

This is further to cross-examination of Ms. Sasova on her May 20, 2014 affidavit held September 4, 2014.

Ms. Sasova will be sending you a complete package of documents on Monday that responds to your Direction to Attend. Most of those are copies and duplicates of documents already provided to you at the cross-examination on September 4th.

However, to avoid further confusion, they are being sent to you as a complete package responding to your Direction to Attend.

The email exchange dated May 27 from Paul Lynch to Paul de Bois and Simona Sasova is related to the two page document you were provided at the cross-examination and that started at page 2, which lead to some discussion. Although Ms. Sasova had not brought this first page to the cross-examination since it includes exchanges dated May 26 and 27 (and past the date she attested her affidavit), she is providing this document as it is relates to paragraph 14 of her affidavit.

If you require further cross-examinations with respect to a document not provided at cross-examinations on September 4, then we could reconvene cross-examinations for that limited purpose at your convenience. Ms. Sasova will not be available to answer any additional questions on matters that have already been subject to cross-examination.

While, as mentioned, I am not available on September 11th we are available on the 10th and the following week.

Best Regards

John Dodsworth

This is **Exhibit “R”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Sun Sep 7 21:29:18 2014
Date: Sun, 7 Sep 2014 21:29:15 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Subject: Production of documents and re-attendance by Ms. Sasova [Re: Documents]

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dear Mr. Dodsworth,

On September 4, 2014, I adjourned the cross-examination of Ms. Sasova on her May 20, 2014 affidavit pursuant to Rule 96(2) for her failure to produce documents requested in the Direction to Attend.

I welcome Ms. Sasova's willingness to produce documents and to re-attend for the continuation of her cross-examination. At the same time, I remain concerned about the completeness of Ms. Sasova's productions.

The Direction to Attend required Ms. Sasova to produce not only the complete enforcement file, but also related documents, including, but not limited to, "all correspondence between Agency staff and Expedia" as well as "all documents and other materials" in her possession, power or control that are relevant to the present application.

Ms. Sasova testified that she had email exchanges with Expedia after May 20, 2014 "with regards to the September 10 compliance date." Ms. Sasova stated that some of this correspondence took place in June, most of it in July, and some shortly before the date of the cross-examination, after her return from vacation.

Given that these email exchanges were in relation to "compliance" of Expedia's website, they are clearly relevant to enforcement and the facts deposed to in Ms. Sasova's affidavit.

Furthermore, as you surely recall, you stated on the record that the communication concerning the September 10 compliance date would be produced.

In these circumstances, I expect production of all email exchanges between Agency staff and Expedia in relation to Expedia's website from February 2014 to the date of the production.

I welcome the opportunity to resume the cross-examination of Ms. Sasova on Wednesday, September 10, 2014 at 10:30 am Ottawa's time; however, I do not accept any limitations as to its scope. You are, of course, entitled to object to any question that will be asked, and the propriety of the question can be subsequently determined by the Court.

Finally, I am requesting that the Agency or Ms. Sasova undertake to reimburse me for the costs of the continuation of Ms. Sasova's cross-examination, as these costs are incurred due to the failure to produce documents as directed.

Kindly please confirm that Ms. Sasova will be re-attending on September 10, 2014 at 10:30 am at the reporter's office.

Best wishes,

Dr. Gabor Lukacs

On Sun, 7 Sep 2014, John Dodsworth wrote:

>
> Mr. Lukacs
>
>
> This is further to cross-examination of Ms. Sasova on her May 20, 2014
> affidavit held September 4, 2014.
>
>
>
> Ms. Sasova will be sending you a complete package of documents on Monday
> that responds to your Direction to Attend. Most of those are copies and
> duplicates of documents already provided to you at the cross-examination on
> September 4th. However, to avoid further confusion, they are being sent to
> you as a complete package responding to your Direction to Attend.
>
>
>
> The email exchange dated May 27 from Paul Lynch to Paul de Bois and Simona
> Sasova is related to the two page document you were provided at the
> cross-examination and that started at page 2, which lead to some discussion.
> Although Ms. Sasova had not brought this first page to the cross-examination
> since it includes exchanges dated May 26 and 27 (and past the date she
> attested her affidavit), she is providing this document as it is relates to
> paragraph 14 of her affidavit.
>
>
>
> If you require further cross-examinations with respect to a document not
> provided at cross-examinations on September 4, then we could reconvene
> cross-examinations for that limited purpose at your convenience. Ms. Sasova
> will not be available to answer any additional questions on matters that
> have already been subject to cross-examination.
>
>
>
> While, as mentioned, I am not available on September 11th we are available
> on the 10th and the following week.
>
>
>
> Best Regards
>
> John Dodsworth
>
>
>
>
>
>

This is **Exhibit “S”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Mon Sep 8 15:26:35 2014

Date: Mon, 8 Sep 2014 15:26:33 -0300 (ADT)

From: Gabor Lukacs <lukacs@AirPassengerRights.ca>

To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>

Subject: Re: Production of documents and re-attendance by Ms. Sasova [Re: Documents]

[The following text is in the "iso-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Dodsworth,

1. On September 4, 2014, you stated on the record that the communication concerning the September 10 compliance date would produced. Thus, I am requesting that you comply with same.

2. You are misquoting the contents of the Direction to Attend. Kindly please refer to paragraph 1 of the Direction to Attend, as well as the portion of paragraph 2 following the phrase "and/or".

3. Correspondence concerning "compliance" that Ms. Sasova admitted to have had with Expedia after May 2014 is certainly relevant to the enforcement actions, the application, and to the facts deposed to in the affidavit.

4. I am not sure what "our settlement discussions" refers to in your message. If Ms. Sasova chose to share with Expedia details of settlement discussions between the Agency and myself, then it is not privileged, and it must be produced, as it is relevant to her credibility and bias.

On a going forward basis, I request that:

(i) the Agency and/or Ms. Sasova produce all correspondence between the Agency and Expedia in relation to Expedia's website from February 24, 2014 (the date of my complaint) up until today;

(ii) confirm that Ms. Sasova will be re-attending on September 10, 2014 at 11:30 am at the reporter's office (please note the new time!);

(iii) the Agency or Ms. Sasova undertake to reimburse me for the costs of the continuation of Ms. Sasova's cross-examination, as these costs are incurred due to the failure to produce documents as directed.

Yours very truly,
Dr. Gabor Lukacs

On Mon, 8 Sep 2014, John Dodsworth wrote:

> Mr. Lukacs - your direction to attend required documents related to para 14
> of ms sasova's affidavit. As stated in that affidavit the march 27 notice of
> warning was determined to be complied with on may 20. The additional
> exchanges that I committed to produce that will be sent is an exchange
> confirming that.

>

> The additional discussion regarding compliance by September 10 is related to
> our settlement discussions.

>

> John

>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gabor Lukacs
> Sent: Sunday, September 7, 2014 8:29 PM
> To: John Dodsworth
> Cc: Simona Sasova
> Subject: Production of documents and re-attendance by Ms. Sasova [Re:
> Documents]
>
> Dear Mr. Dodsworth,
>
>
> On September 4, 2014, I adjourned the cross-examination of Ms. Sasova on
> her May 20, 2014 affidavit pursuant to Rule 96(2) for her failure to
> produce documents requested in the Direction to Attend.
>
> I welcome Ms. Sasova's willingness to produce documents and to re-attend
> for the continuation of her cross-examination. At the same time, I remain
> concerned about the completeness of Ms. Sasova's productions.
>
> The Direction to Attend required Ms. Sasova to produce not only the
> complete enforcement file, but also related documents, including, but not
> limited to, "all correspondence between Agency staff and Expedia" as well
> as "all documents and other materials" in her possession, power or
> control that are relevant to the present application.
>
> Ms. Sasova testified that she had email exchanges with Expedia after May
> 20, 2014 "with regards to the September 10 compliance date." Ms. Sasova
> stated that some of this correspondence took place in June, most of it in
> July, and some shortly before the date of the cross-examination, after her
> return from vacation.
>
> Given that these email exchanges were in relation to "compliance" of
> Expedia's website, they are clearly relevant to enforcement and the
> facts deposed to in Ms. Sasova's affidavit.
>
> Furthermore, as you surely recall, you stated on the record that the
> communication concerning the September 10 compliance date would be
> produced.
>
> In these circumstances, I expect production of all email exchanges between
> Agency staff and Expedia in relation to Expedia's website from February
> 2014 to the date of the production.
>
> I welcome the opportunity to resume the cross-examination of Ms. Sasova on
> Wednesday, September 10, 2014 at 10:30 am Ottawa's time; however, I do not
> accept any limitations as to its scope. You are, of course, entitled to
> object to any question that will be asked, and the propriety of the
> question can be subsequently determined by the Court.
>
> Finally, I am requesting that the Agency or Ms. Sasova undertake to
> reimburse me for the costs of the continuation of Ms. Sasova's
> cross-examination, as these costs are incurred due to the failure to
> produce documents as directed.
>
> Kindly please confirm that Ms. Sasova will be re-attending on September 10,
> 2014 at 10:30 am at the reporter's office.
>
>
> Best wishes,
> Dr. Gabor Lukacs
>

>
>
>
> On Sun, 7 Sep 2014, John Dodsworth wrote:
>
> >
> > Mr. Lukacs
> >
> >
> >
> > This is further to cross-examination of Ms. Sasova on her May 20, 2014
> > affidavit held September 4, 2014.
> >
> >
> > Ms. Sasova will be sending you a complete package of documents on Monday
> > that responds to your Direction to Attend. Most of those are copies and
> > duplicates of documents already provided to you at the cross-examination
> > on
> > September 4th. However, to avoid further confusion, they are being sent
> > to
> > you as a complete package responding to your Direction to Attend.
> >
> >
> >
> > The email exchange dated May 27 from Paul Lynch to Paul de Bois and Simona
> > Sasova is related to the two page document you were provided at the
> > cross-examination and that started at page 2, which lead to some
> > discussion.
> > Although Ms. Sasova had not brought this first page to the
> > cross-examination
> > since it includes exchanges dated May 26 and 27 (and past the date she
> > attested her affidavit), she is providing this document as it is relates
> > to
> > paragraph 14 of her affidavit.
> >
> >
> >
> > If you require further cross-examinations with respect to a document not
> > provided at cross-examinations on September 4, then we could reconvene
> > cross-examinations for that limited purpose at your convenience. Ms.
> > Sasova
> > will not be available to answer any additional questions on matters that
> > have already been subject to cross-examination.
> >
> >
> >
> > While, as mentioned, I am not available on September 11th we are
> > available
> > on the 10th and the following week.
> >
> >
> >
> > Best Regards
> >
> > John Dodsworth
> >
> >
> >
> >
> >
> >
> >

> >
>
>

This is **Exhibit “T”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Mon Sep 8 16:35:27 2014
Date: Mon, 8 Sep 2014 16:35:23 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Subject: Re: Production of documents and re-attendance by Ms. Sasova [Re: Documents]

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Dodsworth,

With due respect, your client and Ms. Sasova have had plenty of time to consider the obligation to produce documents pursuant to the Direction to Attend, which was served on June 6, 2014, and then served again (with the dates updated) on August 21, 2014.

I am surprised by your request to postpone the continuation of the cross-examination of Ms. Sasova scheduled for September 10, 2014, a date which was proposed by you, accepted by me, and booked accordingly.

I am concerned by what transpires the Agency engaging in dilatory tactics and/or an attempting to run up the costs of the cross-examination.

My preference remains to continue the cross-examination of Ms. Sasova on the September 10, 2014, as scheduled. However, in a final effort to resolve the issues related to the cross-examination of Ms. Sasova, I am prepare to postpone the continuation of Ms. Sasova's cross-examination to September 15, 2014, a date that you have earlier confirmed that both you and Ms. Sasova are available.

Kindly please confirm that you and Ms. Sasova are in agreement with this new date.

Yours very truly,
Dr. Gabor Lukacs

On Mon, 8 Sep 2014, John Dodsworth wrote:

> Mr Lukacs - I will have to discuss your email with my client.
>
> I think these issues should be resolved before resuming cross-examinations
> so that next week seems more realistic.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
>
>
>
> From: Gabor Lukacs
> Sent: Monday, September 8, 2014 2:26 PM
> To: John Dodsworth
> Subject: Re: Production of documents and re-attendance by Ms. Sasova [Re:
> Documents]

>
> Mr. Dodsworth,
>
>
> 1. On September 4, 2014, you stated on the record that the communication
> concerning the September 10 compliance date would produced. Thus, I am
> requesting that you comply with same.
>
> 2. You are misquoting the contents of the Direction to Attend. Kindly
> please refer to paragraph 1 of the Direction to Attend, as well as the
> portion of paragraph 2 following the phrase "and/or".
>
> 3. Correspondence concerning "compliance" that Ms. Sasova admitted to have
> had with Expedia after May 2014 is certainly relevant to the enforcement
> actions, the application, and to the facts deposed to in the affidavit.
>
> 4. I am not sure what "our settlement discussions" refers to in your
> message. If Ms. Sasova chose to share with Expedia details of settlement
> discussions between the Agency and myself, then it is not privileged, and
> it must be produced, as it is relevant to her credibility and bias.
>
>
> On a going forward basis, I request that:
>
> (i) the Agency and/or Ms. Sasova produce all correspondence between the
> Agency and Expedia in relation to Expedia's website from February 24,
> 2014 (the date of my complaint) up until today;
>
> (ii) confirm that Ms. Sasova will be re-attending on September 10,
> 2014 at 11:30 am at the reporter's office (please note the new time!);
>
> (iii) the Agency or Ms. Sasova undertake to reimburse me for the costs of
> the continuation of Ms. Sasova's cross-examination, as these costs are
> incurred due to the failure to produce documents as directed.
>
>
> Yours very truly,
> Dr. Gabor Lukacs

This is **Exhibit “U”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Wed Sep 10 13:31:48 2014
Date: Wed, 10 Sep 2014 13:31:45 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Subject: RE: Production of documents and re-attendance by Ms. Sasova [Re: Documents]

[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.]

Mr. Dodsworth,

I am in receipt of a 84-page PDF file sent by Mr. Lynch on September 9, 2014, which I understand to be further productions by Ms. Sasova. What has been produced continues to be inadequate:

1. Although you stated on the record that the communication concerning the September 10 compliance date would be produced, the Agency and/or Ms. Sasova failed to produce.

I note that Ms. Sasova admitted to have exchanged numerous emails with Expedia in relation to this matter since June 2014.

2. A number of emails that are either incomplete or missing. For example:

- (a) the images embedded in the email on page 17 are missing;
- (b) the answer to the email on page 17 is missing;
- (c) the email chain starting on page 19 and continuing on page 20 is incomplete;
- (d) the images embedded in the email on page 21 are missing;
- (e) page 25 is not the continuation of the chain of emails on page 24;
- (f) the first two pages of the email chain shown on page 25 are missing.

I reiterate my request that the Agency and/or Ms. Sasova produce all correspondence between the Agency and Expedia in relation to Expedia's website from February 24, 2014 (the date of my complaint) up until today. I request that the Agency do so without delay.

I also request that you confirm that confirm that Ms. Sasova will be re-attending on Monday, September 15, 2014 at 11:30 am at the reporter's office.

Furthermore, I request that the Agency or Ms. Sasova undertake to reimburse me for the costs of the continuation of Ms. Sasova's cross-examination, as these costs are incurred due to the failure to produce documents as directed.

Finally, I respectfully disagree with you as to your and the Agency's conduct, which has been dilatory and causing me to incur unnecessary expenses.

Yours very truly,
Dr. Gabor Lukacs

On Mon, 8 Sep 2014, John Dodsworth wrote:

> Mr. Lukacs
>
> I think the record is very clear that throughout this process, I have
> been trying to avoid unnecessary costs in this process.
>
> I said I was available on the 10th If you require further
> cross-examinations with respect to a document not provided at
> cross-examinations on September 4.
>
> In that regard, I expected that you would review any additional
> documents that will be forwarded to you before determining whether or
> not additional cross-examination of Ms. Sasova is required.
>
> However, in your email below, you disagree with my position about what
> you feel should be produced. I think it is important to try to resolve
> this issue before proceeding to cross-examination.
>
> We are available on September 15th if you feel additional
> cross-examinations are necessary after reviewing the emails that are
> produced.
>
> John
>
>
>
> -----Original Message-----
> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
> Sent: September-08-14 3:35 PM
> To: John Dodsworth
> Cc: Simona Sasova
> Subject: Re: Production of documents and re-attendance by Ms. Sasova [Re: Documents
>]
>
> Mr. Dodsworth,
>
>
> With due respect, your client and Ms. Sasova have had plenty of time to
> consider the obligation to produce documents pursuant to the Direction
> to Attend, which was served on June 6, 2014, and then served again (with
> the dates updated) on August 21, 2014.
>
> I am surprised by your request to postpone the continuation of the
> cross-examination of Ms. Sasova scheduled for September 10, 2014, a date
> which was proposed by you, accepted by me, and booked accordingly.
>
> I am concerned by what transpires the Agency engaging in dilatory
> tactics and/or an attempting to run up the costs of the
> cross-examination.
>
> My preference remains to continue the cross-examination of Ms. Sasova on
> the September 10, 2014, as scheduled. However, in a final effort to
> resolve the issues related to the cross-examination of Ms. Sasova, I am
> prepare to postpone the continuation of Ms. Sasova's cross-examination
> to September 15, 2014, a date that you have earlier confirmed that both

> you and Ms. Sasova are available.
>
> Kindly please confirm that you and Ms. Sasova are in agreement with this
> new date.
>
>
> Yours very truly,
> Dr. Gabor Lukacs
>
>
>
>
> On Mon, 8 Sep 2014, John Dodsworth wrote:
>
>> Mr Lukacs - I will have to discuss your email with my client.
>>
>> I think these issues should be resolved before resuming cross-examinations
>> so that next week seems more realistic.
>>
>> Sent from my BlackBerry 10 smartphone on the Rogers network.

This is **Exhibit “V”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Fri Sep 12 15:16:44 2014
Date: Fri, 12 Sep 2014 15:16:41 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Subject: Production of documents and re-attendance by Ms. Sasova on September 15, 2014 at 11:30 am

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Dodsworth,

1. Thank you for confirming that Ms. Sasova will be re-attending on September 15, 2014 at 11:30 am for the continuation of her cross-examination. Since a substantial amount of documents were not produced on September 4, 2014, the examination will have to be broad, and cannot strictly be limited to those documents that were produced since September 4, 2014.
 2. I am in receipt of 16 additional pages of emails between Agency staff and Expedia, which seem to have taken place between June 9, 2014 and August 21, 2014. These 16 additional pages appear to be not a complete production of the correspondence. For example:
 - (a) some of the emails sent by Mr. Lynch to Expedia on July 28, 2014, to which he refers as "sent in error" have not been produced; and
 - (b) correspondence following August 21, 2014 is missing.
 3. I reiterate my request that the Agency and/or Ms. Sasova produce ALL correspondence between the Agency and Expedia in relation to Expedia's website from February 24, 2014 (the date of my complaint) up until today.
 4. Concerning the 84 pages produced on September 9, 2014, I do not accept your explanation for a wealth of missing pages that "This is just how it printed out." Based on my many years of IT experience, this is not credible. On a going forward basis, I am requesting that the following documents be produced:
 - (a) COMPLETE email of Mr. de Blois to Mr. Paul Lynch, dated 16/04/2014 8:34:08 PM, including the entire string of emails, which were truncated on page 20 of the September 9, 2014 productions;
 - (b) the missing pages of the chain of emails starting on page 25 of the September 9, 2014 productions.
 5. I reiterate my request that the Agency or Ms. Sasova undertake to reimburse me for the costs of the continuation of the examination, which became necessary due the failure to produce documents on September 4, 2014.
- Finally, settlement discussions, if any, will be taking place in a separate email.

Yours very truly,
Dr. Gabor Lukacs

On Fri, 12 Sep 2014, John Dodsworth wrote:

>
> Mr. Lukacs ? As mentioned previously, the package you received and to which
> refer below constitutes documents that you received on cross-examinations on
> September 4, 2014. They were provided a second time in an attempt to avoid
> further confusion. One additional document is the email exchange on May 26
> and 27 involving Paul Lynch of the Agency which you requested at the
> cross-examinations that Ms. Sasova had not brought with her. This brief
> exchange is dated after her May 20, 2014 affidavit, but is related to the
> March 27, 2014 notice of warning.
>
> As stated by Ms. Sasova at cross-examinations, subsequent communications
> with Expedia resulted from her efforts to satisfy your offer to settle the
> judicial review application.
>
>
> I nonetheless provide that exchange.
>
>
>
> I hope that you will consider settling this matter and withdraw your
> judicial review application. We can discuss how costs of this
> cross-examination would be apportioned if that were to occur.
>
>
>
> Given your interest in cross-examining Ms. Sasova further, we will attend on
> September 15th to allow her to respond to any further questions you may have
> on this limited additional documentation
>
> In what follows, are responses to your statements about missing documents:
>
>
>
> 2. A number of emails that are either incomplete or missing. For example:
>
> (a) the images embedded in the email on page 17 are missing;
>
> The images referred to are for a competitor of Expedia, namely Flight
> Network. The screen shots are provided in a separate email.
>
> (b) the answer to the email on page 17 is missing;
>
> No answer was given in writing to the images of Flight Network's web site
> supplied by Expedia.
>
> (c) the email chain starting on page 19 and continuing on page 20 is
> incomplete;
>
> The email referred to is a string?the start of the email at the bottom of
> page 20 can be viewed in whole on the top of page 5 of the supplied
> document. This is just how it printed out. No emails missing.
>
> (d) the images embedded in the email on page 21 are missing;

>
> The embedded images have been provided. This email is dated April 24th and
> refers to three images ? this email is again part of a string and the images
> (3,5 & 7) can be viewed starting page 79 of the supplied document.
>
> (e) page 25 is not the continuation of the chain of emails on page 24;
>
> Again, the email referred to is a string?please see page 12 of the supplied
> document. This is just how it printed out. No emails missing.
>
> (f) the first two pages of the email chain shown on page 25 are missing.
>
> Again, the emails referred to are part of a string?please see page 11 of the
> supplied document for page 1 of the string. This is just how it printed
> out. No emails or pages missing.
>
>
>

This is **Exhibit “W”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on October 9, 2014

Signature

From lukacs@AirPassengerRights.ca Fri Sep 12 16:15:27 2014
Date: Fri, 12 Sep 2014 16:15:24 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Simona Sasova <Simona.Sasova@otc-cta.gc.ca>
Subject: Re: Production of documents and re-attendance by Ms. Sasova on September 15, 2014 at 11:30 am

[The following text is in the "ISO-8859-15" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Mr. Dodsworth,

1. I have reviewed the 84-page production once again. Can you please confirm that the email string from page 20 continues on page 25 (i.e., it was scanned in the wrong order)?

This would explain the discrepancy I pointed out earlier, and would resolve one of my concerns.

2. As for the 16-page production, my position remains that the Agency and/or Ms. Sasova has provide incomplete productions. I urge you to revisit this matter, and produce the missing documents before Monday.

3. Finally the Federal Courts Rules contain no provision that would permit objecting to questions on the basis that you propose.

Yours very truly,
Dr. Gabor Lukacs

On Fri, 12 Sep 2014, John Dodsworth wrote:

> Mr. Lukacs
>
> All documents have been produced. Ms. Sasova will be available on Monday
> only with respect to the documents provided since September 4
> cross-examinations.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gabor Lukacs
> Sent: Friday, September 12, 2014 2:16 PM
> To: John Dodsworth
> Cc: Simona Sasova
> Subject: Production of documents and re-attendance by Ms. Sasova on
> September 15, 2014 at 11:30 am
>
> Mr. Dodsworth,
>
>
> 1. Thank you for confirming that Ms. Sasova will be re-attending on
> September 15, 2014 at 11:30 am for the continuation of her
> cross-examination. Since a substantial amount of documents were not
> produced on September 4, 2014, the examination will have to be broad, and
> cannot strictly be limited to those documents that were produced since
> September 4, 2014.

>
>
> 2. I am in receipt of 16 additional pages of emails between Agency staff
> and Expedia, which seem to have taken place between June 9, 2014 and
> August 21, 2014. These 16 additional pages appear to be not a complete
> production of the correspondence. For example:
>
> (a) some of the emails sent by Mr. Lynch to Expedia on July 28, 2014, to
> which he refers as "sent in error" have not been produced; and
>
> (b) correspondence following August 21, 2014 is missing.
>
>
> 3. I reiterate my request that the Agency and/or Ms. Sasova produce ALL
> correspondence between the Agency and Expedia in relation to Expedia's
> website from February 24, 2014 (the date of my complaint) up until today.
>
>
> 4. Concerning the 84 pages produced on September 9, 2014, I do not accept
> your explanation for a wealth of missing pages that "This is just how it
> printed out." Based on my many years of IT experience, this is not credible.
> On a going forward basis, I am requesting that the following documents be
> produced:
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> (a) COMPLETE email of Mr. de Blois to Mr. Paul Lynch, dated 16/04/2014
> 8:34:08 PM, including the entire string of emails, which were truncated on
> page 20 of the September 9, 2014 productions;
>
> (b) the missing pages of the chain of emails starting on page 25 of the
> September 9, 2014 productions.
>
>
> 5. I reiterate my request that the Agency or Ms. Sasova undertake to
> reimburse me for the costs of the continuation of the examination, which
> became necessary due the failure to produce documents on September 4, 2014.
>
>
> Finally, settlement discussions, if any, will be taking place in a separate
> email.
>
>
> Yours very truly,
> Dr. Gabor Lukacs
>
>
>
> On Fri, 12 Sep 2014, John Dodsworth wrote:
>
> >
> > Mr. Lukacs ? As mentioned previously, the package you received and to
> which
> > refer below constitutes documents that you received on cross-examinations
> on
> > September 4, 2014. They were provided a second time in an attempt to avoid
> > further confusion. One additional document is the email exchange on May 26
> > and 27 involving Paul Lynch of the Agency which you requested at the
> > cross-examinations that Ms. Sasova had not brought with her. This brief
> > exchange is dated after her May 20, 2014 affidavit, but is related to the
> > March 27, 2014 notice of warning.
> >
> > As stated by Ms. Sasova at cross-examinations, subsequent communications

> > with Expedia resulted from her efforts to satisfy your offer to settle the
> > judicial review application.
> >
> >
> > I nonetheless provide that exchange.
> >
> >
> >
> > I hope that you will consider settling this matter and withdraw your
> > judicial review application. We can discuss how costs of this
> > cross-examination would be apportioned if that were to occur.
> >
> >
> > Given your interest in cross-examining Ms. Sasova further, we will attend
> > on
> > September 15th to allow her to respond to any further questions you may
> > have
> > on this limited additional documentation
> >
> > In what follows, are responses to your statements about missing documents:
> >
> >
> > 2. A number of emails that are either incomplete or missing. For example:
> >
> > (a) the images embedded in the email on page 17 are missing;
> >
> > The images referred to are for a competitor of Expedia, namely Flight
> > Network. The screen shots are provided in a separate email.
> >
> > (b) the answer to the email on page 17 is missing;
> >
> > No answer was given in writing to the images of Flight Network's web site
> > supplied by Expedia.
> >
> > (c) the email chain starting on page 19 and continuing on page 20 is
> > incomplete;
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> > The email referred to is a string?the start of the email at the bottom of
> > page 20 can be viewed in whole on the top of page 5 of the supplied
> > document. This is just how it printed out. No emails missing.
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> > (d) the images embedded in the email on page 21 are missing;
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> > The embedded images have been provided. This email is dated April 24th
> > and
> > refers to three images ? this email is again part of a string and the
> > images
> > (3,5 & 7) can be viewed starting page 79 of the supplied document.
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> > (e) page 25 is not the continuation of the chain of emails on page 24;
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> >
> > Again, the emails referred to are part of a string?please see page 11 of
> > the

> > supplied document for page 1 of the string. This is just how it printed
> > out. No emails or pages missing.
> >
> >
> >
> >
>
>

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

Examination No. 14-0812

Court File No. A-167-14

FEDERAL COURT OF APPEAL

B E T W E E N:

DR. GABOR LUKACS

APPLICANT

- and -

CANADIAN TRANSPORTATION AGENCY

RESPONDENT

CROSS-EXAMINATION OF SIMONA SASOVA ON HER AFFIDAVIT sworn May 20th, 2014, pursuant to an appointment made on consent of the parties, to be reported by Gillespie Reporting Services, on the 4th day of September, 2014, commencing at the hour of 10:30 in the forenoon.

ORIGINAL

APPEARANCES:

Dr. Gabor Lukacs,

for the Applicant

Mr. John Dodsworth,

for the Respondent

This Cross-Examination was digitally recorded by Gillespie Reporting Services at Ottawa, Ontario, having been duly appointed for the purpose.

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

(i)

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NAME OF WITNESS: SIMONA SASOVA

CROSS-EXAMINATION BY: DR. GABOR LUKACS

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EXHIBIT NO. 2: Direction to Attend dated June 6, 2014.2

EXHIBIT NO. 3: Direction to Attend dated August 21, 2014 . . .2

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DATE TRANSCRIPT ORDERED: September 4, 2014

DATE TRANSCRIPT COMPLETED: September 25, 2014

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Fax: 613-238-1045

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2

1 **SIMONA SASOVA, AFFIRMED:**

2 **CROSS-EXAMINATION BY DR. GABOR LUKACS:**

3 1. Q. Ms. Sasova, I understand that on May 20th,
4 2014, you swore an Affidavit.

5 A. That is correct.

6 DR. LUKACS: Let's mark that Affidavit as Exhibit
7 No. 1.

8 **EXHIBIT NO. 1:** Affidavit of Simona Sasova, sworn
9 May 20, 2014.

10 DR. LUKACS:

11 2. Q. I understand that you received a Direction to
12 Attend dated June 6th, 2014.

13 A. Yes.

14 DR. LUKACS: Let's mark that as Exhibit No. 2.

15 **EXHIBIT NO. 2:** Direction to Attend dated June 6,
16 2014.

17 DR. LUKACS:

18 3. Q. And I understand that you received a Direction
19 to Attend dated August 21st, 2014.

20 A. Yes.

21 DR. LUKACS: Let's mark that as Exhibit 3.

22 **EXHIBIT NO. 3:** Direction to Attend dated August
23 21, 2014.

24 DR. LUKACS:

25 4. Q. For how long have you been working with the

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3

1 Canadian Transportation Agency and in what roles?

2 A. I started in December 2010 so it has been
3 three and a half years or a little bit more, and since
4 December when I started, 2010, I work as a manager of
5 enforcement.

6 5. Q. So I understand that you are designated as an
7 enforcement officer.

8 A. That is correct, and I have been designated
9 since December 2010.

10 6. Q. Who provided you with that designation?

11 A. It is the Chair. It is the Agency that
12 provides the designation.

13 7. Q. The Chair of the Agency?

14 A. You asked me this question -- yes.

15 8. Q. Who else has such a designation at the Agency?

16 A. There are five more--well under--in my section
17 there are five more officers. They have that designation
18 and I believe there is some other staff that has been
19 designated as well in the Agency.

20 9. Q. In your unit who are those other enforcement
21 officers?

22 A. They are my staff: enforcement officers,
23 senior investigators that work on the programs that I
24 supervise, that I oversee.

25 10. Q. So, for example, Cordoza, Daniel, would be one

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4

1 of them?

2 A. I cannot tell you because he does not work in
3 my section. I really don't know.

4 11. Q. Okay, so who are the people that work in your
5 section?

6 A. You want the names of those people?

7 12. Q. Yes.

8 A. Okay, it is Jeannette Anderson, Marla LeBlanc,
9 Jean-Michel Gagnon, Gerrienne Ross and Daniel McKenna.
10 There was also an officer that has left the Agency since
11 but he was involved in this and his name was Ishani Cooray
12 but he is now gone.

13 13. Q. Who is your immediate supervisor?

14 A. It is Carole Girard.

15 14. Q. What is the chain of command? To whom does
16 Carole Girard report?

17 A. She reports to Ghislain Blanchard.

18 15. Q. And further up the chain of command?

19 A. That would be then the Chair.

20 16. Q. Are you a current or past member of the
21 Canadian Transportation Agency?

22 A. What do you mean member?

23 17. Q. Member as appointed by the Governor-in-
24 Council.

25 A. Oh, no. Oh, god, no, of course I am not a

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5

1 member. No.

2 18. Q. Thank you. In carrying out your duties as an
3 enforcement officer and manager of the enforcement
4 division are you bound by the decisions made by members of
5 the Agency?

6 A. As the enforcement officer I enforce the
7 Canadian Transportation Act and regulations, and I haven't
8 had the decision--yes, I consider decisions, definitely.
9 I work--it is hard to answer because I haven't had a case
10 where I would have to rely strictly on a decision.
11 However decisions are--I am bound by decisions, yes.

12 19. Q. Thank you. In paragraph 1 of your Affidavit
13 you say that you have "personal knowledge of the
14 matter...deposed" in your Affidavit. Is this correct?

15 A. Say again.

16 20. Q. In paragraph 1 of your Affidavit you state
17 that you have--

18 A. Oh, yes.

19 21. Q. I am quoting, "personal knowledge of the
20 matters...deposed" in your Affidavit.

21 A. Yes, of course. Yes.

22 22. Q. In paragraph 5 of your Affidavit you refer to
23 the Canadian Transportation Act and state that it, and I
24 am quoting, "...introduced, among other things, more..."
25 efficient "... enforcement powers for the Canadian

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6

1 Transportation Agency across all modes of transportation,
2 including the ability to--"

3 A. Levy fines.

4 23. Q. "--levy fines...". So just to be clear it
5 said, "more effective enforcement powers".

6 A. Uh-huh.

7 24. Q. Do you have personal knowledge of this?

8 A. Of what; of more effective enforcement powers
9 or what? I am sorry I don't understand your question.

10 25. Q. Of what you are stating here. You are stating
11 here that the Canada Transportation Act "...introduced,
12 among other things, more effective enforcement powers...".
13 Do you have personal knowledge of this fact?

14 A. That the Canadian Transportation Agency--
15 sorry, that the Canada Transportation Act--I really don't
16 know where you are going with this question. I am sorry I
17 cannot answer that.

18 If I have a personal knowledge? Well I have a
19 personal knowledge. I understand that the AMPs were
20 introduced and yes, they are more effective and that is a
21 known fact. I don't know what you are trying to say.

22 26. Q. Okay. What do you mean by "more effective
23 enforcement powers"?

24 A. Well the AMP program, AMP system, allows for
25 monetary penalties to be issued instead of let's say, you

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7

1 know, just giving a ticket--I would just compare it to
2 anything else--which is more effective to reach
3 compliance.

4 27. Q. More effective than what?

5 A. More effective than just issuing--as I said
6 just let's say issuing a ticket or giving a verbal
7 reprimand or anything. When there is a monetary penalty
8 involved the two -- it is more effective to enforce and to
9 reach compliance.

10 28. Q. It is more effective in your opinion?

11 A. No, in my experience.

12 29. Q. In your experience what--we are talking about
13 an Act that came out in 1996. So do you have any
14 experience about the times before AMPs were in force?

15 A. I have experience from other--yes, from other
16 positions that I have held where there were no AMPs.

17 30. Q. Other positions with the Agency?

18 A. No.

19 31. Q. Can you tell me what was the situation before
20 the Canada Transportation Act was enacted?

21 A. What was the situation before the Canada
22 Transportation Act was enacted?

23 32. Q. Yes.

24 MR. DODSWORTH: Perhaps you could clarify that.

25 THE WITNESS: Yes, I am not sure what--

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1 DR. LUKACS: Sure, sure.

2 33. Q. My question is: What enforcement tools and
3 powers were available before the Canada Transportation Act
4 was enacted?

5 A. Well there were--the enforcement to my
6 knowledge--to my knowledge the history of the enforcement
7 section since I worked was based--was actually developed
8 when the AMP program started.

9 MR. DODSWORTH: Can I say anything?

10 DR. LUKACS: No, no, counsel. This is a cross-
11 examination. I am sorry--

12 MR. DODSWORTH: Okay.

13 THE WITNESS: Okay, fine. I just--are you trying-
14 -whether I have personal knowledge of-- when I have
15 personal knowledge which was referred in paragraph 1--I
16 just want to clarify this--is to what your complaint was.
17 I am sorry, what your complaint was, yes.

18 DR. LUKACS:

19 34. Q. I am sorry, I asked question--

20 A. Yes.

21 35. Q. --in this setting I am asking you questions
22 and I ask you to answer those questions. This is not a
23 mediation when we discuss the contents of the affidavit.

24 A. That is fine. Go ahead, yes.

25 36. Q. So my question was whether you have knowledge

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1 of what enforcement tools and powers were available before
2 the Canada Transportation Act was enacted.

3 A. I have very--I have little knowledge. There
4 was--it was--there were no tools, really. The enforcement
5 section started when the Act--when the AMPs program had
6 started.

7 37. Q. So AMP--

8 A. So I don't think so anything has been--so what
9 I want to say with this: I don't think so there was much
10 enforcement being done before that as far as I know, and
11 that is only my knowledge of the section's history.

12 38. Q. And just for clarity of the court reading this
13 transcript AMP means...?

14 A. Administrative Monetary Penalty.

15 39. Q. Administrative Monetary Penalty, so to your
16 knowledge before this provision was made there was not
17 much enforcement going on. Is that correct?

18 A. I don't even think that the enforcement
19 section existed. I really cannot go further than that or
20 in what capacity it existed.

21 40. Q. As an enforcement officer do you have the
22 power to make orders, for example to order an advertiser
23 to change its website?

24 A. Okay, it is not an order by the Agency. What
25 I have a power it is to enforce the Act and regulations.

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1 41. Q. So you cannot make an order directing an
2 advertiser to change its website, can you?

3 A. Once again I can ask them to do it and enforce
4 it but it is not an order of the Agency. It is not in the
5 same sense.

6 42. Q. Thank you. Would you please look at Exhibit F
7 to your Affidavit?

8 A. All right.

9 43. Q. Would you please explain what is this exhibit?
10 What is Exhibit F to your Affidavit?

11 A. What I am looking at is--I believe what you
12 had. It is your email between you and Expedia.

13 44. Q. Exhibit F? That is not what I am seeing here.

14 A. What do I have here?

15 MR. DODSWORTH: To clarify, February 24th, 2014,
16 Exhibit F?

17 DR. LUKACS: That is not what I am seeing in the
18 copy I have here served upon me, counsel. If you look at
19 paragraph 8 of Ms. Sasova's Affidavit, it is being
20 identified there.

21 THE WITNESS: Which paragraph?

22 DR. LUKACS: Paragraph 8.

23 THE WITNESS: Okay. Oh, it is a note, an
24 interpretation note.

25 DR. LUKACS: Uh-huh.

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1 THE WITNESS: Okay, it is an interpretation note.
2 Okay, I have the interpretation--it is the interpretation
3 note, yes?

4 DR. LUKACS:

5 45. Q. So what is this document? Can you explain
6 what it is?

7 A. Oh, yes, sure. An interpretation note has
8 been issued past the implementation of the new regulations
9 with regards to air service price advertising and it has--
10 as in the title "interpretation". Okay, it interprets the
11 legislation to facilitate those affected--so in this case
12 it would advertisers how to reach compliance and what
13 changes need to be done and in what manner so that they
14 understand and can become compliant faster and refer to it
15 for anybody who wants to advertise in the future and so
16 forth.

17 46. Q. Who wrote this interpretation note?

18 A. This was written by tariff division.

19 47. Q. The tariff division?

20 A. That is right, in consultation with us.

21 48. Q. Is this interpretation note binding upon the
22 Agency or upon you?

23 A. If it is, sorry, binding?

24 49. Q. Is it binding?

25 A. It is a guidance document. We refer to it

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1 when we enforce or when we instruct, rather when we
2 instruct how to become compliant.

3 50. Q. But is it a binding document?

4 A. You mean what is inside would be--I am bound
5 by this, what is inside?

6 51. Q. Yes, yes. Are you--

7 A. No.

8 52. Q. -or the Agency bound by it?

9 A. I don't know when you say "Agency". I am
10 talking about myself as an enforcement officer and I refer
11 to it. It is binding word by word, is that what you are
12 asking? Every word, whether it is binding?

13 53. Q. Yes.

14 A. No, these are concepts and, you know, we work
15 with--it is strictly a guidance, an interpretation. We
16 interpret it and this is not a law and this not an order.

17 54. Q. Can you please look now to page 8 of the
18 interpretation note?

19 A. Sure, yes.

20 55. Q. Do you agree that a total price of an air
21 service is made up of two categories of costs: one called
22 air transportation charges, on the one hand, and taxes,
23 fees and charges on the other hand?

24 A. Correct.

25 56. Q. Can you explain in plain words what air

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1 transportation charges stand for?

2 A. Air transportation charges are any other
3 charges than those that are third party charges.

4 57. Q. Then what are third party charges?

5 A. It is everything that is remit to a third
6 party: taxes, fees, airport fees, anything that is remit
7 that it does not stay with the carrier, that is remit to a
8 third party.

9 58. Q. Uh-huh.

10 A. To advertiser, not another carrier,
11 advertiser.

12 59. Q. Can an advertiser refer to air transportation
13 charges using a different heading?

14 A. To air transportation charges a different
15 heading? What we--what is--the regulation calls that if
16 the air transportation--air transportation charges are
17 mentioned, they must appear under air transportation
18 charges heading.

19 60. Q. So if they appear at all then they cannot put
20 a different name for it, correct?

21 A. That is correct.

22 61. Q. Can you explain the meaning of base fare and
23 fuel surcharges?

24 A. Well base fare would be--and I am not an
25 expert in what base fare is, but base fare would be a

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1 carrier fare or a carrier charge and fuel surcharge. It
2 is what is, you know, it is charges for fuel. That is all
3 what I can--as I said I am not an expert in those, what
4 exactly, you know, comprises what.

5 62. Q. Do you agree that fuel surcharges belongs to
6 the category of air transportation charges?

7 A. Of course, yes.

8 63. Q. Do you agree that base fare and fuel
9 surcharges must be grouped together under the heading air
10 transportation charges on a website?

11 A. Yes and no. If it is broken down, then yes.
12 If is not broken down they then don't. They don't have to
13 be grouped. They don't need to appear so I don't know
14 whether they are grouped or not. They don't have to be
15 mentioned.

16 64. Q. But if they are mentioned at all then they
17 have to be grouped together and they have to--

18 A. No, they have to be broken down. They don't
19 have to be grouped. They have to be broken down and under
20 the heading, but the heading does not need to have a
21 total.

22 65. Q. But if the heading does have a total then that
23 total must include fuel surcharges. Do you agree with me?

24 A. Okay, let's say that the airline would put air
25 transportation charges in the total and would not break it

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1 down, I don't know if the fuel surcharge is there. I
2 really cannot tell you that if there is a fuel surcharge--
3 if there is a--if they break it down and they define one
4 of the charges to be a fuel surcharge it has to be under
5 the heading air transportation charges.

6 66. Q. But if they put a total for air transportation
7 charges that total must include in it fuel surcharges if
8 fuel surcharges appears, correct?

9 A. No, no, because what if there is no fuel
10 surcharge. There are some tickets that they are not--
11 there is no fuel surcharges so I can ask them to include
12 it there.

13 67. Q. Ms. Sasova, my question is if fuel surcharges
14 appear--

15 A. Okay, if they listed it. That is what you
16 mean.

17 68. Q. If they list fuel surcharges--

18 A. Yes.

19 69. Q. --and they also list a total for air
20 transportation charges, that total for air transportation
21 charges must include also the amount listed under fuel
22 surcharges, correct?

23 A. If they wrote a total and then underneath a
24 fuel surcharge this would have to be--it should be. I
25 don't have a legislation for it but it should be. That

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1 makes sense that it would be, but as I said the
2 legislation does not call for having a total and then
3 those charges that are underneath must equal the total.
4 It does not. We don't have anything. I don't have any
5 cover for that.

6 70. Q. I believe one of the items printed out there
7 is a decision in Scandinavian Airlines.

8 A. Yes.

9 71. Q. This is number 8-A-2014.

10 A. Yes, yes.

11 DR. LUKACS: Let's mark it as Exhibit 4.

12 THE WITNESS: Yes.

13 **EXHIBIT NO. 4:** *Re: Scandinavian Airlines System,*
14 *Decision No. 8-A-2014 of the Canadian*
15 *Transportation Agency.*

16 DR. LUKACS:

17 72. Q. Let's look at paragraph 55.

18 A. All right.

19 73. Q. Are you familiar with this decision?

20 A. Yes, I am.

21 74. Q. Was the enforcement division involved in this
22 case?

23 A. No. Well, not in the decision, not in the
24 decision.

25 75. Q. But in the case itself.

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1 A. Yes, the case. Yes, of course. Well we were
2 involved until the warning letter was issued to
3 Scandinavian and then there was no more involvement.

4 76. Q. Did the enforcement division not make
5 submissions to the Agency on this? I recall some
6 reference to it. Am I mistaken; on the first page?

7 A. Enforcement. There was involvement yeah.
8 There was an answering of what they had submitted,
9 correct, but at the end of the decision no there was none.

10 77. Q. So the decision was made by the Agency, by the
11 members of the Agency.

12 A. Correct, yes.

13 78. Q. Have you read paragraphs 54 and 55 of the
14 decision?

15 A. Yes. Yes, I have read the decision but I have
16 to look at it. Just a moment.

17 MR. DODSWORTH: Do you have it?

18 THE WITNESS: I have it here.

19 MR. DODSWORTH: You have it, eh.

20 THE WITNESS: Yes, just a second here.

21 MR. DODSWORTH: Oh, I am sorry, I have it here.

22 THE WITNESS: Yes.

23 DR. LUKACS:

24 79. Q. Can you please explain the meaning of the
25 following? I am quoting:

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1 "The fare is an air transportation charge, as is
2 the fuel surcharge, yet the two charges are not
3 grouped together on SAS's Web site. Further,
4 these two charges are not grouped together under
5 the heading "Air Transportation Charges" as
6 required by the ATR. The ATR are clear that the
7 appropriate headings are to be used and that the
8 relevant charges are to be found under the
9 appropriate headings".

10 A. Yes.

11 80. Q. Can you explain what the issue was here?

12 A. Okay. Well Scandinavian Airlines had
13 everything grouped together so what they needed, they
14 needed to separate. They couldn't have, you know, the air
15 transportation charges and taxes, fees and charges in the
16 one breakdown. These had to be separate. So what they
17 meant if you are--if you want to display air
18 transportation charges they have to be separate from
19 taxes, fees and charges and the fuel surcharges cannot be
20 under taxes, fees and charges--sorry--cannot be, yes,
21 under taxes, fees and charges. It has to be in air
22 transportation charges so you need to group those together
23 and you need to group taxes, fees and charges together.

24 This was kind of a case where they put everything
25 together.

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1 81. Q. Do you agree that the Agency ruled that fuel
2 surcharges cannot appear under its own separate heading?

3 A. Well reading this it says that they have to
4 use appropriate heading but they are not saying that a
5 fuel surcharge--you see there that a fuel surcharge cannot
6 be on its own as a heading. I just read that the
7 appropriate headings must be used and they have to be
8 grouped separately.

9 82. Q. And what is the appropriate heading under
10 which fuel surcharge must appear?

11 A. It will be air transportation charges.

12 83. Q. Let's now go back to Exhibit F of your
13 Affidavit. I would like you to look at page 12, the
14 second paragraph. It says:

15 "In addition, the Agency may order a person to
16 make the changes necessary to conform to Part V.1
17 of the ATR to bring about compliance".

18 A. Okay.

19 84. Q. Who can issue such orders?

20 A. The Agency may order, the Agency may order.

21 85. Q. So it is not you?

22 A. No, I don't need to order. I cannot order.

23 86. Q. It will be members of the Agency?

24 A. Members, yes.

25 87. Q. Let's now look at page 27. I see here a table

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1 of penalty amounts.

2 A. Yes.

3 88. Q. What does level mean in this context?

4 A. In the--okay, the level, it is based on
5 severity of a contravention really.

6 89. Q. Are these penalty tables found in the Canadian
7 Transportation Agency Designated Provisions Regulations?

8 A. Yes and no. The level is not written 2, 3, 4.
9 However based on the penalty amount the level can be
10 implied from there.

11 90. Q. So are you telling me that the Designated
12 Provisions Regulations contain those levels with respect
13 to first violation, second violation and so on?

14 A. It says up to.

15 91. Q. My question is about first violation, second
16 violation and so on.

17 A. So for example in designated provisions you
18 would have a violation and then you would have an amount
19 and that amount would give you the level. So for example
20 25,000 it is associated with levels 4 and 5. So if you
21 look at the provisions and you see 25,000 that would
22 indicate it is either level 4 or 5.

23 92. Q. Level 4 and 5, are these words that one would
24 find in the Designated Provisions Regulations, Ms. Sasova?

25 A. Say again.

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1 93. Q. I am going to look at now the Designated
2 Provisions Regulations, Exhibit D to your Affidavit. The
3 word "level", does it appear there?

4 A. I think it just says maximum penalty. The
5 level, really the word doesn't appear there. I don't
6 think so.

7 94. Q. So is there anything in the designated
8 regulations, provisions regulations that speak about first
9 violation, second violation, and so on and so forth.

10 A. The table, no. It says "minimum" and
11 "maximum", I think, or just "maximum". Let me get it.
12 Just a moment. Here. All right, yes, it just says
13 "maximum", sorry, and it says "corporation". That's why I
14 couldn't recall. Maximum for corporation or the
15 individual, depending on--yes.

16 95. Q. So do you agree that there is nothing in the
17 regulations about first violation, second violation or
18 about levels?

19 A. Yes, for the first, second. Yes, correct.

20 96. Q. Who created this penalty table?

21 A. This was created--it was actually enforcement-
22 -the enforcement section. Now I don't recall for all of
23 those but I can tell you for the latest. It was created
24 and approved by the Agency, by the Chair ultimately.

25 97. Q. So under what authority this penalty table was

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1 created?

2 A. I don't know what authority that would be.
3 The Agency's authority to create--

4 MR. DODSWORTH: I don't know that Ms. Sasova is
5 best placed to answer a question of that sort.

6 THE WITNESS: I really don't know.

7 DR. LUKACS: Counsel, Ms. Sasova put this document
8 as an exhibit. This is a matter related to enforcement
9 specifically. Ms. Sasova is the manager of the
10 enforcement division. So I am struggling to find anybody
11 more appropriate to answer this question than the person
12 who daily supposedly applies those provisions.

13 THE WITNESS: Yes but --

14 MR. DODSWORTH: Well, as long as you don't ask for
15 a legal opinion.

16 DR. LUKACS: I don't ask for a legal opinion. I
17 asked whether--under what authority these provisions were
18 made. It is not a legal opinion.

19 My question is that given that Ms. Sasova provided
20 detailed explanation of applicable legislation to her
21 role, I am asking under what authority these tables were
22 made.

23 98. Q. If you don't know that is perfectly fine. You
24 can state that. I would just like to know whether you
25 know under what authority.

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1 A. Well, I don't know because you ask about
2 authority. I don't know if there is authority. That is
3 what I don't know. How it is made I can tell you because
4 those are developed internally and they were developed
5 internally for others. This is not the only provisions
6 that we enforce, and based on what we had these were
7 developed internally and run through internal process of
8 approval before we were able to apply them.

9 99. Q. Let me rephrase the question. You have
10 provided as Exhibit C to your Affidavit a lengthy excerpt
11 from the Canada Transportation Act which outlines
12 enforcement.

13 A. Okay.

14 100. Q. Are you aware of any provision in that exhibit
15 to your Affidavit which would authorize making such
16 penalty tables?

17 A. No, from my head, no I don't. I really--I
18 would have to go through it.

19 101. Q. Well take your time. This is an exhibit to
20 your Affidavit.

21 A. There is definitely--no, I won't say anything.
22 You have said paragraph 3. I am sorry, what did you refer
23 to?

24 102. Q. I asked you concerning Exhibit C to your
25 Affidavit.

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1 A. Okay, once again, I just have to go see.

2 MR. DODSWORTH: He is referring to the
3 legislation.

4 THE WITNESS: Oh, the legislation; regarding a
5 reference, yes.

6 MR. DODSWORTH: Just to be clear that is what you
7 are referring to, Mr. Lukacs?

8 DR. LUKACS: Yes, I am referring to Part VI of the
9 Canada Transportation Act, being Exhibit C to the
10 Affidavit of Ms. Sasova.

11 THE WITNESS: Okay, what is not subject to
12 advertising? Oh. So the Agency may, by regulation,
13 designate the provision and prescribe the penalty.

14 DR. LUKACS:

15 103. Q. So those--that is the regulations we are
16 talking about.

17 A. Regulation-making powers, yes.

18 104. Q. Yes, but we said it--in the regulation you
19 just said there was nothing about levels or first, second
20 and third offences.

21 A. Well it goes, like, prescribed amount but the
22 amount shall not exceed, you know, so this is it.

23 105. Q. Which paragraph are you talking about, again?

24 A. (b), (b), 177.(1)(b), prescribed amount. So
25 you have the prescribed amount.

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1 106. Q. It says, "The Agency may, by regulation".

2 A. Yes.

3 107. Q. It has to be done by regulation.

4 A. Uh-huh.

5 108. Q. So are you telling me those tables are
6 regulations made by the Agency?

7 A. I really don't know what you are saying. They
8 can--the Agency may, by regulation, designate any
9 provision of the Act--okay, so there will be designated
10 provision and assign a penalty.

11 109. Q. And it has done so?

12 A. That is all, yes.

13 110. Q. And it has set maximum penalties which we have
14 seen?

15 A. Yes, yes. The tables--

16 111. Q. My question is: those penalty tables, is
17 there anything here that authorizes the Agency to make
18 those penalty tables and--do you believe those penalty
19 tables were made under Section 177? Is that what you are
20 saying?

21 A. I cannot really answer that. I don't know. I
22 don't know where. I don't know. I know that we refer--
23 when we were designating--designing the tables, and I am
24 saying not only for this provision, for any, what is
25 prescribed and what is the maximum penalty and you know

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1 what the levels are, are done internally. That is all.

2 112. Q. Okay, thank you. Let's now look at paragraph
3 10 of your Affidavit.

4 A. Yes.

5 113. Q. You say you refer here to "the Designated
6 Enforcement Officer"?

7 A. Uh-huh.

8 114. Q. Can you please clarify who was this person?

9 A. I think the designated enforcement officer is
10 used here as a position, the designated. There is not a
11 particular one. I have done some. Yannick has done some.
12 Yes, that would be probably it at that time.

13 115. Q. But this is your Affidavit.

14 A. I understand, yes and I am explaining the
15 designated officer is used as a title. It wasn't, you
16 know--I don't know--administrative officer. It was the
17 designated enforcement officer.

18 116. Q. You state here that an online compliance
19 verification was conducted.

20 A. Yes.

21 117. Q. Who initiated this enforcement campaign?

22 A. I did.

23 118. Q. You personally?

24 A. The particular one, in the particular one?

25 119. Q. The one referred to in paragraph 10.

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1 A. Yes. Well we had--compliance verification is
2 one of the parts of the program, of the enforcement
3 program, so on a daily basis--I would say on a regular
4 basis we do compliance verifications. So this was one of
5 them.

6 120. Q. Uh-huh.

7 A. Oh, but if you are talking about the Expedia,
8 that was done by someone else.

9 121. Q. No, I am referring to paragraph 10 of your
10 Affidavit.

11 A. Uh-huh. Oh, I see, okay.

12 122. Q. In paragraph 10 you refer to warning letters
13 and administrative monetary penalties. What is the
14 difference between the two?

15 A. A warning letter, it is a first step in a
16 penalty process so that would be the first contravention.
17 Depending on the level, if it is level 1, 2, 3, 4, it
18 starts with a warning letter and level 5, those start with
19 a penalty. So when I am talking about penalty that means
20 it is either a second contravention or a first
21 contravention for a level 5.

22 123. Q. Can you point to any provision of the Canada
23 Transportation Act or any regulation that speaks about the
24 power of a designated enforcement officer to issue a
25 warning letter?

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1 A. To issue a warning letter. It is to apply
2 penalty. We have a provision that talks about to apply
3 penalty where penalties are, as I said before, up to a
4 certain and can start with a warning letter; to my
5 understanding.

6 124. Q. Can you tell me--show me any place in the
7 statute where a warning letter is referred to as a
8 penalty?

9 A. I don't think so.

10 125. Q. So would you agree with me that in terms of
11 the Act penalty means a monetary penalty?

12 A. In the Act, monetary penalty--interpretation.
13 It is up to--it starts--states up to, a monetary penalty
14 up to a certain amount, yes.

15 126. Q. So a penalty within the meaning of the Canada
16 Transportation Act is a monetary penalty.

17 A. I don't know.

18 127. Q. You don't know. So let me then get back to
19 this question--

20 A. I don't know about interpretation. I could
21 have asked. You know, if I was going to determine
22 something like that I probably would ask for a legal
23 opinion.

24 128. Q. So my question is: Under what authority were
25 you issuing and you issue warning letters? What gives you

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1 the authority to issue warning letters? The reason I am
2 asking, I would like it to be clear, is I have no doubt
3 that you can issue monetary penalties.

4 A. Yes.

5 129. Q. That is clearly in the Act. My question is:
6 What gives you any authority to issue a warning letter?

7 A. I would say it is the same authority as
8 issuing administrative monetary penalties.

9 130. Q. The same authority?

10 A. Yes.

11 131. Q. Now what happens if you send someone a warning
12 letter and they disagree with your findings and
13 conclusions?

14 A. They can apply for review with the Agency.

15 132. Q. What gives the Agency the power to review the
16 findings of a designated officer, enforcement officer?

17 A. Say again.

18 133. Q. What gives the Agency the power to review the
19 findings of a designated enforcement officer?

20 A. The Agency has power to review. I don't know.
21 I don't know.

22 MR. DODSWORTH: Is this relevant to the particular
23 appeal?

24 THE WITNESS: I have no idea.

25 DR. LUKACS: Counsel, in my submission it is.

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1 Essentially in my submission there is a complete chaos in
2 terms of enforcement and if you will bear with me for one
3 more question you will see that there is a very troubling
4 situation we have here.

5 MR. DODSWORTH: But you haven't--I mean you have
6 brought an appeal regarding Expedia and this--you are
7 making very broad questions about our entire enforcement
8 to it.

9 THE WITNESS: Why didn't you ask that? I mean,
10 you know, I would have prepared. I really don't know what
11 authority, plus I just want to--I want to refer when you
12 said--your last question.

13 DR. LUKACS:

14 134. Q. I am sorry, you have provided answers to
15 questions so why don't we stick to where we are?

16 Counsel, just to clarify, this is not an appeal.
17 It is an application for judicial review and the issue
18 here is essentially how my complaints about non-compliance
19 are being dealt with. So in my submission, there is
20 essential chaos here--

21 MR. DODSWORTH: No, your judicial review is about
22 this particular instance of non-enforcement pardon me, of
23 your allegation of Expedia's non-compliance with air
24 transportation regulations.

25 And I think your questions are very broad and

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1 outside the bounds of that judicial review application.

2 THE WITNESS: And I don't know. I cannot answer
3 you. I don't know.

4 DR. LUKACS: Okay.

5 135. Q. Section 180.3 of the Canada Transportation
6 Act, and it is part of Exhibit C to your Affidavit, Ms.
7 Sasova, it states that:

8 "A person who is served with a notice of violation
9 and who wishes to have the facts of the alleged
10 contravention or the amount of the penalty
11 reviewed shall, on or before the date specified in
12 the notice or within any further time that the
13 Tribunal on application may allow, file a written
14 request for a review with the Tribunal at the
15 address set out in the notice".

16 A. Yes, that's 180.3, you said?

17 136. Q. Yes.

18 A. "A person who is served with a notice of
19 violation", yes. Okay, yes, they can appeal at TATC, yes,
20 correct.

21 137. Q. Yes. Now let's go back to Section 176.1.

22 A. Okay.

23 138. Q. "For the purposes of sections 180.1 to 180.7,
24 'Tribunal' means the Transportation Appeal Tribunal
25 of Canada established by subsection 2(1) of the

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1 *Transportation Appeal Tribunal of Canada Act*".

2 A. Yes.

3 139. Q. Do you agree with me that the body to review
4 violations is not the Agency but the Transportation Appeal
5 Tribunal?

6 A. No, I don't agree.

7 MR. DODSWORTH: Mr. Lukacs, again, these are
8 provisions of the Act. If you have arguments about the
9 application of the Act you are free to make those
10 submissions in the judicial review application, and I
11 don't see any point to the questioning of Ms. Sasova about
12 that.

13 DR. LUKACS: Okay.

14 140. Q. When you issue a warning letter and an
15 advertiser disagrees with it--

16 A. Yes.

17 141. Q. --you said it then goes to the Agency,
18 correct?

19 A. Correct.

20 142. Q. Do members of the Agency always agree with the
21 designated enforcement officers on reviews of warnings?

22 A. I cannot tell you. I don't know all the
23 decisions that have passed. No, I really cannot answer
24 the question. You are asking me every decision that is
25 brought forward--sorry, every warning that is appealed

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1 brought in front of the Agency did they agree with the
2 Agency? I cannot answer you but I don't think so.

3 143. Q. So the Agency is not bound by your warning
4 letter.

5 A. No, of course not.

6 144. Q. Okay.

7 A. As example the Priceline decision when it is
8 not--okay, go ahead.

9 145. Q. The Priceline decision, can you please
10 elaborate on that?

11 A. No--I am sorry, yes, Priceline of course.
12 There was a decision that was issued by the Agency which
13 was--

14 MR. DODSWORTH: It is available online.

15 THE WITNESS: Yes, go ahead. It is about
16 targeting Canadian public, what is--was it deemed to be
17 Canadian--but it is relevant to ASPAR. I don't have all
18 the details.

19 DR. LUKACS:

20 146. Q. Let's look now at paragraph 11 of your
21 Affidavit. You say in paragraph 11 of your Affidavit that
22 a warning letter was sent to Expedia Canada on January
23 21st, 2013.

24 Is Exhibit H to your Affidavit the letter in
25 question?

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1 procedure. I sign all the warning letters and the--as a
2 manager of enforcement and the notices of violation. I
3 review the evidence and I go through with the designated
4 enforcement officer and then I sign off on it.

5 151. Q. Who was the actual designated enforcement
6 officer involved?

7 A. It was Yannick Pourret.

8 152. Q. Pardon me?

9 A. Mr. Yannick Pourret.

10 153. Q. Okay. Other than this warning letter what
11 communication did you or anyone else from the Agency have
12 with Expedia about its website in the context of this 2013
13 warning?

14 A. Who? You are asking who or what? Sorry, I
15 didn't catch it.

16 154. Q. I said what communication.

17 A. Okay, there was--I don't know all the
18 communications. There was a conference call. We had
19 several calls with them. Expedia actually made a
20 presentation to us at one point. There was some email
21 exchanged between Yannick and Expedia.

22 155. Q. Did you also exchange some faxes?

23 A. I don't know. It could be. I really don't
24 know. Maybe.

25 156. Q. Back in 2013 how did Expedia display fuel

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1 surcharges on its website?

2 A. I am not sure if I will be able but I will try
3 to answer that. I don't know if I will be able to answer
4 it because I may have the copy of 2013 but I don't know.
5 The problem at that time—I don't know how it was
6 displayed. The problem was that there was no breakdown of
7 taxes, fees and charges so we first asked--and this is
8 standard with everybody--to show the breakdown. And only
9 then we can determine whether the fuel surcharge was in
10 the taxes, fees and breakdown—taxes, fees and charges
11 breakdown. This was common across, so this was how we
12 approached it. We first needed to know what is in there.

13 157. Q. But then they--

14 A. So I don't know how it was displayed. That is
15 all I am going to say.

16 158. Q. But you say that they became compliant so I
17 presume that they did then prepare a breakdown of the
18 taxes.

19 A. Well as you can see there were several areas
20 here that they needed to comply with and at the end where
21 they had the changes they had done were deemed
22 satisfactory.

23 159. Q. On what basis?

24 A. On what basis?

25 160. Q. Yes.

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1 A. According to the changes that we asked them to
2 do such as having a breakdown of taxes, fees and charges,
3 removing fuel surcharges from taxes, fees and charges or
4 any other non-third party charges from taxes, fees and
5 charges. Pretty much it was having the full price--

6 161. Q. So at that time back in 2013 you already asked
7 Expedia to remove fuel surcharges from taxes?

8 A. I cannot answer that because what we asked
9 them is to have taxes, fees and charges breakdown and--

10 162. Q. And when you got that, when they made that
11 change, did you then go back and check what are the actual
12 taxes they list under--

13 A. Absolutely, yes. If there was a fuel
14 surcharge we would have not deemed them compliant,
15 definitely not. Fuel surcharges absolutely could not be
16 located under taxes, fees and charges.

17 163. Q. You write in paragraph 12 that you informed
18 Expedia that they were compliant.

19 A. That they were...?

20 164. Q. Compliant.

21 A. Yes, they were. At that time they were
22 compliant. What is the problem with Expedia is that they
23 receive information from hundreds and hundreds--well, not
24 hundreds but hundred, at least a hundred of suppliers. At
25 one point when somebody is compliant it doesn't mean that

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1 the next day they are. At the time when the compliance
2 verification was done they were deemed compliant. That
3 can change in a few hours because of the coding, because
4 of the information they receive.

5 MR. DODSWORTH: Excuse me, Mr. Lukacs, is there
6 somebody there with you?

7 DR. LUKACS: Yes, is taking
8 notes.

9 MR. DODSWORTH: Ah, I would have appreciated you
10 having informed us of that at the outset but in any case...

11 DR. LUKACS: I am sorry. I see only the two of
12 you. I don't know who else is in the room either. I
13 wouldn't put here a stranger.

14 MR. DODSWORTH: We are in a different environment.
15 In any case it is nice to know that you have somebody in
16 the room with you.

17 DR. LUKACS: Sure, sure, and if it is an issue for
18 you in any future case I will be advising you accordingly.
19 No problem.

20 165. Q. Now let's look at paragraph 13 of your
21 Affidavit.

22 A. All right.

23 166. Q. You summarize my February 24, 2014 complaint
24 as raising two issues; (a) Expedia failed to include fuel
25 surcharges in air transportation charges and (b) Expedia

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1 improperly included and listed airline imposed charges in
2 taxes, fees and charges under the name YR-service charge.
3 Is this accurate?

4 A. Yes.

5 167. Q. Did you inquire into the meaning of YR-service
6 charges?

7 A. I am sorry, if I inquired?

8 168. Q. Yes.

9 A. Yes that was the reason why we issued a
10 warning letter, because we did not know what a YR-service
11 charge was.

12 169. Q. And what is it?

13 A. They have to--they have to--I cannot tell you.
14 It has to be--they have to refer to all the charges by its
15 proper name. You know, there is thousands and thousands
16 of codes and I unfortunately don't know every code. When
17 they say service charge it just implies to us that it may
18 be--it may not be a third party charge. So we wanted to
19 make sure that they do not include any non-third party
20 charges under taxes, fees and charges. So first we have
21 to know what the code is, what does it mean? Once we know
22 it means it either falls under taxes, fees and charges or
23 it is out of there.

24 170. Q. In paragraph 14 you refer again to designated
25 enforcement officer.

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1 A. Uh-huh.

2 171. Q. Who was that? Was it you or somebody else?

3 A. That was me probably. Yes, that was--yes,
4 that could have been me, yes.

5 172. Q. It was you.

6 A. Yes.

7 173. Q. So then why do you refer to yourself in the
8 third person in your own Affidavit?

9 A. I don't know, because I used the enforcement
10 officer before. It is just standard. I don't know. I
11 really don't know.

12 174. Q. Did you write this Affidavit yourself?

13 A. I swore on it, yes.

14 175. Q. My question is: Did you--

15 A. I am not experienced writing affidavits. This
16 is how I wrote it. It is myself.

17 176. Q. Did you draft the whole Affidavit yourself,
18 the whole text?

19 A. With legal services help.

20 177. Q. My complaint was made on February 24th but the
21 warning letter is dated March 27th.

22 A. Uh-huh.

23 178. Q. Could you explain why it took so long to issue
24 a warning letter?

25 A. Because we have priorities and I addressed

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1 situations as I deem appropriate and as much as
2 advertisement may be, you know--I don't want to say
3 important, I guess. We do have other enforcement matters
4 that I have to attend to.

5 179. Q. So dealing with advertising matters is of a
6 lower priority than other enforcement matters. Is that
7 what you are saying?

8 A. Illegal operation of flights, yes, takes
9 precedent over advertising matters, yes.

10 180. Q. Uh-huh?

11 A. Where the safety of public is in jeopardy,
12 yes, I would say.

13 181. Q. So do you also deal with safety matters?

14 A. No, no, we don't. However illegal operation
15 may, may, may be linked to a safety issue. We don't. It
16 is strictly economic. However I am just explaining the
17 priorities.

18 182. Q. So an illegal operation wouldn't that be a
19 matter for Transport Canada to shut it down--?

20 A. Illegal operation without--flying without a
21 licence is our jurisdiction.

22 183. Q. Let's look at Exhibit J to your Affidavit. I
23 would like you to look at page 2. It says, "c.c." and
24 then "XXXXXX". I see there are six X's at the bottom.
25 What does it stand for?

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1 A. I have no idea. No, I don't know.

2 184. Q. You are the author of this letter.

3 A. Yes, yes.

4 185. Q. And you don't know what that means?

5 A. No, no. That is a typo. It was prepared by
6 an admin officer. It is a template that we use. I really
7 don't know. They usually--we use it when there is
8 somebody to c.c. At this time there was nobody to c.c. so
9 we didn't put--the X's were in there.

10 186. Q. Okay. Back to paragraph 14, you refer here to
11 Expedia's service charge in paragraph 14. What is that?
12 Can you elaborate on that?

13 A. Can you--in my Affidavit, Expedia?

14 187. Q. Yes.

15 A. Okay, okay, let me see. It is the one from
16 the paragraph before. It is YR-service charge.

17 188. Q. So in your belief that is not an airline
18 charge but rather a charge imposed by Expedia?

19 A. It is a service charge, yes. Was a service
20 charge? It is--I am sorry if I say--I probably did not
21 hear what you said.

22 189. Q. In your belief is that YR-service charge not
23 an airline imposed charge?

24 A. No, opposite, opposite. A service charge
25 would be an airline imposed charge so it cannot be under

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1 taxes, fees and charges.

2 190. Q. So that airline service charge should have
3 been under air transportation charges.

4 A. It should be out of taxes, fees and charges.

5 191. Q. Thank you. After you sent this--actually
6 between February 24th, 2014 and April 30th, 2014 what
7 communications occurred between Expedia and the
8 enforcement division?

9 A. There were phone calls. There was some email
10 exchanged about--because Expedia was working on the
11 changes. So there was back and forth communication about
12 you know what codes, where do we get codes from, you know
13 how to break it out, how to put it together and all this.
14 So there were some email communication exchanges and
15 numerous phone calls.

16 192. Q. Did you also take notes during those calls?

17 A. No.

18 193. Q. You were directed to bring those
19 communications, those emails with you. Did you bring them
20 with you?

21 A. I did. I have some, yes, here.

22 194. Q. Okay--

23 A. Well, some; actually, all of those that are
24 related to communications between Expedia and your
25 complaint.

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1 195. Q. We will leave it to the end because we need to
2 have it scanned.

3 A. Okay, okay.

4 196. Q. We will deal with that at the end. Okay. In
5 paragraph 15 of your Affidavit you say:

6 "Expedia has since rectified the problem; the
7 issue has now been resolved; and therefore,
8 Expedia has complied with the requirements
9 identified in the warning letter".

10 A. That is correct.

11 197. Q. What problem and issue are you referring to?

12 A. The problem that was identified in a warning
13 letter that is the taxes that were--well the codes for the
14 taxes and the charges and/or fees that were not there.

15 198. Q. So did the warning letter refer also to fuel
16 surcharges which were in the wrong place?

17 A. No, the warning letter did not refer to that.
18 The warning letter only referred to taxes that were--the
19 breakdown of--I am sorry, the name and amount of each tax,
20 I believe, or the name, proper name of the tax. Let me
21 just get it. We are talking the warning letter of March
22 27th.

23 199. Q. That's right.

24 A. Yes, that is it:

25 "A person must not refer to a third party charge in

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1 an advertisement by" any other name than "under
2 which it was established", yes.

3 200. Q. So that was only referring to the YR-service
4 charge and not to--

5 A. Well, it was referring to other because at
6 that time Expedia had several codes that were not
7 identified. So we just wanted to make sure that all the
8 calls that are there are identified and they do belong
9 under taxes, fees and charges.

10 201. Q. So let's go back now to paragraph 13. You
11 said here that in my letter I complained about the failure
12 of Expedia to include fuel surcharges in air
13 transportation charges.

14 A. Yes.

15 202. Q. Did you not issue a warning letter about that
16 too?

17 A. No, no, we did not.

18 203. Q. Why?

19 A. Because at Expedia their display of fuel
20 surcharge was not under taxes, fees and charges. It was
21 broken out.

22 204. Q. Really?

23 A. Yes.

24 205. Q. So are you telling me that air fuel surcharge
25 does not have to be--you just told me earlier, I am sorry,

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1 that fuel surcharges have to be included under air
2 transportation charges?

3 A. If they are broken out, yes.

4 206. Q. Yes. Have a look please at my complaint dated
5 February 24th, at page 11 of that complaint?

6 A. You said--just a second--page 11.

7 207. Q. Yes.

8 MR. DODSWORTH: Page 11. Are you referring to the
9 exhibit attached?

10 DR. LUKACS: Exhibit B, yes, to my complaint.

11 THE WITNESS: Yes.

12 DR. LUKACS:

13 208. Q. So here you see air fuel surcharge broken out.

14 A. Yes. What you had mentioned is that it is
15 under taxes, fees and charges. Well it is not under
16 taxes. It is not under the heading taxes, fees and
17 charges. It is broken out so we asked them to move it up
18 under air transportation charges.

19 209. Q. No, no, my complaint was that it was not
20 included in air transportation charges. That is what my
21 complaint said. It was not--

22 A. It doesn't have to be included in. It doesn't
23 have to be included. It has to be--if it is broken out,
24 okay, it has to be listed under air transportation
25 charges. If they don't want to put a total there then it

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1 just has to be a title. They don't need to put a total
2 for air transportation charges.

3 210. Q. In this case, still with respect to this
4 specific exhibit.

5 A. Yes.

6 211. Q. They chose to put a total to air
7 transportation charges.

8 A. I don't know if that is a total. I don't
9 know. That could be only a base fare. I don't know and I
10 cannot tell.

11 212. Q. Well I suggest that you can because if you add
12 up the figures without the bold, they add up to the figure
13 in the bold.

14 A. Yes, but I am not adding it up because this is
15 not the requirement. For me the requirement is to show
16 the full price, to have a breakdown of taxes, fees and
17 charges to ensure there is no third party--that there is
18 not a third party charge in the third party charges and if
19 they choose to break it down then it is under the proper
20 heading.

21 213. Q. So are you telling me that air fuel surcharge
22 is not an air transportation charge?

23 A. It is; it is.

24 214. Q. It is so then air fuel surcharge, if it is
25 broken out, if it is listed at all, it has to be included

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1 in air transportation charges.

2 A. It has to be under title air transportation
3 charges. It doesn't have to be included. It has to be
4 under title air transportation charges.

5 215. Q. As a sub-item?

6 A. As a sub-item.

7 216. Q. Yes, but in this case--

8 A. As a sub-item but the total does not have to
9 be there. They can only--they may call it air
10 transportation charges, then put, you know whatever, a
11 dash and then put airline fuel surcharge or base fare or
12 agency fee or NavCan charge, whatever they want if they
13 want to do it but they don't have to. They just--the
14 title--I am talking about title. That is the only
15 requirement there is. If they mention it, it has to be
16 under the title air transportation charges.

17 217. Q. In this case do you see it under the title in
18 Exhibit B?

19 A. No, that is why we had asked them to move it
20 under the title.

21 218. Q. But there is nothing in the notice of
22 violation about it, is there?

23 A. No, no, there is none.

24 219. Q. Why?

25 A. The reason is because we found this

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1 acceptable.

2 220. Q. You found this acceptable--

3 A. Yes.

4 221. Q. -even though you just told me earlier that it
5 was at the wrong place.

6 A. It wasn't--well you asked for it to be--not to
7 be under taxes, fees and charges. What we found
8 acceptable with Expedia: Did they break out the airline
9 fuel surcharge? The legislation calls for it to be under
10 the title air transportation charges so yes, that is
11 correct, but we found this acceptable.

12 222. Q. Even though it was not under the air
13 transportation charges on page 11?

14 A. Even though it was not under air
15 transportation charges heading.

16 MR. DODSWORTH: Are we talking with the right
17 exhibit here, if I may? Are you referring to Ms. Sasova's
18 printout that is appended to her--I just want to be sure
19 that we are talking about the right exhibit, sorry.

20 DR. LUKACS: I was referring to page 11 of my
21 complaint which was--

22 THE WITNESS: Exhibit B.

23 DR. LUKACS: --which was Exhibit B to my complaint
24 and my complaint itself, I can tell you in a moment.

25 THE WITNESS: Do you mind saying the flight? Is

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1 it your trip to Budapest, Hungary, for \$985?

2 DR. LUKACS: I am talking about Exhibit I to the
3 Affidavit of Ms. Sasova and, yes, that was my trip from
4 Halifax to Budapest, correct. It is page 11.

5 MR. DODSWORTH: I am sorry but you just referred
6 to Exhibit I to Ms. Sasova's--

7 DR. LUKACS: It is Exhibit I to the affidavit of
8 Ms. Sasova's Affidavit, and--

9 MR. DODSWORTH: Oh, being your complaint.

10 DR. LUKACS: My complaint and it is page 11 of the
11 complaint.

12 MR. DODSWORTH: Right.

13 DR. LUKACS:

14 223. Q. Let's look at paragraph 16 of your Affidavit.

15 A. Yes.

16 224. Q. You say here and I am quoting that:

17 "In his letter dated February 24, 2014, Dr. Lukacs
18 also submits that the 'Airline Fuel Surcharge' was
19 improperly listed under the heading 'Taxes, Fees
20 and Charges'.

21 A. Uh-huh.

22 225. Q. Can you please point to where it is found in
23 my letter?

24 A. You had mentioned that failing to--

25 MR. DODSWORTH: I would just like to ask one more

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1 question. Are all questions being asked today your
2 questions or is participating, because I think
3 my client has the right to know who is asking the
4 questions? You know, you have asked for me to be apparent
5 to you in this session and I have yet to see

6 DR. LUKACS: These are all my questions.

is simply taking notes for me.

8 THE WITNESS: It is not in your letter but I have
9 a feeling it was in one of your appendices that--this is
10 the reason why it seemed to me that that is what you meant
11 here.

12 I said "letter" but I meant all the attachments to
13 it, probably communications with Expedia, because I know
14 that this was--the issue was under taxes, fees and
15 charges.

16 DR. LUKACS:

17 226. Q. Can you point to where?

18 A. Yes, I am not sure. I am not sure. I really
19 am not sure. Maybe from the--that it is from the same
20 exhibit that we were looking at airline surcharge--fuel
21 surcharge. It is not under air transportation charges.

22 227. Q. But my question is: You attribute to me
23 something in your Affidavit.

24 A. Uh-huh.

25 228. Q. Did I write something like that? Can you

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1 point out where?

2 A. Yes--no, I can't point to the exact wording.

3 No, I can't.

4 229. Q. Okay.

5 A. Maybe it was just implied.

6 230. Q. Okay. Now you say at the end of paragraph 16
7 that Expedia listed airline fuel surcharge separately,
8 which is acceptable because it is clear and so on and so
9 forth.

10 A. Uh-huh.

11 231. Q. In whose opinion is this acceptable?

12 A. It is in my opinion. However this is
13 something that as the enforcement officer I saw. However
14 I had discussed it with my superiors as well.

15 232. Q. I put it to you, Ms. Sasova, in light of the
16 decision in this Scandinavian Airlines case, fuel
17 surcharges and base fare must be listed together and all
18 under the heading of air transportation charges. Do you
19 agree with me on that?

20 A. It was a different case. The situation was
21 different there than it is here. We are talking about the
22 heading. I want to stay with heading because I don't want
23 to be talking about the groupings because that is not a
24 requirement. Let's talk about--let's stay with the
25 headings for this purpose. I have a hard time to say yes

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1 to a grouping because that is not the case. However you
2 are partially right with the heading, yes.

3 233. Q. How so? Can you elaborate on what you mean by
4 I am partially right?

5 A. Once again when you say about a SAS decision,
6 okay, we are talking about paragraph 55. It is the
7 heading. It has to be under the heading. This decision
8 really reflects SAS's situation because it was all grouped
9 together, but at the end of the day it says that--the ATR
10 are clear that appropriate headings are to be used and the
11 relevant charges are to be found under appropriate
12 headings and that applies if they are broken down. So it
13 is a heading, not grouping.

14 234. Q. What is the difference between heading and
15 grouping?

16 A. Because you don't have to group them. You can
17 just have a heading. If they have only one heading, air
18 transportation charge, and one amount that is fine. They
19 don't need to break it down. It is actually--

20 235. Q. But in fact they do break down.

21 A. In the Expedia case it is actually better for
22 consumers to have it because what they can do: they can
23 just put one amount, air transportation charges, and you
24 will never know what the airline fuel surcharges and what
25 the Expedia fee is. So if they break it down it is better

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1 for consumers. So this is why we deemed it acceptable
2 because it is even clearer than having one total. There
3 is no requirement to break air transportation charges
4 down.

5 236. Q. So a fee to Expedia, like a travel agent fee,
6 would that not be a third party charge?

7 A. No.

8 237. Q. Really?

9 A. Uh-huh.

10 238. Q. Is that a fee required to pay to the airline
11 itself?

12 A. It is--it is air transportation charge. That
13 is all.

14 239. Q. Let me rephrase it.

15 A. Yes.

16 240. Q. When we talk about air transportation charge
17 isn't--

18 A. It includes air--travel agent fees as well.

19 241. Q. It does.

20 A. Yes.

21 242. Q. So just to confirm, you said that you
22 communicated the request to move the location of airline
23 fuel surcharge to a different place by email or phone?

24 A. It was by phone, I think by phone, yes.

25 243. Q. By phone, uh-huh.

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1 A. Yes because I was on travel status so I was
2 driving. Anyway I could not. I did not have access to
3 email. I believe that was--yes, at that time that I said
4 to move it, yes.

5 244. Q. Let's go back to Exhibit I. Can you tell me
6 what itineraries are mentioned in the complaint, what
7 pairs of cities, what airlines? "The exhibits--"

8 A. In...?

9 245. Q. To your Affidavit.

10 A. Okay, here. That is your complaint. That is
11 your letter. What itineraries? You have several ones.
12 Okay, is it on page 6, the Ottawa to London? Is that what
13 you are talking about?

14 246. Q. I believe it starts on page 10 of the exhibit.

15 A. Oh, there are four itineraries, okay; your
16 trip to London, England, Ottawa to London.

17 247. Q. Yes, go on. Let's go through all of them.

18 A. Okay; then your trip to Budapest, Hungary,
19 Halifax to Budapest.

20 248. Q. Yes.

21 A. Another Halifax to Budapest.

22 249. Q. Yes.

23 A. Then Halifax to Toronto; and that is it.

24 250. Q. All right?

25 A. Yes.

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1 251. Q. Now after April 30th, 2014, did you go back
2 and check how the same routes are being advertised on
3 Expedia?

4 A. I believe so, probably. We did definitely and
5 when I am saying "we" that was my assistant or the officer
6 that works for me and Halifax to Budapest for sure.
7 Halifax to Toronto I believe so as well. Ottawa to
8 London; that is a very common one, we do that often so
9 probably I would say yes.

10 252. Q. Do you have printouts of those?

11 A. No, no I don't.

12 253. Q. Because I tell you that actually on those
13 itineraries involving Finnair--

14 A. Yes, Finnair is different, yes.

15 254. Q. --Expedia continues to have the same problems.

16 A. I know, I know. We have--no, actually right
17 after your complaint they had moved the airline and
18 service fee--sorry, it was agency or airline service fee.
19 They listed it under air transportation charges. They
20 did. But when you are saying that they have it under the
21 title that is correct because that will be fixed on the
22 10th of September. Everything will be under title air
23 transportation charges. So you are right in that.
24 However when the airline--sorry, not airline. Is it
25 called--it is either called the Agency or Expedia's fee.

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1 I am not really sure.

2 255. Q. I believe it is called airline service fees.

3 A. Oh, airline service, correct. That has been
4 out of taxes, fees and charges. It has been separated--
5 eliminated from that breakdown and put separately.

6 256. Q. But it is still not included in air
7 transportation charges?

8 A. Correct, and because of your complaint and
9 really to avoid this litigation we had gone to Expedia and
10 asked them to put everything, and we do have a date. It
11 is a release date of 10th of September that everything will
12 be put under air transportation charges title. I do not
13 know if it will have an amount. However it will be under
14 correct title and it will be broken down there.

15 257. Q. So you included here as Exhibit K a trip to
16 Dubai.

17 A. Yes.

18 258. Q. What was the logical basis for choosing Air
19 Canada and Dubai as a destination where it was never
20 mentioned in the complaint?

21 A. It is completely sporadic, we do so many
22 itineraries. Nothing, we just pulled this departure and
23 destination. There is absolutely no logic. We do not
24 have prescribed routes that we check. We check whatever
25 comes through. Sometimes it, you know, the cookies that

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1 appear on a computer we go and we check because those are
2 mostly--much easier to update so we want to make sure that
3 those updates that they do on a, you know, frequent basis,
4 they are correct still. So that is about it.

5 259. Q. So earlier you just said that still with
6 Finnair there are some problems, correct?

7 A. No, no. What I meant is that with Finnair it
8 is one of those cases where there is an airline service
9 charge. If you look at other itineraries there is no
10 airline service charge. So what I wanted to say: with
11 airline service charge and an airline fuel surcharge it
12 appears separately but as of the 10th of September it will
13 appear under air transportation charges when there is an
14 airline service charge. If there is no airline service
15 charge it will be only airline fuel surcharges that will
16 appear under air transportation charges. That is all what
17 I meant.

18 260. Q. And they will be included in the air
19 transportation charges?

20 A. Correct.

21 261. Q. So when I look at Exhibit K to your Affidavit
22 this trip to Dubai, does this reflect the state of Expedia
23 on May 20, 2014?

24 A. Yes, I believe so, yes. May 20th, yes. That
25 was May 20th, yes. We took it the same day as the

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1 Affidavit was done to be as close to the date as the
2 Affidavit.

3 262. Q. But things can change from hour to hour?

4 A. Absolutely.

5 263. Q. So do you agree that here the airline fuel
6 surcharge is listed at a separate heading?

7 A. Yes.

8 264. Q. Why did you not issue another warning?

9 A. As I mentioned, because it is acceptable.

10 This is acceptable to us to display it that way.

11 265. Q. In your opinion?

12 A. Yes, in my opinion and in the approach. It is
13 not only my opinion. It is the approach that we take
14 based on resources that I have available and based on the
15 priorities and the clarity and transparency to the
16 consumer.

17 266. Q. So you look at those principles and not at the
18 letter of the law.

19 A. I follow the law where--when I apply, when I
20 enforce. In this case, as I said, it is an approach that
21 is taken because of the--really of the priorities and the
22 objectives of legislation being met and I said it is
23 something that is cleared through my superiors.

24 267. Q. You said objective of the legislation.

25 A. Uh-huh.

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1 268. Q. Canada is one of a few countries where when
2 you go to a store you see the prices without taxes. So
3 you go up to the cashier and the tax is being added to it,
4 correct?

5 A. Yes.

6 269. Q. So in this society we do place some value on
7 knowing what taxes we pay and what money goes to the
8 service provider.

9 A. Absolutely.

10 270. Q. So you would agree with me that the purpose of
11 the legislation in this case is really to put things in
12 two big bins. One is money going to the service provider
13 and the other bin is money going to third parties.

14 A. This is strictly my opinion but I disagree
15 with you. The objection of the legislation, as it is
16 posted everywhere and how I understand it and how I
17 interpret it, is to provide a level playing field for
18 airlines and the consumer to make it clear--so they can
19 make a clear and transparent decision when they are
20 purchasing their ticket, so they can see what they are
21 paying in full and that there is no deceit of any air
22 transportation charges being listed as the taxes, fees and
23 charges.

24 271. Q. Let's go back to page 8 of the interpretation
25 note.

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1 A. All right.

2 272. Q. We agreed here earlier that the total price is
3 made up of air transportation charges and taxes, fees and
4 charges.

5 A. That is correct.

6 273. Q. So would you agree with me that when a
7 passenger looks at an online ad they have to be able to
8 clearly identify which charges are air transportation
9 charges and which charges are the taxes, fees and charges,
10 correct?

11 A. No, I don't agree.

12 274. Q. You don't agree.

13 A. No. When a passenger--and this is according
14 to the legislation and--when a passenger looks at a price
15 it has to be a full price and it has to list taxes, fees
16 and charges and have a proper breakdown with a proper name
17 for each tax. That is it. There is no requirement to
18 list the air transportation charges. If a carrier or an
19 advertiser chooses to put a full price and only a
20 breakdown of taxes, fees and charges they will be
21 compliant.

22 275. Q. How is it possible to put only a breakdown of
23 taxes, fees and charges without providing some at least
24 subtotal for the air transportation charges?

25 A. That is how it is.

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1 276. Q. I am asking how is possible in practical
2 terms?

3 A. Oh, they do it. That is how they do it. Even
4 Expedia was going to comply with your request quickly and
5 they were only going to list the full price and have
6 taxes, fees and charges. They don't need--they don't need
7 to show air transportation charges. But that would not be
8 clear to a consumer so they wanted to show the fuel
9 surcharge and they wanted to show whatever is being
10 charged by the carrier or the advertiser or whoever it is.
11 It is perfectly fine if they only list the full price,
12 let's say \$985, and they only break down that there will
13 be taxes, fees and charges, whatever it could be. The
14 rest does not need to be shown.

15 277. Q. But if air transportation charges are shown at
16 all then it has to be this kind of two bins type of
17 division. Do you agree with me on that?

18 A. No, air transportation charges could be one
19 total. They don't need to break it down.

20 278. Q. It doesn't have to be broken down but if it
21 appears then essentially there would be two big headings,
22 air transportation charges and another big heading, taxes,
23 fees and charges which then would have a breakdown.

24 A. That is right.

25 279. Q. Okay. So when we look at Exhibit K to your

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1 Affidavit this has three bins, not two bins, correct?

2 A. Yes.

3 DR. LUKACS: I suggest we take now a break and you
4 will transmit to me the documents that you have brought
5 and then we will resume after the break.

6 MR. DODSWORTH: How long are you thinking for a
7 break?

8 DR. LUKACS: Probably 15 minutes, 15-20 minutes.
9 It depends on how long it takes for the documents to be
10 transmitted to me.

11 MR. DODSWORTH: And I want to be very clear what
12 documents you are requesting be transmitted.

13 DR. LUKACS: The documents that Ms. Sasova brought
14 in response to the Direction to Attend. She was directed
15 to bring certain documents and given that this is done
16 over Skype I don't have the physical ability to review
17 those things right now. So it will need to be transmitted
18 over by a scanner and then we can resume.

19 MR. DODSWORTH: Just to be clear though, do you
20 intend to then cross-examine on those documents?

21 DR. LUKACS: Absolutely.

22 MR. DODSWORTH: Okay and you are going to receive
23 them and read them in 15 minutes?

24 DR. LUKACS: Probably 20 minutes. Can you tell me
25 approximately how many documents we are talking about?

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1 THE WITNESS: There is just an email
2 communication, that's it.

3 MR. DODSWORTH: Okay.

4 THE WITNESS: Yes that is the email communication
5 that you requested.

6 DR. LUKACS: Yes.

7 THE WITNESS: Yes, I brought it here.

8 MR. DODSWORTH: Okay.

9 DR. LUKACS: I would ask you to give it to Madam
10 Clerk and she can transmit it to me.

11 THE WITNESS: Absolutely, yes.

12 DR. LUKACS: I guess we are off the record now.

13 THE REPORTER: Yes.

14 (SHORT RECESS)

15 (Upon resuming at 12:30 p.m.)

16 DR. LUKACS:

17 280. Q. Ms. Sasova, I understand that you have
18 produced some documents in response to your request to
19 attend.

20 MR. DODSWORTH: Excuse me, Mr. Lukacs, we can't
21 see you.

22 DR. LUKACS: Oh, my apologies. Here I am, okay.

23 281. Q. So Ms. Sasova, I understand that you have
24 produced certain documents in response to the Direction to
25 Attend.

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1 A. Yes.

2 282. Q. I would like to go through with you these
3 documents because I am having a bit of difficulty
4 understanding what is what here. So I see here a chain of
5 emails starting on the 4th of April.

6 A. Correct.

7 283. Q. It is from sdeblois@expedia.com--

8 A. Uh-huh.

9 284. Q. --and for some reason I have only two pages of
10 this email here with me.

11 A. So I just want to--this exchange of email--
12 email exchange plus the one, the 28th of April from Steven
13 de Blois and Paul Lynch, very similar type and then the
14 itinerary--so the printout--it is all together and this is
15 the case package that you had asked that is in reference
16 to the warning letter that was issued to Expedia. This is
17 what we have included in our--this is our case. We don't
18 have anything else for the case.

19 285. Q. I understand but I also asked you to provide
20 correspondence between Expedia and Agency staff. So I am
21 going to first ask you questions about these first two
22 pages. They are marked pages 1 and 2 of this email.

23 A. Okay.

24 DR. LUKACS: I would like to mark it as Exhibit 5,
25 just these two pages.

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1 **EXHIBIT NO. 5:** Incomplete chain of emails starting
2 with the email of Mr. de Blois, dated April 4, 2014
3 (total of 2 numbered pages).

4 DR. LUKACS:

5 286. Q. My first question is going to be: At the
6 bottom of page 2 the email ends quite abruptly. It
7 doesn't look like a natural ending to the email but rather
8 ends abruptly with the word "Regulations". Can you
9 explain that?

10 A. Okay. Once again this is what we had kept as
11 the relevant to the case. The last email, what is
12 important in this email for us, for the case, was what is
13 above it and what is on the page. So the email continued
14 and I am not sure where, but we did not keep that for the
15 reason that what is important for our case is what is
16 above it and on the page.

17 287. Q. Ms. Sasova, do you agree with me that you were
18 the recipient of an email on March 20th from Paul Lynch?

19 A. I was copied, yes.

20 288. Q. Copied to it, yes, so you were in receipt that
21 email, yes.

22 A. Yes.

23 289. Q. So that was part of this chain of emails,
24 correct?

25 A. Yes, but I don't—I don't keep all the emails.

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1 290. Q. So are you telling me that even though this
2 email goes on you did not keep the rest of it?

3 A. No, I did not keep it. This is from Paul
4 Lynch that he had copied to our file in our enforcement
5 module. This is an email excerpt that was kept as part of
6 the file. This is not from the email inbox. This was
7 relevant, the relevant parts, and that is what we do. We
8 take relevant parts of the emails and move them into
9 enforcement module with the second part and yours. This
10 is really the file for us so we have some--

11 291. Q. Ms. Sasova, I am not asking you about that.

12 A. No?

13 292. Q. I am asking you very simply about this
14 specific email.

15 A. Yes.

16 293. Q. This email from the 20th of March came into
17 your inbox, correct?

18 A. Yes.

19 294. Q. So I presume you have it among your emails.

20 A. No, I don't. I don't. I get rid of these
21 emails. I was cc'd on it. I don't. Paul had taken it
22 out because that was his communications with Brian
23 Flanagan and copied it. He put it on a file, what is
24 relevant to the case and that is it.

25 295. Q. Does he have this email in its entirety?

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1 A. What I--no. What I had asked him, I asked him
2 to produce, as stated on yours, what was relevant to--
3 sorry, a copy of the enforcement file that is connected.

4 296. Q. Ms. Sasova, to be clear, I asked you to
5 produce correspondence, all correspondence.

6 A. Absolutely.

7 297. Q. So this would include correspondence sent by
8 Mr. Lynch to Mr. Flanagan.

9 A. This is the only thing that he was able to
10 produce for me with regards to this case--with regards to
11 this--to your request and the rest--and the other email.

12 298. Q. Did you direct him to obtain an original copy,
13 a complete copy of this email?

14 A. I directed him to obtain a case from--a case
15 that is relevant to the March 27th warning letter, what's
16 on the file for the March 27th warning letter plus what
17 communication we had with Expedia with regards to your
18 complaint--sorry, not the complaint, to your letter.

19 299. Q. Ms. Sasova, this email from March 20th, 2014,
20 its subject is, "Follow-up on All-Inclusive Price
21 Advertising Regulations".

22 A. Expedia, yes, and the one above. Yes,
23 correct.

24 300. Q. So this was certainly related to the issue
25 about which a warning letter was subsequently issued?

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1 A. Yes.

2 301. Q. But can you explain to me why there was
3 communication with Expedia prior to issuing a warning
4 letter?

5 A. That is a standard procedure. We always do
6 that with everybody. Whenever--actually it is our policy.
7 What we do--whenever there is a contravention we contact
8 the advertiser right away to make sure that they rectify
9 it as soon as possible because what we want to prevent is
10 that--the non-compliance is out there so we want to tell
11 them and then we take appropriate enforcement action being
12 in this case a warning letter or it could be a notice of
13 violation, but the first thing is to contact them with a
14 very reasonable--in a reasonable time.

15 302. Q. So when was this initial contact with Expedia
16 made?

17 A. I don't recall. Maybe in--I don't recall. I
18 don't recall the first contact, when it was made.

19 303. Q. Well, Ms. Sasova, you are here to be cross-
20 examined in relation to this notice of violation.

21 A. Absolutely, yes.

22 304. Q. So my question, and my request to you, was to
23 produce all correspondence between the Agency and Expedia
24 in relation to this matter.

25 A. Absolutely.

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1 305. Q. Now you just admitted a moment ago that this
2 email was as a kind of preliminary to the notice of
3 warning that you sent. So therefore I am asking you to
4 provide me with a complete email dated March 20th and any
5 previous correspondence that you have had with Expedia and
6 anybody else at the Agency had in relation to this notice
7 of violation, notice warning, and its history.

8 A. Okay.

9 306. Q. That is what was in the Direction to Attend.
10 The direction was to produce all correspondence.

11 A. And I did; what I had. This is with regards
12 to the file. You wanted--

13 307. Q. And I didn't ask you to only produce the file.
14 Why don't we go back to Exhibit 3? Would you like to
15 again have a look at the Direction to Attend?

16 A. Sure. Do you have it? Oh, good, thank you.
17 Oh, between the Agency and Expedia. Okay, "all
18 correspondence between Agency staff and Expedia", related
19 to your letter.

20 308. Q. It says in paragraph 2(i), "all correspondence
21 between Agency staff and Expedia".

22 A. Uh-huh.

23 309. Q. To read the whole thing:

24 "Complete enforcement file of the enforcement
25 action(s) referred to in paragraph 14 of your

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1 affidavit and/or related documents, including, but
2 not limited to:
3 all correspondence between Agency staff and
4 Expedia".

5 You have just earlier told me that this email sent
6 on March 20th, 2014, to Expedia was related to the warning
7 letter you sent on March 27th.

8 A. Uh-huh.

9 310. Q. So therefore it is an email correspondence
10 related to that warning letter. Therefore you were
11 supposed to produce the entire letter and the entire chain
12 of emails because--

13 A. But I don't have them. I don't have them. I
14 only kept what was relevant to the file, to the warning
15 letter file.

16 311. Q. Can you tell me who is Mr. Lynch?

17 A. This is the officer that works for me, yes.

18 312. Q. So he is your subordinate?

19 A. Yes, he is, yes.

20 313. Q. So are you telling me that Mr. Lynch does not
21 have the full correspondence?

22 A. I believe he does not because he only copies
23 and puts on a file what is relevant. We have a lot of
24 emails and very small mailboxes. So there is--from March
25 there is a possibility that this has all been gone. I

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1 asked him to produce what he had with regards to Expedia
2 and your--since your letter came in and this is what I had
3 received.

4 314. Q. Well this is an incomplete letter, Ms. Sasova.
5 So my question is where is the rest? And with due
6 respect, for an organization such as the Agency there are
7 backup servers and normally your records are required
8 under law to be kept for a number of years?

9 A. Relevant records.

10 315. Q. So I am having a very hard time to believe
11 with due respect that this email has disappeared without a
12 trace.

13 A. Okay. Should I? I don't know what to do. I
14 cannot say. I cannot tell--I understand but this is a
15 really administrative. I don't know. I can check. This
16 is--I followed your--and this is with due respect--I
17 followed your Direction to Attend and pulled the
18 information that I had. There is a lot of communication
19 that is repetitive going as you can see and there is a lot
20 of communication done verbally and I have asked my staff
21 to produce that as well.

22 316. Q. I asked a question, Ms. Sasova, I am sorry. I
23 am asking here a specific email chain which has been
24 truncated here and what you want me and the court to
25 believe that actually the Agency which is a government

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1 body does not have the full email and that you are not
2 able to obtain from archives the full email. Is that what
3 you are telling me?

4 A. I really don't know all the intricacies. I
5 probably would be able to but I cannot tell you right now
6 that we don't keep it and all this. You are asking me
7 whether I had it. I don't. This is part of the file and
8 Paul--I asked Paul what he produced to me and this is what
9 he gave me. I am here. I am not at my desk so I cannot
10 really produce it for you right now. Do you want me to
11 check? What is it that you want?

12 317. Q. Certainly, certainly I would want you to
13 produce the full chain, the rest of the email, the
14 complete email in its entirety and I reserve my right--

15 A. Okay.

16 318. Q. --to continue the cross-examination on at that
17 point at your expense because you were supposed to produce
18 that email. This is an email. The language is
19 "possession, power and control". I am certainly--put it
20 on the record. We will still get back to it possibly at
21 the end. Let's go on.

22 This was Exhibit 5, correct?

23 THE REPORTER: Yes. The two page letter.

24 DR. LUKACS: Yes.

25 THE WITNESS: Yes, those two pages, yes.

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1 DR. LUKACS:

2 319. Q. Now, I see here another pile of documents
3 starting on page 3.

4 A. Yes.

5 320. Q. It starts with the text at the top, "I will
6 loop back with update before May 19th", signed by Steve.

7 A. Yes.

8 321. Q. Can you explain what that is?

9 A. This is an email communication that I had
10 between Paul, myself and Expedia with regard to your file.

11 322. Q. But this starts at page 3 and starts right in
12 the middle.

13 A. Yes, because anything that precedes it is
14 actually past the--past the Affidavit so it is not
15 relevant to this.

16 323. Q. Past? I am sorry. I didn't ask you to limit
17 your communications to what is in your Affidavit. I asked
18 you to produce all documents and materials and all
19 correspondence between the Agency staff and Expedia.
20 There was no time limit here so with due respect I believe
21 that you haven't complied with your Direction to Attend.
22 So I don't think that--

23 A. It is--isn't it for the--anything that is
24 after the Affidavit is not really relevant to this. You
25 did not want anything. You wanted to cross-examine me on

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1 my Affidavit so everything that I have done past the
2 Affidavit is not relevant. I would not be producing that,
3 or would I?

4 324. Q. My position is that yes, you would. You are -
5 the request to direct was not confined in time in any
6 possible way and given I have very serious concerns about
7 your conduct in relation to this case it would certainly
8 be relevant.

9 MR. DODSWORTH: Your paragraph 2 starts:

10 "Complete enforcement file of the enforcement
11 action(s) referred to in paragraph 14 of your
12 Affidavit--"

13 DR. LUKACS: And I suggest that you continue
14 reading.

15 MR. DODSWORTH: So the Affidavit says--

16 DR. LUKACS: Counsel, please continue reading the
17 full text.

18 MR. DODSWORTH: "and/or related documents.

19 DR. LUKACS: It says: "and/or related documents,
20 including, but not limited to", and also paragraph 1.
21 This is a very broad --

22 MR. DODSWORTH: No, but those qualifying words are
23 not with respect to the paragraph 14 of the Affidavit.
24 They are with respect to complete an enforcement file.
25 You know, you have asked for something--documents in

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1 relation to the Affidavit. This is a cross-examination on
2 an Affidavit and documents that came into creation after
3 that time are not relevant.

4 DR. LUKACS: No, I beg to differ with you,
5 counsel. It is my submission that documents that were
6 created in the same file, given that there is an ongoing
7 issue here would be relevant.

8 Moreover--actually it is quite clear from this
9 email, which I would like to mark this now as Exhibit 6,
10 from pages 3 to 10, this undated package of correspondence
11 that a person says here, "I will loop back with an update
12 before May 19th".

13 THE WITNESS: Yes.

14 **EXHIBIT NO. 6:** Incomplete chain of emails starting
15 with "I will loop back with an update before May
16 19th" (total of 8 consecutively numbered pages,
17 from page 3 to 10, inclusive).

18 DR. LUKACS:

19 325. Q. On what date you swore your Affidavit?

20 A. On the 20th.

21 326. Q. Yes, so would you agree with me that therefore
22 the person who wrote that he would loop back to you with
23 an update before May 19th wrote it before May 19th?

24 A. Yes.

25 327. Q. So therefore you would agree with me that the

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1 part that is missing from those, from this Exhibit 6,
2 predates your Affidavit.

3 A. It is only a title. There is no--no
4 everything that was after, any correspondence I had
5 received from them was after May 20th.

6 328. Q. I am asking--

7 A. He wrote it on May 19th but I did not receive--
8 the next email that is on pages 1 and 2 is past May 20th
9 and that was the reason why I excluded it because my
10 understanding was that in your Affidavit you state--sorry,
11 in your Direction to Attend it is relevant to the
12 Affidavit. That is why.

13 329. Q. Let me recap; this email from which I am
14 seeing the last two lines: "I will loop back with an
15 update before May 19th", signed Steve.

16 A. Uh-huh.

17 330. Q. What was the date of that email?

18 A. April 29th.

19 331. Q. Yes, so therefore it predates the date of your
20 Affidavit.

21 A. Yes and it is there.

22 332. Q. No, it is not.

23 A. No?

24 333. Q. I am talking about, if you look at the top of
25 page 3, at the very top it says, "I will loop back with an

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1 update this before May 19th, Steve".

2 A. Okay.

3 334. Q. That starts on page 2 which I don't have here.

4 My question is: What was that email signed by Steve?

5 What was the date of that email? And I put it to you that
6 given that Steve promises to get back to you by May 19th--

7 A. May 29th. I am sorry.

8 335. Q. May 19th it says at the top here.

9 A. Yes, yes.

10 336. Q. Therefore this email was also dated before May
11 19th.

12 A. Correct.

13 337. Q. So page 2 and page 1 contain correspondence--

14 A. Yes.

15 338. Q. --which dates before May 19th.

16 A. No, no, no. It is after. I did not receive
17 anything on May 19th. Everything that I had received on
18 pages 1 and 2 it is past May 20th. That is the date of the
19 Affidavit. That is why I did not include it in here.

20 339. Q. You have just a moment ago agreed with me, Ms.
21 Sasova that Steve said he would "loop back with an update
22 before May 19th". That has been said before May 19th.

23 A. Yes, yes.

24 340. Q. So where is the header of that email?

25 A. On page 2.

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1 341. Q. Yes and that is an email before May 19th.

2 A. The header is, yes, but there are other emails
3 that are past May 20th.

4 342. Q. Where is the header? Where is the rest of the
5 text of this email on page 2 which predates May 19th?

6 A. It is only a header. It is only a header that
7 is from--as the one below. It is only a header and I can
8 supply it but that date is before May 19th. Everything
9 else dates past May 20th.

10 343. Q. Well, Ms. Sasova, that is what you say but I
11 don't have it here in front of me.

12 A. Sure.

13 DR. LUKACS: So I believe we have two outstanding
14 issues here concerning documents, counsel. One concerns
15 Exhibit 5 and one concerns Exhibit 6. With respect to
16 Exhibit 5, my position is that Ms. Sasova has this email
17 in her possession or control or power within the meaning
18 of the law and therefore she should have produced the full
19 email with respect to Exhibit 5 and I am certainly
20 amenable to postponing that until a few hours later. I
21 understand that you are quite close to the Agency so you
22 should be able to obtain that, or in the alternative to
23 resume at a later time. However I think it must be clear
24 that I am not prepared to pay for the costs of any
25 continuation given that--about this there is not even the

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1 slightest doubt.

2 344. Q. Ms. Sasova, I am sorry it is inappropriate for
3 you to communicate with counsel during cross-examination.
4 I am not consenting for you to communicate with counsel
5 and I appreciate you not making faces at me--

6 A. I just wanted to ask him because I can get an
7 email right away.

8 345. Q. Ms. Sasova--

9 A. Would you like me to ask for it? Sorry.

10 346. Q. Ms. Sasova, it is inappropriate for you to
11 make faces at me either. It is very impolite. And it is
12 not a proper conduct for a witness.

13 A. I did not make a face, Mr. Lukacs. I did not
14 make a face, Mr. Lukacs. When we are talking about the
15 faces I would refrain--anyway I won't say anything. Mr.
16 Lukacs, my question is: Would you like me to attempt to
17 get emails right away? If we have a short break maybe I
18 can try to get it right away.

19 347. Q. Sure, I think that would be a reasonable
20 solution. Sure, I would certainly be agreeable with that
21 and the same thing about Exhibit 6. I would like to have
22 the full email including pages 1 and 2.

23 I guess we will go now off the record and I would
24 again ask you not to discuss this matter with counsel.
25 You are under cross-examination.

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1 (SHORT RECESS)

2 (Upon resuming at 1:11 p.m.)

3 DR. LUKACS: Are we back on the record?

4 THE REPORTER: Yes.

5 DR. LUKACS: Okay. Let's mark as Exhibit 7 the
6 complete email sent by Mr. Steven de Blois dated the 4th of
7 April, 2014.

8 **EXHIBIT NO. 7:** Chain of emails starting with the
9 email of Mr. de Blois, dated April 4, 2014 (4
10 unnumbered pages).

11 348. Q. I am going to ask a few questions maybe about
12 that. On page 3 of that exchange I see there an email
13 coming from Expedia on the 18th of March--

14 A. Okay.

15 349. Q. --in which they refer to how much effort it
16 would take to come into compliance.

17 A. That is correct, yes.

18 350. Q. Is this something you take into account in
19 deciding whether a website is compliant or how to deal
20 with a non-compliance?

21 A. Yes, partially; yes, mostly with regards to
22 time.

23 351. Q. So just to confirm it looks like the first
24 email to Expedia was dated March 11th. That was when the
25 Agency notified Expedia that there was a new complaint

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1 received?

2 A. There is some--it wasn't really a complaint
3 even though it says here but we dealt with it as
4 information received and there possibly may have been a
5 communication before but as an email, yes.

6 352. Q. And now I just would like to be clear. What I
7 have here is an email sent by Mr. Paul Lynch to the office
8 of the Reporter which contains a chain of emails. Is that
9 correct?

10 A. I just asked him to, yes, to forward the email
11 that you wanted.

12 353. Q. Well I asked you to forward the full chain of
13 emails from which I have only pages 3 to 10. I am
14 missing--

15 A. What are you missing?

16 354. Q. I am missing two full pages of emails. What I
17 have--

18 355. Q. Which one?

19 A. What I have received is compared to what I
20 seem to be having here is only maybe, you know, 10 lines
21 from the two pages missing. I did not receive--the full
22 two pages are still missing from Exhibit 6.

23 A. No, no, they are there. It is which one?
24 Okay, let's go through it because, you know, as I received
25 it quickly.

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1 356. Q. I am looking at Exhibit 6 now and Exhibit 6--

2 A. Yes.

3 357. Q. I have at the top, "I will loop back with an
4 update before--"

5 MR. DODSWORTH: I am sorry, Mr. Lukacs. Are you
6 clear what Exhibit 6 is?

7 THE WITNESS: No.

8 DR. LUKACS:

9 358. Q. Exhibit 6 is pages 3 to 10 of a chain of
10 emails with "I will loop back with"--

11 A. Yes, that is how it starts. That is it.
12 There is no more to it. This is how the whole email
13 starts. There is nothing--it starts with April 29th
14 saying, "Thank you, Simona. I will loop back with you
15 before May" 18th--I am sorry, the 19th, and then it goes
16 down to April 22nd when Paul started too. This is one.
17 That is the one that you were missing when they were
18 talking about the header.

19 359. Q. I am missing--Ms. Sasova, I am missing a whole
20 two pages of this because this starts on page 3 what you
21 gave me. So I am not only missing simply a header which
22 now I do have--

23 A. No, this is how I printed. It has nothing to
24 do with a--there is no more email. This is it.

25 360. Q. Ms. Sasova, earlier you just told me--

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1 A. I know.

2 361. Q. --that before that there were emails that
3 according to what you claim were post-dating the date of
4 your Affidavit. That is why this is page 3.

5 A. Yes, but they are not emails. Just a second,
6 Mr. Lukacs. I want to--when I was preparing the package I
7 excluded everything that was after the Affidavit that was
8 written. The email that is of concern here, okay, started
9 on April 29th. I don't have anything that is with regards
10 to the Affidavit, communications with Expedia that would
11 be prior to May 20th. When I mentioned those
12 communications that I had with Expedia was after May 20th
13 when the Affidavit was produced. When I printed them,
14 yes, it was showing pages because of the page number but
15 you wanted absolutely the email that was part of what I
16 had sent and there is nothing else on that email.

17 362. Q. I wanted pages the 1 and 2 of Exhibit 6
18 because Exhibit 6 starts on page 3 and ends on page 10 and
19 I want to see what was on page 1 and page 2 of this
20 document.

21 A. I don't have them with me.

22 MR. DODSWORTH: Can you get them or is there
23 anything that--

24 THE WITNESS: No, because it is one email that
25 starts on April 29th. I didn't bring the--it was missing

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1 that header because--anyway, I thought it was a complete
2 email. There is nothing else on that. I don't know why
3 page 1 and 2--because I was printing so many documents and
4 they were numbering but it is my email that I printed out.
5 So Paul has taken now and he has a copy of that email.
6 Sorry, he has the copy of that email and he just
7 reproduced it.

8 DR. LUKACS:

9 363. Q. Ms. Sasova, let's phrase it differently. You
10 say that you have had correspondence--

11 A. Yes.

12 364. Q. - with Expedia subsequent to the date of your
13 Affidavit?

14 A. That is correct.

15 365. Q. Okay. What correspondence did you have with
16 them?

17 A. It was email, some email but mostly we were
18 talking. But there were some email messages that we
19 exchanged with regards to the September 10th compliance
20 date. That is pretty much, you know. Yes, maybe some in
21 June but mostly July. Then I was off the whole--almost
22 the whole month of August and then now we were talking
23 when they set up a concrete date of September 10th.

24 366. Q. And so do you know what was on the first two
25 pages of Exhibit 6 which are currently not here, what date

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1 those emails were approximately?

2 A. I don't--I don't even think there were emails
3 but it could have been emails that were June when we were
4 going to have a--because they were going to become
5 compliant in June if you recall and that didn't happen
6 because they were going to remove everything from--all air
7 transportation charges were going to be removed. So this
8 is where we were talking, exchanging emails a little bit.
9 So that would be probably the page that would be preceding
10 because as I was printing it was numbering the pages. But
11 those numbering of pages has nothing to do--because the
12 email that is preceding the Affidavit, it is the April 29th
13 one.

14 367. Q. Well, my position remains that you should
15 produce all correspondence with Expedia up to, you know,
16 yesterday and certainly it is my position that you did not
17 fully comply with the Direction to Attend. I am wondering
18 if you would like to produce those as well and resume or
19 if a court order will be necessary.

20 MR. DODSWORTH: I am sorry, the last part?

21 DR. LUKACS: Or if a court will be necessary.

22 MR. DODSWORTH: A court order. I didn't think
23 that that was necessary. I was not--not that we are
24 trying to intentionally be difficult here. We will comply
25 with that. We will take-

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1 THE WITNESS: Sure.

2 MR. DODSWORTH: But I don't know that there is
3 much purpose in trying to scramble and do that today. I
4 guess we will have to reconvene if that is something that
5 you will want to do, having seen them. But--

6 DR. LUKACS: Well certainly I am able to do that
7 provided the Agency will be paying or Ms. Sasova paying
8 for the cost of continuation of the examination given that
9 in my position she was supposed to produce those documents
10 and she failed to do so and there would be some additional
11 costs associated with that including set-up fees.
12 Certainly on those terms I would be amendable to that.

13 THE WITNESS: I understood from your Direction to
14 Attend it was with regards to the Affidavit. You are
15 wanting to cross-examine me on the Affidavit, everything
16 that was relevant to it, and that is the reason why I
17 produced those documents. Anything after, even what is
18 happening today or any time when Expedia is writing, I did
19 not think was relevant to it as it is specifically written
20 in your Direction to Attend.

21 DR. LUKACS:

22 368. Q. Well it was quite clear, it was:

23 "--all documents and other materials in your
24 possession, power or control that are relevant to
25 the present application".

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1 So is it your position that anything that happened
2 after the date of your Affidavit is not relevant to this
3 proceeding?

4 Is that the position the Agency intends to take,
5 Mr. Dodsworth?

6 MR. DODSWORTH: Well, you have a specific judicial
7 review application that is framed in a very specific way
8 and you have asked for specific things and we have
9 endeavoured to comply with the spirit and intent of that
10 application. We can consider and discuss this and return
11 if needed after this afternoon, I guess.

12 DR. LUKACS: Mr. Dodsworth, one point I would like
13 to raise with you while we are still on the record is that
14 this Direction to Attend was served first on June 6th. As
15 it is almost three months ago I would suspect that perhaps
16 that those months would have been enough to discuss with
17 me any issues that may have been--or any doubts as to what
18 was the intent or what is the scope of the production.

19 I am really puzzled and having difficulty to
20 understand if there were such doubts, which I believe they
21 are not reasonable--but if there were such reasonable
22 doubts, why, Ms. Sasova, you have not contacted me to
23 discuss this matter, ahead of the--

24 MR. DODSWORTH: Well, if you recall, the original
25 postponement of the cross-examination was with regards to

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1 the relevancy of the documents you were requesting. So
2 this is not a surprise and we can't discuss what has
3 happened since then, but the indication is that in either
4 direction that happened on that point.

5 THE WITNESS: Sorry, I just wanted to add
6 something. We were--it was all--you wanted to drop this
7 if Expedia was to become compliant.

8 MR. DODSWORTH: I am sorry, we can't talk.

9 THE WITNESS; I am sorry, we can't talk but they
10 are coming to compliance on the 10th and this is why, the
11 reason we had--

12 MR. DODSWORTH: We probably shouldn't talk any
13 more about this.

14 THE WITNESS: Okay, but they are compliant on the
15 10th so this is why--

16 DR. LUKACS:

17 369. Q. How do you know that they are going to be
18 compliant on the 10th?

19 A. Because of my experience with the carriers and
20 travel agencies I know what they have to go through, make
21 changes and the difficult--really, no, challenging
22 schedule of IT releases that they are on and this is not
23 they just said it. They have their whole team working on
24 it and several teams--

25 370. Q. How do you know?

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1 A. Because of my communications with them.

2 371. Q. Okay, so after--as you recall, I have
3 requested copies of those communications as well from
4 counsel.

5 A. But I have--some of them are verbal. There is
6 --a lot of them are verbal because they are from
7 California. They are talking from meetings and so forth,
8 so a lot of it is verbal. However the 10th of September,
9 compliance date, is--yes, I do have an email about that.

10 372. Q. Okay, and can you explain why counsel did not
11 provide me with that email prior to this examination when
12 I explicitly requested that?

13 A. I don't know. My understanding is and this--
14 Mr. Lukacs, my understanding is that the Direction to
15 Attend was with regards to the Affidavit and it is--

16 MR. DODSWORTH: No.

17 THE WITNESS: So I don't know.

18 MR. DODSWORTH: If I may answer that, these are
19 matters that are somewhat sensitive when you are dealing
20 with enforcement matters, right? The issue of whether or
21 not I produce anything--and most of it as Ms. Sasova has
22 just said was oral--so the full flavour of the discussion
23 couldn't be produced. We are willing to produce that,
24 that one document, but I didn't think after you said that
25 we were proceeding with cross-examinations that that would

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1 actually satisfy you. In any case you scheduled these
2 cross-examinations so we proceeded. It didn't become
3 relevant at that point.

4 DR. LUKACS:

5 373. Q. Mr. Dodsworth, I advised you by email that I
6 would be prepared to postpone this cross-examination if
7 you provided me with some correspondence or undertaking or
8 some form of communication from Expedia confirming that
9 they were making changes by September 10th, correct?

10 MR. DODSWORTH: And what I am saying is and what
11 Ms. Sasova more importantly has just said is most of that
12 was done verbally. It is her belief. So it is impossible
13 to produce the full rationale in writing.

14 DR. LUKACS: Just a moment ago you heard Ms.
15 Sasova testify under oath that she has an email to that
16 effect. That email is something that you could have
17 provided to me in a timely manner and perhaps avoided this
18 cross-examination.

19 I think that what we are going to do now is: I am
20 going to adjourn this examination pursuant to Rule 96.(2)
21 as no full production has been made in accordance with the
22 Direction to Attend and I reserve my right to bring a
23 motion to the court to seek production or otherwise we
24 will be in touch to discuss on what terms this examination
25 may resume and continue.

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Is that clear, counsel?

MR. DODSWORTH: I understand what you are saying,
yes.

DR. LUKACS: I guess for today we are done. We
can go off record.

--THIS CROSS-EXAMINATION ADJOURNED AT 1:26 P.M.,
ON September 4, 2014.

WE HEREBY CERTIFY THAT the foregoing was
transcribed, to the best of our skill and ability,
from digitally recorded and monitored proceedings.

.....*Malcolm Stewart*.....

G R S / M J A

| | |
|-------------------------------------|---------------|
| GILLESPIE REPORTING SERVICES | |
| EXHIBIT NO. | 2 |
| EXAMINATION OF | Simona Sasova |
| HELD ON | Sept 4, 2014 |
| EXAMINATION NO. | 14-0812 |

Court File No.: A-167-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

DIRECTION TO ATTEND

TO: Simona Sasova

YOU ARE REQUIRED TO ATTEND AN EXAMINATION for cross-examination on your affidavit sworn on May 20, 2014 on behalf of the Canadian Transportation Agency on Monday, June 9, 2014 at 8:30 am at the office of Gillespie Reporting Services, located at 130 Slater Street, 2nd Floor, Ottawa, Ontario, K1P 6E2 (Tel: 613-238-8501).

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

1. all documents and other material in your possession, power or control that are relevant to the present application;
2. complete enforcement file of the enforcement action(s) referred to in paragraph 14 of your affidavit and/or related documents, including, but not limited to:
 - (i) all correspondence between Agency staff and Expedia;
 - (ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;
 - (iii) evidence on file, referred to on page 2 of Exhibit "J" of your affidavit;

3. communication of Agency staff with Expedia referred to in paragraph 16 of your affidavit.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Dr. Gábor Lukács (lukacs@AirPassengerRights.ca).

June 6, 2014

"Dr. Gábor Lukács"

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

| | |
|------------------------------|-----|
| GILLESPIE REPORTING SERVICES | |
| EXHIBIT NO. 3 | 234 |
| EXAMINATION OF Simona Sasova | |
| HELD ON Sept 4, 2014 | |
| EXAMINATION NO. 14-0512 | |

Court File No.: A-167-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

DIRECTION TO ATTEND

TO: Simona Sasova

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1. all documents and other material in your possession, power or control that are relevant to the present application;
2. complete enforcement file of the enforcement action(s) referred to in paragraph 14 of your affidavit and/or related documents, including, but not limited to:
 - (i) all correspondence between Agency staff and Expedia;
 - (ii) all memos and/or notes and/or documentation concerning oral communications between Agency staff and Expedia;
 - (iii) evidence on file, referred to on page 2 of Exhibit "J" of your affidavit;

3. communication of Agency staff with Expedia referred to in paragraph 16 of your affidavit.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Dr. Gábor Lukács (lukacs@AirPassengerRights.ca).

June 6, 2014 August 21, 2014

"Dr. Gábor Lukács"

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Applicant

| GILLESPIE REPORTING SERVICES | |
|------------------------------|---------------|
| EXHIBIT NO. | 5 |
| EXAMINATION OF | Simana Sasova |
| HELD ON | Sept. 4, 2014 |
| EXAMINATION NO. | 14-0812 |

From: Steven de Blois <sdeblois@expedia.com>
 Sent: 04/04/2014 2:54:54 PM
 To: Paul.Lynch@otc-cta.gc.ca
 CC: bflanagan@expedia.com
 BCC:
 Subject: RE: Expedia.ca

Hi Paul,

Attached is a complete list of all IATA codes including customer friendly name. We have translated the English names to French.

In order to meet the CTA's core requirement, we have assigned - to the best of our ability - each code into one of the following 2 buckets:

1. Air Transportation Charges
2. Taxes, Fees, and Charges

Question: can you kindly confirm that we have accurately bucketed each tax code?

We would like to confirm above before moving into development.

Thank you for your support
 Steve

Steven de Blois
 Sr Manager, Product Management, CA & LatAm
 o 416.202.8664
 m 416.930.5058
 expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> | expedia.com.br
 <<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

From: Steven de Blois
 Sent: Thursday, March 27, 2014 10:29 AM
 To: 'Paul.Lynch@otc-cta.gc.ca'
 Cc: Brian Flanagan
 Subject: Expedia.ca

Hi Paul,

Thank you for providing additional clarity re: below.
 I will follow-up with you next week.

Best regards,
 Steve

Steven de Blois
 Sr Manager, Product Management, CA & LatAm
 o 416.202.8664
 m 416.930.5058
 expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> | expedia.com.br
 <<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

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

From: Brian Flanagan

Sent: Friday, March 21, 2014 5:37 PM

To: 'Paul Lynch'

Cc: Alexei Baturin; Simona Sasova

Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Paul,

We found the list of the IATA (not Sabre) codes. There are over 1000 codes in this list, many of which are country specific. Do all of these need to be named? Or just those codes that impact Canadian airlines?

As you can appreciate, the complexity for OTAs like us is that we sell over 100 global airlines which adds significant complexity to this exercise.

We've noticed that iTravel2000 does call out some taxes as the code name with tax as in "OG Tax" (see attached). According to the initial IATA document, it is a "Carbon Offset Service Code (Optional - validating)" but has now been changed to "OG - Spain & Canary Islands Aviation Safety and Security Fee". Is their approach allowed within the guidelines?

Thanks for your guidance and insight on this.

Brian

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]

Sent: Thursday, March 20, 2014 11:04 AM

To: Brian Flanagan

Cc: Alexei Baturin; Simona Sasova

Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

Just to confirm our conversation of this morning, a separate line item under Air Transportation Charges for an 'Airline Service Charge' would be compliant.

As far as naming third party charges in the breakdown of the taxes, fees and charges, any 'unknown' codes (e.g. HU, FE, XU, WL etc) would have to be identified as per section 135.92 of the Air Transportation

Regulations:

I will loop back with an update before May 19th.

Steve

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

From: Simona Sasova [mailto:Simona.Sasova@otc-cta.gc.ca]

Sent: Tuesday, April 29, 2014 9:35 AM

To: Steven de Blois

Cc: Brian Flanagan; Paul Lynch

Subject: Re: www.expedia.ca<<http://www.expedia.ca>>

Good morning Steven,

As requested, the extension to May 19, 2014 has been approved.

Thank you

Simona

Simona Sasova

Gestionnaire, Application de la loi

Manager, Enforcement Division

Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie

Tel: 819-953-9786

Cell: 613-864-7960

Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca<<mailto:Simona.Sasova@otc-cta.gc.ca>>

| GILLESPIE REPORTING SERVICES | |
|------------------------------|---------------|
| EXHIBIT NO. | 6 |
| EXAMINATION OF | Simona Sasova |
| HELD ON | Sept. 4, 2014 |
| EXAMINATION NO. | 14-0812 |

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>>> Steven de Blois <sdeblois@expedia.com<mailto:sdeblois@expedia.com>>
28/04/2014 2:45 PM >>>

239

Hi Simona,

On behalf of Expedia Canada Corp., I am writing to request an extension of the April 30th date per the warning letter dated March 27, 2014.

The teams at Expedia have been actively working to implement the agreed upon experience that will ensure we are compliant. This is a high-priority project. It is scheduled to be released week of May 19th, 2014. There is a possibility that it will be delivered before this date.

Thank you for your consideration,

Steve

Steven de Blois

Senior Manager

Product Management - CA/LatAm

416.930.5058

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]

Sent: Monday, April 28, 2014 11:21 AM

To: Steven de Blois

Cc: Simona Sasova

Subject: RE: Question : www.expedia.ca<<http://www.expedia.ca>>

Hi Steve,

As Expedia Canada Corporation received a formal warning letter with a compliance date, we would require a written **240** request (email is OK) from Expedia to extend the date of compliance along with justification for the extension. It appears from recent emails that the April 30th compliance date cannot be met.

Therefore, please address your request for extension to Simona Sasova (simona.sasova@otc-cta.gc.ca<mailto:simona.sasova@otc-cta.gc.ca>),
Manager, Enforcement Division.

Regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St.,
Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com<mailto:sdeblois@expedia.com>>
28/04/2014 10:08 AM >>>

Hi Paul - I just sent you a response on the other email thread.

We are actively working on it and expect the new compliant experience to launch in coming 2 weeks. I will be sure to loop back with you to confirm live date.

Is this ok? I understand the date in letter states Apr 30th. We have been working diligently to resolve this issue.

Thank you for your support

Steve

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
Sent: Monday, April 28, 2014 10:03 AM
To: Steven de Blois
Cc: Simona Sasova
Subject: Re: Question : www.expedia.ca<<http://www.expedia.ca>>

Hi Steve,

I continued with a few more searches and found the contravention again on the attached pdf - please be aware that Exepdia Canada Corporation have until April 30, 2014 to fix this issue as per the warning letter of March 27, 2014.

You will see the attached flight breakdown has two taxes with codes only - the tax is not identified.

Regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St.,
Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Paul Lynch 28/04/2014 9:39 AM >>>

Hi Steve,

The collapsed fare in option 2 is not an issue, so long as the relevant information is available by either a click or hover over - by relevant I refer to a tax breakdown that includes the name of each tax or third party charge (the contravention for which the warning letter dated March 27 was issued). As you are aware, the Air Transportation Charge is not required to be broken down.

I have reviewed the expedia.ca web site and have not been able to replicate the contravention highlighted in the warning letter - i.e. the names of all taxes appear in the breakdown. Are you confident that this issue has now been fully resolved?

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9

Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9

Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com<mailto:sdeblois@expedia.com>>
25/04/2014 4:36 PM >>>

Great. Thank you Paul.

Steve

On 2014-04-25, at 4:24 PM, "Paul Lynch"
<Paul.Lynch@otc-cta.gc.ca<mailto:Paul.Lynch@otc-cta.gc.ca>>

wrote:

> Hi Steve - I will review proposal 2 with my supervisor on Monday -

so

> long as you can click it or hover over it to get the beakdown, it

may

be

> OK...let me confirm.

>

> Regards,

>

>

>

> Paul Lynch

> Enforcement Support Officer

> 819-953-9764 | télécopieur/facsimile 819-953-5562

> | ATS/TTY 800-669-5575

> Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

> Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9

> Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9

> Gouvernement du Canada | Government of Canada

>

>

>>>> Steven de Blois

<sdeblois@expedia.com<mailto:sdeblois@expedia.com>>

22/04/2014 12:55 PM >>>

> Hi Paul,

>

> I have a question regarding the Flight path on

>

www.expedia.ca<http://www.expedia.ca<http://www.expedia.ca%3chttp://www.expedia.ca>>

>

> Below is the default view. As you can see, the "Trip Summary" module

is

> expanded by default. The Traveller1 and Traveller2 details are both

> expanded.

>

> Default view:

> [cid:image003.jpg@01CF5E2A.190F1550]

>

>

> I would like to understand if below proposals are compliant.

>

> Proposal #1 - Traveller2 details is collapsed. Is this compliant?

> [cid:image005.jpg@01CF5E2A.190F1550]

- >
- >
- > Proposal #2 - Traveller1 and Traveller2 details are both collapsed.

Is

- > this compliant?
- > [cid:image007.jpg@01CF5E2A.190F1550]

>

>

> Thank you

> Steve

>

>

> Steven de Blois

> Sr Manager, Product Management, CA & LatAm

> o 416.202.8664

> m 416.930.5058

> expedia.ca<<http://www.expedia.ca/>> |

> expedia.mx<<http://www.expedia.com.mx/>> |

> expedia.com.br<<http://www.expedia.com.br/>> |

> expedia.com.ar<<http://www.expedia.com.br/>>

>

EXHIBIT NO. 7

EXAMINATION OF Simona Sasova

HELD ON Sept. 4, 2014

EXAMINATION NO. 14-0812

From: Steven de Blois <sdeblois@expedia.com>
Sent: 04/04/2014 2:54:54 PM
To: Paul.Lynch@otc-cta.gc.ca
CC: bflanagan@expedia.com
BCC:
Subject: RE: Expedia.ca

Hi Paul,

Attached is a complete list of all IATA codes including customer friendly name. We have translated the English names to French.

In order to meet the CTA's core requirement, we have assigned - to the best of our ability - each code into one of the following 2 buckets:

1. Air Transportation Charges
2. Taxes, Fees, and Charges

Question: can you kindly confirm that we have accurately bucketed each tax code?

We would like to confirm above before moving into development.

Thank you for your support
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> |
expedia.com.br<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

From: Steven de Blois
Sent: Thursday, March 27, 2014 10:29 AM
To: 'Paul.Lynch@otc-cta.gc.ca'
Cc: Brian Flanagan
Subject: Expedia.ca

Hi Paul,

Thank you for providing additional clarity re: below.
I will follow-up with you next week.

Best regards,
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> |
expedia.com.br<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

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

From: Brian Flanagan
Sent: Friday, March 21, 2014 5:37 PM
To: 'Paul Lynch'

Cc: Alexei Baturin; Simona Sasova

Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Paul,

We found the list of the IATA (not Sabre) codes. There are over 1000 codes in this list, many of which are country specific. Do all of these need to be named? Or just those codes that impact Canadian airlines?

As you can appreciate, the complexity for OTAs like us is that we sell over 100 global airlines which adds significant complexity to this exercise.

We've noticed that iTravel2000 does call out some taxes as the code name with tax as in "OG Tax" (see attached). According to the initial IATA document, it is a "Carbon Offset Service Code (Optional - validating)" but has now been changed to "OG - Spain & Canary Islands Aviation Safety and Security Fee". Is their approach allowed within the guidelines?

Thanks for your guidance and insight on this.

Brian

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]

Sent: Thursday, March 20, 2014 11:04 AM

To: Brian Flanagan

Cc: Alexei Baturin; Simona Sasova

Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

Just to confirm our conversation of this morning, a separate line item under Air Transportation Charges for an 'Airline Service Charge' would be compliant.

As far as naming third party charges in the breakdown of the taxes, fees and charges, any 'unknown' codes (e.g. HU, FE, XU, WL etc) would have to be identified as per section 135.92 of the Air Transportation

Regulations:

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

Therefore, a warning letter will be issued to Expedia Canada to rectify this issue.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St.,
Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Brian Flanagan <bflanagan@expedia.com<mailto:bflanagan@expedia.com>> 18/03/2014 4:29 PM >>>

Hi Paul,

It turns out that it is much easier for our team to break out the YR tax as a separate item vs. moving it into the ATC amount.

If we were to break it out as a separate item, would it be acceptable to put it below the Fuel Surcharge line?

Moving it would require a couple of months of effort across numerous teams vs. breaking it out which would be done in weeks.

Please let me know if this would be acceptable to you.

Thanks,

Brian Flanagan

Sr. Director, Product & Retail for Canada and Latin America Expedia Canada Corp

Phone: +1 416 202 8668 | Email: bflanagan@expedia.com<mailto:bflanagan@expedia.com>
www.expedia.ca<http://www.expedia.ca> | www.expedia.mx<http://www.expedia.mx> | http://www.expedia.com.br |
http://www.expedia.com.ar

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]

Sent: Tuesday, March 11, 2014 3:27 PM

To: Brian Flanagan

Cc: Simona Sasova

Subject: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

You had been in contact with Yannick Pouret here at the Canadian Transportation Agency last year, when the Agency highlighted violations of the Air Transportation Regulations (ATR) governing All-Inclusive Air Price Advertising on the expedia.ca web site.

Those violations were fixed by the end of October last year but we recently received a complaint and subsequently reviewed the expedia.ca web site again. We found two violations within the breakdown of the taxes, fees and charges. Both relate to a 'Service Charge' with the code 'YR' and appear in the breakdown on our examples. These are not third party charges and should be incorporated within the Air Transportation Charge.

Knowing that Expedia fixed this issue last year, this may be a coding error of some kind and hopefully a quick fix can be implemented.

Perhaps you could call me on 819-953-9764 at your earliest convenience to discuss.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St.,
Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

<<File: TEXT.htm>>

<<File: IATA Tax List_breakout.xlsx>>

<<File: Mime.822>>

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

Examination No. 14-0857

Court File No. A-167-14

FEDERAL COURT OF APPEAL

B E T W E E N:

DR. GABOR LUKACS

APPLICANT

- and -

CANADIAN TRANSPORTATION AGENCY

RESPONDENT

CONTINUED CROSS-EXAMINATION OF SIMONA SASOVA ON HER
AFFIDAVIT sworn May 20th, 2014, pursuant to an appointment
made on consent of the parties, to be reported by Gillespie
Reporting Services, on the 15th day of September, 2014,
commencing at the hour of 11:29 in the forenoon.

APPEARANCES:

ORIGINAL

Dr. Gabor Lukacs,

for the Applicant

Mr. John Dodsworth,

for the Respondent

This continued Cross-Examination was digitally recorded by
Gillespie Reporting Services at Ottawa, Ontario, having been duly
appointed for the purpose.

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

(i)

INDEX

NAME OF WITNESS: SIMONA SASOVA

CONTINUED CROSS-EXAMINATION BY: DR. GABOR LUKACS

NUMBER OF PAGES: 93 THROUGH 153 INCLUSIVE

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 97, 98, 99, 100, 101, 105, 107, 108, 147, 148, 150, 151

EXHIBITS

EXHIBIT NO. 8: Bundle of email correspondence between March 11, 2014 and May 27, 2014 between Agency Staff and Expedia, 84 numbered pages..... 94

EXHIBIT NO. 9: Bundle of email correspondence between June 9, 2014 and August 21, 2014 between Agency staff and Expedia, 16 numbered pages..... 112

EXHIBIT NO. A FOR IDENTIFICATION: Email correspondence from Dr. Lukacs to Mr. Dodsworth, marked 'Without Prejudice'..... 150

DATE TRANSCRIPT ORDERED: SEPTEMBER 15, 2014

DATE TRANSCRIPT COMPLETED: OCTOBER 06, 2014

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

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1 378. Q. What was the reason?

2 A. It was to be cross-examined on the documents
3 that you had asked for that you had received.

4 DR. LUKACS: Let's mark as Exhibit 8 the bundle of
5 email correspondence between March 11th, 2014 and May 27th,
6 2014 between Agency staff and Expedia, which is I believe
7 84 numbered pages.

8 THE REPORTER: Exhibit Number 8?

9 DR. LUKACS: Yes, we are continuing the numbering.

10 THE REPORTER: Okay.

11 **EXHIBIT NO. 8:** Bundle of email correspondence
12 between March 11, 2014 and May 27, 2014 between
13 Agency Staff and Expedia, 84 numbered pages.

14 MR. DODSWORTH: Can I see a copy of those
15 documents?

16 DR. LUKACS: I believe it was printed out,
17 counsel, was it not?

18 MR. DODSWORTH: Yes, but I don't have a copy here.

19 THE REPORTER: I am giving it to you right now.

20 MR. DODSWORTH: Thank you.

21 DR. LUKACS: Are you okay with it, counsel? Can
22 we proceed?

23 MR. DODSWORTH: Yes.

24 DR. LUKACS:

25 379. Q. Ms. Sasova, do you recognize Exhibit 8?

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

95

1 A. Yes.

2 380. Q. Did you cause Exhibit 8 to be sent to me?

3 A. Yes.

4 381. Q. Was Exhibit 8 provided to me on September 9th,
5 2014?

6 A. On September 9th. When did we send that out?

7 382. Q. This was last Tuesday.

8 A. On September 9th, yes, I believe it--Sorry, I
9 don't know what date it was sent to you. If it was-- if
10 that is what you are referring to, then I believe so.

11 383. Q. Can you please look at page 20 and 25?

12 A. All right.

13 384. Q. And be so kind to confirm that the string of
14 emails from page 20 continues on page 25?

15 A. Oh, this is the question, okay, let me see.

16 MR. DODSWORTH: Do you understand the question?

17 THE WITNESS: I just--I have to--I have to go
18 back; just a second. That is March 11th, 18th--one, two,
19 the message was--This is the format how the emails were
20 saved. If you probably ask me another question--I cannot
21 see that connection but those emails that are following
22 each other--the email that you are asking about, on page
23 20, that email is from March 21st, 2014, 5:37, appears on
24 page 5.

25 DR. LUKACS:

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

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1 385. Q. My question to you is whether that header that
2 you see at the bottom of page 20--

3 A. Yes.

4 386. Q. --the body of the email is on page 25. Is
5 this correct?

6 A. Let me see. Let me check. It will take a
7 moment, okay.

8 387. Q. Take your time.

9 A. Yes. Okay, 21st, 5:37. So that is the email,
10 okay.

11 MR. DODSWORTH: That is what he is asking.

12 THE WITNESS: This is what he is asking which is
13 on 25. Just a second and I will go to 25. I am looking
14 for this email:

15 "Hi Paul,

16 "We found the list of the IATA codes..."

17 Yes.

18 DR. LUKACS:

19 388. Q. So just to be clear, just due to some scanning
20 problems, it was not scanned consecutively but it should
21 have--page 25, which has 3 at the bottom, should have
22 appeared after page 20 which has 2 at the bottom.

23 A. I cannot tell you. This is how we saved them.
24 This is how they appeared. I know you had sent the email
25 requesting that but this is the best--I really cannot

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Fax: 613-238-1045

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1 answer how the scanning--why it appeared like this. But
2 the complete email appears on page 5 as I had mentioned in
3 the answer.

4 389. Q. Uh-huh. Let's now look at page 6. On March
5 11th, 2014, Mr. Lynch wrote to Expedia.

6 A. Uh-huh.

7 390. Q. In his March 11th, 2014 email, Mr. Lynch stated
8 that two new violations were found.

9 A. All right.

10 391. Q. Is that correct?

11 MR. DODSWORTH: Is that what--?

12 THE WITNESS: Okay, yes.

13 DR. LUKACS:

14 392. Q. Correct. Mr. Lynch referred to previous
15 violations of Expedia from 2013?

16 A. Yes.

17 393. Q. So, this email of Mr. Lynch from 2014 was
18 about a second violation of Expedia within two years?

19 MR. DODSWORTH: Ms. Sasova has already answered
20 questions with regard to this email.

21 DR. LUKACS: I am sorry, counsel. I have received
22 a whole new package of emails with a wealth of new
23 correspondence and given how incomplete the original chain
24 was, I intend to examine Ms. Sasova on the whole document.
25 We agreed that--?

O

Tel: 613-238-8501

Fax: 613-238-1045

Toll Free 1-800-267-3926

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1 MR. DODSWORTH: No, we did not agree to that. We
2 agreed to--we provided the entire package to make sure
3 that you were clear that you had them all but all those
4 documents you are referring to were provided prior to
5 this--or at the September 4th cross-examinations--

6 THE WITNESS: It was after.

7 MR. DODSWORTH: --and you had an opportunity to
8 answer her--ask her questions at that time. If you can
9 identify a text or an email that was provided since that
10 time, that is what we are here to do, to answer questions
11 with respect to those.

O

12 DR. LUKACS: Counsel, with the utmost respect,
13 this current exhibit, it has 84 pages. As I recall the
14 exhibits back on September 4th were less than 20 pages. So
15 there has been a substantial amount of information not
16 disclosed and therefore--

17 MR. DODSWORTH: No, no, that doesn't follow. The
18 fact is that there is a lot of repetition.

19 DR. LUKACS: Counsel, if you would allow me to
20 finish please. The disclosures were so grossly incomplete
21 that it was not possible to fully and meaningfully conduct
22 the cross-examination based on that. I have done my very
23 best but given that there have been a wealth of more
24 information disclosed at this point certainly I do intend
25 to go through these matters thoroughly.

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1 MR. DODSWORTH: Well, Ms. Sasova will not be
2 answering any questions having to do with emails that you
3 were provided on September 4th.

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4 DR. LUKACS: Counsel, so is it an objection and
5 you actually refuse to answer questions?

6 MR. DODSWORTH: That is right. We are objecting
7 to the line of questioning having to do with emails and
8 information that you had at your disposal on September 4th.

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9 DR. LUKACS: Well, counsel, I am going to state
10 those questions on the record and I guess we will have
11 then a judge of the court decide whether it is appropriate
12 or not.

13 I note however that I had a grossly inappropriate
14 productions at the time and certainly that will be
15 sufficient ground in my submission to allow this
16 examination.

17 I would also caution you, counsel, that given that
18 it appears that you are interfering with the examination
19 costs may be sought against you personally. I hope you
20 are aware of that.

21 394. Q. So my last question was: So this was the
22 second violation of Expedia within two years.

23 A. As I said, this was part of it. It was part
24 of the cross-examination--

25 MR. DODSWORTH: Ms. Sasova is not going to answer

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1 questions-

2 THE WITNESS: No.

3 MR. DODSWORTH: --having to do with the
4 information that was available to you on the previous
5 cross-examinations.

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6 DR. LUKACS:

7 395. Q. Mr. Lynch stated that 'YR' and 'Service
8 Charges' are not third party charges.

9 A. Once again, you have already seen those
10 emails.

11 396. Q. Mr. Lynch stated that 'YR' and 'Service
12 Charges' should be incorporated within 'Air Transportation
13 charge'.

14 A. Once again, that was in a package that we had
15 provided to you on September 4th.

16 397. Q. Listing an air transportation charge as a
17 third party charge is a violation of Section 135.91 of the
18 Air Transportation Regulations, isn't it?

19 A. I have already answered that question, Mr.
20 Lukacs, I recall.

21 398. Q. I don't--can you help me to recall that?

22 A. I recall--

23 MR. DODSWORTH: You can read the transcript when
24 it comes.

O

25 DR. LUKACS: Well I don't have the transcript yet,

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1 counsel.

2 MR. DODSWORTH: Well you can evaluate and assess
3 her response at that time.

4 DR. LUKACS: Counsel, I reserve my right to
5 continue this line of questioning subject to an order from
6 the court. I am then going to move on because I really
7 see no point given how you are frustrating this line of
8 questioning. So, I am going to move on as a matter of due
9 diligence but I am not satisfied that Ms. Sasova is
10 answering questions properly.

11 399. Q. All right, let's look at page 9. This is an
12 email from March 27th, 2014, at 10:29 a.m.

13 A. Uh-huh.

14 400. Q. The top; Expedia thanks here Mr. Lynch "for
15 providing additional clarity re: below", correct?

16 A. Yes.

17 401. Q. What was Expedia referring to here?

18 A. Wasn't that--

19 MR. DODSWORTH: This was a document that was
20 provided before to you, unless you can prove otherwise.

21 DR. LUKACS: No counsel this document was not
22 provided to me. If you look at Exhibit 5, I believe,
23 Exhibits 5, 6 and 7 it is not among them. This email was
24 not provided to me earlier and therefore I am asking
25 questions about it and I request that Ms. Sasova answer

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1 questions about them.

2 MR. DODSWORTH: I am sorry. When you are
3 referring to this having been provided can you just
4 confirm that, that it was not provided? I don't know how
5 you--

6 DR. LUKACS: That's what I have here. I am
7 looking here at the papers that I have here and I don't
8 see this email among them.

9 MR. DODSWORTH: Did you provide this package?

10 THE WITNESS: This package, yes, with the 1,000
11 codes. Yes, that was given to you. I am pretty sure it
12 was part of it.

13 DR. LUKACS: Counsel, this email at the top, of
14 March 27, 2014, 10:29, I don't have it here, among the
15 exhibits that I have here so I am requesting that Ms.
16 Sasova answer the question.

17 MR. DODSWORTH: Do we have the exhibit from the
18 previous--

19 DR. LUKACS: Yes.

20 MR. DODSWORTH: If this line of questioning is
21 going to continue perhaps we need the previous exhibit to
22 compare it.

23 THE WITNESS: Yes, we would need them here.

24 DR. LUKACS: Sure.

25 MR. DODSWORTH: Perhaps if we--can I suggest then,

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1 Mr. Lukacs, we adjourn until we have that in front of us
2 to allow us to consider this issue.

3 DR. LUKACS: Are you sure? Do you have those
4 exhibits right there or...?

5 THE REPORTER: I may have the previous exhibits in
6 the other room. I just have to go and get them.

7 DR. LUKACS: So we need Exhibits 5, 6 and 7.

8 THE REPORTER: Okay. Do you want to go off record
9 while I just go out of the room to get them?

10 MR. DODSWORTH: Sure.

11 DR. LUKACS: Sure.

12 THE REPORTER: Okay, hang on.

13 (SHORT RECESS)

14 --UPON RESUMING AT 11:45 A.M.

15 DR. LUKACS: Are we back on the record?

16 THE REPORTER: Yes, back on.

17 DR. LUKACS: Thank you.

18 402. Q. So can you tell me, Ms. Sasova, if this email
19 at that the top of page 9 of Exhibit 8 if it appears
20 anywhere else in Exhibits 5, 6 or 7?

21 A. Yes, it appears. It is Exhibit 5.

22 403. Q. Exhibit 5, yes?

23 A. And it is the second email from the top.

24 404. Q. Oh, okay, you are quite right. Okay,
25 withdrawn.

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1 MR. DODSWORTH: That is not relevant to this
2 proceeding.

3 DR. LUKACS: So you object to it, counsel?

4 MR. DODSWORTH: I object to that question, yes.

5 DR. LUKACS:

6 409. Q. Let's now look at page 19 at the top. Expedia
7 advised Agency staff that the "target roll-out date" was
8 "mid/end May", correct?

9 A. Yes.

10 MR. DODSWORTH: I am sorry, should we--I think we
11 should clarify that this is a new email.

12 THE WITNESS: Okay, 16/04, I think we gave it to
13 him. Okay.

14 DR. LUKACS:

15 410. Q. Okay, let's look at page 21. Expedia asked
16 Agency staff about two different ways to show the charges
17 on its website, correct?

18 A. Yes, but we have given this one to you
19 already.

20 411. Q. Let's look at page 23--

21 A. Yes, we have given that to you.

22 412. Q. --on April 25, 2014, Mr. Lynch advised that he
23 would confirm with his supervisor, correct?

24 A. Yes, I think this is here.

25 413. Q. And Mr. Lynch was referring to you as his

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1 supervisor?

2 A. It already was given to you on September 9th.

3 414. Q. Which exhibit?

4 A. I just had it. September 4th.

5 MR. DODSWORTH: Just clarify this.

6 THE WITNESS: I am sorry, September 4th was the
7 date. It is on page--it is in Exhibit 6 on page--well the
8 second page but the page is marked 4.

9 DR. LUKACS: Counsel, with the utmost respect,
10 when you provide an incomplete chain of emails such as
11 Exhibit 6 which starts right in the middle, I don't think
12 it would be fair to expect a party to cross-examine based
13 on an incomplete document.

14 So my position is that Ms. Sasova should respond
15 to questions about everything, that whole email in that
16 exhibit, given that I received something which was
17 incomplete last time.

18 MR. DODSWORTH: I continue my objection that that
19 information was provided. The question that you are
20 asking about is about an email that was provided on
21 September 4th. You had an opportunity to ask questions and
22 you did ask questions at that time.

23 If you have a question about something in that
24 email chain, it is a separate email, it is a separate
25 document that you would like to ask questions about, then

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1 that is a different matter.

2 DR. LUKACS: Counsel, your objection is noted. I
3 certainly may have to bring up some of these issues with a
4 judge.

5 415. Q. Let's look at page 43 of Exhibit 8. So on
6 April 29, 2014, Expedia thanked you, and stated that they
7 would get back to you before May 19th, 2014; correct?

8 A. Just a moment, please. I just want to see
9 what I have given you.

10 416. Q. This was the email that was partially
11 disclosed, but not completely, in Exhibit 6 which was
12 dated--

13 A. All right, yes.

14 417. Q. So certainly a new email.

15 A. Just a moment, please.

16 MR. DODSWORTH: Mr. Lukacs, could you clarify
17 again which email you are referring to?

18 THE WITNESS: Yes. We have given you an email
19 that had "I will loop back with an update before May 19th".
20 That was--you were looking for the header for that email
21 so the header, it is the one above it.

22 DR. LUKACS:

23 418. Q. I do see here Exhibit 6 is the body of the
24 email and the header is not part of Exhibit 6.

25 A. Yes, that is right.

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1 419. Q. So I just would like to confirm with you that
2 email we see on page 43 was sent on April 29th, 2014 to
3 you.

4 A. That is the header for it.

5 420. Q. Yes and now that we see the full email, it was
6 Mr. de Blois from Expedia, telling you, "Thank you Simona"
7 that was missing from Exhibit 6.

8 A. That is right.

9 421. Q. And it says: "I will loop back with an update
10 before May 19th".

11 A. That is right, yes, that header wasn't there.
12 Correct.

13 422. Q. For how long have you been on a first-name
14 basis with Mr. de Blois?

15 MR. DODSWORTH: That is not a relevant question.

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16 DR. LUKACS: Counsel, it is relevant because it
17 speaks to the bias of Ms. Sasova. It speaks to her
18 credibility, bias and integrity of her carrying out her
19 work. She is an enforcement officer who is on a first
20 name basis, apparently, with the people against whom she
21 is supposed to act. Do you still maintain your objection?

22 MR. DODSWORTH: I object to this line of
23 questioning.

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24 DR. LUKACS: All right, I am also going to put
25 another question on the record which I expect you will

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1 also be objecting to.

2 423. Q. Is it your practice to be on a first-name
3 basis with executives of corporations against whom you
4 take enforcement actions?

5 A. Yes.

6 DR. LUKACS: So, counsel, now that I have that
7 answer would you withdraw your objection to answer this
8 specific question about Expedia?

9 MR. DODSWORTH: Yes, I withdraw my objection.

10 DR. LUKACS: Okay.

11 424. Q. So for how long have you been on a first-name
12 basis with Mr. de Blois of Expedia?

13 A. Probably since we started communicating. It
14 is a common practice.

15 425. Q. Now let's look at page 49. On May 1, 2014,
16 Expedia had further questions for Mr. Lynch, correct?

17 MR. DODSWORTH: Before you ask your question, we
18 will just confirm that this is in fact a new document.

19 DR. LUKACS: Please take your time.

20 THE WITNESS: Yes, go ahead. That is a new one,
21 yes. That is a new one. I am sorry, what was the
22 question again?

23 DR. LUKACS:

24 426. Q. The question was: Expedia had further
25 questions for Mr. Lynch on May 1, 2014.

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1 A. Yes.

2 427. Q. Let's look at page 51 now. On May 2, 2014,
3 Mr. Lynch advised Expedia that he was unable to "comment
4 further", correct?

5 A. Where do you see that?

6 428. Q. On page 51 in the middle of the page.

7 A. I am not sure I am the best person to ask this
8 question.

9 429. Q. Ms. Sasova, I am examining you and my question
10 to you is: Give that you were cc'd to this email dated
11 May 2, 2014 at 4:20 p.m. from Mr. Lynch to Expedia, the
12 second line Mr. Lynch here stated that he "cannot comment
13 further", correct?

14 A. Mr. Lukacs, I am answering your question and
15 when I ask a supplementary it is to clarify so that I can
16 provide you with the best possible answer.

17 430. Q. My question to you is: Is it correct that Mr.
18 Lynch wrote to Expedia that he "cannot comment further"?

19 A. "Cannot comment further", yes.

20 431. Q. And then at the top of the page Expedia
21 thanked Mr. Lynch, correct?

22 A. Yes.

23 432. Q. Now let's look at page 53. On May 14, 2014,
24 Expedia wrote to Mr. Lynch and to you, correct?

25 A. Yes.

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1 433. Q. Expedia stated that: "The French language
2 website has been updated per the CTA requirement",
3 correct?

4 A. Yes.

5 434. Q. Expedia stated that: "The English language
6 website will be updated on May 23rd", correct?

7 A. Yes.

8 435. Q. Expedia also expressed hope that "this 4 day
9 delay is satisfactory".

10 A. Yes.

11 436. Q. Expedia also stated that it would "loop back
12 once English has been updated".

13 A. Correct.

14 437. Q. What was the response of Agency staff to
15 Expedia's email dated May 14th, 2014?

16 A. I don't believe there was any response.

17 438. Q. Not even a phone call?

18 A. No, I don't recall that there was a phone
19 call. Maybe it could have been. I am not sure. I cannot
20 with certainty answer. As for emails, no; but there could
21 have been. I don't know.

22 439. Q. Let's look at page 61 in the middle. On May
23 26, 2014, Expedia advised you and Mr. Lynch that its
24 "English language website has been updated per the CTA
25 requirement as of May 23", correct?

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1 A. All right, yes.

2 440. Q. On May 27, 2014, Mr. Lynch wrote that
3 Expedia's website was compliant, correct?

4 A. Yes.

5 DR. LUKACS: Now let's mark as Exhibit 9 the
6 bundle of email correspondence between June 9th, 2014 and
7 August 21st, 2014 between Agency staff and Expedia, 16
8 numbered pages.

9 **EXHIBIT NO. 9:** Bundle of email correspondence
10 between June 9, 2014 and August 21, 2014 between
11 Agency staff and Expedia, 16 numbered pages.

12 THE REPORTER: Okay.

13 DR. LUKACS:

14 441. Q. Do you recognize Exhibit 9, Ms. Sasova?

15 A. Yes.

16 442. Q. Did you cause Exhibit 9 to be sent to me?

17 A. Yes.

18 443. Q. Was Exhibit 9 provided to me on September 12,
19 2014?

20 A. I believe it was September 12th.

21 444. Q. Last Friday?

22 A. Yes, it was last Friday.

23 445. Q. The first email in Exhibit 9 is from June 9th,
24 2014, correct?

25 A. Correct.

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1 446. Q. Did you or anyone else from the Agency
2 communicate with Expedia between May 27th, 2014 and June
3 9th, 2014?

4 A. No, I don't know. I don't think so.

5 447. Q. Okay.

6 A. It could have been.

7 448. Q. Did you or other Agency staff issue a warning
8 letter to Expedia since May 27th, 2014?

9 A. No, no.

10 449. Q. Did you or other Agency staff impose an
11 administrative monetary penalty on Expedia since May 27th,
12 2014?

13 A. No.

14 450. Q. Now let's look at this email. This is by Mr.
15 de Blois. Am I pronouncing his name correctly?

16 A. Yes, I think so, it is de Blois.

17 451. Q. Mr. de Blois of Expedia wrote to you. Mr. de
18 Blois wrote to "confirm the details of our conversation".

19 A. Oh, yes, we did have a conversation. It could
20 have been on June 9th, though.

21 452. Q. So, the conversation took place on June 9th.
22 How did the conversation take place?

23 A. By phone.

24 453. Q. Who participated in the conversation?

25 A. Myself and him, Steven de Blois.

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1 454. Q. Anybody else?

2 A. Sometimes Paul sits on the conference calls.
3 I don't recall whether he was there or not.

4 455. Q. Did you have any counsel from the Agency
5 sitting in on the call?

6 A. No.

7 456. Q. Was the conversation related to your role as
8 an enforcement officer?

9 A. The conversation that we had was with regards
10 to trying to reach a settlement with regards to your
11 letter and pursuance. That was the conversation.

12 457. Q. Ms. Sasova, my question to you was: Was this
13 conversation related to your role as an enforcement
14 officer of the Agency?

15 A. I don't understand your question. What do you
16 mean "your role as an enforcement officer"?

17 458. Q. You told me as I recall last time that your
18 role as an enforcement officer is to enforce the laws and
19 regulations.

20 A. That is correct.

21 459. Q. So what regulations were Expedia violating at
22 this time?

23 A. This is strictly again to your request--well
24 for the settlement, the issue that you had raised. The
25 warning letter with Expedia that we had issued, that

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1 enforcement action was finished.

2 460. Q. Why? If it was finished why would you be
3 talking to Expedia? What enforcement matter was in
4 process?

5 A. Because of your letter. That was because--to
6 try to reach settlement and for you, what you had brought
7 forward, you know. That was the only reason.

8 461. Q. As an enforcement officer you enforce laws and
9 regulations, correct?

10 A. Yes.

11 462. Q. So was there any law or regulation that you
12 were enforcing when you were having this discussion with
13 Expedia?

14 A. My conversation with Expedia was with regards,
15 again, to air transportation charges that were raised by
16 you. It was under ASPAR. It is under Air Service Price
17 Advertising Regulations.

18 463. Q. So was there any enforcement procedure that
19 you were speaking to Expedia about at that time?

20 A. No, no.

21 464. Q. Okay. What did you discuss during that
22 conversation exactly? Can you recall that?

23 A. As you see in the email there, we talked about
24 a way to satisfy you to reach a settlement, what the
25 options would be.

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1 465. Q. Expedia advised you that it would take several
2 months to make further changes to its website, correct? I
3 am talking about the phone conversation.

4 A. Oh, phone conversation. We discussed, as it
5 is stated in the email, possibilities to--and the length,
6 time length, yes. I am not really sure whether I can say
7 what would take several months because as you know it is
8 quite specific what would take several months to fix.

9 466. Q. Would you agree with me that the additional
10 changes would be time and cost consuming for Expedia?

11 A. Yes, I believe so.

12 467. Q. Would it be fair to say that we are talking
13 about hundreds of thousands of dollars?

14 A. I really don't know.

15 468. Q. Why should Expedia spend the time and cost to
16 change its website at this stage?

17 A. To--so we can reach settlement with you.

18 469. Q. Who can reach settlement? Can you please
19 specify? Who would be settling with whom?

20 MR. DODSWORTH: I believe we are referring to--you
21 are referring and Ms. Sasova is referring to the
22 settlement discussions that caused this matter to be
23 adjourned in fact on an ongoing basis so there is no--

24 DR. LUKACS: Counsel, I am sorry. I asked Ms.
25 Sasova to answer the question because she is--You see,

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1 counsel, settlement discussions between parties is one
2 thing but when it goes outside the parties it is an
3 entirely different matter so I would--

4 MR. DODSWORTH: Well--but you are referring to
5 matters that were discussed between yourself and myself
6 and in fact are--

7 THE WITNESS: Yes.

8 MR. DODSWORTH: --on a without prejudice basis so
9 you can understand my interest in this. Ms. Sasova did
10 not participate in those conversations.

11 DR. LUKACS:

12 470. Q. I understand that but--so Ms. Sasova, how did
13 you learn about any settlement matters?

14 A. From my counsel, from John.

15 471. Q. Okay.

16 MR. DODSWORTH: But those conversations are
17 privileged.

18 DR. LUKACS: Certainly.

19 472. Q. So would it be fair to say that you were
20 asking Expedia to change its website so that the Agency
21 would be able to settle with me? Can you please answer my
22 question?

23 A. It is to satisfy you. The way you put it, it
24 is to satisfy you. You had--after we had issued a warning
25 letter to Expedia and they complied there was still

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1 something outstanding that you were not satisfied with.
2 So it was really for that.

3 473. Q. So you were speaking to Expedia and asking
4 Expedia to make changes to make me, Gabor Lukacs, happy?

5 A. Yes.

6 474. Q. Uh-huh. Do you agree that the further changes
7 that were being discussed here were necessary for Expedia
8 to comply with the law?

9 A. No.

10 475. Q. No.

11 A. With the law. Okay, okay, I take it back.
12 No, no, not really, no. I am not sure what you are going
13 to say.

14 476. Q. With the regulations, with the Price
15 Advertising Regulations.

16 A. Were they necessary? No.

17 477. Q. No. So what rationale did you give to Expedia
18 about having to make further changes to their website?
19 What did you tell Expedia? Why? What you are telling me
20 here is that you told--

21 A. I know where you--what you are trying to ask.
22 I believe I do. This regulation called for a title Air
23 Transportation Charges and I have already answered those
24 questions, and this is what I had explained to Expedia.

25 478. Q. I am not sure if I understand your answer. My

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1 question to you was what rationale you gave to Expedia
2 about having to make further changes to their website
3 after May 27th.

4 A. I said air transportation charges. There
5 needs to be a title for air transportation charges.

6 479. Q. Why was a title necessary?

7 A. Because of the regulations.

8 480. Q. So then would you agree with me that on June
9 9th Expedia's website was not complying with the
10 regulations?

11 A. With not all the regulations. The one that
12 you had raised before it was compliant with.

13 481. Q. But there were some other regulations it
14 wasn't compliant with on June 9th?

15 A. I have already answered this. I already
16 answered it in my cross-examination where they were
17 compliant.

18 482. Q. Ms. Sasova, with the utmost respect, we had no
19 discussions because these emails--

20 A. Yes.

21 483. Q. --were not exposed until last Friday, as you
22 just admitted. Therefore we could not have had this kind
23 of discussion based on those emails.

24 A. I think it is in my--

25 MR. DODSWORTH: No.

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1 THE WITNESS: Oh, this is not. This is--

2 MR. DODSWORTH: No.

3 THE WITNESS: But this part, the two--oh, no.

4 Okay, sorry. Yes, go ahead.

5 DR. LUKACS:

6 484. Q. Ms. Sasova, what I am trying to understand is:
7 Can you confirm that on June 9, 2014, Expedia's website
8 was not compliant with all the Price Advertising
9 Regulations?

10 A. Yes.

11 485. Q. Did you issue Expedia a warning letter of its
12 non-compliance?

13 A. We issued on March 27th, yes.

14 486. Q. I am talking about on June 9th. You said, on
15 June 9th, Expedia was not compliant.

16 A. No.

17 487. Q. Why didn't you issue a warning letter?

18 A. Because, as I explained and as I mentioned in
19 my Affidavit, the display how Expedia had it was
20 satisfactory and I had answered those questions. We had
21 tried to move specific, about the specific airline fuel
22 surcharge into air transportation charges or eliminate
23 those altogether in order to satisfy your request.

24 488. Q. A moment ago you just stated that on June 9th
25 Expedia's website was not compliant, correct?

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1 A. Yes.

2 489. Q. If it wasn't compliant on June 9th, my question
3 to you then is: What enforcement action in terms of
4 warning letters and fines have you taken since June 9th to
5 bring Expedia to compliance?

6 A. There was no warning letter. There was no--I
7 am sorry--enforcement action.

8 490. Q. Why on June 9th did you not take enforcement
9 action against Expedia, against those issues that were
10 non-compliant on June 9th?

11 A. Because I was satisfied with how it was
12 displayed.

13 491. Q. Even though it was non-compliant; correct?

14 A. It was acceptable as I mentioned in my
15 Affidavit and answered the question to you already.

16 492. Q. A moment ago you just said that on June 9th it
17 was not complaint.

18 A. I said--as I said in my Affidavit, again, it
19 was satisfactory.

20 493. Q. I am asking you--my question is not about your
21 Affidavit, Ms. Sasova. I am asking you about what you
22 said just five minutes ago.

23 A. Yes, and I answered yes.

24 494. Q. You said that on June 9th Expedia's website was
25 not compliant.

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1 A. That is correct. Not all of it was. There
2 was--the majority was compliant. Air Transportation
3 Charges title was not there. Everything else was
4 compliant. It was a miniscule part but yes, non-
5 compliant.

6 495. Q. It was not compliant. So my question to you
7 is: How is it possible that on June 9th Expedia's website
8 was non-compliant and you were nevertheless satisfied with
9 the website?

10 A. Because--and I have answered that already. I
11 don't know if I have to answer it again.

12 496. Q. I don't believe you have answered that
13 question. I am sorry.

14 A. Do I have to answer it again?

15 497. Q. I am talking about June 9th specifically.

16 A. Yes.

17 498. Q. On June 9th the website was not fully
18 compliant, as you put it. You nevertheless claim that you
19 were satisfied with it. How is that possible?

20 A. On June 9th and May 20th the website was in the
21 same state. So May 20th was the date of the Affidavit and
22 I was satisfied because in the majority and what is
23 important on it was compliant. As I mentioned before and
24 I answered it already, the objectives of the legislation
25 were satisfied and we went through that during my cross-

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1 examination with you on September 4th.

2 499. Q. I am not asking you about the objectives of
3 the legislation. I am asking you about the enforcement of
4 whatever outstanding issues there were on June 9th.

5 A. But this is what I had answered, Mr. Lukacs.

6 500. Q. Now you stated that the website was in the
7 same state on May 20th as on June 9th, and I am telling you
8 that that is not the case.

9 A. No?

10 501. Q. Do you agree with me that Expedia's website
11 had changed between May 20th and June 9th?

12 A. On May 20th when the Affidavit was written we
13 had taken a screen shot that was attached to the Affidavit
14 which had a Dubai flight on it and it had the same
15 display, I believe--I believe, as on June 9th where the air
16 transportation fuel surcharges were listed separately.

17 502. Q. And I put it to you, Ms. Sasova, that there
18 are some serious problems with Exhibit J. The way
19 Expedia's website looked like is not what is shown there
20 and the reason is, I am telling you, because Expedia
21 changed its website only on May 23rd.

22 A. That is not the case. They say 23rd but they
23 do changes before that. It is a ballpark date, Mr.
24 Lukacs. On May 20th the screen shot that I have taken was
25 from Expedia.

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1 503. Q. Ms. Sasova, why don't we go back to the email
2 of Expedia to you?

3 MR. DODSWORTH: Which email, Mr. Lukacs?

4 THE WITNESS: Yes.

5 DR. LUKACS: I am trying to find it, counsel. It
6 appears in the middle of page 61.

7 MR. DODSWORTH: In which exhibit?

8 DR. LUKACS: Exhibit 8.

9 THE WITNESS: It is on May 27th, yes.

10 DR. LUKACS:

11 504. Q. Expedia, itself, tells you here that this was
12 being updated as of May 23rd.

13 A. Yes, but they updated it before.

14 505. Q. That is what you say but it is not what is in
15 the email here.

16 A. It is a conversation, an email. It is--what I
17 go--it's by evidence and by facts. In my Affidavit I had--
18 the exhibits that we had attached have a May 20th screen
19 shot, Mr. Lukacs, and it shows compliance.

20 506. Q. Well you have just admitted a moment ago that
21 on June 9th the website was not compliant.

22 A. With what you had asked, what we had issued a
23 warning letter for.

24 507. Q. Let's go back to this conversation, Ms.
25 Sasova, taking place between you and Mr. de Blois on June

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1 9th. When did you inform Expedia about the present
2 litigation between the Agency and myself?

3 A. I am sorry, between...?

4 508. Q. When did you inform Expedia about this present
5 litigation?

6 A. I don't believe I informed about a litigation.
7 They--Expedia, I had a conversation with them about it
8 changing and putting it altogether under air
9 transportation charges but I did not say anything about a
10 litigation. I did not.

11 509. Q. I don't understand. Earlier you just--

12 A. I said about complaint. I didn't say about
13 litigation. I said there was a complaint.

14 510. Q. So you earlier told me that you had been
15 asking Expedia to make further changes to its website in
16 order to settle this litigation.

17 A. The complaint, yes. But if--it is what you
18 call complaint--information from, yes, from the passenger.

19 511. Q. So earlier you just said that your counsel
20 told you about some settlement discussions that were going
21 on.

22 A. Yes.

23 512. Q. So then you went to Expedia and told them
24 please change its website because there is some settlement
25 discussion, didn't you?

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1 A. No.

2 513. Q. No. Then what did you tell Expedia? Change
3 its website why?

4 A. Because of the complaint.

5 514. Q. Because of what complaint?

6 A. Passenger complaint.

7 515. Q. But on May 27th Expedia was told already that
8 its website is compliant so--correct?

9 A. Yes, it was compliant with regards to the
10 warning letter, Mr. Lukacs.

11 516. Q. Okay but not--just please bear with me for a
12 moment.

13 A. Sure.

14 517. Q. Let's go back again to page 61 from Exhibit 8.

15 A. Uh-huh.

16 518. Q. I see here Mr. Lynch confirming to Expedia
17 with cc to you that: "A review of the attached and the
18 expedia.ca web site confirms compliance", correct?

19 A. This is in the context of a warning letter of
20 May--of March 27th, Mr. Lukacs.

21 519. Q. My question to you is: Is it what Mr. Lynch
22 wrote to Expedia?

23 A. Yes.

24 520. Q. Did he write to Expedia: "A review of the
25 attached and the expedia.ca web site confirms compliance",

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1 correct?

2 A. Yes.

3 521. Q. It is an unqualified statement.

4 A. Uh-huh. It is understood through--because of
5 the warning letter of March 27th.

6 522. Q. And then you have this call with Expedia on
7 June 9th and you tell them you need to make more changes to
8 your website.

9 A. Correct.

10 523. Q. Let's go to page 3 of Exhibit 9. On June 9,
11 2014, you confirmed to Expedia the changes that it was
12 required to make, correct?

13 A. Yes.

14 524. Q. On June 9, 2014, Expedia stated that it would
15 contact you the following day, correct?

16 A. Yes.

17 525. Q. Now let's look at page 5. Expedia asked you
18 to confirm a revised display of the price. This is still
19 on June 9th.

20 A. Yes.

21 526. Q. Expedia also asked you about the date by which
22 the change must be made.

23 A. Uh-huh.

24 527. Q. Yes?

25 A. Yes.

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1 528. Q. What did you answer Expedia about the deadline
2 for making these additional changes?

3 A. I said immediately, as soon as possible.

4 529. Q. Where is that response?

5 A. It was verbal.

6 530. Q. On the phone?

7 A. Yes.

8 531. Q. Do you have notes taken during those--

9 A. No.

10 532. Q. You never take notes?

11 A. No, not in a conversation with airlines and
12 advertisers while I am trying to bring them, you know, to
13 do the changes and so forth. There are so many, no.

14 533. Q. There are many of them.

15 A. Yes, there are many of them and there are many
16 calls that are not--no, we don't take notes, no. We don't
17 really take notes, no.

18 534. Q. How can you remember all of them?

19 A. Just a good memory. I don't need to.
20 Whatever I don't remember it is in the email. I am not
21 sure what you--I remember the conversation in general
22 terms. I am not sure where you are trying to head but in
23 this I can tell you I am here to answer those questions
24 and I gladly will. But I remember the discussion and once
25 again with--having in mind that it was for the settlement

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1 this was--I was trying to get them to act as soon as
2 possible.

3 535. Q. Can you tell me at what time the conversation
4 took place?

5 A. What type?

6 536. Q. Yes.

7 A. It is always phone conversation.

8 537. Q. I mean what time of the day?

9 A. During working hours.

10 538. Q. Well you just said you have a good memory of
11 things so perhaps you can tell me what time the
12 conversation took place.

13 A. I really don't look outside. I can tell you
14 the content of the conversation and not the time or the
15 weather.

16 539. Q. Let's look at page 7 now, from the bottom. On
17 June 10, 2014, you asked Expedia, "Any news?"

18 A. Correct.

19 540. Q. What was your question referring to?

20 A. The changes that they were going to proceed
21 with.

22 541. Q. On June 11, 2014, you wrote to Expedia, "I
23 will need to know shortly", correct?

24 A. Yes.

25 542. Q. What was it that you needed to know shortly?

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1 A. Their answer.

2 543. Q. Answer to what?

3 A. About the changes.

4 544. Q. Can you please elaborate?

5 A. There is a--as you recall that was around the
6 time when there was supposed to be a cross-examination and
7 there were discussions about a settlement.

8 545. Q. Ms. Sasova, in this--I am asking you a
9 question so--

10 A. This is with regards to--this is with regards
11 to this, absolutely.

12 546. Q. Ms. Sasova, in this case I am asking you
13 questions saying things like--

14 A. I didn't pose any questions.

15 547. Q. Well you said as you recall so I would like
16 you to stick to answering my question. My question was:
17 What was it that you needed to know shortly? Not why but
18 what was it that you needed to know shortly.

19 A. I believe this was the changes, when they will
20 be able to do the changes.

21 548. Q. So the timeline.

22 A. I believe so. I believe so, yes.

23 549. Q. You are not sure.

24 A. Well it goes any news. It was all with
25 regards to the settlement. It was when they will be able

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1 to do the changes to satisfy what you had requested.

2 550. Q. On June 11, 2014, Expedia wrote you that "It
3 will be completed within next two weeks", correct?

4 A. Correct.

5 551. Q. And these were referring to the changes to
6 Expedia's website?

7 A. This was with regards to removal of air
8 transportation charges completely.

9 552. Q. The removal of--was this something that I
10 requested?

11 A. It is something that would be--yes, that would
12 be--yes, actually it is. It is something that you had
13 requested. You had requested that the air transportation
14 charges title, it is there, and the Regulation is if they
15 break it out then there is--it must be appear under the
16 title or they can--they don't need to break it out. So
17 there are two options as they were mentioned in my email
18 previously that you had asked about.

19 553. Q. Let's go back to Exhibit I of your Affidavit.
20 That is my complaint.

21 MR. DODSWORTH: Do you have it?

22 THE WITNESS: Yes, I think so. Have you
23 questioned--you may have before.

24 DR. LUKACS:

25 554. Q. Do you have Exhibit I?

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1 A. Yes.

2 555. Q. Can you point here anything in my complaint in
3 which I am asking that air transportation charges be
4 removed altogether?

5 A. I understand, Mr. Lukacs, that you had agreed
6 to settle if Expedia became compliant.

7 556. Q. My question to you, Ms. Sasova, was: Can you
8 point to something in Exhibit I to your Affidavit, which
9 is my complaint, where I am asking that Expedia remove air
10 transportation charges altogether?

11 A. You said: "Failing to include fuel surcharges
12 in 'Air Transportation Charges'". They are but if they
13 are not there they can--they don't have to have it there.

14 557. Q. Would you agree with me that I did not ask for
15 air transportation charges to be removed in my complaint?
16 There is nothing in my complaint that asks for that. Yes
17 or no?

18 A. Well it is not written.

19 558. Q. Okay, so it is a no.

20 A. You asked them--you asked for them to be
21 compliant. This is further. This is past the Affidavit.
22 We are the past the Affidavit which was on the 20th of May.

23 559. Q. My question to you is about my complaint. Was
24 there anything in my complaint requesting that Expedia be
25 ordered, for example, to remove air transportation charges

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1 altogether?

2 A. Not in your complaint but after.

3 560. Q. No. Thank you, okay. So Expedia, they were
4 still on June 11th--let's go back to page 7 of Exhibit 9.
5 Expedia said--

6 MR. DODSWORTH: I am sorry. Can we just be sure
7 we have the right email. Which one are you referring to?

8 DR. LUKACS: It is page 7 of Exhibit 9, an email
9 from June 11, 2014, at 1:55 p.m.

10 THE WITNESS: All right, yes.

11 DR. LUKACS:

12 561. Q. Expedia advised, I believe, Ms. Sasova that
13 the changes would be completed within the next two weeks.
14 Correct?

15 A. Correct.

16 562. Q. What actions did you and Agency staff take to
17 check whether Expedia made the required changes within two
18 weeks?

19 A. We have--we had probably done a compliance
20 verification of Expedia. However as I said, Mr. Lukacs,
21 this was two--as you recall there are two options there.
22 It is either to remove air transportation charges or to
23 have them listed under the title Air Transportation
24 Charges. The option that is being talked about there is
25 to remove them. That did not materialize. They chose to

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1 put air transportation charges all together. So this is
2 why this just did not go through. I was informed by a
3 telephone conversation that they were going to proceed
4 with having air transportation charges put together under
5 the title Air Transportation Charges.

6 563. Q. My question to you, Ms. Sasova, was: What
7 actions did you and the Agency staff take to check whether
8 Expedia made the required changes within two weeks?

9 A. And I have answered, Mr. Lukacs. The actions
10 were that the process changed. This did not stop there.
11 There was no action after because they had decided to do
12 something else in order to satisfy your request.

13 564. Q. How were you informed that they decided to do
14 something else?

15 A. Via telephone.

16 565. Q. When were you informed about it?

17 A. That was after, shortly after. I am not
18 really sure what date it was but I was informed. This was
19 the conversation. There were several conversations that I
20 had with them in order to resolve this and to satisfy your
21 request.

22 566. Q. Let's look at the bottom of page 11 and the
23 top of page 12. On July 23rd, 2014, you wrote to Expedia,
24 correct?

25 A. Yes.

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1 567. Q. What communications did you have with Expedia
2 between June 11th, 2014 and July 23rd, 2014?

3 A. Conference calls and telephone conversations.

4 568. Q. Who participated in those conference calls and
5 telephone conversations?

6 A. Myself. I believe Paul may have been in one
7 and then Mr. de Blois. He had--I believe at one point he
8 had somebody from a technical team at Expedia that
9 participated as well.

10 569. Q. Did you take notes?

11 A. No, I did not take notes, Mr. Lukacs.

12 570. Q. Did, perhaps, Mr. Lynch take notes?

13 A. No, he did not take notes.

14 571. Q. In this July 23, 2014 email you asked for an
15 update about the "result of yesterday's meeting".

16 A. Yes.

17 572. Q. What meeting were you referring to?

18 A. They had a team meeting, a technical team
19 meeting somewhere and they were going to update me. This,
20 as I explained, is a big process that they have to go
21 through and consult on, you know, various levels. So
22 there was a meeting and I was looking for the results of
23 the meeting.

24 573. Q. How did you know that a meeting would take
25 place?

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1 A. Because they told me.

2 574. Q. How?

3 A. By a telephone conversation.

4 575. Q. Then on July 25, 2014, you had a
5 teleconference with Expedia, correct?

6 A. Yes.

7 576. Q. What did you discuss during that
8 teleconference?

9 A. The changes.

10 577. Q. Can you elaborate, please?

11 A. There were--it was air transportation charges
12 and really going through their booking, you know, page and
13 seeing where the air transportation charges and to put
14 them together. It was very straightforward.

15 578. Q. How long was the conversation?

16 A. I really cannot recall. It wasn't long.

17 579. Q. Was it half an hour long?

18 A. I really cannot recall.

19 580. Q. You just said earlier you have a good memory,
20 don't you?

21 A. Yes, I do, but as I said of the context of the
22 conversation, not the length of time or the weather.

23 581. Q. Can you please elaborate more what was exactly
24 discussed in that conversation details?

25 A. No, I can't. It was really to bring them to

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1 compliance as per your request or rather to make the
2 changes with your--to satisfy your request and it was to
3 really under--move the title of Air Transportation
4 Charges. It takes a lot of changes they need to do and as
5 I said it could be air transportation charges with the
6 broken down items or it could be air transportation
7 charges altogether with the amount or it could be air
8 transportation charges, no amount, but then broken down
9 with the amount. So, this is what we were discussing.

10 582. Q. So you said it is a very time-consuming
11 process for Expedia.

12 A. It is a complex process, yes, for any booking,
13 any advertiser that receives hundreds of different
14 suppliers and processes the data. Yes, it is.

15 583. Q. And Expedia had to go through this because
16 they had to comply with the regulations, correct?

17 A. Expedia went through it because we asked them
18 to comply with regulations based on the complaint that we
19 had received from you.

20 584. Q. You asked Expedia to comply with the
21 regulations, correct?

22 A. To satisfy your complaint. I have to say that
23 because that is the case. That is the key.

24 585. Q. In what way is my complaint relevant to
25 whether Expedia's website is compliant or not? Can you

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1 elaborate on that? You seem to be referring--

2 A. Yes, I have already replied to that and I have
3 said it several times, Mr. Lukacs. You had asked if we
4 were satisfied--if I was satisfied with Expedia's display.
5 It was because of your--what you had brought forward and
6 your settlement, the possibility of a settlement. That is
7 why we had gone to Expedia and asked them to do those
8 further modifications.

9 586. Q. A moment ago you said that Expedia wasn't
10 compliant. Can you make up your mind, please? What--

11 A. Mr. Lukacs, I have never said something
12 different. I did say Expedia was not compliant but it was
13 satisfactory as stated in my Affidavit. What changes we
14 had required them to do was strictly based to reach a
15 settlement with you.

16 587. Q. So even though Expedia's website was not
17 compliant you wouldn't have asked Expedia to make those
18 changes without my complaint, would it be fair to say?

19 A. What I may have not done--that is speculation.
20 What I have done is I had gone to Expedia and asked them
21 to do the changes because of your--what you had brought
22 forward --and not really what you had brought forward
23 because that was addressed in a letter but really to just
24 satisfy, to reach a settlement.

25 588. Q. So you would actually as an enforcement

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1 officer push Expedia to make changes to settle something
2 with a complaint of a third party.

3 A. It is a complaint that you had and you had
4 agreed that there was the possibility of a settlement if
5 Expedia makes those changes. So this is the reason.

6 589. Q. And you used your position as an enforcement
7 officer to push Expedia to make these changes because you
8 wanted to settle something?

9 A. As you have stated before, because you had
10 requested.

11 590. Q. So what I am trying to understand, Ms. Sasova,
12 is, were you trying to enforce the law, the regulations,
13 in June and July against Expedia or were you just trying
14 to make an application for judicial review go away?

15 A. I believe, Mr. Lukacs, that you had asked for-
16 -in view of a settlement, you wanted to see those changes
17 and this is the reason I went to Expedia. As I said, I
18 was satisfied with--as I said in my Affidavit, with the
19 display.

20 591. Q. So even though you were satisfied with
21 Expedia's display you nevertheless asked them to make
22 further changes. Is that correct?

23 A. Yes, because of your--because of a possibility
24 of a settlement, yes.

25 592. Q. Then on July 28th, Expedia wrote to you. We

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1 are on page 11.

2 A. Right.

3 593. Q. Correct?

4 A. Yes.

5 594. Q. Expedia referred to "required changes" in the
6 email.

7 A. Uh-huh.

8 595. Q. These required changes were what?

9 A. I see "requested changes". Which line are you
10 talking about?

11 596. Q. Line 2, it says: "Per our conversation on
12 Friday, we look forward to receiving screenshots of all
13 pages within our air booking path highlighting the
14 specific required changes".

15 A. Yes, required or requested changes. I am not
16 sure why they said required, yes. What is your question,
17 sorry?

18 597. Q. What were those required changes?

19 A. It was--the air transportation charges
20 changes. There were conversations going on. What we had
21 it is because of air transportation charges and a booking
22 fee and then sometimes having one or the other or an
23 airline fuel surcharge or it is a service charge and so
24 forth. So this is all in connection to that. Requested
25 and required--

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1 598. Q. Let's look at page 14 now at the bottom.

2 A. Uh-huh.

3 599. Q. On July 28th Mr. Lynch wrote to Expedia,
4 correct?

5 A. Uh-huh.

6 600. Q. You were carbon copied to this email, correct?

7 A. Yes.

8 601. Q. You are the supervisor of Mr. Lynch, correct?

9 A. Correct, yes.

10 602. Q. Did you take any action to correct the
11 statement made in Mr. Lynch's email?

12 A. Which statement?

13 603. Q. Any of the statements made in his email.

14 A. No.

15 604. Q. Why not?

16 A. "The trip summary..."—no, I didn't. Why not?
17 Why would I? Like I am not sure what you are trying to
18 ask me. I didn't. Why I didn't? I didn't because I
19 didn't see anything wrong with it.

20 605. Q. So there is nothing wrong with this email.

21 A. No, this email is correct. It is fine.

22 606. Q. For greater clarity, would you care to read
23 into the record the third paragraph of the email starting
24 with, "The current display"?

25 MR. DODSWORTH: I am sorry, Mr. Lukacs, who are

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1 you asking to do that?

2 DR. LUKACS: Pardon me?

3 MR. DODSWORTH: Who are you asking? You are
4 asking--

5 DR. LUKACS: I am asking Ms. Sasova for clarity to
6 read into the record the third paragraph of Mr. Lynch's
7 email of July 28th, at 1:20 p.m. starting with, "The
8 current display", just for clarity.

9 THE WITNESS: "The current displays appear to have
10 a fuel surcharge (carrier charge) under 'Taxes and Fees'
11 and this surcharge must form part of the Air
12 Transportation Charge".

13 DR. LUKACS:

14 607. Q. Thank you. On August 5th, 2014, Mr. Lynch
15 wrote a follow-up email to Expedia, correct?

16 A. Yes.

17 608. Q. Mr. Lynch asked when the "first page issues"
18 would be corrected.

19 A. Yes.

20 609. Q. What were these "first page issues"?

21 A. This is the display of air transportation
22 charges that is based on your request.

23 610. Q. Let's look at the bottom of page 13 and the
24 top of page 14. Mr. Lynch sent another follow-up email to
25 Expedia on August 11th, 2014, correct?

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1 A. Yes.

2 611. Q. Why was this second follow-up email necessary?

3 A. Necessary from whom? Do you mean from Mr. de
4 Blois?

5 612. Q. This was an email sent by Mr. Lynch.

6 A. Oh, the bottom one.

7 613. Q. Yes, the bottom, yes.

8 A. Okay, I am sorry.

9 614. Q. So my question to you is: Why was this second
10 follow-up email necessary?

11 A. Because at first Expedia said they would do it
12 within six weeks and we wanted to know the exact date.
13 They could not--at six weeks ahead because of the release
14 schedule of their IT--anyway the IT release schedule.
15 They were not exactly sure what the exact date would be so
16 this was within six weeks. This is why.

17 615. Q. On August 11, 2014, Expedia wrote to you and
18 Mr. Lynch at 2:46 p.m., correct?

19 A. Yes.

20 616. Q. In this email Expedia referred to "First Page
21 Project" and "Subsequent Pages Project", correct?

22 A. Yes.

23 617. Q. So the first page project was related to again
24 what?

25 A. To your request.

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1 618. Q. And what is the subsequent pages project?

2 A. This is unrelated to your request.

3 619. Q. What is it?

4 A. I really don't want to elaborate on this
5 because it is being assessed. It is not enforcement.
6 Anyway, it is not something that is related to what is
7 being discussed here with regards to your request and with
8 regards to all the work that Expedia had done to implement
9 what your--well what your request--I will call it your
10 request is.

11 620. Q. Well I don't know that so I request that you
12 answer that question and clarify what a "subsequent pages
13 project" is.

14 A. As I said, it is a subsequent pages project.
15 It is a display of their fares and how it appears, yes.

16 621. Q. What changes are they required to do under
17 that?

18 A. As I said this is still under discussion, Mr.
19 Lukacs. I cannot elaborate on this. This is not relevant
20 to what we are trying to--to what I am trying to answer
21 for you and what you are asking me and what the request
22 was.

23 622. Q. With the utmost respect, your counsel didn't
24 object to this matter. So I am requesting that you answer
25 the question therefore. There is no objection from

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1 counsel to the question so you must answer it.

2 A. It is a display. As I said it is a display of
3 subsequent pages. It is how it appears, how the display
4 is.

5 623. Q. Can you elaborate on that, please?

6 A. No, I can't because I don't have it in front
7 of me.

8 624. Q. You certainly have a good memory you stated
9 earlier so you should be able to--

10 A. You have to understand that during that time I
11 was on vacation. I was not present. I was out of the
12 country and I did not--I wasn't privy to this. Yes, I was
13 copied. You are right but I was not here until August
14 21st.

15 625. Q. Okay. Then on August 21st Expedia wrote to you
16 and Mr. Lynch again, correct?

17 A. Yes.

18 626. Q. Expedia advised that the first page project
19 would be completed by September 10th, 2014.

20 A. Yes.

21 627. Q. And Expedia did not provide a completion date
22 for the "subsequent pages project"?

23 A. No.

24 628. Q. Correct?

25 A. Yes.

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1 629. Q. Are telephone calls received or made by Agency
2 staff recorded?

3 A. I don't think so.

4 630. Q. Let's go back to page 14 at the bottom, so
5 back to the email of Mr. Lynch to Expedia.

6 A. Uh-huh.

7 631. Q. Mr. Lynch here states: "Please ignore any
8 previous emails to me dated July 28th--sent in error",
9 correct?

10 A. Yes.

11 632. Q. What previous emails does Mr. Lynch refer to
12 in this email?

13 A. I have no idea, Mr. Lukacs. I don't know.
14 They were sent in error. I really don't know.

15 633. Q. Well certainly, you are the supervisor of Mr.
16 Lynch and somebody who was cc'd to this email.

17 A. Yes, but I wasn't cc'd on the previous. I
18 don't know. It was something he sent in error and
19 recalled it. I don't know. I don't know how to answer
20 that for you.

21 634. Q. Okay.

22 A. I have made those mistakes before too. It is
23 something that--

24 635. Q. I am requesting that you produce these emails
25 now or undertake to produce them.

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1 MR. DODSWORTH: I object to providing any further
2 emails with respect to that.

O

3 DR. LUKACS: Okay.

4 636. Q. What communications did you and Agency staff
5 have with Expedia since August 21st, 2014?

6 A. From August 21st, 2014, none.

7 637. Q. None?

8 A. No.

9 638. Q. Not even phone calls.

10 A. Up to--we are talking with regards to--

11 MR. DODSWORTH: I am sorry. Could you repeat the
12 dates?

13 DR. LUKACS:

14 639. Q. My question is: What communications did you
15 and/or Agency staff have with Expedia since August 21st,
16 2014?

17 MR. DODSWORTH: And I object to that question. It
18 is irrelevant to this proceeding.

O

19 DR. LUKACS: All right.

20 640. Q. I am requesting that you produce any emails
21 now or undertake to produce them.

22 MR. DODSWORTH: I object to that request.

O

23 DR. LUKACS: Now let's look at Exhibit 10. Do you
24 have there Exhibit 10?

25 THE REPORTER: No.

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1 DR. LUKACS: Okay. I guess I am going to just--
2 can you check it? I can resend it if necessary.

3 THE REPORTER: We will have to go off record.

4 DR. LUKACS: Okay, then let's go.

5 MR. DODSWORTH: I am sorry, maybe you could
6 clarify what Exhibit 10 is.

7 THE REPORTER: What am I looking for?

8 DR. LUKACS: Exhibit 10 is an email and I would
9 like to question Ms. Sasova about that email.

10 MR. DODSWORTH: I am sorry. It is not related to
11 any information that is before this proceeding. It is not
12 related, I presume, to Ms. Sasova's Affidavit so I am not
13 sure of the relevancy of this document.

14 DR. LUKACS: First I suggest that apparently the--
15 that Exhibit needs to be retrieved. So I suggest you have
16 a look at the exhibit and then we discuss it on the
17 record, counsel.

18 MR. DODSWORTH: Okay.

19 DR. LUKACS: Okay. Let's just go--

20 MR. DODSWORTH: I am just, I guess, objecting to
21 the idea it is even an exhibit at this point.

22 DR. LUKACS: I am sorry?

23 MR. DODSWORTH: I am objecting to it being
24 considered an exhibit at this point until we actually see
25 the document.

O

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1 DR. LUKACS: I understand. Your point is well
2 taken. We can also mark it, if necessary, as an exhibit
3 for identification if you wish. Let's just go off the
4 record to allow Madame Reporter to obtain the document,
5 okay.

6 MR. DODSWORTH: Okay.

7 THE REPORTER: Okay. It will take me a couple of
8 minutes.

9 DR. LUKACS: No problem.

10 THE REPORTER: Okay.

11 (SHORT RECESS)

12 --UPON RESUMING AT 1:01 P.M.

13 DR. LUKACS: Let's go back on the record.

14 THE REPORTER: Okay.

15 MR. DODSWORTH: Well can we have some time to read
16 the email?

17 DR. LUKACS: Sure, take your time.

18 MR. DODSWORTH: Okay.

19 DR. LUKACS: So are you comfortable with marking
20 it as Exhibit 10, counsel?

21 MR. DODSWORTH: I am not, no. It is clearly
22 marked "without prejudice". It is not something that
23 should be placed on the public record. It has to do with
24 communications between yourself and myself regarding
25 settlement negotiations which Ms. Sasova was not privy to,

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1 and therefore I object to this being placed on the record.

O

2 DR. LUKACS: Well, counsel, Ms. Sasova here is
3 purporting to provide detailed knowledge of what
4 discussions have been going on and has been certainly
5 dragged into this matter so certainly it would be
6 appropriate to mark it as--this as an exhibit for
7 identification.

8 MR. DODSWORTH: Absolutely not. What you are
9 referring to as well are communications of a privileged
10 nature--I have already made this point--between Ms. Sasova
11 and myself regarding the nature of the settlement
12 discussions and the strategy that we are going to be
13 involved in. I do not believe that we are in a position
14 to talk about that. I know that we are not.

15 DR. LUKACS: Counsel, Ms. Sasova has already
16 answered questions about her source of knowledge. My
17 request is not to go into details of discussions between
18 you, but rather to put this exhibit for identification to
19 Ms. Sasova.

20 MR. DODSWORTH: No, I object to that.

O

21 DR. LUKACS: You object to it, okay. So I
22 certainly understand it will be marked as an exhibit for
23 identification and your objection is--

24 **EXHIBIT NO. A FOR IDENTIFICATION:** Email
25 correspondence from Dr. Lukacs to Mr. Dodsworth,

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Fax: 613-238-1045

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1 marked 'Without Prejudice'.

2 MR. DODSWORTH: Neither myself nor the court
3 reporter are aware of what you are referring to.

4 DR. LUKACS: Sorry?

5 MR. DODSWORTH: We are not aware of what you are
6 referring to, the status of an exhibit for the purpose of-
7 -I don't know. It is your words. I am objecting to it
8 being placed on the record as an exhibit, period.

O

9 DR. LUKACS: Well, counsel, normally when there is
10 an item that there is a concern about, or perhaps an item
11 that it is not clear that a witness is familiar with, then
12 you place it on the record as an exhibit for
13 identification at which point the witness is asked to
14 identify it.

15 MR. DODSWORTH: That is not what you are asking
16 about, though. You are asking to put a document that is
17 clearly marked "without prejudice" on a public record and
18 I object to that. If you have a concern with that then
19 you can go to the court and you can seek an order. It
20 does not need to be on record to make that application.

O

21 DR. LUKACS: Well, counsel, given that Ms. Sasova
22 made a lengthy reference to what she purportedly claimed
23 to be in this document certainly, it would be appropriate.

24 MR. DODSWORTH: She did not. She did not. She
25 referred to the objective of settling this application and

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1 she has been motivated by that. She has been clear on the
2 record.

3 DR. LUKACS: And she stated she made certain
4 statements as to what allegedly I represented to the
5 Agency as a fair settlement.

6 MR. DODSWORTH: No, she did not.

7 THE WITNESS: No, I did not.

8 DR. LUKACS: Well, counsel, I guess we will then
9 have to adjourn this cross-examination of Ms. Sasova
10 pursuant to Rule 96.(2) of the Federal Court Rules for
11 failure to produce documents therefore refusal to answer
12 questions.

13 MR. DODSWORTH: And I stand by all of my
14 objections and we do not consent to reconvening until that
15 issue has been resolved.

16 DR. LUKACS: That is your prerogative, counsel,
17 and we are going to take it from there. Thank you very
18 much.

19 MR. DODSWORTH: Thank you.

20 THE REPORTER: We are off record now.

21 DR. LUKACS: Yes.

22
23 --THIS CONTINUED CROSS-EXAMINATION ADJOURNED AT 1:05
24 P.M., ON SEPTEMBER 15TH, 2014.
25

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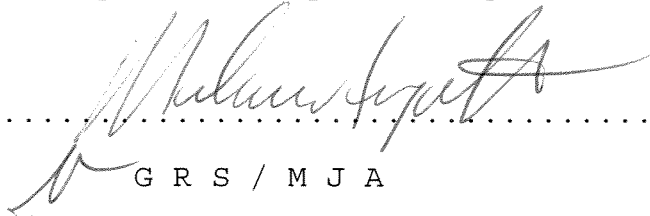
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WE HEREBY CERTIFY THAT the foregoing was
transcribed, to the best of our skill and ability,
from digitally recorded proceedings.


.....
G R S / M J A

Paul Lynch

From: Brian Flanagan <bflanagan@expedia.com>
Sent: March-20-14 5:20 PM
To: Paul Lynch
Cc: Alexei Baturin; Simona Sasova
Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Thanks Paul, we will sort these out.

I have asked our team to reach out to Sabre again on the items that we did not previously identify to see if we can get better details as to what they are. If you are aware of some kind of master list, I'd be grateful if you could share it.

I will get back to you shortly with our estimated timing to complete this work.

Sincerely,

Brian Flanagan
Sr. Director, Product & Retail for Canada and Latin America
Expedia Canada Corp
Phone: +1 416 202 8668 | Email: bflanagan@expedia.com
www.expedia.ca | www.expedia.mx | <http://www.expedia.com.br> | <http://www.expedia.com.ar>

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
Sent: Thursday, March 20, 2014 11:04 AM
To: Brian Flanagan
Cc: Alexei Baturin; Simona Sasova
Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

Just to confirm our conversation of this morning, a separate line item under Air Transportation Charges for an 'Airline Service Charge' would be compliant.

As far as naming third party charges in the breakdown of the taxes, fees and charges, any 'unknown' codes (e.g. HU, FE, XU, WL etc) would have to be identified as per section 135.92 of the Air Transportation Regulations:

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

Therefore, a warning letter will be issued to Expedia Canada to rectify this issue.

Kind regards,

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St.,
Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Brian Flanagan <bflanagan@expedia.com> 18/03/2014 4:29 PM >>>
Hi Paul,

It turns out that it is much easier for our team to break out the YR tax as a separate item vs. moving it into the ATC amount.

If we were to break it out as a separate item, would it be acceptable to put it below the Fuel Surcharge line?

Moving it would require a couple of months of effort across numerous teams vs. breaking it out which would be done in weeks.

Please let me know if this would be acceptable to you.

Thanks,

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<http://www.expedia.com.br> | <http://www.expedia.com.ar>

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
Sent: Tuesday, March 11, 2014 3:27 PM
To: Brian Flanagan
Cc: Simona Sasova
Subject: Follow-up on All-Inclusive Air Price Advertising regulations -
Expedia.ca

Hi Brian,

You had been in contact with Yannick Pouret here at the Canadian Transportation Agency last year, when the Agency highlighted violations of the Air Transportation Regulations (ATR) governing All-Inclusive Air Price Advertising on the [expedia.ca](http://www.expedia.ca) web site.

Those violations were fixed by the end of October last year but we recently received a complaint and subsequently reviewed the [expedia.ca](http://www.expedia.ca) web site again. We found two violations within the breakdown of the taxes, fees and charges. Both relate to a 'Service Charge' with the code 'YR' and appear in the breakdown on our examples. These are not third party charges and should be incorporated within the Air Transportation Charge.

Knowing that Expedia fixed this issue last year, this may be a coding error of some kind and hopefully a quick fix can be implemented.

Perhaps you could call me on 819-953-9764 at your earliest convenience to discuss.

Kind regards,

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
Gouvernement du Canada | Government of Canada

Paul Lynch

From: Brian Flanagan <bflanagan@expedia.com>
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As you can appreciate, the complexity for OTAs like us is that we sell over 100 global airlines which adds significant complexity to this exercise.

We've noticed that iTravel2000 does call out some taxes as the code name with tax as in "OG Tax" (see attached). According to the initial IATA document, it is a "Carbon Offset Service Code (Optional - validating)" but has now been changed to "OG - Spain & Canary Islands Aviation Safety and Security Fee". Is their approach allowed within the guidelines?

Thanks for your guidance and insight on this.

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318

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Gouvernement du Canada | Government of Canada



itravel search.png itravel OG.jpg

Paul Lynch

From: Steven de Blois <sdeblois@expedia.com>
Sent: March-27-14 10:29 AM
To: Paul Lynch
Cc: Brian Flanagan
Subject: Expedia.ca

Hi Paul,

Thank you for providing additional clarity re: below.
I will follow-up with you next week.

Best regards,
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca | expedia.mx | expedia.com.br | expedia.com.ar

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http://www.expedia.com.br | http://www.expedia.com.ar

From: Steven de Blois <sdeblois@expedia.com>
Sent: 04/04/2014 2:54:54 PM
To: Paul.Lynch@otc-cta.gc.ca
CC: bflanagan@expedia.com
BCC:
Subject: RE: Expedia.ca

Hi Paul,

Attached is a complete list of all IATA codes including customer friendly name. We have translated the English names to French.

In order to meet the CTA's core requirement, we have assigned - to the best of our ability - each code into one of the following 2 buckets:

1. Air Transportation Charges
2. Taxes, Fees, and Charges

Question: can you kindly confirm that we have accurately bucketed each tax code?

We would like to confirm above before moving into development.

Thank you for your support
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> | expedia.com.br
<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

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Regulations:

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

Therefore, a warning letter will be issued to Expedia Canada to rectify this issue.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Brian Flanagan <bflanagan@expedia.com<mailto:bflanagan@expedia.com>> 18/03/2014 4:29 PM >>>

Hi Paul,

It turns out that it is much easier for our team to break out the YR tax as a separate item vs. moving it into the ATC amount.

If we were to break it out as a separate item, would it be acceptable to put it below the Fuel Surcharge line?

Moving it would require a couple of months of effort across numerous teams vs. breaking it out which would be done in weeks.

Please let me know if this would be acceptable to you.

Thanks,

Brian Flanagan

Sr. Director, Product & Retail for Canada and Latin America Expedia Canada Corp

Phone: +1 416 202 8668 | Email: bflanagan@expedia.com<<mailto:bflanagan@expedia.com>> www.expedia.ca
<<http://www.expedia.ca>> | www.expedia.mx<<http://www.expedia.mx>> | <http://www.expedia.com.br> |
<http://www.expedia.com.ar>

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]

Sent: Tuesday, March 11, 2014 3:27 PM

To: Brian Flanagan

Cc: Simona Sasova

Subject: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

You had been in contact with Yannick Pouret here at the Canadian Transportation Agency last year, when the Agency highlighted violations of the Air Transportation Regulations (ATR) governing All-Inclusive Air Price Advertising on the [expedia.ca](http://www.expedia.ca) web site.

Those violations were fixed by the end of October last year but we recently received a complaint and subsequently reviewed the [expedia.ca](http://www.expedia.ca) web site again. We found two violations within the breakdown of the taxes, fees and charges. Both relate to a 'Service Charge' with the code 'YR' and appear in the breakdown on our examples. These are not third party charges and should be incorporated within the Air Transportation Charge.

Knowing that Expedia fixed this issue last year, this may be a coding error of some kind and hopefully a quick fix can be implemented.

Perhaps you could call me on 819-953-9764 at your earliest convenience to discuss.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15
Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

<<File: TEXT.htm>>

<<File: IATA Tax List breakout.xlsx>>

<<File: Mime.822>>

From: Steven de Blois <sdeblois@expedia.com>
Sent: 08/04/2014 8:44:12 AM
To: Paul.Lynch@otc-cta.gc.ca
CC:
BCC:
Subject: question

Hi Paul - we are in process of ensuring our experience on Expedia.ca is compliant.

I noticed the following on FlightNetwork. It looks to be non-compliant.

I would like to confirm this is indeed non-compliant as it conflicts with our understanding of what is considered desired state.

1. YQ included in Taxes Fees and Charges

[cid:image009.jpg@01CF5306.B505D040]

[cid:image010.jpg@01CF5306.B505D040]

2. "Airline use only" included in Taxes Fees and Charges

[cid:image011.jpg@01CF5306.B505D040]

[cid:image012.jpg@01CF5306.B505D040]

<<File: TEXT.htm>>
<<File: image009.jpg>>
<<File: image010.jpg>>
<<File: image011.jpg>>
<<File: image012.jpg>>
<<File: Mime.822>>

From: Steven de Blois <sdeblois@expedia.com>
 Sent: 16/04/2014 8:34:08 PM
 To: Paul.Lynch@otc-cta.gc.ca
 CC: Alexei.Baturin@otc-cta.gc.ca;Simona.Sasova@otc-cta.gc.ca;bflanagan@expedia.com
 BCC:
 Subject: RE: Expedia.ca

Hello Paul,

A quick follow-up per below email dated April 4th.

The Expedia technology team is actively working on the agreed upon changes (per below) to ensure we remain compliant.

Target roll-out date for this new experience is mid/end May.

I am sure you can appreciate the level of effort and coordination of teams that is involved.

As agreed, the Travelocity.ca implementation is our guide.

We will be sure to loop back with you as soon as it is live.

Thank you for your support
 Steve

Steven de Blois
 Sr Manager, Product Management, CA & LatAm
 o 416.202.8664
 m 416.930.5058
 expedia.ca| expedia.mx| expedia.com.br| expedia.com.ar

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
 Sent: Friday, April 04, 2014 3:20 PM
 To: Steven de Blois
 Cc: Brian Flanagan; Alexei Baturin; Simona Sasova
 Subject: RE: Expedia.ca

Hi Steven,

Thank you for the attached IATA code list and your interpretation of which are Air Transportation Charges and which are third party charges.

It would be beyond the scope of Agency staff to confirm your efforts to identify each code, but it certainly looks like you are on the right path. Perhaps IATA themselves would be better placed to confirm which code belongs in which column.

From an Agency viewpoint, an air transportation charge is a charge related directly to the airline, for which fuel surcharge would be the best example. A third party charge is one that falls outside of an airline's scope and would include security charges, airport improvement fees, HST to name but a few.

Again, a quick scan of your list appears to have most of those in order but this does not constitute a confirmation from the Agency that they are correct and therefore compliant.

Are you in a position to offer a time line for completion of this project?

Kind regards,

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
 Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15
 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com> 04/04/2014 2:54 PM >>>
Hi Paul,

Attached is a complete list of all IATA codes including customer friendly name. We have translated the English names to French.

In order to meet the CTA's core requirement, we have assigned - to the best of our ability - each code into one of the following 2 buckets:

1. Air Transportation Charges
2. Taxes, Fees, and Charges

Question: can you kindly confirm that we have accurately bucketed each tax code?

We would like to confirm above before moving into development.

Thank you for your support
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm o 416.202.8664 m 416.930.5058 expedia.ca
<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> | expedia.com.br
<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

From: Steven de Blois
Sent: Thursday, March 27, 2014 10:29 AM
To: 'Paul.Lynch@otc-cta.gc.ca'
Cc: Brian Flanagan
Subject: Expedia.ca

Hi Paul,

Thank you for providing additional clarity re: below.
I will follow-up with you next week.

Best regards,
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm o 416.202.8664 m 416.930.5058 expedia.ca
<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> | expedia.com.br
<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

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

From: Brian Flanagan
Sent: Friday, March 21, 2014 5:37 PM
To: 'Paul Lynch'
Cc: Alexei Baturin; Simona Sasova
Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

From: Steven de Blois <sdeblois@expedia.com>
Sent: 22/04/2014 12:55:22 PM
To: Paul.Lynch@otc-cta.gc.ca
CC:
BCC:
Subject: Question : www.expedia.ca

Hi Paul,

I have a question regarding the Flight path on www.expedia.ca<<http://www.expedia.ca>>

Below is the default view. As you can see, the "Trip Summary" module is expanded by default. The Traveller1 and Traveller2 details are both expanded.

Default view:
[cid:image003.jpg@01CF5E2A.190F1550]

I would like to understand if below proposals are compliant.

Proposal #1 - Traveller2 details is collapsed. Is this compliant?
[cid:image005.jpg@01CF5E2A.190F1550]

Proposal #2 - Traveller1 and Traveller2 details are both collapsed. Is this compliant?
[cid:image007.jpg@01CF5E2A.190F1550]

Thank you
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
[expedia.ca](http://www.expedia.ca)<<http://www.expedia.ca/>> | [expedia.mx](http://www.expedia.com.mx/)<<http://www.expedia.com.mx/>> | [expedia.com.br](http://www.expedia.com.br/)
<<http://www.expedia.com.br/>> | [expedia.com.ar](http://www.expedia.com.ar/)<<http://www.expedia.com.br/>>

<<File: TEXT.htm>>
<<File: image003.jpg>>
<<File: image005.jpg>>
<<File: image007.jpg>>
<<File: Mime.822>>

From: Steven de Blois <sdeblois@expedia.com>
 Sent: 25/04/2014 4:36:35 PM
 To: Paul.Lynch@otc-cta.gc.ca
 CC:
 BCC:
 Subject: Re: Question : www.expedia.ca

Great. Thank you Paul.

Steve

On 2014-04-25, at 4:24 PM, "Paul Lynch" <Paul.Lynch@otc-cta.gc.ca> wrote:

> Hi Steve - I will review proposal 2 with my supervisor on Monday - so
 > long as you can click it or hover over it to get the breakdown, it may be
 > OK...let me confirm.
 >
 > Regards,
 >
 >
 >
 > Paul Lynch
 > Enforcement Support Officer
 > 819-953-9764 | télécopieur/facsimile 819-953-5562
 > | ATS/TTY 800-669-5575
 > Paul.Lynch@cta-otc.gc.ca
 > Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
 > Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
 > Gouvernement du Canada | Government of Canada
 >
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 >>>> Steven de Blois <sdeblois@expedia.com> 22/04/2014 12:55 PM >>>
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 >
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 > Steven de Blois
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 > [expedia.ca](http://www.expedia.ca)<<http://www.expedia.ca>> |
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 > [expedia.com.br](http://www.expedia.com.br)<<http://www.expedia.com.br>> |

> expedia.com.ar<http://www.expedia.com.br/>
>
<<File: Mime.822>>

Hi Paul,

We found the list of the IATA (not Sabre) codes. There are over 1000 codes in this list, many of which are country specific. Do all of these need to be named? Or just those codes that impact Canadian airlines?

As you can appreciate, the complexity for OTAs like us is that we sell over 100 global airlines which adds significant complexity to this exercise.

We've noticed that iTravel2000 does call out some taxes as the code name with tax as in "OG Tax" (see attached). According to the initial IATA document, it is a "Carbon Offset Service Code (Optional - validating)" but has now been changed to "OG - Spain & Canary Islands Aviation Safety and Security Fee". Is their approach allowed within the guidelines?

Thanks for your guidance and insight on this.

Brian

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]

Sent: Thursday, March 20, 2014 11:04 AM

To: Brian Flanagan

Cc: Alexei Baturin; Simona Sasova

Subject: RE: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

Just to confirm our conversation of this morning, a separate line item under Air Transportation Charges for an 'Airline Service Charge' would be compliant.

As far as naming third party charges in the breakdown of the taxes, fees and charges, any 'unknown' codes (e.g. HU, FE, XU, WL etc) would have to be identified as per section 135.92 of the Air Transportation

Regulations:

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

Therefore, a warning letter will be issued to Expedia Canada to rectify this issue.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Brian Flanagan
<bflanagan@expedia.com<mailto:bflanagan@expedia.com>>
18/03/2014 4:29 PM >>>

Hi Paul,

It turns out that it is much easier for our team to break out the YR tax as a separate item vs. moving it into the ATC amount.

If we were to break it out as a separate item, would it be acceptable to put it below the Fuel Surcharge line?

Moving it would require a couple of months of effort across numerous teams vs. breaking it out which would be done in weeks.

Please let me know if this would be acceptable to you.

Thanks,

Brian Flanagan

Sr. Director, Product & Retail for Canada and Latin America Expedia Canada Corp

Phone: +1 416 202 8668 | Email:
bflanagan@expedia.com<mailto:bflanagan@expedia.com>
www.expedia.ca<<http://www.expedia.ca>> |
www.expedia.mx<<http://www.expedia.mx>> |

<http://www.expedia.com.br> | <http://www.expedia.com.ar>

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]

Sent: Tuesday, March 11, 2014 3:27 PM

To: Brian Flanagan

Cc: Simona Sasova

Subject: Follow-up on All-Inclusive Air Price Advertising regulations - Expedia.ca

Hi Brian,

You had been in contact with Yannick Pouret here at the Canadian Transportation Agency last year, when the Agency highlighted violations of the Air Transportation Regulations (ATR) governing All-Inclusive Air Price Advertising on the expedia.ca web site.

Those violations were fixed by the end of October last year but we recently received a complaint and subsequently reviewed the expedia.ca web site again. We found two violations within the breakdown of the taxes, fees and charges. Both relate to a 'Service Charge' with the code 'YR' and appear in the breakdown on our examples. These are not third party charges and should be incorporated within the Air Transportation Charge.

Knowing that Expedia fixed this issue last year, this may be a coding error of some kind and hopefully a quick fix can be implemented.

Perhaps you could call me on 819-953-9764 at your earliest convenience to discuss.

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15
Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

From: Steven de Blois <sdeblois@expedia.com>
 Sent: 28/04/2014 10:05:40 AM
 To: Paul.Lynch@otc-cta.gc.ca
 CC: Simona.Sasova@otc-cta.gc.ca;bflanagan@expedia.com
 BCC:
 Subject: RE: Question : www.expedia.ca

Hi Paul,

Thank you for confirming below re: the collapsed fare option.

Regarding the contravention highlighted in the warning letter, did you receive attached update sent 04/16? We are actively working on it and expect the new compliant experience to launch in coming 2 weeks. I will be sure to loop back with you to confirm live date.

Thank you for your support
 Steve

Steven de Blois
 Sr Manager, Product Management, CA & LatAm

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
 Sent: Monday, April 28, 2014 9:40 AM
 To: Steven de Blois
 Cc: Simona Sasova
 Subject: Re: Question : www.expedia.ca

Hi Steve,

The collapsed fare in option 2 is not an issue, so long as the relevant information is available by either a click or hover over - by relevant I refer to a tax breakdown that includes the name of each tax or third party charge (the contravention for which the warning letter dated March 27 was issued). As you are aware, the Air Transportation Charge is not required to be broken down.

I have reviewed the expedia.ca web site and have not been able to replicate the contravention highlighted in the warning letter - i.e. the names of all taxes appear in the breakdown. Are you confident that this issue has now been fully resolved?

Kind regards,

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15
 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com> 25/04/2014 4:36 PM >>>
 Great. Thank you Paul.

Steve

On 2014-04-25, at 4:24 PM, "Paul Lynch" <Paul.Lynch@otc-cta.gc.ca> wrote:

> Hi Steve - I will review proposal 2 with my supervisor on Monday -
 so
 > long as you can click it or hover over it to get the beakdown, it may
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> OK...let me confirm.
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 > Regards,
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 > Paul Lynch
 > Enforcement Support Officer
 > 819-953-9764 | télécopieur/facsimile 819-953-5562
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 >>>> Steven de Blois <sdeblois@expedia.com> 22/04/2014 12:55 PM >>>
 > Hi Paul,
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 > I have a question regarding the Flight path on
 > www.expedia.ca<<http://www.expedia.ca>>
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 > Below is the default view. As you can see, the "Trip Summary" module
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 >
 > Steven de Blois
 > Sr Manager, Product Management, CA & LatAm o 416.202.8664 m
 > 416.930.5058 [expedia.ca](http://www.expedia.ca/)<<http://www.expedia.ca/>> |
 > [expedia.mx](http://www.expedia.com.mx/)<<http://www.expedia.com.mx/>> |
 > [expedia.com.br](http://www.expedia.com.br/)<<http://www.expedia.com.br/>> |
 > [expedia.com.ar](http://www.expedia.com.ar/)<<http://www.expedia.com.ar/>>
 >
 <<File: Mail>>
 <<File: Mime.822>>

From: Steven de Blois <sdeblois@expedia.com>
 Sent: 28/04/2014 10:08:26 AM
 To: Paul.Lynch@otc-cta.gc.ca
 CC: Simona.Sasova@otc-cta.gc.ca
 BCC:
 Subject: RE: Question : www.expedia.ca

Hi Paul - I just sent you a response on the other email thread.

We are actively working on it and expect the new compliant experience to launch in coming 2 weeks. I will be sure to loop back with you to confirm live date.
 Is this ok? I understand the date in letter states Apr 30th. We have been working diligently to resolve this issue.

Thank you for your support
 Steve

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
 Sent: Monday, April 28, 2014 10:03 AM
 To: Steven de Blois
 Cc: Simona Sasova
 Subject: Re: Question : www.expedia.ca

Hi Steve,

I continued with a few more searches and found the contravention again on the attached pdf - please be aware that Exepdia Canada Corporation have until April 30, 2014 to fix this issue as per the warning letter of March 27, 2014.

You will see the attached flight breakdown has two taxes with codes only - the tax is not identified.

Regards,

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
 Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15
 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Paul Lynch 28/04/2014 9:39 AM >>>

Hi Steve,

The collapsed fare in option 2 is not an issue, so long as the relevant information is available by either a click or hover over - by relevant I refer to a tax breakdown that includes the name of each tax or third party charge (the contravention for which the warning letter dated March 27 was issued). As you are aware, the Air Transportation Charge is not required to be broken down.

I have reviewed the expedia.ca web site and have not been able to replicate the contravention highlighted in the warning letter - i.e. the names of all taxes appear in the breakdown. Are you confident that this issue has now been fully resolved?

Kind regards,

Paul Lynch
 Enforcement Support Officer

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 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com> 25/04/2014 4:36 PM >>>
 Great. Thank you Paul.

Steve

On 2014-04-25, at 4:24 PM, "Paul Lynch" <Paul.Lynch@otc-cta.gc.ca>
 wrote:

> Hi Steve - I will review proposal 2 with my supervisor on Monday -
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 > Gouvernement du Canada | Government of Canada
 >
 >

>>> Steven de Blois <sdeblois@expedia.com> 22/04/2014 12:55 PM >>>
 > Hi Paul,

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 >
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 >
 >
 > Steven de Blois

> Sr Manager, Product Management, CA & LatAm
> o 416.202.8664
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> expedia.ca<<http://www.expedia.ca/>> |
> expedia.mx<<http://www.expedia.com.mx/>> |
> expedia.com.br<<http://www.expedia.com.br/>> |
> expedia.com.ar<<http://www.expedia.com.br/>>
>
<<[File: Mime.822](#)>>

From: Paul Lynch
Sent: 28/04/2014 11:21:14 AM
To: sdeblois@expedia.com
CC: Simona.Sasova@otc-cta.gc.ca
BCC:
Subject: RE: Question : www.expedia.ca

Hi Steve,

As Expedia Canada Corporation received a formal warning letter with a compliance date, we would require a written request (email is OK) from Expedia to extend the date of compliance along with justification for the extension. It appears from recent emails that the April 30th compliance date cannot be met.

Therefore, please address your request for extension to Simona Sasova (simona.sasova@otc-cta.gc.ca), Manager, Enforcement Division.

Regards,

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
 Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
 Gouvernement du Canada | Government of Canada

>>> Steven de Blois <sdeblois@expedia.com> 28/04/2014 10:08 AM >>>
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Thank you for your support
 Steve

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

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
Sent: Monday, April 28, 2014 10:03 AM
To: Steven de Blois
Cc: Simona Sasova
Subject: Re: Question : www.expedia.ca

Hi Steve,

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Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
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>>> Steven de Blois <sdeblois@expedia.com> 25/04/2014 4:36 PM >>>
Great. Thank you Paul.

Steve

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- >

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: April-28-14 2:46 PM
To: Simona Sasova
Cc: Paul Lynch; Brian Flanagan
Subject: www.expedia.ca

Hi Simona,

On behalf of Expedia Canada Corp., I am writing to request an extension of the April 30th date per the warning letter dated March 27, 2014.

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Thank you for your consideration,
Steve

Steven de Blois
Senior Manager
Product Management - CA/LatAm
416.930.5058

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
Sent: Monday, April 28, 2014 11:21 AM
To: Steven de Blois
Cc: Simona Sasova
Subject: RE: Question : www.expedia.ca

Hi Steve,

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Therefore, please address your request for extension to Simona Sasova (simona.sasova@otc-cta.gc.ca), Manager, Enforcement Division.

Regards,

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Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: April-29-14 9:37 AM
To: Simona Sasova
Cc: Paul Lynch; Brian Flanagan
Subject: RE: www.expedia.ca

Thank you Simona.
 I will loop back with an update before May 19th.

Steve

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

From: Simona Sasova [mailto:Simona.Sasova@otc-cta.gc.ca]
 Sent: Tuesday, April 29, 2014 9:35 AM
 To: Steven de Blois
 Cc: Brian Flanagan; Paul Lynch
 Subject: Re: www.expedia.ca

Good morning Steven,

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Thank you
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Simona Sasova
 Gestionnaire, Application de la loi
 Manager, Enforcement Division
 Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie
 Tel: 819-953-9786
 Cell: 613-864-7960
 Fax: 819-953-1972

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>

Paul Lynch

From: Steven de Blois <sdeblois@expedia.com>
Sent: May-01-14 2:39 PM
To: Paul Lynch
Subject: Expedia.ca

Hi Paul,

One final question, can you please confirm that the label for YQ and YR "Airline Service Charge" is correct?

| | Service Charge - YQ | Service Charge - YR |
|----|------------------------|-------------------------------------------|
| YQ | Airline Service Charge | Frais de service de la compagnie aérienne |
| YR | Airline Service Charge | Frais de service de la compagnie aérienne |

Thank you
Steve

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca | expedia.mx | expedia.com.br | expedia.com.ar

Paul Lynch

From: Steven de Blois <sdeblois@expedia.com>
Sent: May-02-14 4:35 PM
To: Paul Lynch
Cc: Simona Sasova
Subject: RE: Expedia.ca

Thank you Paul.

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
Sent: Friday, May 02, 2014 4:20 PM
To: Steven de Blois
Cc: Simona Sasova
Subject: Re: Expedia.ca

Hi Steve,

Not sure I am the best person to ask this question...the codes you refer to are IATA codes but yes, I have seen both YQ and YR used to represent a fuel surcharge and an airline service charge but cannot comment further. IATA themselves would be your best confirmation of labeling when it comes to these codes.

Kind regards,

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
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[[cid:image001.png@01CF654A.FF7B7520](#)]

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expedia.ca <<http://www.expedia.ca/>> | expedia.mx <<http://www.expedia.com.mx/>> |

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Paul Lynch

From: Steven de Blois <sdeblois@expedia.com>
Sent: May-14-14 5:32 PM
To: Paul Lynch; Simona Sasova
Cc: Brian Flanagan
Subject: RE: www.expedia.ca
Attachments: image003.jpg

Hello Simona and & Paul,

Pleased to report that our www.expedia.ca French language website has been updated per the CTA requirement. Please refer to below screenshot.

The English language website will be updated on May 23. I understand our extension has been granted to May 19. It is our hope that this 4 day delay is satisfactory.

We will loop back once English has been updated.
Thank you
Steve



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

From: Steven de Blois
Sent: Tuesday, April 29, 2014 9:37 AM
To: 'Simona Sasova'
Cc: Brian Flanagan; Paul Lynch
Subject: RE: www.expedia.ca

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 > Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
 > Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
 > Gouvernement du Canada | Government of Canada
 >

>>>> Steven de Blois <sdeblois@expedia.com> 22/04/2014 12:55 PM >>>

> Hi Paul,
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 > I have a question regarding the Flight path on
 > www.expedia.ca<<http://www.expedia.ca>>
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 > Below is the default view. As you can see, the "Trip Summary" module
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>
>
> Thank you
> Steve
>
>
> Steven de Blois
> Sr Manager, Product Management, CA & LatAm
> o 416.202.8664
> m 416.930.5058
> expedia.ca<<http://www.expedia.ca/>> |
> expedia.mx<<http://www.expedia.com.mx/>> |
> expedia.com.br<<http://www.expedia.com.br/>> |
> expedia.com.ar<<http://www.expedia.com.br/>>
>

Votre voyage à Las Vegas, Nevada, États-Unis

juin 14, 2014 - juin 16, 2014 | Prix total: **581²² \$C** Plus que 3 billets à ce prix!

Beau travail! Vous avez sélectionné un de nos vols les moins chers. Réservez maintenant pour ne pas rater cette aubaine!

Vols [Modifier les vols](#) [Afficher les détails](#)

juin 14, 2014 - Départ
Le moins cher
 Toronto **YYZ 20:50** → Las Vegas **LAS 22:32**
WestJet 1118
Classe Économie (F)
Sans escale
Durée totale: 4h 42m

juin 15, 2014 - Retour
Le moins cher
Las Vegas **LAS 22:50** → Philadelphie **PHL 06:30**
US Airways 608
Classe Économie (R)
Arrivée le juin 15, 2014
Philadelphie **PHL 09:19** → Ottawa **YOW 10:50**
Arrivée le juin 17, 2014

Sommaire du voyage

Toronto à Las Vegas
juin 14, 2014 - juin 16, 2014

1 Retour: arrive le juin 17, 2014

1 billet: Aller-retour

- = Voyageur 1: Adulte 581,22 \$C
- Frais sur le transport aérien 441,47 \$C
- Supplément carburant de la compagnie aérienne 7,50 \$C
- Taxes, frais et services 132,25 \$C

Total: 581²² \$C
Prix en Dollars canadiens.

Un résumé des taxes, frais et services

| | |
|-----------------------------------------------------------------------------|-----------|
| CA - Frais de sécurité des voyageurs du transport aérien | 12,10 \$C |
| XG - Taxe sur les produits et services (TPS) | 23,05 \$C |
| RC - Taxe de vente harmonisée (TVH) | 3,25 \$C |
| SQ - Frais d'amélioration aéroportuaire (FAA) | 25,00 \$C |
| US - Taxe sur le transport | 38,86 \$C |
| YC - Frais d'utilisateur du service des douanes | 6,11 \$C |
| XY - Frais d'utilisateur du service de l'immigration | 7,77 \$C |
| XA - Frais d'utilisateur de l'APHIS - Passagers | 5,55 \$C |
| AY - Frais des services de l'aviation civile pour la sécurité des passagers | 5,56 \$C |
| XF - Frais d'installations pour les passagers | 5,00 \$C |

Éléments de vol

Le que vous sachiez que
le laquelle vous voyagez
ins de vol suivantes.

ont ni remboursables.
es. Des frais de
par billets s'appliquent
catégorie de réservation d'itinéraire
changements de nom ne sont pas

371

Paul Lynch

From: Paul Lynch <Paul.Lynch@otc-cta.gc.ca>
Sent: May-27-14 2:19 PM
To: Simona Sasova; Steven de Blois
Cc: Brian Flanagan
Subject: RE: www.expedia.ca

Hi Steven,

A review of the attached and the expedia.ca web site confirm compliance.

Kind regards,

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
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Can you kindly confirm we are compliant?

Thank you

Steve

Steven de Blois

Senior Manager

Product Management - CA/LatAm

416.930.5058

[cid:image004.jpg@01CF78F1.EEAE5E50]

From: Steven de Blois
Sent: Wednesday, May 14, 2014 5:32 PM
To: 'Simona Sasova'; 'Paul Lynch'
Cc: Brian Flanagan
Subject: RE: www.expedia.ca

Hello Simona and & Paul,

Pleased to report that our www.expedia.ca <<http://www.expedia.ca>> French language website has been updated per the CTA requirement. Please refer to below screenshot.

The English language website will be updated on May 23. I understand our extension has been granted to May 19. It is our hope that this 4 day delay is satisfactory.

We will loop back once English has been updated.

Thank you

Steve

[cid:image003.jpg@01CF78F1.EDA18230]

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

From: Steven de Blois
Sent: Tuesday, April 29, 2014 9:37 AM
To: 'Simona Sasova'
Cc: Brian Flanagan; Paul Lynch
Subject: RE: www.expedia.ca <<http://www.expedia.ca>>

Thank you Simona.

I will loop back with an update before May 19th.

Steve

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

From: Simona Sasova [mailto:Simona.Sasova@otc-cta.gc.ca]

Senior Manager
Product Management - CA/LatAm
416.930.5058

375

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
Sent: Monday, April 28, 2014 11:21 AM
To: Steven de Blois
Cc: Simona Sasova
Subject: RE: Question : www.expedia.ca

Hi Steve,

As Expedia Canada Corporation received a formal warning letter with a compliance date, we would require a written request (email is OK) from Expedia to extend the date of compliance along with justification for the extension. It appears from recent emails that the April 30th compliance date cannot be met.

Therefore, please address your request for extension to Simona Sasova (simona.sasova@otc-cta.gc.ca), Manager, Enforcement Division.

Regards,

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
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>>> Steven de Blois <sdeblois@expedia.com> 28/04/2014 10:08 AM >>>

Hi Paul - I just sent you a response on the other email thread.

We are actively working on it and expect the new compliant experience to launch in coming 2 weeks. I will be sure to loop back with you to confirm live date.

Is this ok? I understand the date in letter states Apr 30th. We have been working diligently to resolve this issue.

Thank you for your support
Steve

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
Sent: Monday, April 28, 2014 10:03 AM
To: Steven de Blois
Cc: Simona Sasova
Subject: Re: Question : www.expedia.ca

Hi Steve,

I continued with a few more searches and found the contravention again on the attached pdf - please be aware that Expedia Canada Corporation have until April 30, 2014 to fix this issue as per the warning letter of March 27, 2014.

You will see the attached flight breakdown has two taxes with codes only - the tax is not identified.

Regards,

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819-953-9764 | télécopieur/facsimile 819-953-5562

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>>> Paul Lynch 28/04/2014 9:39 AM >>>

Hi Steve,

The collapsed fare in option 2 is not an issue, so long as the relevant information is available by either a click or hover over - by relevant I refer to a tax breakdown that includes the name of each tax or third party charge (the contravention for which the warning letter dated March 27 was issued). As you are aware, the Air Transportation Charge is not required to be broken down.

I have reviewed the expedia.ca web site and have not been able to replicate the contravention highlighted in the warning letter - i.e. the names of all taxes appear in the breakdown. Are you confident that this issue has now been fully resolved?

Kind regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575
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>>> Steven de Blois <sdeblois@expedia.com> 25/04/2014 4:36 PM >>>
 Great. Thank you Paul.

Steve

On 2014-04-25, at 4:24 PM, "Paul Lynch" <Paul.Lynch@otc-cta.gc.ca> wrote:

> Hi Steve - I will review proposal 2 with my supervisor on Monday -
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> expedia.com.ar<<http://www.expedia.com.br/>>
>

Your Trip to Las Vegas, NV, United States

12 Jun 2014 - 18 Jun 2014 | Total price: **C\$794.00** Only 5 tickets left at this price!

Nice Job! You picked one of our Cheapest flights. Book now so you don't miss out on this price!



Flights

[Change Flights](#) [Show Details](#)

| 12 Jun 2014 - Departure | 1 stop | Total travel time: 5h 19m |
|----------------------------------------------------------|--------|----------------------------------------|
| Cheapest | | |
| Calgary YYC 5:05pm WestJet 227 EconomyCoach (P) | → | Victoria YYJ 5:32pm 1h 27m |
| Victoria YYJ 6:55pm WestJet 1908 EconomyCoach (P) | → | Las Vegas LAS 9:24p Lapover: 1h 23m |
| 18 Jun 2014 - Return | | |
| Shortest | | |
| Las Vegas LAS 8:00am WestJet 1515 EconomyCoach (X) | → | Calgary YYC 11:41 |

Trip Summary

Calgary to Las Vegas
12 Jun 2014 - 18 Jun 2014

2 Tickets: Return

| | |
|----------------------------|-----------|
| Traveler 1: Adult | C\$397.45 |
| Air Transportation Charges | C\$258.00 |
| Airline Fuel Surcharge | C\$15.00 |
| Taxes, Fees and Charges | C\$124.45 |
| Traveler 2: Child | C\$397.45 |
| Air Transportation Charges | C\$258.00 |
| Airline Fuel Surcharge | C\$15.00 |
| Taxes, Fees and Charges | C\$124.45 |

Total: **C\$794.00**

Prices in Canadian dollars.

A breakdown of taxes, fees and charges

- CA - Air Travellers Security Charge C\$12.10
- XG - Goods and Services Tax (GST) C\$15.76
- SG - Airport Improvement Fee (AIF) C\$30.00
- US - Transportation Tax C\$39.16
- YC - Customs User Fee C\$6.16
- XY - Immigration User Fee C\$7.83
- XA - APHS User Fee - Passengers C\$5.60
- AY - Passenger Call Aviation Security Service Fee C\$2.80
- XF - Passenger Facility Charge C\$5.04

Important Information

For the airline you're following during your flight, refundable and non-refundable fares. Name changes are not allowed.

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: May-27-14 2:26 PM
To: Paul Lynch; Simona Sasova
Cc: Brian Flanagan
Subject: RE: www.expedia.ca

Great. Thank you Paul.

Steve

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]
Sent: Tuesday, May 27, 2014 2:19 PM
To: Steven de Blois; Simona Sasova
Cc: Brian Flanagan
Subject: RE: www.expedia.ca

Hi Steven,

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Kind regards,

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Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
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Steven de Blois

Senior Manager

Product Management - CA/LatAm

416.930.5058

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Cc: Brian Flanagan; Paul Lynch
Subject: RE: www.expedia.ca<<http://www.expedia.ca>>

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383

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Sent: Tuesday, April 29, 2014 9:35 AM

To: Steven de Blois

Cc: Brian Flanagan; Paul Lynch

Subject: Re: www.expedia.ca<<http://www.expedia.ca>>

Good morning Steven,

As requested, the extension to May 19, 2014 has been approved.

Thank you

Simona

Simona Sasova

Gestionnaire, Application de la loi

Manager, Enforcement Division

Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie

Tel: 819-953-9786

Cell: 613-864-7960

Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca<<mailto:Simona.Sasova@otc-cta.gc.ca>>

>>> Steven de Blois <sdeblois@expedia.com<mailto:sdeblois@expedia.com>>
28/04/2014 2:45 PM >>>

384

Hi Simona,

On behalf of Expedia Canada Corp., I am writing to request an extension of the April 30th date per the warning letter dated March 27, 2014.

The teams at Expedia have been actively working to implement the agreed upon experience that will ensure we are compliant. This is a high-priority project. It is scheduled to be released week of May 19th, 2014. There is a possibility that it will be delivered before this date.

Thank you for your consideration,

Steve

Steven de Blois

Senior Manager

Product Management - CA/LatAm

416.930.5058

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

From: Paul Lynch [mailto:Paul.Lynch@otc-cta.gc.ca]

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Manager, Enforcement Division.

Regards,

Paul Lynch

Enforcement Support Officer

819-953-9764 | télécopieur/facsimile 819-953-5562

| ATS/TTY 800-669-5575

Paul.Lynch@cta-otc.gc.ca<mailto:Paul.Lynch@cta-otc.gc.ca>

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>

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>

>

> Steven de Blois

> Sr Manager, Product Management, CA & LatAm

> o 416.202.8664

> m 416.930.5058

> expedia.ca<<http://www.expedia.ca/>> |

> expedia.mx<<http://www.expedia.com.mx/>> |

> expedia.com.br<<http://www.expedia.com.br/>> |

> expedia.com.ar<<http://www.expedia.com.br/>>

>

Your Trip to Orlando, FL, United States

Thu 5/Jun/2014 - Mon 9/Jun/2014 | Total price: **C\$726.74** Only 7 tickets left at this price!

Nice Job! You picked one of our Cheapest flights. Book now so you don't miss out on this price!



Flights

[Change Flights](#) [Show Details](#)

| June 5, 2014 - Departure | Nonstop | Total travel time : 2h 42m |
|--------------------------------------------------------------------------------------|-------------------------------|----------------------------|
| Cheapest Toronto YYZ 8:40pm WestJet 1166 Economy/Coach (D) | Orlando MCO 11:22pm | 2h 42m |
| June 9, 2014 - Return | Nonstop | Total travel time : 2h 47m |
| Cheapest Orlando MCO 6:55am WestJet 1169 Economy/Coach (D) | Toronto YYZ 9:42am | 2h 47m |

Trip Summary

Toronto to Orlando

Thu 5/Jun/2014 - Mon 9/Jun/2014

2 Tickets: Return

| | |
|----------------------------|-----------|
| Traveller 1: Adult | C\$363.37 |
| Air Transportation Charges | C\$228.00 |
| Airline Fuel Surcharge | C\$15.00 |
| Taxes, Fees and Charges | C\$120.37 |
| Traveller 2: Adult | C\$363.37 |

Total: **C\$726.74**

All prices quoted in Canadian dollars.

Important Flight Information

We want you to know the airline you're travelling with has the following restrictions regarding your flight:

- Tickets are nonrefundable and

Your Trip to Orlando, FL, United States

Thu 5/June/2014 - Mon 9/June/2014 | Total price: **C\$726⁷⁴**

Only 7 tickets left at this price!

Nice Job! You picked one of our Cheapest flights. Book now so you dont miss out on this price!



Flights

Change Flights

Show Details

| | | | |
|------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------|----------------------------|
| June 5, 2014 - Departure Cheapest Toronto YYZ 8:40pm WestJet 1166 Economy/Coach (D) | | → Nonstop Orlando MCO 11:22pm | Total travel time : 2h 42m |
| June 9, 2014 - Return Cheapest Orlando MCO 6:55am WestJet 1169 Economy/Coach (X) | | → Nonstop Toronto YYZ 9:42am | Total travel time : 2h 47m |

Trip Summary

Toronto to Orlando

Thu 5/June/2014 - Mon 9/June/2014

2 Tickets: Return

Traveller 1: Adult C\$363.37

Air Transportation C\$228.00

Charges C\$15.00

Airline Fuel Surcharge C\$120.37

Taxes, Fees and Charges C\$363.37

Traveller 2: Adult C\$228.00

Air Transportation C\$15.00

Charges C\$120.37

Airline Fuel Surcharge C\$120.37

Taxes, Fees and Charges

Total: **C\$726⁷⁴**

All prices quoted in Canadian dollars.

Important Flight Information

Your Trip to Orlando, FL, United States

Thu 5Jun/2014 - Mon 9Jun/2014 | Total price: **CS\$726^{.74}** Only 7 tickets left at this price!

Nice Job! You picked one of our Cheapest flights. Book now so you dont miss out on this price!



Flights

[Change Flights](#) [Show Details](#)

| | | | | | |
|---------------------------------|-------------------------------------------------------------------|----------------|-------------------------------|-----------------------------------|--|
| June 5, 2014 - Departure | | Nonstop | | Total travel time : 2h 42m | |
| Cheapest | Toronto YYZ 8:40pm WestJet 1166 Economy/Coach (D) | → | Orlando MCO 11:22pm | | |
| June 9, 2014 - Return | | Nonstop | | Total travel time : 2h 47m | |
| Cheapest | Orlando MCO 6:55am WestJet 1169 Economy/Coach (X) | → | Toronto YYZ 9:42am | | |

Trip Summary

Toronto to Orlando

Thu 5Jun/2014 - Mon 9Jun/2014

2 Tickets: Return

✕ Traveller 1: Adult CS\$363.37

✕ Traveller 2: Adult CS\$363.37

Total: **CS\$726^{.74}**

All prices quoted in Canadian dollars.

Important Flight Information

We want you to know the airline you're travelling with has the following restrictions regarding your flight.

- Tickets are **nonrefundable** and **nontransferable**. Name changes are not allowed.
- The airline may charge additional fees for checked baggage or other optional services.

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: June-09-14 3:18 PM
To: Simona Sasova
Subject: CTA

| | |
|-------------------------------------|----------------|
| GILLESPIE REPORTING SERVICES | |
| EXHIBIT NO. | 9 |
| EXAMINATION OF | Simona Sasova |
| HELD ON | Sept. 15, 2014 |
| EXAMINATION NO. | 14-0857 |

Hi Simona - to confirm the details of our conversation, below are the 2 options for us to implement:

1. Remove "Air Transportation Charges" and remove "Airline Fuel Surcharge"
2. Combine Air Transportation Charges" and "Airline Fuel Surcharge" into a single line titled Remove "Air Transportation Charges"

Trip Summary

Ottawa to Paris

28 Jul 2014 - 11 Aug 2014

Departure: Arrives on 29 Jul 2014

2 Tickets: Return

| | |
|---------------------------------------------------------------------------------------------|-------------|
| * Traveller 1: Adult | C\$1,092.96 |
| Air Transportation | C\$444.00 |
| Charges | |
| Airline Fuel Surcharge | C\$476.00 |
| Taxes, Fees and | C\$172.96 |
| Charges  | |
| * Traveller 2: Adult | C\$1,092.96 |
| Air Transportation | C\$444.00 |
| Charges | |
| Airline Fuel Surcharge | C\$476.00 |
| Taxes, Fees and | C\$172.96 |
| Charges  | |

Total: C\$2,185.⁵²

All prices quoted in Canadian dollars.

Steven de Blois
Sr Manager, Product Management, CA & LatAm
o 416.202.8664
m 416.930.5058
expedia.ca expedia.mx expedia.com.br expedia.com.ar

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: June-09-14 3:33 PM
To: Simona Sasova
Subject: RE: CTA

Thank you. I will loop back tomorrow.

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

From: Simona Sasova [mailto:Simona.Sasova@otc-cta.gc.ca]
 Sent: Monday, June 09, 2014 3:22 PM
 To: Steven de Blois
 Subject: Re: CTA

Hi Steve,

Yes, confirmed, both are correct.

Thank you
 Simona

Simona Sasova
 Gestionnaire, Application de la loi
 Manager, Enforcement Division
 Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie
 Tel: 819-953-9786
 Cell: 613-864-7960
 Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca

>>> Steven de Blois <sdeblois@expedia.com> 09/06/2014 3:18 PM >>>

Hi Simona - to confirm the details of our conversation, below are the 2 options for us to implement:

1. Remove "Air Transportation Charges" and remove "Airline Fuel Surcharge"
2. Combine "Air Transportation Charges" and "Airline Fuel Surcharge" into a single line titled "Remove Air Transportation Charges"

[cid:image001.png@01CF83F6.060ECB20]

Steven de Blois
 Sr Manager, Product Management, CA & LatAm o 416.202.8664 m 416.930.5058 [expedia.ca](http://www.expedia.ca)<<http://www.expedia.ca/>> |
[expedia.mx](http://www.expedia.com.mx)<<http://www.expedia.com.mx/>> | [expedia.com.br](http://www.expedia.com.br)<<http://www.expedia.com.br/>> |
[expedia.com.ar](http://www.expedia.com.ar)<<http://www.expedia.com.br/>>

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: June-09-14 4:52 PM
To: Simona Sasova
Cc: Brian Flanagan
Subject: RE: CTA

Hi Simona,

Good news. I have been able to confirm with our Technology team that we can remove mention of "Air Transportation Charges" and "Airline Fuel Surcharge"

The new experience will look similar to below. Can you please approve this revised display?

Also, can you confirm when this change needs to be effective?

Thank you
 Steve



Trip Summary

Ottawa to Paris

28 Jul 2014 - 11 Aug 2014

Departure: Arrives on 29 Jul 2014

2 Tickets: Return

| | |
|-------------------------------------------------------------------------------------------------------------|-------------|
| * Traveller 1: Adult | C\$1,092.96 |
| Taxes, Fees and Charges  | C\$172.96 |
| * Traveller 2: Adult | C\$1,092.96 |
| Taxes, Fees and Charges  | C\$172.96 |

Total: **C\$2,185.⁹²**

All prices quoted in Canadian dollars.

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

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]
Sent: Monday, June 09, 2014 3:33 PM
To: Steven de Blois
Subject: RE: CTA

reat. Thank you

>>> Steven de Blois <sdeblois@expedia.com> 09/06/2014 3:32 PM >>>
 Thank you. I will loop back tomorrow.

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

From: Simona Sasova [mailto:Simona.Sasova@otc-cta.gc.ca]
Sent: Monday, June 09, 2014 3:22 PM
To: Steven de Blois
Subject: Re: CTA

Hi Steve,

Yes, confirmed, both are correct.

Thank you
Simona

Simona Sasova
Gestionnaire, Application de la loi
Manager, Enforcement Division
Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie
Tel: 819-953-9786
Cell: 613-864-7960
Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca

>>> Steven de Blois <sdeblois@expedia.com> 09/06/2014 3:18 PM >>>

Hi Simona - to confirm the details of our conversation, below are the 2 options for us to implement:

1. Remove "Air Transportation Charges" and remove "Airline Fuel Surcharge"
2. Combine Air Transportation Charges" and "Airline Fuel Surcharge" into a single line titled Remove "Air Transportation Charges"

[cid:image001.png@01CF83F6.060ECB20]

Steven de Blois
Sr Manager, Product Management, CA & LatAm o 416.202.8664 m
416.930.5058 expedia.ca<<http://www.expedia.ca/>> | expedia.mx<<http://www.expedia.com.mx/>> |
expedia.com.br<<http://www.expedia.com.br/>> | expedia.com.ar<<http://www.expedia.com.br/>>

Simona Sasova

From: Steven de Blois <sdeblois@expedia.com>
Sent: June-11-14 1:55 PM
To: Simona Sasova
Cc: Brian Flanagan
Subject: Re: CTA

Hi Simona - just received confirmation from our Technology team. It will be completed within next 2 weeks.

Steve

On 2014-06-11, at 11:49 AM, "Simona Sasova" <Simona.Sasova@otc-cta.gc.ca> wrote:

Hello Steve,

I've left you a voicemail this morning. I will need to know shortly. Is it possible to let me know.

Thanks
Simona

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Steven de Blois
Sent: Tuesday, June 10, 2014 1:28 PM
To: Simona Sasova
Cc: Brian Flanagan
Subject: RE: CTA

Hi Simona - not yet - will know more end of day today.

Steve

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

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]
Sent: Tuesday, June 10, 2014 1:26 PM
To: Steven de Blois
Cc: Brian Flanagan
Subject: RE: CTA

Hi Steve,

Any news?

Thanks
Simona

Simona Sasova
Gestionnaire, Application de la loi

Manager, Enforcement Division
Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de
l'industrie
Tel: 819-953-9786
Cell: 613-864-7960
Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca

>>> Steven de Blois 09/06/2014 4:51 PM >>>
Hi Simona,

Good news. I have been able to confirm with our Technology team that we can remove mention of "Air Transportation Charges" and "Airline Fuel Surcharge"

The new experience will look similar to below. Can you please approve this revised display?

Also, can you confirm when this change needs to be effective?

Thank you

Steve

[cid:image001.png@01CF8403.1FC646D0]

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

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]
Sent: Monday, June 09, 2014 3:33 PM
To: Steven de Blois
Subject: RE: CTA

Great. Thank you

>>> Steven de Blois <sdeblois@expedia.com>

09/06/2014 3:32 PM >>>

405

Thank you. I will loop back tomorrow.

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

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]

Sent: Monday, June 09, 2014 3:22 PM

To: Steven de Blois

Subject: Re: CTA

Hi Steve,

Yes, confirmed, both are correct.

Thank you

Simona

Simona Sasova

Gestionnaire, Application de la loi

Manager, Enforcement Division

Regulatory Approvals & Compliance Directorate Direction, générale et des déterminations de l'industrie

Tel: 819-953-9786

Cell: 613-864-7960

Fax: 819-953-1972

Simona.Sasova@otc-cta.gc.ca

>>> Steven de Blois <sdeblois@expedia.com>
09/06/2014 3:18 PM >>>

Hi Simona - to confirm the details of our conversation, below are the 2 options for us to implement:

1. Remove "Air Transportation Charges" and remove "Airline Fuel Surcharge"

2. Combine "Air Transportation Charges" and "Airline Fuel Surcharge" into a single line titled "Remove Air Transportation Charges"

[cid:image001.png@01CF83F6.060ECB20]

Steven de Blois

Sr Manager, Product Management, CA & LatAm o 416.202.8664 m

416.930.5058 expedia.ca | expedia.mx | expedia.com.br | expedia.com.ar

</sdeblois@expedia.com</sdeblois@expedia.com

Paul Lynch

From: Simona Sasova
Sent: July-28-14 9:35 AM
To: Paul Lynch
Subject: FW: Update

From: Steven de Blois [<mailto:sdeblois@expedia.com>]
Sent: July-28-14 9:32 AM
To: Simona Sasova
Subject: RE: Update

Hello Simona,

Per our conversation on Friday, we look forward to receiving screenshots of all pages within our Air booking path highlighting the specific required changes.
This will help to ensure we 100% understand your requested changes.

Thank you,
Steve

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]
Sent: Friday, July 25, 2014 12:42 PM
To: Steven de Blois
Subject: Re: Update

Hi Steve,

Can we postpone to 1:15?

Thanks
Simona

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Steven de Blois
Sent: Friday, July 25, 2014 9:36 AM
To: Simona Sasova
Subject: RE: Update

Hi Simona,
I will have a target delivery date to share with you on this afternoon's call.

Thank you
Steve

From: Simona Sasova [<mailto:Simona.Sasova@otc-cta.gc.ca>]
Sent: Wednesday, July 23, 2014 12:27 PM

To: Steven de Blois
Subject: Update

Hi Steve,

Is there any update that you can provide for me as a result of yesterday's meeting.

Thank you
Simona

Simona Sasova
Gestionnaire, Application de la loi | Manager, Enforcement
Approbations réglementaires et conformité, Regulatory Approvals and Compliance
819-953-9786 | télécopieur/facsimile 819-953-1972
Simona.Sasova@cta-otc.gc.ca
Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
Gouvernement du Canada | Government of Canada

Paul Lynch

From: Steven de Blois <sdeblois@expedia.com>
Sent: August-21-14 3:21 PM
To: Paul Lynch; Simona Sasova
Cc: Brian Flanagan
Subject: RE: Expedia.com - headings and breakdown

Hi Paul & Simona,

I am following up on action item #1 below. We have now confirmed a delivery date = **Sept 10th**
 As agreed, this date is 6 weeks from our phone call meeting on July 25th.

- 1- **First Page Project:** we are still on target for completed change to expedia.ca per the update provided to Simona on July 25. The target is 6 weeks from July 25. We have not locked a delivery date but will continue to keep you updated.

Shortly, we will begin the work effort to finalize requirements on action item #2. I will be sure to keep you updated.

Thank you
 Steve

From: Steven de Blois
Sent: Monday, August 11, 2014 2:46 PM
To: 'Paul Lynch'; Simona Sasova (Simona.Sasova@otc-cta.gc.ca)
Cc: Brian Flanagan
Subject: RE: Expedia.com - headings and breakdown

Hi Paul,

Thank you for the follow-up. I was on holiday out-of-office last week just returning to office today.

Summary:

- 1- **First Page Project:** we are still on target for completed change to expedia.ca per the update provided to Simona on July 25. The target is 6 weeks from July 25. We have not locked a delivery date but will continue to keep you updated.
- 2- **Subsequent Pages Project:** This work effort has not started. I will respond to your email below to confirm the scope/requirements. As discussed with Simona on July 25, this work effort is far more complex than #1 above as it involves multiple stakeholders spread out across a few countries. The team will work towards this change once above change is completed.

Thank you
 Steve

From: Paul Lynch [<mailto:Paul.Lynch@otc-cta.gc.ca>]
Sent: Monday, August 11, 2014 2:37 PM
To: Steven de Blois
Subject: RE: Expedia.com - headings and breakdown

Hi Steve – Do you have a date to complete the fixes to the expedia.com web site?

Kind regards

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
 Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
 Gouvernement du Canada | Government of Canada

From: Paul Lynch
Sent: August-05-14 10:07 AM
To: 'sdeblois@expedia.com'
Subject: RE: Expedia.com - headings and breakdown

Hi Steve,

Just following up on my email of July 28 – do you have a date yet when the first page issues will be corrected?

Kind regards

Paul Lynch
 Enforcement Support Officer
 819-953-9764 | télécopieur/facsimile 819-953-5562
 | ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
 Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
 Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
 Gouvernement du Canada | Government of Canada

From: Paul Lynch
Sent: July-28-14 1:20 PM
To: 'sdeblois@expedia.com'
Cc: Simona Sasova
Subject: Expedia.com - headings and breakdown

Hi Steven,

Please ignore any previous emails from me dated July 28 – sent in error.

The trip summary page requires a heading of 'Air Transportation Charges' under which all advertiser imposed charges should appear (base fare, fuel surcharge, booking fee etc) and another heading for 'Taxes, Fees and Charges' for all third party charges such as airport improvement fees and GST etc.

The current display appears to have a fuel surcharge (carrier charge) under 'Taxes and Fees' and this surcharge must form part of the Air Transportation Charge.

Below is an example from our interpretation note of price advertising for air services:

ABC Airlines

Monday June 25, 2012
 From: Toronto, ON
 To: Ottawa, ON

The first price presented to the consumer must be the total price

| Flights | Depart | Arrive | Economy | Business | Business Plus |
|----------------|--------|--------|----------------------------------------|-----------------------------|-----------------------------|
| One-way | | | | | |
| ABC123 | 07:00 | 08:00 | <input checked="" type="radio"/> \$177 | <input type="radio"/> \$350 | <input type="radio"/> \$510 |
| ABC124 | 09:00 | 10:00 | <input type="radio"/> \$154.40 | <input type="radio"/> \$250 | <input type="radio"/> \$310 |
| ABC125 | 11:00 | 12:00 | <input type="radio"/> \$120 | | |
| ABC126 | 14:00 | 15:00 | <input type="radio"/> \$120 | | |

When a consumer hovers over a selected fare, a pop-up box appears giving breakdown of government-imposed charges and fees (Air Transportation Charges) and third party charges (Taxes, Fees and Charges).

Economy – One-way

Air Transportation Charges

| | |
|---------------------|-------|
| Base Fare | \$100 |
| Fuel Surcharge | \$20 |
| Insurance Surcharge | \$3 |
| NAV Surcharge | \$9 |

Taxes, Fees and Charges

| | |
|-------------|------|
| HST | \$13 |
| Toronto AIF | \$25 |
| ATSC | \$7 |

Total price (per passenger) \$177

Optional Incidental Service Charges

(Additional charges passengers may incur)

Optional Incidental Service Charges (inclusive of HST)

| | |
|--------------------------|-------------------|
| Checked 2nd Bag | \$22.60 |
| Oversized/Overweight Bag | \$84.75 - \$113 |
| Preferred Seat Selection | \$16.95 - \$24.85 |
| Beverage/Snack | \$2.26 - \$6.78 |
| Travel w/ Pet | \$113 - \$282.50 |
| Unaccompanied minor | \$113 |

When a consumer hovers over Optional Incidental Services Charges, a pop-up box appears with the additional charges listed that a consumer may incur. It is also acceptable if the consumer clicks on the Optional Incidental Service Charges and is taken to another page where the charges are listed.

Please do not hesitate to contact me should you require further assistance.

Kind regards

Paul Lynch
Enforcement Support Officer
819-953-9764 | télécopieur/facsimile 819-953-5562
| ATS/TTY 800-669-5575
Paul.Lynch@cta-otc.gc.ca
Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9
Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9
Gouvernement du Canada | Government of Canada

From lukacs@AirPassengerRights.ca Fri Jun 6 23:28:20 2014
Date: Fri, 6 Jun 2014 23:28:12 +0200 (CEST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>, Wendy Liston <Wendy.Liston@otc-cta.gc.ca>
Subject: WITHOUT PREJUDICE [Re: A-167-14 Dr. Gabor Lukacs v. Canadian Transportation Agency]

Dear Mr. Dodsworth,

I am writing this message as part of settlement discussions, on a without prejudice basis.

As you know, my February 24, 2014 complaint raised two issues:

- (a) failing to include fuel surcharges in "Air Transportation Charges"; and
- (b) improperly including and listing airline-imposed charges in "Taxes, Fees and Charges" under the name "YR - Service Charge."

Issue (a) certainly remains outstanding. All Expedia did was moving the physical location of fuel surcharges. It has not included fuel surcharges in "Air Transportation Charges," as required by the ATR (see section III of my February 24, 2014 complaint).

Currently (as shown in Exhibit "K" of Ms. Sasova's affidavit), Expedia shows "Air Transportation Charges" and shows fuel surcharge as a separate and different heading from "Air Transportation Charges." In other words, fuel surcharge is not a sub-item of "Air Transportation Charge" and the amount of the fuel surcharge is not included in the amount of "Air Transportation Charge." (You may wish to compare Exhibit "K" with page 20 of Exhibit "F". I hope you see the difference.)

As for issue (b), Expedia has not solved the problem either. All it did was moving the charge out from taxes, and putting under a separate heading called "Airline Service Charge" (this problem appears to be specific to Finnair flights). Again, this item should be included in "Air Transportation Charge" and not left under a stand-alone heading.

To be clear, my position is that the ATR permits only two headings: "Air Transportation Charge" and "Taxes, Fees and Charges"; every charge has to be included in one of these and/or listed as a sub-item to one of these (if such a break-down is provided at all).

Based on the foregoing, I propose the following steps to settle the present application:

1. We hold a teleconference, on a without prejudice basis, to clarify the outstanding issues with Expedia's website, and to ensure that my concerns and goals are clear.
- 2/a. The Agency will issue a warning letter to Expedia, requiring that Expedia rectify the aforementioned outstanding issues within 30 days.
- 2/b. The Agency will provide me with a copy of the letter of warning.
- 2/c. Upon receipt of a copy of the warning letter, I will write to the Federal Court of Appeal and ask to stay the proceeding on consent in order to allow the parties to reach a settlement.

3. Upon the expiry of the 30 days, we will hold a teleconference to review the changes that Expedia made to its website.

4. If full compliance by Expedia is achieved this way, then the application for judicial review will be withdrawn on a without costs basis.

Kindly please advise by June 11, 2014 if the Agency is interested in attempting to resolve the application this way.

Best wishes,
Dr. Gabor Lukacs

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
VOLUME 2**

Dated: October 14, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Applicant / Moving Party

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

John Dodsworth

Tel: 819-997-9324
Fax: 819-953-9269

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

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Court File No.: A-167-14

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. This is an interlocutory motion to compel production of documents and answers on the continued cross-examination of the Agency's affiant that was held on September 15, 2014, as well as for the costs of the continued cross-examination, which were incurred as a result of failure to produce documents on the initial cross-examination.

2. The present proceeding is an application for judicial review, which raises a question of law concerning the obligation of the Agency to hear complaints and render decisions. The Applicant is seeking a *mandamus* requiring the Agency to render a decision in his complaint, dated February 24, 2014, about the advertising of air services on the Canadian website of Expedia, Inc., contrary to Part V.1 of the *Air Transportation Regulations*.

3. The affidavit of Ms. Simona Sasova, the manager of the Enforcement Division of the Agency, sworn on May 20, 2014 and tendered by the Agency

in opposition to the application, creates the incorrect impression that Expedia's website has become compliant with Part V.1 of the *Air Transportation Regulations*, and thus the present application is moot.

4. In order to test and contest Ms. Sasova's evidence, the Applicant requested to cross-examine her, and directed her to produce certain documents, including correspondence between Agency Staff and Expedia.

5. At the initial cross-examination (September 4, 2014), the Agency and Ms. Sasova acted unreasonably and obstructed the conduct of the examination by producing fragments of documents, making it impossible to conduct a meaningful cross-examination on them, and forcing the Applicant to adjourn the examination.

6. Subsequently, some further and complete documents were produced, and Ms. Sasova attended for the continuation of her cross-examination, but certain emails, dated July 28, 2014, were not produced. At the continued cross-examination (September 15, 2014), counsel for the Agency objected to certain questions on the improper basis that fragments of the documents were produced at the initial cross-examination, and that the Applicant could have asked the questions back then.

7. In her answers, Ms. Sasova referred to the settlement discussions between the parties and the alleged content of these discussions. Counsel for the Agency improperly objected to questioning Ms. Sasova with respect to an email in relation to the settlement discussions, which was marked "without prejudice," thus shielding Ms. Sasova from a challenge to her credibility.

B. BACKGROUND

(i) The Agency: Members, Staff, and Designated Enforcement Officers

8. The Agency, established by the *Canada Transportation Act*, S.C. 1996, c. 10, consists of Members (including temporary members), who exercise the quasi-judicial powers conferred upon the Agency by the Act. The Agency also has Staff, but they are not Members, and they cannot exercise the quasi-judicial powers of the Agency.

Canada Transportation Act, ss. 7 and 19

Tab 8: 457 , 458

9. The Agency can designate individuals as enforcement officers (DEOs) who are authorized to issue notices of violation and administrative monetary penalties (AMPs) for violations of certain regulations; DEOs, however, cannot issue orders.

Canada Transportation Act, ss. 178(1), 180

Tab 8: 464 , 465

Sasova Cross-Examination, p. 19, Q84-Q86

Tab 3: 158

(ii) Air services price advertising

10. The Agency is required to make regulations with respect to advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada. Part V.1 of the *Air Transportation Regulations* (“ATR”), governing advertising prices and consisting of sections 135.5 to 135.92, was promulgated to fulfill this requirement.

Canada Transportation Act, s. 86.1

Tab 8: 461

***Air Transportation Regulations, S.O.R./88-58,
Part V.1, ss. 135.5-135.92***

Tab 7: 452

(iii) **The Agency's refusal to render a decision in the Applicant's complaint**

11. On or around February 24, 2014, the Applicant, Dr. Gábor Lukács, made a formal complaint to the Agency alleging that Expedia, Inc. ("Expedia") had been advertising prices of air services on its Canadian website, *expedia.ca*, in a manner contrary to sections 135.8 and 135.91 of the *ATR*. As a remedy, Lukács asked the Agency to order Expedia to amend its Canadian website to comply with Part V.1 of the *ATR*.

Lukács Affidavit, Exhibit "A"

Tab 2A: 19

12. On March 11, 2014, Ms. Cathy Murphy, the Secretary of the Agency, wrote to Lukács with respect to his complaint that:

As this is an enforcement matter and not a matter that is subject to a formal complaint and adjudicative process, the Agency will not be commencing a formal pleadings process.

Lukács Affidavit, Exhibit "B"

Tab 2B: 40

13. After further inquiries by Lukács, on March 27, 2014, Mr. Geoffrey C. Hare, Chair and Chief Executive Officer of the Agency, wrote to Lukács that:

Enforcement of the air pricing advertising provisions of the *ATR* is being achieved by application of the administrative monetary penalty provisions of the *Canada Transportation Act (CTA)*. [...]

To be clear, no decision by an Agency Panel is required for the DEO to undertake an investigation of a potential contravention of a provision listed in the Designated Provisions Regulations. Therefore, the Agency will not be conducting an inquiry into the matter you have raised. Further, there is no role for the public to participate in an investigation, should the DEO decide that an investigation is warranted, except as requested by the DEO where the DEO determines that information relevant to the investigation is required. The role of the public is limited to apprising the DEO of concerns that they may have with respect to compliance. [...]

[...] the General Rules do not require the Agency to conduct an inquiry into a matter filed by the public with respect to alleged non-compliance with Part V.1 of the ATR or of other provisions of the ATR or the CTA which do not specifically provide for a complaint mechanism.

[Emphasis added.]

Lukács Affidavit, Exhibits “C” - “E”

Tabs 2C-2E: 42 - 49

C. PROCEDURAL HISTORY

14. On March 28, 2014, Lukács brought the within application for judicial review, seeking a *mandamus* requiring the Agency to render a decision in his February 24, 2014 complaint, as required by subsection 29(1) of the *Canada Transportation Act*. On April 22, 2014, Lukács served the Agency with his affidavit in support of the application.

Lukács Affidavit, paras. 6-7, Exhibit “F”

Tab 2F: 53

***Canada Transportation Act*, s. 29(1)**

Tab 8: 460

15. On May 22, 2014, the Agency served Lukács with the affidavit of Ms. Simona Sasova, the manager of the Enforcement Division of the Agency, sworn on May 20, 2014, in opposition of the application.

Lukács Affidavit, Exhibit “G”

Tab 2G: 61

16. On May 26, 2014, Lukács wrote to Mr. John Dodsworth, counsel for the Agency, and advised counsel about his intent to cross-examine Ms. Sasova on her affidavit. Lukács also sought the cooperation of Mr. Dodsworth in the scheduling and conduct of the examination.

Lukács Affidavit, Exhibit “H”

Tab 2H: 69

(i) The Agency's initial refusal to produce documents

17. On June 2, 2014, Lukács wrote to Mr. Dodsworth to request that Ms. Sasova attend for cross-examination on June 9, 2014 and that she produce all documents and other material in her possession, power or control that were relevant to the application.

Lukács Affidavit, Exhibit "I"

Tab 2I: 71

18. Since Mr. Dodsworth's response of June 3, 2014 made no reference to the issue of productions, Lukács wrote to Mr. Dodsworth again on June 5, 2014, this time also requesting the production of specific documents by Ms. Sasova, including, but not limited to, all related correspondence between Agency Staff and Expedia.

Lukács Affidavit, Exhibit "J"

Tab 2J: 76

19. On June 5, 2014, Mr. Dodsworth advised Lukács that communications between Ms. Sasova and Expedia would not be produced.

Lukács Affidavit, Exhibit "K"

Tab 2K: 83

20. On June 6, 2014, Lukács served Ms. Sasova and the Agency with a Direction to Attend requiring Ms. Sasova to produce:

1. all documents and other material in your possession, power or control that are relevant to the present application;

2. complete enforcement file of the enforcement action(s) referred to in paragraph 14 of your affidavit and/or related documents, including, but not limited to:

(i) all correspondence between Agency staff and Expedia; [...]

[Emphasis added.]

Lukács Affidavit, Exhibit "L"

Tab 2L: 91

D. FAILURE TO PRODUCE DOCUMENTS ON SEPTEMBER 4, 2014

26. Ms. Sasova produced two incomplete and/or truncated chains of emails on her September 4, 2014 cross-examination, which were marked as Exhibit Nos. 5 and 6, respectively. Ms. Sasova's explanations about the pages missing from the exhibits were neither forthright nor credible, and took up a substantial portion of the second hour of the examination (12:30 p.m. – 1:26 p.m.) and of the transcript.

**Sasova Cross-Examination, pp. 64-92
and Exhibit Nos. 5 and 6**

**Tab 3: 203 - 231
236 and 238**

(i) Implausible excuses about Exhibit No. 5

27. Exhibit No. 5 is the first two pages of a chain of emails, with subsequent pages missing. In response to questions about the missing pages, Ms. Sasova provided a variety of implausible excuses:

(a) "This is what we have included in our–this is our case. We don't have anything else for the case."

Sasova Cross-Examination, p. 65, I. 16-18, Q284

Tab 3: 204

(b) "So the email continued and I am not sure where, but we did not keep that for the reason that what is important for our case is what is above it and on the page."

Sasova Cross-Examination, p. 66, I. 13-16, Q286

Tab 3: 205

(c) "No, I did not keep it."

Sasova Cross-Examination, p. 67, I. 3, Q290

Tab 3: 206

(d) "We have a lot of emails and very small mailboxes."

Sasova Cross-Examination, p. 71, I. 23-24, Q313

Tab 3: 210

28. Oddly, when Ms. Sasova was pressed further, she was able to produce the missing pages of Exhibit No. 5 within minutes. The complete chain of emails in question was marked as Exhibit No. 7.

Sasova Cross-Examination, p. 80, I. 17-18, Q346 **Tab 3: 219 , 246**
and Exhibit No. 7

(ii) Deliberately and improperly withheld pages from Exhibit No. 6

29. Exhibit No. 6 is a total of 8 pages, numbered from 3 to 10, containing a truncated chain of emails. In response to questions about the missing first two pages, Ms. Sasova acknowledged that they were deliberately not produced:

(a) “Yes, because anything that precedes it is actually past the—past the Affidavit so it is not relevant to this.”

Sasova Cross-Examination, p. 74, I. 13-15, Q322 **Tab 3: 213**

(b) “I don’t have anything that is with regards to the Affidavit, communications with Expedia that would be prior to May 20th.”

Sasova Cross-Examination, p. 84, I. 9-11, Q361 **Tab 3: 223**

(c) “Everything that I had received on pages 1 and 2 it is past May 20th. That is the date of the Affidavit. That is why I did not include it in here.”

Sasova Cross-Examination, p. 78, I. 17-19, Q338 **Tab 3: 217**

30. Ms. Sasova misstated the truth. The complete chain of the emails, which was produced only after the examination, shows that page 2 of the chain contained an email from Expedia addressed to Ms. Sasova, dated May 14, 2014, advising her that “The English language website will be updated on May 23.”

Sasova Continued Cross-Examination, **Tab 4: 382**
Exhibit No. 8, p. 70

(iii) Failure to produce subsequent correspondence with Expedia and adjournment

31. Ms. Sasova acknowledged having had correspondence with Expedia subsequent to May 20, 2014, the date her affidavit was sworn, but she did not produce any of the correspondence.

**Sasova Cross-Examination,
p. 85, l. 9-14, Q363-Q364**

Tab 3: 224

32. The gross incompleteness of the productions made meaningful cross-examination impossible, and Lukács adjourned the cross-examination of Ms. Sasova pursuant to Rule 96(2) due to the failure of Ms. Sasova to produce documents as directed.

Sasova Cross-Examination, p. 91, l. 19-25

Tab 3: 230

E. REFUSAL TO ANSWER QUESTIONS AND PRODUCE DOCUMENTS AT THE CONTINUED CROSS-EXAMINATION ON SEPTEMBER 15, 2014

33. On September 7, 2014, Mr. Dodsworth advised that Ms. Sasova would be producing documents that were not produced earlier, and that she would be available for further cross-examination, but insisted that its scope exclude matters that had already been subject to cross-examination.

Lukács Affidavit, Exhibit “Q”

Tab 2Q: 113

34. On September 7, 2014, Lukács advised Mr. Dodsworth that while he welcomed further productions and continuing the cross-examination of Ms. Sasova, he did not accept any restriction on its scope.

Lukács Affidavit, Exhibit “R”

Tab 2R: 115

35. The continued examination, scheduled for September 10, 2014, was postponed until September 15, 2014 at the request of Mr. Dodsworth.

Lukács Affidavit, Exhibit “T”

Tab 2T: 123

36. Between September 8, 2014 and September 12, 2014, Lukács repeatedly requested that either the Agency or Ms. Sasova produce all email correspondence in relation to Expedia's website between Agency Staff and Expedia since February 24, 2014, and that the Agency or Ms. Sasova reimburse him for the costs of the continuation of the cross-examination.

Lukács Affidavit, Exhibits "S"- "W"

Tab 2S-2W: 118 - 134

37. Prior to her continued cross-examination, Ms. Sasova produced an 84-page bundle of email correspondence, dated between March 11, 2014 and May 27, 2014 (Exhibit No. 8), and a 16-page bundle of email correspondence, dated between June 9, 2014 and August 21, 2014 (Exhibit No. 9), between Agency Staff and Expedia.

**Sasova Continued Cross-Examination,
Exhibit Nos. 8 and 9**

Tab 4: 313 , 397

(i) Objections to questions 393-397 and the entire line of questioning

38. At the September 15, 2014 continued cross-examination, Mr. Dodsworth objected to questions 393-397 and to the entire line of questioning on the basis that the questions related to emails that were already produced on September 4, 2014, and that Lukács could have asked or did ask some questions about the emails back then.

**Sasova Continued Cross-Examination,
pp. 97-100, Q393-Q397**

Tab 4: 256 - 259

39. After numerous attempts to explain to Mr. Dodsworth that the inadequacies of the production on September 4, 2014 made it impossible to meaningfully cross-examine on that day, Lukács reserved his right to continue the line of questioning, subject to an order of the Court.

Sasova Cont'd Cross-Examination, p. 101, I. 4-10

Tab 4: 260

(ii) **Failure to produce all emails sent by Mr. Lynch on July 28, 2014**

40. Mr. Paul Lynch is a subordinate of Ms. Sasova, and he had been involved in the correspondence with Expedia concerning its website. On July 28, 2014, Mr. Lynch wrote to Expedia, with carbon copy to Ms. Sasova, among other things, that:

Please ignore any previous emails from me dated July 28 – sent in error.

Sasova Continued Cross-Examination, Exhibit No. 9, p. 14 **Tab 4:** 410

Sasova Cross-Examination, p. 71, Q311-Q312 **Tab 3:** 210

41. On September 12, 2014, Lukács expressed concern to Mr. Dodsworth and Ms. Sasova about the absence of the emails, dated July 28, 2014, sent by Mr. Lynch, allegedly in error, from the more recent productions of Ms. Sasova. Lukács requested that these emails be produced to ensure completeness of the production.

Lukács Affidavit, Exhibits “V”-“W” **Tabs 2V-2W:** 130 - 134

42. The July 28, 2014 emails of Mr. Lynch in question were not produced on the continued cross-examination on September 15, 2014, and Ms. Sasova did not inform herself about the content of the emails either. Mr. Dodsworth objected to the production of these emails, but failed to state his reasons for the objection.

Sasova Continued Cross-Examination, pp. 146-147, Q632-Q633, Q635 **Tab 4:** 305 - 306

(iii) Objections to questions related to Exhibit No. A for Identification

43. Although Ms. Sasova is not a Member of the Agency, Mr. Dodsworth shared with her details of the settlement discussions between Lukács and the Agency.

Sasova Continued Cross-Examination, p. 117, Q470 **Tab 4:** 276

44. Ms. Sasova frequently referred in her answers to the settlement discussions between the parties as well as the alleged content of these discussions.

Sasova Cross-Examination, p. 89, l. 5-7 **Tab 3:** 228

Sasova Continued Cross-Examination, p. 114, l. 10 and 24; p. 115, l. 6 and 24; p. 116, l. 17; p. 128, l. 25; p. 130, l. 7 and 25; p. 132, l. 6; p. 138, l. 6, 15, and 24; p. 139, l. 4, 16, and 24 **Tab 4:** 273 ; 274 ; 275 ; 287 ; 289 ; 291 ; 297 ; 298

45. Lukács intended to cross-examine Ms. Sasova with respect to her statements relating to the settlement discussions, but Mr. Dodsworth objected to the introduction of Exhibit No. A for Identification, which is an email sent by Lukács to Mr. Dodsworth in relation to settlement discussions, and which was marked “without prejudice.” Mr. Dodsworth also claimed to have no knowledge of the meaning of the phrase “exhibit for identification.”

Sasova Cont’d Cross-Examination, pp. 149-152 **Tab 4:** 308 - 311

(iv) Adjournment

46. In light of the outstanding disagreements between the parties about the production of documents and the conduct of the continued cross-examination of Ms. Sasova, Lukács adjourned the examination pursuant to Rule 96(2) for the purpose of bringing the present motion.

Sasova Cont’d Cross-Examination, p. 152, l. 9-12 **Tab 4:** 311

PART II – STATEMENT OF THE POINTS IN ISSUE

47. The questions to be decided on this motion are:
- (i) Should the Agency or Ms. Sasova be required to pay Lukács the costs of the September 15, 2014 continuation of Ms. Sasova's cross-examination?
 - (ii) Should Ms. Sasova be required to re-attend at her own expense or the expense of the Agency, for cross-examination on her affidavit, and at the re-attendance:
 - (a) answer questions 393-397 and further questions in the line of questioning to which counsel for the Agency objected on September 15, 2014 (p. 99, l. 6-8 of the transcript), and any follow-up questions;
 - (b) produce all emails sent by Mr. Paul Lynch to Expedia on July 28, 2014, including those that were allegedly sent in error, and answer questions in relation to them, including any follow-up questions;
 - (c) answer questions related to Exhibit No. A for Identification and its content, including any follow-up questions?
 - (iii) The schedule for the remaining steps in the proceeding.

PART III – STATEMENT OF SUBMISSIONS

A. COSTS OF THE SEPTEMBER 15, 2014 CONTINUED CROSS-EXAMINATION

48. When a person is served with a direction to attend requiring the production of documents, the person is required to produce all documents requested that are in that person's possession and control, with the exception of those that are privileged or for which relief from production was granted by the Court.

Federal Courts Rules, Rule 94

Tab 6: 446

49. The Court may sanction, through costs, a person whose conduct necessitates adjourning an examination, both pursuant to Rule 96(3) and its inherent jurisdiction to control its own procedures, and its discretion to award costs.

Federal Courts Rules, Rule 96(3)

Tab 6: 447

50. In the case at bar, there are two reasons for sanctioning, through costs, the conduct of Ms. Sasova and/or the Agency on September 4, 2014. First, documents that were damaging to the Agency's case and Ms. Sasova's credibility were not produced for the examination, but only later. Second, the productions were inadequate in a manner that no reasonable person would conduct herself.

51. The failure to adequately produce documents on September 4, 2014 made it impossible to meaningfully cross-examine in relation to the documents, and to complete the examination on that day; it necessitated adjourning the examination, and continuing it on September 15, 2014, which resulted in unnecessary delay to the proceeding and costs to Lukács.

(i) Failing to produce documents damaging to the Agency's case

52. The missing pages 1 and 2 of the chain of emails that was marked as Exhibit No. 6 on September 4, 2014 were evidence damaging to the Agency's case and Ms. Sasova's credibility; they demonstrate that Ms. Sasova misstated the truth by swearing on May 20, 2014, at paragraph 15 of her affidavit, that "Expedia has since rectified the problem." These missing pages were produced only after the examination, and show that Ms. Sasova knew that Expedia's website would not be updated until at least several days later, on May 23, 2014.

**Sasova Continued Cross-Examination,
Exhibit No. 8, pp. 69-70**

Tab 4: 381 - 382

53. Similarly, the correspondence between Agency Staff and Expedia, dated between June 9, 2014 and August 21, 2014, was not not produced on September 4, 2014, but only later. Although Ms. Sasova's affidavit creates the impression that Expedia's website had become compliant with the *Air Transportation Regulations*, the subsequent correspondence about the need for further changes to Expedia's website demonstrates that Ms. Sasova did not state the full truth in her affidavit.

**Sasova Continued Cross-Examination,
p. 120, Q484 and Exhibit No. 9**

Tab 4: 279 , 397

(ii) Failure to act reasonably

54. Producing truncated or incomplete documents, with pages missing, at an examination is an obstructive and improper conduct that no reasonable person would engage in, unless the person genuinely has no access to the complete documents. Such conduct cannot be justified with arguments about relevance or the appropriate scope of the production.

55. Both Ms. Sasova, a Designated Enforcement Officer and a manager of the Enforcement Division, and Mr. Dodsworth, a senior counsel, are very experienced in legal matters. Nevertheless, they failed to ensure that complete documents, without missing pages, would be produced on September 4, 2014, even though Ms. Sasova had full access to the complete documents, and indeed, had no difficulty producing them at a later date. Ms. Sasova and Mr. Dodsworth knew or ought to have known that the failure to produce complete documents on September 4, 2014 would unnecessarily delay completion of the examination, and result in unnecessary costs to Lukács.

56. Ms. Sasova and Mr. Dodsworth had plenty of time to prepare the production for the cross-examination, to ascertain what needed to be produced, and to ensure that no pages would be missing from the documents produced. They had known since June 6, 2014 that Lukács sought production of documents. No motion for relief from production was made pursuant to Rule 94(2), nor did they make any effort to clarify the scope of the production in the unlikely event that it was unclear to them.

(iii) Quantum

57. In cases where an entire cross-examination was “largely a waste,” courts have ordered the responsible person to pay for the “abortive cross-examination” and the motion on a solicitor and client basis. The conduct of Ms. Sasova and/or the Agency was not so egregious, and wasted only the second hour of the September 4, 2014 examination, but it necessitated a continued cross-examination on September 15, 2014. Therefore, it would be fair to require them to pay only for the party-to-party costs of the continued cross-examination.

B. OBJECTIONS TO QUESTIONS AND PRODUCTIONS

(i) Questions 393-397 and the entire line of questioning

58. The relevance of these questions and the line of questioning was not disputed. Mr. Dodsworth nevertheless objected, on the basis that they relate to emails that were produced on September 4, 2014, and that Lukács could have asked or did ask some questions about the emails back then.

59. These objections fail to recognize that the production on September 4, 2014 was grossly incomplete, to the point that it was impossible to meaningfully cross-examine on them, and necessitated the adjourning of the examination. For comparison, Exhibits Nos. 5-7 are a total of 14 pages, while Exhibits No. 8-9, that were produced after September 4, 2014, are a total of 100 pages.

60. In the present case, the productions were not standalone documents that could be understood in isolation, but rather interrelated chains of emails, similar to a live conversation. It was impossible to assess the documents, appreciate their logical interrelations, and to identify possible contradictions using the incomplete bits and pieces that were produced on September 4, 2014. Although these questions relate to the warning letter issued in March 2014, their significance could be recognized only after reviewing the email correspondence in Exhibit No. 9, and thus they could not have been asked earlier.

61. The objections to questions related to fragments that were already available on September 4, 2014 is an attempt of the Agency and/or Ms. Sasova to benefit from their own failure to adequately produce documents on September 4, 2014, and to avoid answering questions that may be damaging to the Agency's case and Ms. Sasova's credibility.

62. Finally, Ms. Sasova misremembered having answered question 397 previously, and her refusal to answer the question on that basis was improper. While she did answer similar questions on September 4, 2014, this line of questioning, which could not be continued due to Mr. Dodsworth's objections and Ms. Sasova's refusals to answer, was aimed at the inconsistency between the content of the warning letter and the correspondence contained in Exhibit No. 9. As such, it was distinctly different from any of the questions that were asked or could have been asked on September 4, 2014.

(ii) Production: all emails sent by Mr. Lynch to Expedia on July 28, 2014

63. Ms. Sasova did not produce certain emails sent by Mr. Lynch to Expedia, dated July 28, 2014, that were allegedly sent in error, even though Lukács requested their production to ensure completeness.

**Sasova Continued Cross-Examination,
Exhibit No. 9, p. 14**

Tab 4: 410

Lukács Affidavit, Exhibits "V"- "W"

Tabs 2V-2W: 130 - 134

64. The failure of Mr. Dodsworth to state his reasons for objecting to the production of these documents, contrary to Rule 95(1), puts Lukács in a difficult position on the present motion; nevertheless, the issues of relevance and the duty of an affiant to get informed will be addressed below.

Federal Courts Rules, Rule 95(1)

Tab 6: 446

**Sasova Continued Cross-Examination,
pp. 146-147, Q632-Q633, Q635**

Tab 4: 305 - 306

(a) Relevance

65. Relevance is defined by the issues of fact separating the parties. In an action, issues of fact are defined by the pleadings. In the case of an application, the issues of fact are defined by the affidavits of the parties.

66. In his July 6, 2014 email, Mr. Dodsworth correctly recognized an issue of fact separating the parties, and acknowledged the Agency's intent to rely on Ms. Sasova's affidavit in relation to that fact:

Only documents that are relevant to the application must be produced. While the fact of Expedia's current compliance with the Air Transportation Regulations, a fact that is established in Ms. Sasova's affidavit, is relevant to your application, her communications during her investigation with Expedia are not.

[Emphasis added.]

Lukács Affidavit, Exhibit "M"

Tab 2M: 97

67. Lukács, who is seeking a *mandamus*, will have to address at the hearing of the application on its merits all eight conditions set out in *Apotex Inc. v. Canada (Attorney General) (C.A.)*, including the condition that the order has "some practical value or effect." Thus, whether Expedia's website is currently compliant with the *Air Transportation Regulations* is also legally relevant to the application.

***Apotex Inc. v. Canada (Attorney General) (C.A.)*,
[1994] 1 F.C. 742, para. 45**

Tab 10: 499

68. The continued correspondence between Agency Staff and Expedia about the need for further changes to Expedia's website is capable of demonstrating that, contrary to what is suggested by Ms. Sasova's affidavit, Expedia's website continues to be non-complaint, and the extent of the non-compliance. As such, it can show that there is a clear practical value or effect in granting a *mandamus* in the present case.

69. While Exhibit No. 9 contains such subsequent correspondence, it is clear from Mr. Lynch's July 28, 2014 email that some of his emails sent that day, allegedly in error, were not produced by Ms. Sasova.

(b) Duty of an affiant to get informed

70. Although a cross-examination on an affidavit is not as broad as a discovery, Justice Nadon (as he was then) held that affiants nevertheless have a duty to inform themselves on matters in issue which are within their knowledge or means of knowledge.

***Merck & Co. v. Apotex Inc.*,
[1996] F.C.J. No. 405, para. 10**

Tab 11: 527

71. Ms. Sasova is the supervisor of Mr. Lynch, and she could have easily informed herself about the content of the missing July 28, 2014 emails that Mr. Lynch sent. Ms. Sasova was advised on September 12, 2014 that not all emails dated July 28, 2014 were produced and that Lukács was seeking the production of all emails sent by Mr. Lynch to Expedia on July 28, 2014; however, Ms. Sasova chose not to inform herself about the content of the missing emails.

**Sasova Continued Cross-Examination,
p. 146, Q632-Q633**

Tab 4: 305

Lukács Affidavit, Exhibits “V”-“W”

Tabs 2V-2W: 130 - 134

72. It is submitted that in these circumstances, Ms. Sasova ought to be required to produce all emails sent by Mr. Lynch to Expedia on July 28, 2014, or at least provide them to the Court, to ascertain that they were sent in error and that they are unrelated to Expedia’s website.

(iii) Questions related to Exhibit No. A for Identification

73. Lukács acknowledges that, as a general rule, settlement discussions are privileged and there is a *prima facie* presumption of their inadmissibility as evidence of the admissions made in the course of such discussions; however, it is submitted that the present case is exceptional in a number of ways.

74. First, Lukács does not intend to rely on admissions (if any) contained in Exhibit No. A for Identification. Instead, Lukács intends to use this exhibit for the limited purpose of challenging the credibility of Ms. Sasova, who frequently referred to the alleged content of the settlement discussions between the parties.

75. Second, it would be unfair and possibly prejudicial to allow the statements of Ms. Sasova with respect to the alleged content of the settlement discussions between the parties to stand unchallenged and without any ability to cross-examine on it. Moreover, these statements are so frequent and so intimately tied with the relevant issues that it is not possible to expunge these statements from the transcript without severely affecting the intelligibility of Ms. Sasova's answers.

76. Third, the Agency waived its settlement privilege to the extent that the content of settlement discussions were shared with Ms. Sasova. Indeed, according to the *Canada Transportation Act*, the Agency consists only of Members, including temporary members, but Ms. Sasova is not a Member of the Agency. Lukács was engaging in settlement discussions with the Agency, and not with Ms. Sasova. Nevertheless, Ms. Sasova testified that she learned about details of the settlement discussions from Mr. Dodsworth, counsel for the Agency. The Agency cannot maintain a claim of privilege with respect to information that it shared with others.

Canada Transportation Act, s. 7

Tab 8: 457

**Sasova Continued Cross-Examination,
p. 117, Q470**

Tab 4: 276

77. Therefore, it is submitted that Ms. Sasova should be required to answer questions related to Exhibit No. A for Identification and its content.

C. SCHEDULE FOR THE REMAINING STEPS

78. Madam Justice Sharlow, J.A., extended the deadline for filing the applicant's record until September 30, 2014, to allow the parties time to engage in settlement discussions.

Lukács Affidavit, Exhibit "O"

Tab 20: 107

79. Lukács acted with due diligence, and took all steps that were reasonably necessary to meet that deadline, including cross-examining Ms. Sasova, the Agency's affiant, on September 4, 2014. Unfortunately, due to the conduct of Ms. Sasova and/or the Agency, Lukács was unable to complete the cross-examination on that day, had to continue the cross-examination on September 15, 2014, and additionally had to adjourn the examination once again.

80. Although Lukács ordered the transcripts on the day of the examinations, the transcript of the September 15, 2014 continued cross-examination was completed only on October 6, 2014, after the deadline set by Madam Justice Sharlow. Thus, Lukács missed the deadline due to no fault of his own and in spite of having acted with due diligence.

Sasova Cont'd Cross-Examination, p. (i)

Tab 4: 251

81. Lukács is asking the Honourable Court to extend the deadline for filing the applicant's record, set a schedule for the remaining steps in the within application, and permit Lukács 30 days from the receipt of the transcripts of Ms. Sasova's re-attendance to serve and file the applicant's record.

D. COSTS

82. The Agency, a public body with vastly more resources than Lukács, has been delaying the within application and frustrating the efforts of Lukács to cross-examine the Agency's affiant and to bring the application to a hearing.

83. The Agency's conduct forced Lukács to spend a substantial amount of time and resources on preparing the present motion.

84. Lukács is asking the Honourable Court to exercise its discretion by awarding him the costs of the present motion.

PART IV – ORDER SOUGHT

85. The Applicant, Dr. Gábor Lukács, is seeking an Order:
- (i) requiring the Canadian Transportation Agency and/or its affiant, Ms. Simona Sasova, to pay Lukács the costs of the September 15, 2014 continuation of Ms. Sasova's cross-examination on her affidavit sworn on May 20, 2014;
 - (ii) requiring Ms. Sasova to re-attend at her own expense or the expense of the Agency, for cross-examination on her affidavit sworn on May 20, 2014, and at the said re-attendance:
 - (a) answer questions 393-397 and further questions in the line of questioning to which counsel for the Agency objected on September 15, 2014 (p. 99, l. 6-8 of the transcript), and any follow-up questions;
 - (b) produce all emails sent by Mr. Paul Lynch to Expedia on July 28, 2014, including those that were allegedly sent in error, and answer questions in relation to them, including any follow-up questions;
 - (c) answer questions related to Exhibit No. A for Identification and its content, including any follow-up questions.
 - (iii) setting a schedule for the remaining steps in this proceeding, and permitting Lukács 30 days from the receipt of the transcripts of Ms. Sasova's re-attendance to serve and file the applicant's record;

- (iv) directing the Agency to pay Lukács the costs of the present motion;
- (v) granting such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 14, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Applicant / Moving Party

PART V – LIST OF AUTHORITIES

CASES

Altaspec Communications Inc. v. Nigrin, 2000 ABQB 571

Apotex Inc. v. Canada (Attorney General) (C.A.),
[1994] 1 F.C. 742

Merck & Co. v. Apotex Inc., [1996] F.C.J. No. 405

Sherman v. Canada (Minister of National Revenue),
2004 FCA 29

STATUTES AND REGULATIONS

Federal Courts Rules, S.O.R./98-106
Rules 8, 91, 94, 96, 97, 369

Air Transportation Regulations, S.O.R./88-58,
Part V.1, ss. 135.5-135.92

Canada Transportation Act, S.C. 1996, c. 10,
ss. 7, 19, 86.1, 178, 180



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Rules

Règles des Cours fédérales

SOR/98-106

DORS/98-106

Current to September 15, 2014

À jour au 15 septembre 2014

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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

ADMINISTRATION OF THE COURT

OFFICERS OF THE COURT

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

PARTIE 2

ADMINISTRATION DE LA COUR

FONCTIONNAIRES DE LA COUR

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

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;

the person's residence where a superior court sits.

une cour supérieure qui est le plus proche de la résidence de la personne.

Person residing outside Canada

(2) Where a person to be examined on an oral examination resides outside Canada, the time, place, manner and expenses of the oral examination shall be as agreed on by the person and the parties or, on motion, as ordered by the Court.

(2) Lorsque la personne devant subir un interrogatoire oral réside à l'étranger, l'interrogatoire est tenu aux date, heure et lieu, de la manière et pour les montants au titre des indemnités et dépenses dont conviennent la personne et les parties ou qu'ordonne la Cour sur requête.

Personne résidant à l'étranger

Travel expenses

(3) No person is required to attend an oral examination unless reasonable travel expenses have been paid or tendered to the person.

(3) Nul ne peut être contraint à comparaître aux termes d'une assignation à comparaître pour subir un interrogatoire oral que si des frais de déplacement raisonnables lui ont été payés ou offerts.

Frais de déplacement

Direction to attend

91. (1) A party who intends to conduct an oral examination shall serve a direction to attend, in Form 91, on the person to be examined and a copy thereof on every other party.

91. (1) La partie qui entend tenir un interrogatoire oral signifie une assignation à comparaître selon la formule 91 à la personne à interroger et une copie de cette assignation aux autres parties.

Assignation à comparaître

Production for inspection at examination

(2) A direction to attend may direct the person to be examined to produce for inspection at the examination

(2) L'assignation à comparaître peut préciser que la personne assignée est tenue d'apporter avec elle les documents ou éléments matériels qui :

Production de documents pour examen

(a) in respect of an examination for discovery, all documents and other material in the possession, power or control of the party on behalf of whom the person is being examined that are relevant to the matters in issue in the action;

a) sont en la possession, sous l'autorité ou sous la garde de la partie pour le compte de laquelle elle est interrogée et qui sont pertinents aux questions soulevées dans l'action, dans le cas où elle est assignée pour subir un interrogatoire préalable;

(b) in respect of the taking of evidence for use at trial, all documents and other material in that person's possession, power or control that are relevant to the matters in issue in the action;

b) sont en sa possession, sous son autorité ou sous sa garde et qui sont pertinents à l'action, dans le cas où elle est assignée pour donner une déposition qui sera utilisée à l'instruction;

(c) in respect of a cross-examination on an affidavit, all documents and other material in that person's possession, power or control that are relevant to the application or motion; and

c) sont en sa possession, sous son autorité ou sous sa garde et qui sont pertinents à la requête ou à la demande, dans le cas où elle est assignée pour subir un

(d) in respect of an examination in aid of execution, all documents and other

material in that person's possession, power or control that are relevant to the person's ability to satisfy the judgment.

contre-interrogatoire concernant un affidavit;

d) sont en sa possession, sous son autorité ou sous sa garde et qui fournissent des renseignements sur sa capacité de payer la somme fixée par jugement, dans le cas où elle est assignée pour subir un interrogatoire à l'appui d'une exécution forcée.

Service of direction to attend

(3) A direction to attend an oral examination shall be served

(a) where the person to be examined is an adverse party, at least six days before the day of the proposed examination;

(b) where the person to be examined is not a party to the proceeding, at least 10 days before the day of the proposed examination; or

(c) where the person is to be cross-examined on an affidavit filed in support of a motion, at least 24 hours before the hearing of the motion.

(3) L'assignation à comparaître est signifiée :

a) si elle s'adresse à une partie adverse, au moins six jours avant la date de l'interrogatoire;

b) si elle ne s'adresse pas à une partie à l'instance, au moins 10 jours avant la date de l'interrogatoire;

c) si elle vise le contre-interrogatoire de l'auteur d'un affidavit déposé au soutien d'une requête, au moins 24 heures avant l'audition de celle-ci.

Signification de l'assignation

Swearing

92. A person to be examined on an oral examination shall be sworn before being examined.

92. La personne soumise à un interrogatoire oral prête serment avant d'être interrogée.

Serment

Examining party to provide interpreter

93. (1) Where a person to be examined on an oral examination understands neither French nor English or is deaf or mute, the examining party shall arrange for the attendance and pay the fees and disbursements of an independent and competent person to accurately interpret everything said during the examination, other than statements that the attending parties agree to exclude from the record.

93. (1) Si la personne soumise à un interrogatoire oral ne comprend ni le français ni l'anglais ou si elle est sourde ou muette, la partie qui interroge s'assure de la présence et paie les honoraires et débours d'un interprète indépendant et compétent chargé d'interpréter fidèlement les parties de l'interrogatoire oral qui sont enregistrées selon le paragraphe 89(4).

Interprète fourni par la partie qui interroge

Administrator to provide interpreter

(2) Where an interpreter is required because the examining party wishes to conduct an oral examination in one official language and the person to be examined wishes to be examined in the other official

(2) Lorsqu'une partie désire procéder à l'interrogatoire oral d'une personne dans une langue officielle et que cette dernière désire subir l'interrogatoire dans l'autre langue officielle, la partie peut demander à

Interprète fourni par l'administrateur

language, on the request of the examining party made at least six days before the examination, the Administrator shall arrange for the attendance and pay the fees and disbursements of an independent and competent interpreter.

l'administrateur, au moins six jours avant l'interrogatoire, d'assurer la présence d'un interprète indépendant et compétent. Dans ce cas, l'administrateur paie les honoraires et les débours de l'interprète.

Oath of interpreter

(3) Before aiding in the examination of a witness, an interpreter shall take an oath, in Form 93, as to the performance of his or her duties.

(3) Avant de fournir des services d'interprétation, l'interprète prête le serment, selon la formule 93, de bien exercer ses fonctions.

Serment de l'interprète

SOR/2007-301, s. 3(E).

DORS/2007-301, art. 3(A).

Production of documents on examination

94. (1) Subject to subsection (2), a person who is to be examined on an oral examination or the party on whose behalf that person is being examined shall produce for inspection at the examination all documents and other material requested in the direction to attend that are within that person's or party's possession and control, other than any documents for which privilege has been claimed or for which relief from production has been granted under rule 230.

94. (1) Sous réserve du paragraphe (2), la personne soumise à un interrogatoire oral ou la partie pour le compte de laquelle la personne est interrogée produisent pour examen à l'interrogatoire les documents et les éléments matériels demandés dans l'assignation à comparaître qui sont en leur possession, sous leur autorité ou sous leur garde, sauf ceux pour lesquels un privilège de non-divulgaration a été revendiqué ou pour lesquels une dispense de production a été accordée par la Cour en vertu de la règle 230.

Production of documents

Relief from production

(2) On motion, the Court may order that a person to be examined or the party on whose behalf that person is being examined be relieved from the requirement to produce for inspection any document or other material requested in a direction to attend, if the Court is of the opinion that the document or other material requested is irrelevant or, by reason of its nature or the number of documents or amount of material requested, it would be unduly onerous to require the person or party to produce it.

(2) La Cour peut, sur requête, ordonner que la personne ou la partie pour le compte de laquelle la personne est interrogée soient dispensées de l'obligation de produire pour examen certains des documents ou éléments matériels demandés dans l'assignation à comparaître, si elle estime que ces documents ou éléments ne sont pas pertinents ou qu'il serait trop onéreux de les produire du fait de leur nombre ou de leur nature.

Partie non tenue de produire des documents

Objections

95. (1) A person who objects to a question that is asked in an oral examination shall briefly state the grounds for the objection for the record.

95. (1) La personne qui soulève une objection au sujet d'une question posée au cours d'un interrogatoire oral énonce brièvement les motifs de son objection pour qu'ils soient inscrits au dossier.

Objection

| | | | |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Preliminary answer | <p>(2) A person may answer a question that was objected to in an oral examination subject to the right to have the propriety of the question determined, on motion, before the answer is used at trial.</p> | <p>(2) Une personne peut répondre à une question au sujet de laquelle une objection a été formulée à l’interrogatoire oral, sous réserve de son droit de faire déterminer, sur requête, le bien-fondé de la question avant que la réponse soit utilisée à l’instruction.</p> | Réponse préliminaire |
| Improper conduct | <p>96. (1) A person being examined may adjourn an oral examination and bring a motion for directions if the person believes that he or she is being subjected to an excessive number of questions or to improper questions, or that the examination is being conducted in bad faith or in an abusive manner.</p> | <p>96. (1) La personne qui est interrogée peut ajourner l’interrogatoire oral et demander des directives par voie de requête, si elle croit qu’elle est soumise à un nombre excessif de questions ou à des questions inopportunes, ou que l’interrogatoire est effectué de mauvaise foi ou de façon abusive.</p> | Questions injustifiées |
| Adjournment to seek directions | <p>(2) A person conducting an oral examination may adjourn the examination and bring a motion for directions if the person believes answers to questions being provided are evasive or if the person being examined fails to produce a document or other material requested under rule 94.</p> | <p>(2) La personne qui interroge peut ajourner l’interrogatoire oral et demander des directives par voie de requête, si elle croit que les réponses données aux questions sont évasives ou qu’un document ou un élément matériel demandé en application de la règle 94 n’a pas été produit.</p> | Ajournement |
| Sanctions | <p>(3) On a motion under subsection (1) or (2), the Court may sanction, through costs, a person whose conduct necessitated the motion or a person who unnecessarily adjourned the examination.</p> | <p>(3) À la suite de la requête visée aux paragraphes (1) ou (2), la Cour peut condamner aux dépens la personne dont la conduite a rendu nécessaire la présentation de la requête ou la personne qui a ajourné l’interrogatoire sans raison valable.</p> | Sanctions |
| Failure to attend or misconduct | <p>97. Where a person fails to attend an oral examination or refuses to take an oath, answer a proper question, produce a document or other material required to be produced or comply with an order made under rule 96, the Court may</p> <p>(a) order the person to attend or re-attend, as the case may be, at his or her own expense;</p> <p>(b) order the person to answer a question that was improperly objected to and any proper question arising from the answer;</p> | <p>97. Si une personne ne se présente pas à un interrogatoire oral ou si elle refuse de prêter serment, de répondre à une question légitime, de produire un document ou un élément matériel demandés ou de se conformer à une ordonnance rendue en application de la règle 96, la Cour peut :</p> <p>a) ordonner à cette personne de subir l’interrogatoire ou un nouvel interrogatoire oral, selon le cas, à ses frais;</p> <p>b) ordonner à cette personne de répondre à toute question à l’égard de laquelle une objection a été jugée injusti-</p> | Défaut de comparaître ou inconduite |

- (c) strike all or part of the person's evidence, including an affidavit made by the person;
- (d) dismiss the proceeding or give judgment by default, as the case may be; or
- (e) order the person or the party on whose behalf the person is being examined to pay the costs of the examination.

fiée ainsi qu'à toute question légitime découlant de sa réponse;

c) ordonner la radiation de tout ou partie de la preuve de cette personne, y compris ses affidavits;

d) ordonner que l'instance soit rejetée ou rendre jugement par défaut, selon le cas;

e) ordonner que la personne ou la partie au nom de laquelle la personne est interrogée paie les frais de l'interrogatoire oral.

Contempt order

98. A person who does not comply with an order made under rule 96 or 97 may be found in contempt.

98. Quiconque ne se conforme pas à une ordonnance rendue en application des règles 96 ou 97 peut être reconnu coupable d'outrage au tribunal.

Ordonnance pour outrage au tribunal

Written Examinations

Interrogatoire écrit

Written examination

99. (1) A party who intends to examine a person by way of a written examination shall serve a list of concise, separately numbered questions in Form 99A for the person to answer.

99. (1) La partie qui désire procéder par écrit à l'interrogatoire d'une personne dresse une liste, selon la formule 99A, de questions concises, numérotées séparément, auxquelles celle-ci devra répondre et lui signifie cette liste.

Interrogatoire par écrit

Objections

(2) A person who objects to a question in a written examination may bring a motion to have the question struck out.

(2) La personne qui soulève une objection au sujet d'une question posée dans le cadre d'un interrogatoire écrit peut, par voie de requête, demander à la Cour de rejeter la question.

Objection

Answers to written examination

(3) A person examined by way of a written examination shall answer by way of an affidavit.

(3) La personne interrogée par écrit est tenue de répondre par affidavit établi selon la formule 99B.

Réponses

Service of answers

(4) An affidavit referred to in subsection (3) shall be in Form 99B and be served on every other party within 30 days after service of the written examination under subsection (1).

(4) L'affidavit visé au paragraphe (3) est signifié à toutes les parties dans les 30 jours suivant la signification de l'interrogatoire écrit.

Signification des réponses

(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.

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.

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.

Transcripts of cross-examinations

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

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.

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

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.

Mémoire requis

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.

DORS/2002-417, art. 22; DORS/2007-301, art. 8; DORS/2009-331, art. 7.

Dossier de requête

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.

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

Transcriptions des contre-interrogatoires

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

(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



CANADA

CONSOLIDATION

CODIFICATION

Air Transportation Regulations

Règlement sur les transports aériens

SOR/88-58

DORS/88-58

Current to April 29, 2013

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PART V.1

ADVERTISING PRICES

INTERPRETATION

135.5 The following definitions apply in this Part.

“air transportation charge” means, in relation to an air service, every fee or charge that must be paid upon the purchase of the air service, including the charge for the costs to the air carrier of providing the service, but excluding any third party charge. (*frais du transport aérien*)

“third party charge” means, in relation to an air service or an optional incidental service, any tax or prescribed fee or charge established by a government, public authority or airport authority, or by an agent of a government, public authority or airport authority, that upon the purchase of the service is collected by the air carrier or other seller of the service on behalf of the government, the public or airport authority or the agent for remittance to it. (*somme perçue pour un tiers*)

“total price” means

(a) in relation to an air service, the total of the air transportation charges and third party charges that must be paid to obtain the service; and

(b) in relation to an optional incidental service, the total of the amount that must be paid to obtain the service, including all third party charges. (*prix total*)

SOR/2012-298, s. 3.

135.6 For the purposes of subsection 86.1(2) of the Act and this Part, a prescribed fee or charge is one that is fixed on a per person or *ad valorem* basis.

SOR/2012-298, s. 3.

APPLICATION

135.7 (1) Subject to subsection (2), this Part applies to advertising in all media of prices for air services within, or originating in, Canada.

PARTIE V.1

PUBLICITÉ DES PRIX

DÉFINITIONS ET INTERPRÉTATION

135.5 Les définitions qui suivent s’appliquent à la présente partie.

«frais du transport aérien» S’entend, à l’égard d’un service aérien, de tout frais ou droit qui doit être payé lors de l’achat du service, y compris les coûts supportés par le transporteur aérien pour la fourniture du service, mais à l’exclusion des sommes perçues pour un tiers. (*air transportation charge*)

«prix total» S’entend :

a) à l’égard d’un service aérien, de la somme des frais du transport aérien et des sommes perçues pour un tiers à payer pour ce service;

b) à l’égard d’un service optionnel connexe, de la somme totale à payer pour ce service, y compris les sommes perçues pour un tiers. (*total price*)

«somme perçue pour un tiers» S’entend, à l’égard d’un service aérien ou d’un service optionnel connexe, d’une taxe ou d’un frais ou droit visé à l’article 135.6 établi par un gouvernement, une autorité publique, une autorité aéroportuaire ou un agent de ceux-ci et qui est, lors de l’achat du service, perçu par le transporteur aérien ou autre vendeur pour le compte de ce gouvernement, de cette autorité ou de cet agent afin de le lui être remis. (*third party charge*)

DORS/2012-298, art. 3.

135.6 Pour l’application du paragraphe 86.1(2) de la Loi, les frais et droits visés sont ceux établis par personne ou proportionnellement à une valeur de référence.

DORS/2012-298, art. 3.

CHAMP D’APPLICATION

135.7 (1) Sous réserve du paragraphe (2), la présente partie s’applique à toute publicité dans les médias relative aux prix de services aériens au Canada ou dont le point de départ est au Canada.

(2) This Part does not apply to an advertisement that relates to

- (a) an air cargo service;
- (b) a package travel service that includes an air service and any accommodation, surface transportation or entertainment activity that is not incidental to the air service; or
- (c) a price that is not offered to the general public and is fixed through negotiation.

(3) This Part does not apply to a person who provides another person with a medium to advertise the price of an air service.

SOR/2012-298, s. 3.

REQUIREMENTS AND PROHIBITIONS RELATING TO ADVERTISING

135.8 (1) Any person who advertises the price of an air service must include in the advertisement the following information:

- (a) the total price that must be paid to the advertiser to obtain the air service, expressed in Canadian dollars and, if it is also expressed in another currency, the name of that currency;
- (b) the point of origin and point of destination of the service and whether the service is one way or round trip;
- (c) any limitation on the period during which the advertised price will be offered and any limitation on the period for which the service will be provided at that price;
- (d) the name and amount of each tax, fee or charge relating to the air service that is a third party charge;
- (e) each optional incidental service offered for which a fee or charge is payable and its total price or range of total prices; and
- (f) any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.

(2) La présente partie ne s'applique pas à la publicité relative :

- a) à un service aérien de transport de marchandises;
- b) à un forfait comprenant un service aérien et tout logement, tout transport terrestre ou toute activité de divertissement qui ne constitue pas un service connexe au service aérien;
- c) à un prix qui n'est pas offert au grand public et qui est fixé par voie de négociations.

(3) La présente partie ne s'applique pas à la personne qui fournit un média à une autre personne pour annoncer le prix d'un service aérien.

DORS/2012-298, art. 3.

EXIGENCES ET INTERDICTIONS RELATIVES AUX PUBLICITÉS

135.8 (1) Quiconque annonce le prix d'un service aérien dans une publicité doit y inclure les renseignements suivants :

- a) le prix total à payer à l'annonceur pour le service, en dollars canadiens, et, si le prix total est également indiqué dans une autre devise, la devise en cause;
- b) le point de départ et le point d'arrivée du service et s'il s'agit d'un aller simple ou d'un aller-retour;
- c) toute restriction quant à la période pendant laquelle le prix annoncé sera offert et toute restriction quant à la période pour laquelle le service sera disponible à ce prix;
- d) le nom et le montant de chacun des frais, droits et taxes qui constituent des sommes perçues pour un tiers pour ce service;
- e) les services optionnels connexes offerts pour lesquels un frais ou un droit est à payer ainsi que leur prix total ou échelle de prix total;
- f) les frais, droits ou taxes publiés qui ne sont pas perçus par lui mais qui doivent être payés au point de départ ou d'arrivée du service par la personne à qui celui-ci est fourni.

(2) A person who advertises the price of an air service must set out all third party charges under the heading “Taxes, Fees and Charges” unless that information is only provided orally.

(3) A person who mentions an air transportation charge in the advertisement must set it out under the heading “Air Transportation Charges” unless that information is only provided orally.

(4) A person who advertises the price of one direction of a round trip air service is exempt from the application of paragraph (1)(a) if the following conditions are met:

- (a) the advertised price is equal to 50% of the total price that must be paid to the advertiser to obtain the service;
- (b) it is clearly indicated that the advertised price relates to only one direction of the service and applies only if both directions are purchased; and
- (c) the advertised price is expressed in Canadian dollars and, if it is also expressed in another currency, the name of that other currency is specified.

(5) A person is exempt from the requirement to provide the information referred to in paragraphs (1)(d) to (f) in their advertisement if the following conditions are met:

- (a) the advertisement is not interactive; and
- (b) the advertisement mentions a location that is readily accessible where all the information referred to in subsection (1) can be readily obtained.

SOR/2012-298, s. 3.

135.9 A person must not provide information in an advertisement in a manner that could interfere with the ability of anyone to readily determine the total price that must be paid for an air service or for any optional incidental service.

SOR/2012-298, s. 3.

135.91 A person must not set out an air transportation charge in an advertisement as if it were a third party

(2) Quiconque annonce le prix d'un service aérien dans une publicité doit y indiquer les sommes perçues pour un tiers pour ce service sous le titre « Taxes, frais et droits », à moins que ces sommes ne soient annoncées qu'oralement.

(3) Quiconque fait mention d'un frais du transport aérien dans une publicité doit l'indiquer sous le titre « Frais du transport aérien », à moins que le frais du transport ne soit annoncé qu'oralement.

(4) La personne qui annonce dans sa publicité le prix pour un aller simple d'un service aller-retour est exemptée de l'application de l'alinéa (1)a) si les conditions ci-après sont remplies :

- a) le prix annoncé correspond à cinquante pour cent du prix total à payer à l'annonceur pour le service;
- b) il est clairement indiqué que le prix annoncé n'est que pour un aller simple et qu'il ne s'applique qu'à l'achat d'un aller-retour;
- c) le prix annoncé est en dollars canadiens et, s'il est également indiqué dans une autre devise, la devise est précisée.

(5) La personne est exemptée d'inclure dans sa publicité les renseignements visés aux alinéas (1)d) à f) si les conditions ci-après sont remplies :

- a) la publicité n'est pas interactive;
- b) la publicité renvoie à un endroit facilement accessible où tous les renseignements visés au paragraphe (1) peuvent être facilement obtenus.

DORS/2012-298, art. 3.

135.9 Il est interdit de présenter des renseignements dans une publicité d'une manière qui pourrait nuire à la capacité de toute personne de déterminer aisément le prix total à payer pour un service aérien ou pour les services optionnels connexes.

DORS/2012-298, art. 3.

135.91 Il est interdit de présenter dans une publicité un frais du transport aérien comme étant une somme per-

charge or use the term “tax” in an advertisement to describe an air transportation charge.

SOR/2012-298, s. 3.

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

SOR/2012-298, s. 3.

que pour un tiers ou d’y utiliser le terme «taxe» pour désigner un frais du transport aérien.

DORS/2012-298, art. 3.

135.92 Il est interdit de désigner dans une publicité une somme perçue pour un tiers sous un nom autre que celui sous lequel elle a été établie.

DORS/2012-298, art. 3.

PART VI

SERVICE SCHEDULES

APPLICATION

136. This Part applies in respect of any scheduled international service operated by an air carrier.

SOR/96-335, s. 78.

VALIDITY OF SERVICE SCHEDULES

136.1 (1) A service schedule is valid beginning on its effective date unless the Agency rejects or disallows it.

(2) The Agency shall reject a service schedule if the Agency determines that the service schedule has not been filed in accordance with the requirements of this Part.

(3) The Agency shall disallow a service schedule if the Agency determines that it is inconsistent with the licence of the air carrier that filed it.

SOR/96-335, s. 78.

FILING OF SERVICE SCHEDULES

137. An air carrier or its agent shall file with the Agency a service schedule or an amendment to a service schedule that includes the information required by section 139 and, where the service schedule is on paper, a filing advice that includes the information required by subsection 140(3).

SOR/93-253, s. 2(E); SOR/96-335, s. 78.

138. (1) Every service schedule filed with the Agency shall be consecutively numbered with the prefix “CTA(A)GS”.

PARTIE VI

INDICATEURS

APPLICATION

136. La présente partie s’applique à tout service international régulier exploité par un transporteur aérien.

DORS/96-335, art. 78.

PRISE D’EFFET DES INDICATEURS

136.1 (1) Sauf en cas de rejet ou de refus par l’Office, l’indicateur prend effet à la date de son entrée en vigueur.

(2) L’Office rejette un indicateur s’il détermine qu’il n’a pas été déposé conformément à la présente partie.

(3) L’Office refuse un indicateur s’il détermine qu’il n’est pas conforme à la licence du transporteur aérien qui l’a déposé.

DORS/96-335, art. 78.

DÉPÔT DES INDICATEURS

137. Le transporteur aérien ou son agent doit déposer auprès de l’Office un indicateur, ou toute modification apportée à celui-ci, qui contient les renseignements exigés à l’article 139 et qui est accompagné, s’il est sur papier, d’un avis de dépôt renfermant les renseignements visés au paragraphe 140(3).

DORS/93-253, art. 2(A); DORS/96-335, art. 78.

138. (1) Les indicateurs déposés auprès de l’Office doivent être numérotés consécutivement, le numéro étant précédé de « OTC(A)IG ».



CANADA

CONSOLIDATION

CODIFICATION

Canada Transportation Act

Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to November 26, 2013

À jour au 26 novembre 2013

Last amended on June 26, 2013

Dernière modification le 26 juin 2013

“Vice-Chairperson”
« vice-président »

“Vice-Chairperson” means the Vice-Chairperson of the Agency.

1996, c. 10, s. 6; 1998, c. 30, ss. 13(F), 15(E); 1999, c. 3, s. 20; 2002, c. 7, s. 114(E).

de transport assujéti à la compétence législative du Parlement.

« vice-président » Le vice-président de l’Office.
1996, ch. 10, art. 6; 1998, ch. 30, art. 13(F) et 15(A); 1999, ch. 3, art. 20; 2002, ch. 7, art. 114(A).

« vice-président »
“Vice-Chairperson”

PART I

ADMINISTRATION

CANADIAN TRANSPORTATION AGENCY

Continuation and Organization

Agency continued

7. (1) The agency known as the National Transportation Agency is continued as the Canadian Transportation Agency.

Composition of Agency

(2) The Agency shall consist of not more than five members appointed by the Governor in Council, and such temporary members as are appointed under subsection 9(1), each of whom must, on appointment or reappointment and while serving as a member, be a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Chairperson and Vice-Chairperson

(3) The Governor in Council shall designate one of the members appointed under paragraph (2)(a) to be the Chairperson of the Agency and one of the other members appointed under that paragraph to be the Vice-Chairperson of the Agency.

1996, c. 10, s. 7; 2001, c. 27, s. 221; 2007, c. 19, s. 3.

Term of members

8. (1) Each member appointed under paragraph 7(2)(a) shall hold office during good behaviour for a term of not more than five years and may be removed for cause by the Governor in Council.

Reappointment

(2) A member appointed under paragraph 7(2)(a) is eligible to be reappointed on the expiration of a first or subsequent term of office.

Continuation in office

(3) If a member appointed under subsection 7(2) ceases to hold office, the Chairperson may authorize the member to continue to hear any matter that was before the member on the expiry of the member’s term of office and that member is deemed to be a member of the Agency, but that person’s status as a member does not preclude the appointment of up to five members under subsection 7(2) or up to three temporary members under subsection 9(1).

1996, c. 10, s. 8; 2007, c. 19, s. 4.

PARTIE I

ADMINISTRATION

OFFICE DES TRANSPORTS DU CANADA

Maintien et composition

7. (1) L’Office national des transports est maintenu sous le nom d’Office des transports du Canada.

(2) L’Office est composé, d’une part, d’au plus cinq membres nommés par le gouverneur en conseil et, d’autre part, des membres temporaires nommés en vertu du paragraphe 9(1). Tout membre doit, du moment de sa nomination, être et demeurer un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la *Loi sur l’immigration et la protection des réfugiés*.

(3) Le gouverneur en conseil choisit le président et le vice-président de l’Office parmi les membres nommés en vertu du paragraphe (2).

1996, ch. 10, art. 7; 2001, ch. 27, art. 221; 2007, ch. 19, art. 3.

8. (1) Les membres nommés en vertu du paragraphe 7(2) le sont à titre inamovible pour un mandat d’au plus cinq ans, sous réserve de révocation motivée par le gouverneur en conseil.

(2) Les mandats sont renouvelables.

(3) Le président peut autoriser un membre nommé en vertu du paragraphe 7(2) qui cesse d’exercer ses fonctions à continuer, après la date d’expiration de son mandat, à entendre toute question dont il se trouve saisi à cette date. À cette fin, le membre est réputé être membre de l’Office mais son statut n’empêche pas la nomination de cinq membres en vertu du paragraphe 7(2) ou de trois membres temporaires en vertu du paragraphe 9(1).

1996, ch. 10, art. 8; 2007, ch. 19, art. 4.

Maintien de l’Office

Composition

Président et vice-président

Durée du mandat

Renouvellement du mandat

Continuation de mandat

Chairperson may, with the consent of all the parties to the hearing,

- (a) if the incapacity or death occurs during the hearing, authorize another member to continue the hearing and render a decision, or
- (b) if the incapacity or death occurs after the conclusion of the hearing, authorize another member to examine the evidence presented at the hearing and render a decision,

and in either case, the quorum in respect of the matter is deemed never to have been lost.

Quorum not lost because of incapacity of member

(3) Where a member who is conducting a hearing in respect of a matter becomes incapacitated or dies during the hearing and quorum is not lost as a result, another member may be assigned by the Chairperson to participate in the hearing and in the rendering of a decision.

Rules

Rules

- 17.** The Agency may make rules respecting
- (a) the sittings of the Agency and the carrying on of its work;
 - (b) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which hearings may be held in private; and
 - (c) the number of members that are required to hear any matter or perform any of the functions of the Agency under this Act or any other Act of Parliament.

Head Office

Head office

18. (1) The head office of the Agency shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Residence of members

(2) The members appointed under subsection 7(2) shall reside in the National Capital Region described in the schedule to the *National Capital Act* or within any distance of it that the Governor in Council determines.

1996, c. 10, s. 18; 2007, c. 19, s. 5; 2008, c. 21, s. 61.

Staff

Secretary, officers and employees

19. The Secretary of the Agency and the other officers and employees that are necessary for the proper conduct of the business of the

ment des parties à l'audience, si le fait survient :

- a) pendant l'audience, habiliter un autre membre à continuer l'audience et à rendre la décision;
- b) après la fin de l'audience, habiliter un autre membre à examiner la preuve présentée à l'audience et à rendre la décision.

Dans l'une ou l'autre de ces éventualités, le quorum est réputé avoir toujours existé.

(3) En cas de décès ou d'empêchement, pendant une audience, du membre qui en est chargé, sans perte de quorum résultant de ce fait, le président peut habiliter un autre membre à participer à l'audience et au prononcé de la décision.

Décès ou empêchement sans perte de quorum

Règles

Règles

- 17.** L'Office peut établir des règles concernant :
- a) ses séances et l'exécution de ses travaux;
 - b) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos;
 - c) le nombre de membres qui doivent entendre les questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale.

Siège de l'Office

Siège

18. (1) Le siège de l'Office est fixé dans la région de la capitale nationale délimitée à l'annexe de la *Loi sur la capitale nationale*.

(2) Les membres nommés au titre du paragraphe 7(2) résident dans la région de la capitale nationale délimitée à l'annexe de la *Loi sur la capitale nationale* ou dans la périphérie de cette région définie par le gouverneur en conseil.

Lieu de résidence des membres

1996, ch. 10, art. 18; 2007, ch. 19, art. 5; 2008, ch. 21, art. 61.

Personnel

Secrétaire et personnel

19. Le secrétaire de l'Office et le personnel nécessaire à l'exécution des travaux de celui-ci

Agency shall be appointed in accordance with the *Public Service Employment Act*.

sont nommés conformément à la *Loi sur l'emploi dans la fonction publique*.

Technical experts

20. The Agency may appoint and, subject to any applicable Treasury Board directive, fix the remuneration of experts or persons who have technical or special knowledge to assist the Agency in an advisory capacity in respect of any matter before the Agency.

20. L'Office peut nommer des experts ou autres spécialistes compétents pour le conseiller sur des questions dont il est saisi, et, sous réserve des instructions du Conseil du Trésor, fixer leur rémunération.

Experts

Records

Registre

Duties of Secretary

21. (1) The Secretary of the Agency shall

(a) maintain a record in which shall be entered a true copy of every rule, order, decision and regulation of the Agency and any other documents that the Agency requires to be entered in it; and

(b) keep at the Agency's office a copy of all rules, orders, decisions and regulations of the Agency and the records of proceedings of the Agency.

21. (1) Le secrétaire est chargé :

a) de la tenue du registre du texte authentique des règles, arrêtés, règlements et décisions de l'Office et des autres documents dont celui-ci exige l'enregistrement;

b) de la conservation, dans les bureaux de l'Office, d'un exemplaire des règles, arrêtés, règlements, décisions et procès-verbaux de celui-ci.

Attributions du secrétaire

Entries in record

(2) The entry of a document in the record referred to in paragraph (1)(a) shall constitute the original record of the document.

(2) Le document enregistré en application de l'alinéa (1)a) en constitue l'original.

Original

Copies of documents obtainable

22. On the application of any person, and on payment of a fee fixed by the Agency, the Secretary of the Agency or, in the absence of the Secretary, the person assigned by the Chairperson to act in the absence shall issue under the seal of the Agency to the applicant a certified copy of any rule, order, regulation or any other document that has been issued by the Agency.

22. Le secrétaire de l'Office, ou la personne chargée par le président d'assurer son intérim, délivre sous le sceau de l'Office, sur demande et contre paiement des droits fixés par celui-ci, des copies certifiées conformes des règles, arrêtés, règlements ou autres documents de l'Office.

Copies conformes

Judicial notice of documents

23. (1) Judicial notice shall be taken of a document issued by the Agency under its seal without proof of the signature or official character of the person appearing to have signed it.

23. (1) Les documents délivrés par l'Office sous son sceau sont admis d'office en justice sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

Admission d'office

Evidence of deposited documents

(2) A document purporting to be certified by the Secretary of the Agency as being a true copy of a document deposited or filed with or approved by the Agency, or any portion of such a document, is evidence that the document is so deposited, filed or approved and, if stated in the certificate, of the time when the document was deposited, filed or approved.

(2) Le document censé être en tout ou en partie la copie certifiée conforme, par le secrétaire de l'Office, d'un document déposé auprès de celui-ci, ou approuvé par celui-ci, fait foi du dépôt ou de l'approbation ainsi que de la date, si elle est indiquée sur la copie, de ce dépôt ou de cette approbation.

Preuve

Powers of Agency

Attributions de l'Office

Policy governs Agency

24. The powers, duties and functions of the Agency respecting any matter that comes within its jurisdiction under an Act of Parliament

24. Les attributions de l'Office relatives à une affaire dont il est saisi en application d'une loi fédérale sont exercées en conformité avec

Directives

| | | | |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| | <p>terms that the Agency may impose on an interested party,</p> <p>and the Agency may direct that the whole or any portion of the order shall have force for a limited time or until the happening of a specified event.</p> | <p>subordonner celle-ci à la survenance d'un événement.</p> | |
| Interim orders | <p>(2) The Agency may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.</p> | <p>(2) L'Office peut prendre un arrêté provisoire et se réserver le droit de compléter sa décision lors d'une audience ultérieure ou d'une nouvelle demande.</p> | Arrêtés provisoires |
| Time for making decisions | <p>29. (1) The Agency shall make its decision in any proceedings before it as expeditiously as possible, but no later than one hundred and twenty days after the originating documents are received, unless the parties agree to an extension or this Act or a regulation made under subsection (2) provides otherwise.</p> | <p>29. (1) Sauf indication contraire de la présente loi ou d'un règlement pris en vertu du paragraphe (2) ou accord entre les parties sur une prolongation du délai, l'Office rend sa décision sur toute affaire dont il est saisi avec toute la diligence possible dans les cent vingt jours suivant la réception de l'acte introductif d'instance.</p> | Délai |
| Period for specified classes | <p>(2) The Governor in Council may, by regulation, prescribe periods of less than one hundred and twenty days within which the Agency shall make its decision in respect of such classes of proceedings as are specified in the regulation.</p> | <p>(2) Le gouverneur en conseil peut, par règlement, imposer à l'Office un délai inférieur à cent vingt jours pour rendre une décision à l'égard des catégories d'affaires qu'il indique.</p> | Délai plus court |
| Pending proceedings | <p>30. The fact that a suit, prosecution or proceeding involving a question of fact is pending in any court does not deprive the Agency of jurisdiction to hear and determine the same question of fact.</p> | <p>30. L'Office a compétence pour statuer sur une question de fait, peu importe que celle-ci fasse l'objet d'une poursuite ou autre instance en cours devant un tribunal.</p> | Affaire en instance |
| Fact finding is conclusive | <p>31. The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive.</p> | <p>31. La décision de l'Office sur une question de fait relevant de sa compétence est définitive.</p> | Décision définitive |
| Review of decisions and orders | <p>32. The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.</p> | <p>32. L'Office peut réviser, annuler ou modifier ses décisions ou arrêtés, ou entendre de nouveau une demande avant d'en décider, en raison de faits nouveaux ou en cas d'évolution, selon son appréciation, des circonstances de l'affaire visée par ces décisions, arrêtés ou audiences.</p> | Révision, annulation ou modification de décisions |
| Enforcement of decision or order | <p>33. (1) A decision or order of the Agency may be made an order of the Federal Court or of any superior court and is enforceable in the same manner as such an order.</p> | <p>33. (1) Les décisions ou arrêtés de l'Office peuvent être homologués par la Cour fédérale ou une cour supérieure; le cas échéant, leur exécution s'effectue selon les mêmes modalités que les ordonnances de la cour saisie.</p> | Homologation |
| Procedure | <p>(2) To make a decision or order an order of a court, either the usual practice and procedure of the court in such matters may be followed or the Secretary of the Agency may file with the</p> | <p>(2) L'homologation peut se faire soit selon les règles de pratique et de procédure de la cour saisie applicables en l'occurrence, soit au moyen du dépôt, auprès du greffier de la cour</p> | Procédure |

Advertising regulations

86.1 (1) The Agency shall make regulations respecting advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada.

86.1 (1) L'Office régit, par règlement, la publicité dans les médias, y compris dans Internet, relative aux prix des services aériens au Canada ou dont le point de départ est au Canada.

Règlement concernant la publicité des prix

Contents of regulations

(2) Without limiting the generality of subsection (1), regulations shall be made under that subsection requiring a carrier who advertises a price for an air service to include in the price all costs to the carrier of providing the service and to indicate in the advertisement all fees, charges and taxes collected by the carrier on behalf of another person in respect of the service, so as to enable a purchaser of the service to readily determine the total amount to be paid for the service.

(2) Les règlements exigent notamment que le prix des services aériens mentionné dans toute publicité faite par le transporteur inclue les coûts supportés par celui-ci pour la fourniture des services et que la publicité indique les frais, droits et taxes perçus par lui pour le compte d'autres personnes, de façon à permettre à l'acheteur de déterminer aisément la somme à payer pour ces services.

Contenu des règlements

Regulations may prescribe

(3) Without limiting the generality of subsection (1), the regulations may prescribe what are costs, fees, charges and taxes for the purposes of subsection (2).

(3) Les règlements peuvent également préciser, pour l'application du paragraphe (2), les types de coûts, frais, droits et taxes visés à ce paragraphe.

Précisions

2007, c. 19, s. 27.

2007, ch. 19, art. 27.

Regulations and orders

86.2 A regulation or order made under this Part may be conditional or unconditional or qualified or unqualified and may be general or restricted to a specific area, person or thing or group or class of persons or things.

86.2 Les textes d'application de la présente partie peuvent être conditionnels ou absolus, assortis ou non de réserves, et de portée générale ou limitée quant aux zones, personnes, objets ou catégories de personnes ou d'objets visés.

Textes d'application

2007, c. 19, s. 27.

2007, ch. 19, art. 27.

PART III
RAILWAY TRANSPORTATION
DIVISION I
INTERPRETATION AND APPLICATION

PARTIE III
TRANSPORT FERROVIAIRE
SECTION I
DÉFINITIONS ET CHAMP D'APPLICATION

Definitions

87. In this Part,

87. Les définitions qui suivent s'appliquent à la présente partie.

Définitions

“land”
« terres »

“land” includes an interest in land and, in relation to land in the Province of Quebec, includes the interest of a lessee;

« administration de transport de banlieue » Entité qui est contrôlée par le gouvernement fédéral ou provincial ou une administration municipale, ou qui lui appartient, et qui fournit des services publics de transport de passagers.

« administration de transport de banlieue »
“urban transit authority”

“metropolitan area”
« région métropolitaine »

“metropolitan area” means any area that is classified by Statistics Canada in its most recent census of Canada as a census metropolitan area;

« chemin de fer » Chemin de fer relevant de l'autorité législative du Parlement. Sont également visés :

« chemin de fer »
“railway”

“operate”
« exploitation »

“operate” includes, with respect to a railway, any act necessary for the maintenance of the railway or the operation of a train;

a) les embranchements et prolongements, les voies de garage et d'évitement, les ponts et tunnels, les gares et stations, les dépôts et quais, le matériel roulant, l'équipement et les

“point of destination”
« point de destination »

“point of destination” means, with respect to traffic on a railway line that is subject to a transfer described in subsection 128(4) or 129(2), the point where the traffic is transferred

ities, the Agency may require the taking of appropriate corrective measures or direct that compensation be paid for any expense incurred by a person with a disability arising out of the undue obstacle, or both.

PART VI
GENERAL
ENFORCEMENT

False information, etc.

173. (1) No person shall knowingly make any false or misleading statement or knowingly provide false or misleading information to the Agency or the Minister or to any person acting on behalf of the Agency or the Minister in connection with any matter under this Act.

Obstruction and false statements

(2) No person shall knowingly obstruct or hinder, or make any false or misleading statement, either orally or in writing, to a person designated as an enforcement officer pursuant to paragraph 178(1)(a) who is engaged in carrying out functions under this Act.

Offence

174. Every person who contravenes a provision of this Act or a regulation or order made under this Act, other than an order made under section 47, is guilty of an offence punishable on summary conviction and liable

(a) in the case of an individual, to a fine not exceeding \$5,000; and

(b) in the case of a corporation, to a fine not exceeding \$25,000.

Officers, etc., of corporation re offences

175. Where a corporation commits an offence under this Act, every person who at the time of the commission of the offence was a director or officer of the corporation is guilty of the like offence unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence.

Time limit for commencement of proceedings

176. Proceedings by way of summary conviction in respect of an offence under this Act may be instituted within but not later than twelve months after the time when the subject-matter of the proceedings arose.

ADMINISTRATIVE MONETARY PENALTIES

Definition of "Tribunal"

176.1 For the purposes of sections 180.1 to 180.7, "Tribunal" means the Transportation Appeal Tribunal of Canada established by sub-

ou le versement d'une indemnité destinée à couvrir les frais supportés par une personne ayant une déficience en raison de l'obstacle en cause, ou les deux.

PARTIE VI
DISPOSITIONS GÉNÉRALES

MESURES DE CONTRAINTE

173. (1) Nul ne peut, sciemment, faire de déclaration fautive ou trompeuse ni fournir de renseignements faux ou trompeurs à l'Office, au ministre ou à toute personne agissant au nom de l'Office ou du ministre relativement à une question visée par la présente loi.

(2) Il est interdit, sciemment, d'entraver l'action de l'agent verbalisateur désigné au titre du paragraphe 178(1) dans l'exercice de ses fonctions ou de lui faire, oralement ou par écrit, une déclaration fautive ou trompeuse.

174. Quiconque contrevient à la présente loi ou à un texte d'application de celle-ci, autre qu'un décret prévu à l'article 47, commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire :

a) dans le cas d'une personne physique, d'une amende maximale de 5 000 \$;

b) dans le cas d'une personne morale, d'une amende maximale de 25 000 \$.

175. En cas de perpétration par une personne morale d'une infraction à la présente loi, celui qui, au moment de l'infraction, en était administrateur ou dirigeant la commet également, sauf si l'action ou l'omission à l'origine de l'infraction a eu lieu à son insu ou sans son consentement ou qu'il a pris toutes les mesures nécessaires pour empêcher l'infraction.

176. Les poursuites intentées sur déclaration de culpabilité par procédure sommaire sous le régime de la présente loi se prescrivent par douze mois à compter du fait générateur de l'action.

SANCTIONS ADMINISTRATIVES PÉCUNIAIRES

176.1 Pour l'application des articles 180.1 à 180.7, «Tribunal» s'entend du Tribunal d'appel des transports du Canada, constitué par le

Déclarations fausses ou trompeuses

Entrave

Infraction et peines

Dirigeants des personnes morales

Prescription

Définition de «Tribunal»

section 2(1) of the *Transportation Appeal Tribunal of Canada Act*.

2007, c. 19, s. 48.

Regulation-making powers

- 177.** (1) The Agency may, by regulation,
- (a) designate
- (i) any provision of this Act or of any regulation, order or direction made pursuant to this Act,
- (ii) the requirements of any provision referred to in subparagraph (i), or
- (iii) any condition of a licence issued under this Act,
- as a provision, requirement or condition the contravention of which may be proceeded with as a violation in accordance with sections 179 and 180; and
- (b) prescribe the maximum amount payable for each violation, but the amount shall not exceed
- (i) \$5,000, in the case of an individual, and
- (ii) \$25,000, in the case of a corporation.

Regulation-making powers — railway company's obligations

- (1.1) The Agency may, by regulation,
- (a) designate any requirement imposed on a railway company in an arbitrator's decision made under section 169.37 as a requirement the contravention of which may be proceeded with as a violation in accordance with sections 179 and 180; and
- (b) prescribe the maximum amount payable for each violation, but the amount shall not be more than \$100,000.

Regulations by Minister

- (2) The Minister may, by regulation,
- (a) designate as a provision or requirement the contravention of which may be proceeded with as a violation in accordance with sections 179 and 180 any provision of section 51 or of any regulation made under section 50 or 51, or any requirement of any of those provisions; and
- (b) prescribe the maximum amount payable for each violation, but the amount shall not exceed
- (i) \$5,000, in the case of an individual, and

paragraphe 2(1) de la *Loi sur le Tribunal d'appel des transports du Canada*.

2007, ch. 19, art. 48.

- 177.** (1) L'Office peut, par règlement :
- a) désigner comme un texte dont la contravention est assujettie aux articles 179 et 180 :
- (i) toute disposition de la présente loi ou de ses textes d'application,
- (ii) toute obligation imposée par la présente loi ou ses textes d'application,
- (iii) toute condition d'une licence délivrée au titre de la présente loi;
- b) prévoir le montant maximal — plafonné, dans le cas des personnes physiques, à 5 000 \$ et, dans le cas des personnes morales, à 25 000 \$ — de la sanction applicable à chaque contravention à un texte ainsi désigné.

Pouvoirs réglementaires de l'Office

- (1.1) L'Office peut, par règlement :
- a) désigner toute obligation imposée à une compagnie de chemin de fer par une décision arbitrale rendue en vertu de l'article 169.37 comme un texte dont la contravention est assujettie aux articles 179 et 180;
- b) prévoir le montant maximal de la sanction applicable à chaque contravention à un texte ainsi désigné, plafonné à 100 000 \$.

Règlements — compagnie de chemin de fer

- (2) Le ministre peut, par règlement :
- a) désigner comme texte dont la contravention est assujettie aux articles 179 et 180 toute disposition de l'article 51 ou des règlements pris en vertu des articles 50 ou 51, ou toute obligation imposée par l'article 51 ou ces règlements;
- b) prévoir le montant maximal — plafonné, dans le cas des personnes physiques, à 5 000 \$ et, dans le cas des personnes morales, à 25 000 \$ — de la sanction applicable à

Pouvoirs réglementaires du ministre

| | | | |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| | (ii) \$25,000, in the case of a corporation. 1996, c. 10, s. 177; 2007, c. 19, s. 49; 2013, c. 31, s. 12. | chaque contravention à un texte ainsi désigné. 1996, ch. 10, art. 177; 2007, ch. 19, art. 49; 2013, ch. 31, art. 12. | |
| Notices of violation | 178. (1) The Agency, in respect of a violation referred to in subsection 177(1) or (1.1), or the Minister, in respect of a violation referred to in subsection 177(2), may (a) designate persons, or classes of persons, as enforcement officers who are authorized to issue notices of violation; and (b) establish the form and content of notices of violation. | 178. (1) L'Office ou le ministre, à l'égard d'une contravention à un texte désigné au titre des paragraphes 177(1), (1.1) ou (2), peut désigner, individuellement ou par catégorie, les agents verbalisateurs et déterminer la forme et la teneur des procès-verbaux de violation. | Procès-verbaux |
| Powers of enforcement officers | (2) Every person designated as an enforcement officer pursuant to paragraph (1)(a) has the powers of entry and inspection referred to in paragraph 39(a). | (2) L'agent dispose, dans le cadre de ses fonctions, des pouvoirs de visite mentionnés à l'alinéa 39a). | Attributions des agents |
| Certification of designated persons | (3) Every person designated as an enforcement officer pursuant to paragraph (1)(a) shall receive an authorization in prescribed form attesting to the person's designation and shall, on demand, present the authorization to any person from whom the enforcement officer requests information in the course of the enforcement officer's duties. | (3) Chaque agent reçoit un certificat établi en la forme fixée par l'Office ou le ministre, selon le cas, et attestant sa qualité, qu'il présente sur demande à la personne à qui il veut demander des renseignements. | Certificat |
| Powers of designated persons | (4) For the purposes of determining whether a violation referred to in section 177 has been committed, a person designated as an enforcement officer pursuant to paragraph (1)(a) may require any person to produce for examination or reproduction all or part of any document or electronically stored data that the enforcement officer believes on reasonable grounds contain any information relevant to the enforcement of this Act. | (4) En vue de déterminer si une violation a été commise, l'agent peut exiger la communication, pour examen ou reproduction totale ou partielle, de tout document ou données informatiques qui, à son avis, contient des renseignements utiles à l'application de la présente loi. | Pouvoir |
| Assistance to enforcement officers | (5) Any person from whom documents or data are requested pursuant to subsection (4) shall provide all such reasonable assistance as is in their power to enable the enforcement officer making the request to carry out the enforcement officer's duties and shall furnish such information as the enforcement officer reasonably requires for the purposes of this Act. 1996, c. 10, s. 178; 2007, c. 19, s. 50; 2013, c. 31, s. 13. | (5) La personne à qui l'agent demande la communication de documents ou données informatiques est tenue de lui prêter toute l'assistance possible dans l'exercice de ses fonctions et de lui donner les renseignements qu'il peut valablement exiger quant à l'application de la présente loi. 1996, ch. 10, art. 178; 2007, ch. 19, art. 50; 2013, ch. 31, art. 13. | Assistance |
| Violations | 179. (1) Every person who contravenes a provision, requirement or condition designated under section 177 commits a violation and is liable to a penalty fixed pursuant to that section. | 179. (1) Toute contravention à un texte désigné au titre de l'article 177 constitue une violation pour laquelle le contrevenant s'expose à la sanction établie conformément à cet article. | Violation |

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| How contraven- tions may be proceeded with | <p>(2) Where any act or omission can be proceeded with as a violation or as an offence, proceedings may be commenced in respect of that act or omission as a violation or as an offence, but proceeding with it as a violation precludes proceeding with it as an offence, and proceeding with it as an offence precludes proceeding with it as a violation.</p> | <p>(2) Tout acte ou omission qualifiable à la fois de violation et d'infraction peut être réprimé soit comme violation, soit comme infraction, les poursuites pour violation et celles pour infraction s'excluant toutefois mutuellement.</p> | Précision |
| Nature of violation | <p>(3) For greater certainty, a violation is not an offence and, accordingly, section 126 of the <i>Criminal Code</i> does not apply. 1996, c. 10, s. 179; 2007, c. 19, s. 51(F).</p> | <p>(3) Les violations n'ont pas valeur d'infractions; en conséquence nul ne peut être poursuivi à ce titre sur le fondement de l'article 126 du <i>Code criminel</i>. 1996, ch. 10, art. 179; 2007, ch. 19, art. 51(F).</p> | Nature de la violation |
| Issuance of notice of violation | <p>180. If a person designated as an enforcement officer under paragraph 178(1)(a) believes that a person has committed a violation, the enforcement officer may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out</p> <p>(a) the penalty, established in accordance with the regulations made under section 177, for the violation that the person is liable to pay; and</p> <p>(b) the particulars concerning the time for paying and the manner of paying the penalty. 1996, c. 10, s. 180; 2001, c. 29, s. 52; 2007, c. 19, s. 52.</p> | <p>180. L'agent verbalisateur qui croit qu'une violation a été commise peut dresser un procès-verbal qu'il signifie au contrevenant. Le procès-verbal comporte, outre le nom du contrevenant et les faits reprochés, le montant, établi conformément aux règlements pris en vertu de l'article 177, de la sanction à payer, ainsi que le délai et les modalités de paiement. 1996, ch. 10, art. 180; 2001, ch. 29, art. 52; 2007, ch. 19, art. 52.</p> | Verbalisation |
| Option | <p>180.1 A person who has been served with a notice of violation must either pay the amount of the penalty specified in the notice or file with the Tribunal a written request for a review of the facts of the alleged contravention or of the amount of the penalty. 2007, c. 19, s. 52.</p> | <p>180.1 Le destinataire du procès-verbal doit soit payer la sanction, soit déposer auprès du Tribunal une requête en révision des faits reprochés ou du montant de la sanction. 2007, ch. 19, art. 52.</p> | Option |
| Payment of specified amount precludes further proceedings | <p>180.2 If a person who is served with a notice of violation pays the amount specified in the notice in accordance with the particulars set out in it, the Minister shall accept the amount as and in complete satisfaction of the amount of the penalty for the contravention by that person of the designated provision and no further proceedings under this Part shall be taken against the person in respect of that contravention. 2007, c. 19, s. 52.</p> | <p>180.2 Lorsque le destinataire du procès-verbal paie la somme requise dans les délais et selon les modalités qui y sont prévues, le ministre accepte ce paiement en règlement de la sanction imposée; aucune poursuite ne peut être intentée par la suite au titre de la présente partie contre l'intéressé pour la même contravention. 2007, ch. 19, art. 52.</p> | Paiement de la sanction |
| Request for review of determination | <p>180.3 (1) A person who is served with a notice of violation and who wishes to have the facts of the alleged contravention or the amount of the penalty reviewed shall, on or before the date specified in the notice or within any further time that the Tribunal on application may</p> | <p>180.3 (1) Le destinataire du procès-verbal qui veut faire réviser la décision du ministre à l'égard des faits reprochés ou du montant de la sanction dépose une requête auprès du Tribunal à l'adresse indiquée dans le procès-verbal, au plus tard à la date limite qui y est indiquée, ou</p> | Requête en révision |

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| | allow, file a written request for a review with the Tribunal at the address set out in the notice. | dans le délai supérieur éventuellement accordé à sa demande par le Tribunal. | |
| Time and place for review | (2) On receipt of a request filed under subsection (1), the Tribunal shall appoint a time and place for the review and shall notify the Minister and the person who filed the request of the time and place in writing. | (2) Le Tribunal, sur réception de la requête, fixe la date, l'heure et le lieu de l'audience et en avise par écrit le ministre et l'intéressé. | Audience |
| Review procedure | (3) The member of the Tribunal assigned to conduct the review shall provide the Minister and the person who filed the request with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations. | (3) À l'audience, le membre du Tribunal commis à l'affaire accorde au ministre et à l'intéressé la possibilité de présenter leurs éléments de preuve et leurs observations, conformément aux principes de l'équité procédurale et de la justice naturelle. | Déroulement |
| Burden of proof | (4) The burden of establishing that a person has contravened a designated provision is on the Minister. | (4) S'agissant d'une requête portant sur les faits reprochés, il incombe au ministre d'établir que l'intéressé a contrevenu au texte désigné. | Charge de la preuve |
| Person not compelled to testify | (5) A person who is alleged to have contravened a designated provision is not required, and shall not be compelled, to give any evidence or testimony in the matter. 2007, c. 19, s. 52. | (5) L'intéressé n'est pas tenu de témoigner à l'audience. 2007, ch. 19, art. 52. | Intéressé non tenu de témoigner |
| Certificate | 180.4 If a person neither pays the amount of the penalty in accordance with the particulars set out in the notice of violation nor files a request for a review under subsection 180.3(1), the person is deemed to have committed the contravention alleged in the notice, and the Minister may obtain from the Tribunal a certificate in the form that may be established by the Governor in Council that indicates the amount of the penalty specified in the notice. 2007, c. 19, s. 52. | 180.4 L'omission, par l'intéressé, de payer la pénalité dans les délais et selon les modalités prévus dans le procès-verbal et de présenter une requête en révision vaut déclaration de responsabilité à l'égard de la contravention. Sur demande, le ministre peut alors obtenir du Tribunal un certificat, établi en la forme que le gouverneur en conseil peut déterminer, sur lequel est inscrite la somme. 2007, ch. 19, art. 52. | Omission de payer la sanction ou de présenter une requête |
| Determination by Tribunal member | 180.5 If, at the conclusion of a review under section 180.3, the member of the Tribunal who conducts the review determines that (a) the person has not contravened the designated provision that the person is alleged to have contravened, the member of the Tribunal shall without delay inform the person and the Minister of the determination and, subject to section 180.6, no further proceedings under this Part shall be taken against the person in respect of the alleged contravention; or (b) the person has contravened the designated provision that the person is alleged to have contravened, the member of the Tribunal shall without delay inform the person and the Minister of the determination and, | 180.5 Après audition des parties, le membre du Tribunal informe sans délai l'intéressé et le ministre de sa décision. S'il décide : a) qu'il n'y a pas eu contravention, sous réserve de l'article 180.6, nulle autre poursuite ne peut être intentée à cet égard sous le régime de la présente partie; b) qu'il y a eu contravention, il les informe également, sous réserve des règlements pris en vertu de l'article 177, de la somme qu'il fixe et qui doit être payée au Tribunal. En outre, à défaut de paiement dans le délai imparti, il expédie au ministre un certificat, établi en la forme que le gouverneur en conseil peut déterminer, sur lequel est inscrite la somme. 2007, ch. 19, art. 52. | Décision |

subject to any regulations made under section 177, of the amount determined by the member of the Tribunal to be payable by the person in respect of the contravention and, if the amount is not paid to the Tribunal by or on behalf of the person within the time that the member of the Tribunal may allow, the member of the Tribunal shall issue to the Minister a certificate in the form that may be established by the Governor in Council, setting out the amount required to be paid by the person.

2007, c. 19, s. 52.

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| Right of appeal | <p>180.6 (1) The Minister or a person affected by a determination made under section 180.5 may, within 30 days after the determination, appeal it to the Tribunal.</p> | <p>180.6 (1) Le ministre ou toute personne concernée peut faire appel au Tribunal de la décision rendue au titre de l'article 180.5. Le délai d'appel est de trente jours.</p> | Appel |
| Loss of right of appeal | <p>(2) A party that does not appear at a review hearing is not entitled to appeal a determination, unless they establish that there was sufficient reason to justify their absence.</p> | <p>(2) La partie qui ne se présente pas à l'audience portant sur la requête en révision perd le droit de porter la décision en appel, à moins qu'elle ne fasse valoir des motifs valables justifiant son absence.</p> | Perte du droit d'appel |
| Disposition of appeal | <p>(3) The appeal panel of the Tribunal assigned to hear the appeal may dispose of the appeal by dismissing it or allowing it and, in allowing the appeal, the panel may substitute its decision for the determination appealed against.</p> | <p>(3) Le comité du Tribunal peut rejeter l'appel ou y faire droit et substituer sa propre décision à celle en cause.</p> | Sort de l'appel |
| Certificate | <p>(4) If the appeal panel finds that a person has contravened the designated provision, the panel shall without delay inform the person of the finding and, subject to any regulations made under section 177, of the amount determined by the panel to be payable by the person in respect of the contravention and, if the amount is not paid to the Tribunal by or on behalf of the person within the time allowed by the Tribunal, the Tribunal shall issue to the Minister a certificate in the form that may be established by the Governor in Council, setting out the amount required to be paid by the person.</p> | <p>(4) S'il statue qu'il y a eu contravention, le comité en informe sans délai l'intéressé. Sous réserve des règlements pris en vertu de l'article 177, il l'informe également de la somme qu'il fixe et qui doit être payée au Tribunal. En outre, à défaut de paiement dans le délai imparti, il expédie au ministre un certificat, établi en la forme que le gouverneur en conseil peut déterminer, sur lequel est inscrite la somme.</p> | Avis |
| | | 2007, ch. 19, art. 52. | |
| Registration of certificate | <p>180.7 (1) If the time limit for the payment of an amount determined by the Minister in a notice of violation has expired, the time limit for the request for a review has expired, the time limit for an appeal has expired, or an appeal has been disposed of, on production in any superior court, a certificate issued under section 180.4, paragraph 180.5(b) or subsection</p> | <p>180.7 (1) Sur présentation à la juridiction supérieure, une fois le délai d'appel expiré, la décision sur l'appel rendue ou le délai pour payer la sanction ou déposer une requête en révision expiré, selon le cas, le certificat visé à l'article 180.4, à l'alinéa 180.5b) ou au paragraphe 180.6(4) est enregistré. Dès lors, il devient exécutoire et toute procédure d'exécution</p> | Enregistrement du certificat |

180.6(4) shall be registered in the court. When it is registered, a certificate has the same force and effect, and proceedings may be taken in connection with it, as if it were a judgment in that court obtained by Her Majesty in right of Canada against the person named in the certificate for a debt of the amount set out in the certificate.

peut être engagée, le certificat étant assimilé à un jugement de cette juridiction obtenu par Sa Majesté du chef du Canada contre la personne désignée dans le certificat pour une dette dont le montant y est indiqué.

Recovery of costs and charges

(2) All reasonable costs and charges attendant on the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under subsection (1).

(2) Tous les frais entraînés par l'enregistrement du certificat peuvent être recouvrés comme s'ils faisaient partie de la somme indiquée sur le certificat enregistré en application du paragraphe (1).

Recouvrement des frais

Amounts received deemed public moneys

(3) An amount received by the Minister or the Tribunal under this section is deemed to be public money within the meaning of the *Financial Administration Act*.
2007, c. 19, s. 52.

(3) Les sommes reçues par le ministre ou le Tribunal au titre du présent article sont assimilées à des fonds publics au sens de la *Loi sur la gestion des finances publiques*.
2007, ch. 19, art. 52.

Fonds publics

References to "Minister"

180.8 (1) In the case of a violation referred to in subsection 177(1) or (1.1), every reference to the "Minister" in sections 180.3 to 180.7 shall be read as a reference to the Agency or to a person designated by the Agency.

180.8 (1) S'il s'agit d'une contravention à un texte désigné au titre des paragraphes 177(1) ou (1.1), la mention du ministre aux articles 180.3 à 180.7 vaut mention de l'Office ou de la personne que l'Office peut désigner.

Mention du ministre

Delegation by Minister

(2) In the case of a violation referred to in subsection 177(2), the Minister may delegate to the Agency any power, duty or function conferred on the Minister under this Part.
2007, c. 19, s. 52; 2013, c. 31, s. 14.

(2) S'il s'agit d'une contravention à un texte désigné au titre du paragraphe 177(2), le ministre peut déléguer à l'Office les attributions que lui confère la présente partie.
2007, ch. 19, art. 52; 2013, ch. 31, art. 14.

Délégation ministérielle

Time limit for proceedings

181. Proceedings in respect of a violation may be instituted not later than twelve months after the time when the subject-matter of the proceedings arose.

181. Les poursuites pour violation se prescrivent par douze mois à compter du fait générateur de l'action.

Prescription

PART VII

REPEALS, TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND CONDITIONAL AMENDMENTS AND COMING INTO FORCE

REPEALS

182. to 184. [Repeals]

185. (1) Subject to subsection (2), the *Railway Act* is repealed, except to the extent that subsection 14(1), except paragraph (b), and sections 15 to 80, 84 to 89, 96 to 98 and 109 of that Act continue to apply to a railway company that has authority to construct and operate a railway under a Special Act and has not been

Repeal of R.S., c. R-3

PARTIE VII

ABROGATIONS, DISPOSITIONS TRANSITOIRES, MODIFICATIONS CONNEXES, MODIFICATIONS CONDITIONNELLES ET ENTRÉE EN VIGUEUR

ABROGATIONS

182. à 184. [Abrogations]

185. (1) Sous réserve du paragraphe (2), la *Loi sur les chemins de fer* est abrogée, sauf dans la mesure où le paragraphe 14(1), à l'exception de l'alinéa b), et les articles 15 à 80, 84 à 89, 96 à 98 et 109 de celle-ci continuent de s'appliquer à une compagnie de chemin de fer qui est autorisée à construire et à exploiter un chemin de fer en vertu d'une loi spéciale et n'a

Abrogation de L.R., ch. R-3

Indexed as:

Altaspec Communications Inc. v. Nigrin

Between

**Altaspec Communications Inc. and Vispec Corporation,
plaintiffs, and
Jan Nigrin, Martin Polasek and Radio Performance Institute
Incorporated, defendants**

[2000] A.J. No. 1004

2000 ABQB 571

272 A.R. 313

Action No. 9803 11004

Alberta Court of Queen's Bench
Judicial District of Edmonton

Master Funduk

Heard: July 13, 2000.

Judgment: July 31, 2000.

(13 paras.)

Counsel:

J. Rosselli, for the plaintiff.

I. Gledhill, appearing as counsel on this application only.

MEMORANDUM OF DECISION

1 MASTER FUNDUK:-- The Defendant Martin Polasek applied for summary judgment dismissing the lawsuit as against him.

2 Mr. Rosselli, for the Plaintiffs, cross-examined Polasek. The flavour of the cross-examination can be gleaned from the following, pp. 7-10:

Q Sir, I'm showing you a letter which was marked as Exhibit D-1 in the examination for discovery of Dr. Nigrin. It's on RPI letterhead and it's dated December 3, 1996.

MR. HALJAN: Which way relates to the affidavit with your examination? This is not a discovery, this is examination on affidavit. Where is here referring in your affidavit, because that's all you can ask questions at the moment.

MR. ROSSELLI: Mr. Haljan, this is an application unless I'm wrong, for summary dismissal, and in those circumstances I think my breadth of examination is quite broad, and if you would permit your client to answer the questions we'll get to the rib of it very quickly.

MR. HALJAN: We can do that way because my understanding is you can ask any questions, any matters that relate to the affidavit. Nothing else. It's not an examination for discovery and that's the position I take. You can ask any questions either if it refer to the Statement of Defence or to the affidavit but anything between Dr. Nigrin and the company, and your clients, I would object.

MR. ROSSELLI: Well your position is noted as is mine, now please sir, I'm asking you if you could just look at that letter.

MR. HALJAN: We object to that.

OBJECTION

Q MR. ROSSELLI: Sir, in this letter that your lawyer refuses to have you look at, it refers to a colleague, and this is Dr. Nigrin's letter; would you be that colleague?

MR. HALJAN: I instruct my client not to answer because the affidavit, the letter is not before him, it's not indication, there is no indication that he read or anything else and if you want to know you ask Dr. Nigrin, he can tell you what he meant. You have from Dr. Nigrin a reply and you can rely on Dr. Nigrin if you wish, if the court allows you.

OBJECTION

MR. ROSSELLI: Mr. Haljan, just to be clear, I'll be taking the position before the court that my

cross-examination is not complete until we have a determination.

MR. HALJAN: That's perfectly all right.

MR. ROSSELLI: And that may result in an adjournment of your application.

MR. HALJAN: That may be, that may be so.

Q MR. ROSSELLI: Sir, were you aware of this letter which was marked as Exhibit D-1?

MR. HALJAN: I refuse to, I instruct him not to answer, not to even look at it.

OBJECTION:

MR. HALJAN: Not to put in evidence.

MR. ROSSELLI: I'm going to have it marked as an exhibit for identification because it has been referred to in the transcript.

MR. HALJAN: I refuse to, I don't consent.

[EXHIBIT A FOR IDENTIFICATION: Letter dated December 3, 1996]

Q MR. ROSSELLI: Sir, next I'm showing you a document which was marked as Exhibit D-2 in the examination for discovery of Dr. Nigrin?

MR. HALJAN: The same objection.

MR. ROSSELLI: Just for the record, I'm putting that before you.

MR. HALJAN: Don't look at it.

MR. ROSSELLI: So your lawyer's instructing you not even to look at it.

A Okay.

Q My question is, and it's still before you, whether or not you've seen that document before?

MR. HALJAN: I instruct you not to answer.

3 It does not get better, pp. 12-14:

Q Now, in paragraph 4 you indicate that you were never a party directly or indirectly in any manner whatsoever to an agreement, correct?

A That's correct.

Q And that you did not participate in any discussions or negotiations.

A That's correct.

Q Now, what I put to you is that Dr. Nigrin under oath said that you were aware of what was

marked as Exhibit D-2, the letter dated January 4, '97. Is your evidence that that's not true?

MR. HALJAN: I mean you cannot answer what Dr. Nigrin --

R. ROSSELLI: I'm asking about the factual content, were you aware of this document?

MR. HALJAN: I'm objecting to the document being put here, I'm objection to any questions on the document.

OBJECTION:

MR. ROSSELLI: What is the basis of your objection, sir?

MR. HALJAN: Because it's, he has no business, he has no knowledge of the document, he doesn't know what Dr. Nigrin discussed with him. You can file the documents through you client on an affidavit and then I'll ask and I will get the answer.

MR. ROSSELLI: Mr. Haljan, your client in paragraph 4 makes a statement, I'm putting to your client now under cross-examination, a document which touches on what he has sworn to. I'm not quite sure I understand why you're objecting to that.

MR. HALJAN: You are showing him a letter that somebody identified and says something. He is entitled to say that he knows nothing about it, he's entitled to that.

MR. ROSSELLI: He hasn't said that.

MR. HALJAN: So you better ask him. He told you in the affidavit that he was not directly or indirectly, that's what he says in the affidavit.

MR. ROSSELLI: Well, Mr. Haljan --

MR. HALJAN: He would have to authorize somebody to act for him.

MR. ROSSELLI: Mr. Haljan, the whole point of the cross-examination is so that I could ask questions about what is stated in the affidavit rather than just take it for its face value, are you going to permit me to do that today?

MR. HALJAN: You're permitted but not, you can ask him if he discussed with Dr. Nigrin something, but not to show him the letter and say did you discuss this letter. That's, I know what you are trying to do.

MR. ROSSELLI: Mr. Haljan, this letter is an agreement, and in your client's affidavit he swears he has no knowledge of an agreement, and I'm asking him if he has this knowledge.

MR. HALJAN: I haven't seen the document myself, not that document.

4 The obstruction continues, pp. 15-17:

Q MR. ROSSELLI: Sir, I'm showing you a letter from RPI addressed to Altaspec Communications, dated march 11, 1998. It's --

MR. HAL- 199--
JAN:

MR. ROSSELLI: 8, it's three pages, two sides. It comes from Emery Jamieson's, at the time production document #22.

MR. HALJAN: We object to that document.

MR. ROSSELLI: You're not going to let your client look at the document?

MR. HALJAN: That's right.

OBJECTION:

Q MR. ROSSELLI: Sir, I have questions about this document.

MR. HALJAN: And you can ask Emery Jamieson.

MR. ROSSELLI: This document, on page 4, sir, refers to patent rights and a proposal for the assignment of patent rights, and it refers to a junior engineer. Would that junior engineer be you?

A I don't know.

Q You don't know because your lawyer won't let you look at the document.

MR. HALJAN: I mean, don't answer the question. Nothing about the document.

OBJECTION:

MR. ROSSELLI: May we have this marked as the next exhibit.

MR. HALJAN: Anything what is produced from the, through Emery Jamieson we object because we don't admit they acted for him, or they had the right to bind him in any way.

MR. ROSSELLI: Well, quite apart from that Mr. Haljan, it's a document and I'm entitled to ask questions about it.

MR. HALJAN: Why don't you file an affidavit that you received it and I'll ask questions.

MR. ROSSELLI: Okay Mr. Haljan, I'm not here to be questioned, your client is.

MR. HALJAN: That's right. By the way, I will be asking you, I might bring you as a witness that I was asked to leave from the negotiations.

(EXHIBIT C FOR IDENTIFICATION: Letter dated March 11,

1998)

Q MR. ROSSELLI: Sir, next I have to ask questions which relate to allegations in the Statement of Claim, three letters, all three of them are dated September 23rd, 1997. The first letter is to Max Fisher of Northwestern Utilities; the second letter is to Jim Couprie, of Telecom Group, Alberta Power; the third letter is to Orest Nowaselski, president of FM Electronics. I anticipate what your lawyer is going to say about this, but I ask you to look at these letters and tell me if you've seen them before?

MR. HALJAN: Don't look at them and don't answer any questions about them.

Issues

One

5 It is not correct that a cross-examination must be confined to what is said in the affidavit. It is the motion that the affidavit is used for, not what the affiant says, that defines the scope of the cross-examination. Here Polasek applies for summary judgment so everything that is properly in issue between the Plaintiffs and him (which is defined by the pleadings) can be cross-examined on. The fact that the scope of the cross-examination might be comparable to the scope of an examination for discovery is irrelevant: *College Brand Clothes Company Limited v. Brown*, [1928] 1 W.W.R. 778 (Alta. S.C.A.D.).

Two

6 The cross-examination is 38 pages. Those parts of it that I have quoted is not the whole problem. Mr. Haljan repeatedly refused to let Polasek look at documents. He also fed answers to the witness. This is from pp. 19-20:

Q The subject matter of the patent that you filed, the application through Mr. Gernstein is the same as the one that was prepared by Mr. Stout; is that your information?

MR. HALJAN: If you know say yes, if you don't know say I don't know.

A To my best knowledge it's the same subject matter.

Q MR. ROSSELLI: It's the same technology?

MR. HALJAN: I don't know.

A I don't know.

MR. HALJAN: You're the expert.

MR. ROSSELLI: Sir, I'll ask you not to look to your lawyer for the answers, he's more than able and capable of objecting and he has done that already. so if you know the question, if he doesn't have an objection and you know the answer to the question, please answer.

MR. HALJAN: Did you read that application, do you know anything about that?

A No.

MR. HALJAN: So how can you answer.

Q MR. ROSSELLI: Sir, at one point Dr. Nigrin asked you to work on a patent application to be submitted through Mr. Stout; is that right?

MR. HALJAN: Who is Mr. Stout?

7 Mr. Haljan was so obstructionist on the cross-examination I see no point in doing a question by question analysis. The suitable remedy is to order that Polasek be cross-examined afresh as if for the first time.

8 I decide that Mr. Haljan's instructions to Polasek not to even look at documents, his feeding answers to Polasek and his otherwise almost continuous interference are improper.

9 The issue before me is not whether any questions asked based on the documents are proper. The cross-examination never got to that point. I do not have Mr. Haljan's apparent ability to read Mr. Rosselli's mind so I do not know what questions might have been asked if Polasek had looked at the documents.

A: You don't have, do you?

B: Know What?

A There, I told you so.

Three

10 Undertaking no. 1 will be provided.

11 Undertaking no. 2 (taken under advisement) will be provided. There is no privilege for documents flowing between the U.S. lawyer and the U.S. patent office.

Four

12 This kind of conduct calls for a greater sanction in costs. The first cross-examination was largely a waste. The Plaintiffs will have costs against Polasek for the abortive cross-examination and this application on a solicitor and client basis, with a stay on collection until the conclusion of the lawsuit.

13 If Mr. Rosselli had sought costs against Mr. Haljan personally I would have seriously considered it.

MASTER FUNDUK

cp/i/nc/qljpn

Indexed as:

Apotex Inc. v. Canada (Attorney General) (C.A.)

**Merck & Co., Inc. and Merck Frosst Canada Inc. (Appellants)
(Respondents)**

v.

Apotex Inc. (Respondent) (Applicant)

and

**Attorney General of Canada and The Minister of National Health
and Welfare (Respondents) (Respondents)**

[1994] 1 F.C. 742

[1993] F.C.J. No. 1098

Court File No. A-457-93

Federal Court of Canada - Court of Appeal

Mahoney, Robertson and McDonald JJ.A.

Heard: Ottawa, August 31 and September 1, 1993.

Judgment: October 22, 1993.

Food and drugs -- Appeal and cross-appeal from Trial Division decision granting mandamus and denying prohibition with respect to generic drug notice of compliance (NOC) -- Under Food and Drugs Act, "new drugs" must meet health and safety requirements -- NOC granted if drug found effective, safe -- Scientific safety and efficacy conditions met -- Apotex having vested right to NOC despite Minister's failure to render decision pending enactment of Patent Act Amendment Act, 1992 (Bill C-91) -- Narrow scope of ministerial discretion -- Pending legislative policy irrelevant consideration.

Patents -- Bill C-91 enacted to protect innovator pharmaceutical companies' distribution and sales rights to patented drugs -- Patented Medicines Regulations prohibiting issuance of NOCs in respect of patent-linked drugs -- NOCs, patent rights linked, not mutually dependent -- Mandamus not intended to facilitate patent infringement -- Regulations not procedural per se -- Generic drug manufacturer's vested right to NOC not divested by Bill C-91, Regulations, ss. 5(1),(2).

Judicial review -- Prerogative writs -- Mandamus -- Generic drug manufacturer seeking

mandamus to compel Minister to issue notice of compliance -- Case law on requirements for mandamus -- Available where duty to act not owing at time application filed -- Delay for seeking legal advice not bar to mandamus -- Court having discretion to invoke balance of convenience test as ground for refusing mandamus -- Criteria for exercise of discretion -- No legal basis to deny mandamus herein on ground of balance of convenience.

Federal Court jurisdiction -- Appeal Division -- Jurisdiction under Federal Court Act, s. 18 not ousted by paramountcy provision in Bill C-91 (Patent Act Amendment Act, 1992) -- Patent Act, s. 55.2(5) not privative clause insulating Minister, legislation from judicial review.

These were an appeal and a cross-appeal from a decision by Dubé J. allowing an application for mandamus to issue a notice of compliance (NOC) with respect to Apotex's generic version of the drug enalapril and denying the appellants' application for prohibition. The Patent Act Amendment Act, 1992 (Bill C-91), which was given Royal Assent on February 4, 1993, was enacted in order to protect innovator pharmaceutical companies' distribution and sales rights to patented drugs. Bill C-91 came into force on February 15, 1993 with the exception of the new section 55.2 of the Patent Act which, together with the Patented Medicines Regulations, were not brought into effect until March 12, 1993. Under the Food and Drugs Act (FDA), the Minister of National Health and Welfare must ensure that new drugs meet health and safety requirements. The manufacturer of a new drug must file a New Drug Submission (NDS) setting out the drug's qualities, ingredients and methods of manufacture and purification. The respondent, Apotex, after filing a NDS in respect of its generic drug Apo-Enalapril, sought an order of mandamus to compel the Minister to issue a notice of compliance with respect to that drug. Apotex's NDS was incomplete when it filed its mandamus application; nevertheless, by February 3, 1993, the new drug met all of the scientific safety and efficacy conditions required for a NOC to issue. Although the NDS had cleared the scientific and regulatory review process, the Department's ADM and DM decided to seek legal advice regarding the authority of the Minister or his ADM to issue the NOC in view of the impending passage of Bill C-91. The appellant, Merck, also forwarded a number of legal opinions to the Minister and then sought prohibition to prevent the Minister from issuing the notice of compliance. The Trial Judge ruled that the Minister did not possess the broad discretion to justify his refusal to issue the NOC and that the delay in issuing it was not warranted. He also rejected the argument that to issue mandamus when a new regulatory regime was pending would "frustrate the will of Parliament". This appeal raised a number of issues, namely: 1) the principles governing mandamus and the question of prematurity; 2) whether Apotex had a vested right to a NOC by March 12, 1993; 3) the balance of convenience; 4) whether Apotex's vested right to a NOC was divested by Bill C-91 and the Patented Medicines Regulations and 5) the jurisdiction of the Court. By cross-appeal, the Minister argued that the Trial Judge erred in finding the delay in issuing the NOC to be unwarranted.

Held, the appeal and cross-appeal should be dismissed.

1) Several principal requirements must be satisfied before mandamus will issue. First, there must be a public legal duty to act owed to the applicant. Generally, mandamus cannot issue with respect to a duty owed to the Crown. The Minister had a duty to act which was owed to Apotex. Merck's submission, that the Minister owed no duty to Apotex at the time it commenced its judicial review application on December 22, 1992 or on the hearing date, was partly correct. An order of mandamus will not lie to compel an officer to act in a specified manner if he is under no obligation to act as of the hearing date, but that rule was not valid if applied as of the date that the application for mandamus was filed. While it is open to a respondent to pursue dismissal of an application where the duty to perform has yet to arise, in the absence of compelling reasons, an application for mandamus should not be defeated on the ground that it was initiated prematurely. Provided that the conditions precedent to the exercise of the duty have been satisfied at the time of the hearing, the application should be assessed on its merits.

2) If a decision-maker has an unfettered discretion which he has not exercised as of the date a new law takes effect, the applicant cannot successfully assert either a vested right or even the right to have the decision-maker render a decision. A "vested right" must be distinguished from a "mere hope or expectation". The scope of a decision-maker's discretion is directly contingent upon the characterization of various considerations as "relevant or irrelevant" to its exercise. The Food and Drug Regulations restrict the factors to be considered by the Minister in the proper exercise of his discretion to those concerning a drug's safety and efficacy. They neither expressly nor implicitly contemplate the broad scope of ministerial discretion advocated by Merck. It cannot be said that the time needed to enable a decision-maker to seek and obtain legal advice in any decision-making process is of itself a basis for denying mandamus. That self-imposed obligation cannot of itself deprive Apotex of its right to mandamus. In the absence of intervening legislation, the "legal advice" issue would not have arisen. The legal advice sought herein had no bearing on the exercise of the Minister's narrowly circumscribed discretion. Moreover, to deny mandamus because of legal concerns generated by a party adverse in interest (Merck) would be to judicially condone what might be regarded as a tactical manoeuvre intended to obfuscate and delay the decision-making process. Pending legislative policy was not a consideration relevant to the exercise of the Minister's discretion. It could not be said that, in the exercise of his statutory power under the Food and Drug Regulations, the Minister was entitled to have regard to the provisions of Bill C-91 after enactment but prior to proclamation. Apotex had a vested right to the NOC notwithstanding the Minister's failure to render a decision by March 12, 1993.

3) The case law on mandamus reveals a number of techniques resorted to by courts in balancing competing interests. Any inclination to engage in a balancing of interests must be measured strictly against the rule of law. Having regard to the relevant jurisprudence, it had to be concluded that this Court possesses discretion to refuse mandamus on the ground of balance of convenience. The cases demonstrate three factual patterns in which the balance of convenience test has been implicitly acknowledged. First, there are those cases where the administrative cost or chaos that would result from granting such relief is obvious and unacceptable. The second ground for denying mandamus appears to arise in instances where potential public health and safety risks are perceived to outweigh

an individual's right to pursue personal or economic interests. In this case, there was no issue with respect to administrative chaos or public health and safety. The third line of authority attempts to establish a principle by which it can be determined whether a property owner has acquired a vested right to a building permit pending approval of a by-law amendment. That principle is of no relevance to this case nor to the issue of the Court's discretion to refuse mandamus on the ground of balance of convenience. There was no legal basis upon which the "balance of convenience" test could be applied to deny Apotex the relief sought.

4) The Patented Medicines Regulations prohibit the issuance of NOCs in respect of "patent-linked" drugs. Subsections 5(1) and (2) thereof refer to NDSs filed before March 12, 1993. While NOCs and patent rights are linked, they have never been mutually dependent. Practically speaking, Merck is seeking an interlocutory injunction against Apotex with respect to possible patent infringement without having to satisfy the conditions precedent imposed at law to the granting of such relief. An order in the nature of mandamus cannot be viewed as an instrument which "facilitates" patent infringement. The Patented Medicines Regulations are not procedural regulations per se. The imposition of a criterion that a NOC cannot issue with respect to a patent-linked NDS is clearly a substantive change in the law and hence subject to the rules of statutory construction applicable to legislation purporting to affect vested rights. Subsections 5(1) and (2) do not manifestly seek to divest persons of acquired rights; they are at best ambiguous. While Parliament has the authority to pass retroactive legislation, thereby divesting persons of an acquired right, vested rights could not be divested by the Patented Medicines Regulations unless the enabling legislation, that is the Patent Act or Bill C-91, implicitly or explicitly authorize such encroachments. Bill C-91 contains no provision specifically authorizing regulations to interfere with existing or vested rights except as to compulsory licences granted after December 20, 1991.

5) The jurisdiction of this Court was not "ousted" by the paramountcy provision in Bill C-91. Subsection 55.2(5) of the Patent Act could not be said to be paramount to section 18 of the Federal Court Act and could not be construed as a privative clause insulating the Minister and the relevant legislation from judicial review.

Statutes and Regulations Judicially Considered

Clean Water Act, R.S.A. 1980, c. C-13, s. 3.

Criminal Code, R.S.C. 1970, c. C-34.

Criminal Law Amendment Act, 1977, S.C. 1976-77, c. 53.

Federal Court Act, R.S.C., 1985, c. F-7, s. 18 (as am. by S.C. 1990, c. 8, s. 4).

Food and Drug Regulations, C.R.C., c. 870, ss. C.08.002 (as am. by SOR/85-143, s. 1), C.08.004 (as am. idem, s. 3, SOR/88-257, s. 1).

Food and Drugs Act, R.S.C., 1985, c. F-27.

Interpretation Act, R.S.C. 1952, c. 158.

Interpretation Act, S.C. 1967-68, c. 7, ss. 36(c), 37(c).

Interpretation Act, R.S.C., 1985, c. I-21, s. 44(c).

Orders and Regulations respecting Patents of Invention made under The War Measures Act, 1914, (1914), 48 The Canada Gazette 1107.

Patent Act, S.C. 1923, c. 23, s. 17.

Patent Act, R.S.C. 1952, c. 203, s. 41(3) (as am. by S.C. 1968-69, c. 49, s. 1).

Patent Act, R.S.C., 1985, c. P-4, ss. 39(4),(14), 55.2 (as enacted by S.C. 1993, c. 2, s. 4).

Patent Act Amendment Act, 1992, S.C. 1993, c. 2, ss. 3, 4, 12(1).

Patented Medicines (Notice of Compliance) Regulations, SOR/93-133, ss. 5, 6, 7(1).

War Measures Act, 1914 (The), S.C. 1914 (2nd Sess.), c. 2.

Cases Judicially Considered

Applied:

Merck & Co. Inc. v. Sherman & Ulster Ltd., Attorney-General of Canada, Intervenant (1971), 65 C.P.R. 1 (Ex. Ct.); appeal to S.C.C. dismissed [1972] S.C.R. vi;

Director of Public Works v. Ho Po Sang, [1961] A.C. 901 (P.C.);

A.G. for British Columbia et al. v. Parklane Private Hospital Ltd., [1975] 2 S.C.R. 47; (1974), 47 D.L.R. (3d) 57; [1974] 6 W.W.R. 72; 2 N.R. 305.

Distinguished:

Ottawa, City of v. Boyd Builders Ltd., [1965] S.C.R. 408; (1965), 50 D.L.R. (2d) 704;

Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service, [1980] 1 W.L.R. 302 (H.L.);

Wimpey Western Ltd. and W-W-W Developments Ltd. v. Director of Standards and Approvals of the Department of the Environment, Minister of the Environment and Province of Alberta (1983), 49 A.R. 360; 3 Admin. L.R. 247; 23 Alta. L.R. (2d) 193 (C.A.).

Considered:

Pfizer Canada Inc. v. Minister of National Health & Welfare et al. (1986), 12 C.P.R. (3d) 438 (F.C.A.); leave to appeal to S.C.C. refused (1987), 14 C.P.R. (3d) 447; 76 N.R. 397;

Glaxo Canada Inc. v. Canada (Minister of National Health and Welfare), [1988] 1 F.C. 422; (1987), 43 D.L.R. (4th) 273; 16 C.I.P.R. 55; 18 C.P.R. (3d) 206; 16 F.T.R. 81; additional reasons at (1988), 19 C.I.P.R. 120; 19 C.P.R. (3d) 374 (T.D.); affd (1990), 68 D.L.R. (4th) 761; 31 C.P.R. (3d) 29; 107 N.R. 195 (F.C.A.);

O'Grady v. Whyte, [1983] 1 F.C. 719; (1982), 138 D.L.R. (3d) 167; 42 N.R. 608 (C.A.);

Karavos v. Toronto & Gillies, [1948] 3 D.L.R. 294; [1948] O.W.N. 17 (Ont. C.A.);

Distribution Canada Inc. v. M.N.R., [1991] 1 F.C. 716; (1990), 46 Admin. L.R. 34; 39 F.T.R. 127 (T.D.); affd [1993] 2 F.C. 26 (C.A.);

Reg. v. Anderson; Ex parte Ipec-Air Pty. Ltd. (1965), 113 C.L.R. 177 (Aust. H.C.);

Martinoff v. Gossen, [1979] 1 F.C. 327 (T.D.); Lemyre v. Trudel, [1978] 2 F.C. 453; (1978), 41 C.C.C. (2d) 373 (T.D.); affd [1979] 2 F.C. 362; (1979), 49 C.C.C. (2d) 188 (C.A.);

Abell v. Commissioner of Royal Canadian Mounted Police (1979), 49 C.C.C. (2d) 193; 3 Sask. R. 181 (C.A.);

Re Central Canada Potash Co. Ltd. et al. and Minister of Mineral Resources for Saskatchewan (1972), 30 D.L.R. (3d) 480; [1972] 6 W.W.R. 62 (Sask. Q.B.); affd (1973), 32 D.L.R. (3d) 107; [1973] 1 W.W.R. 193 (Sask. C.A.); appeal to S.C.C. dismissed (1973), 38 D.L.R. (3d) 317; [1973] 2 W.W.R. 672;

Fitzgerald v. Muldoon, [1976] 2 N.Z.L.R. 615 (S.C.).

Referred to:

Apotex Inc. v. Attorney General of Canada et al. (1986), 11 C.P.R. (3d) 43; 10 F.T.R. 271 (F.C.T.D.); application for reconsideration denied (1986), 11 C.P.R. (3d) 62 (F.C.T.D.); affd (1986), 12 C.P.R. (3d) 95; 77 N.R. 71 (F.C.A.); leave to appeal to S.C.C. refused (1987), 14 C.P.R. (3d) 447;

Apotex Inc. v. Canada (Attorney General) et al. (1993), 59 F.T.R. 85 (F.C.T.D.);

C.E. Jamieson & Co. (Dominion) v. Canada (Attorney General), [1988] 1 F.C. 590; (1987), 46 D.L.R. (4th) 582; 37 C.C.C. (3d) 193; 12 F.T.R. 167 (T.D.);

Mensinger v. Canada (Minister of Employment and Immigration), [1987] 1 F.C. 59; (1986), 24 C.R.R. 260; 5 F.T.R. 64 (T.D.);

Minister of Employment and Immigration v. Hudnik, [1980] 1 F.C. 180; (1979), 103 D.L.R. (3d) 308 (C.A.);

Jefford v. Canada, [1988] 2 F.C. 189; (1988), 47 D.L.R. (4th) 321; 28 C.L.R. 266 (C.A.);

Winegarten v. Public Service Commission and Canada (Minister of Transport) (1986), 5 F.T.R. 317 (F.C.T.D.);

Rossi v. The Queen, [1974] 1 F.C. 531; (1974), 17 C.C.C. (2d) 1 (T.D.);

Canadian Wildlife Federation Inc. v. Canada (Minister of the Environment), [1989] 3 F.C. 309; [1989] 4 W.W.R. 526; (1989), 37 Admin. L.R. 39; 3 C.E.L.R. (N.S.) 287; 26 F.T.R. 245 (T.D.); affd [1990] 2 W.W.R. 69; (1989), 38 Admin. L.R. 138; 4 C.E.L.R. (N.S.) 1; 99 N.R. 245 (F.C.A.);

Bedard v. Correctional Service of Canada, [1984] 1 F.C. 193 (T.D.);

Carota v. Jamieson, [1979] 1 F.C. 735 (T.D.); affd [1980] 1 F.C. 790 (C.A.);

Nguyen v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 232 (C.A.);

Rothmans of Pall Mall Canada Limited v. Minister of National Revenue (No. 1), [1976] 2 F.C. 500; (1976), 67 D.L.R. (3d) 505; [1976] C.T.C. 339; 10 N.R. 153 (C.A.);

Secunda Marine Services Ltd. v. Canada (Minister of Supply & Services) (1989), 38 Admin. L.R. 287; 27 F.T.R. 161 (F.C.T.D.);

Szoboszloi v. Chief Returning Officer of Canada, [1972] F.C. 1020 (T.D.);

Hutchins v. Canada (National Parole Board), [1993] 3 F.C. 505 (C.A.);

Thorson v. Attorney General of Canada et al., [1975] 1 S.C.R. 138; (1974), 43 D.L.R. (3d) 1; 1 N.R. 225;

Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265; (1975), 12 N.S.R. (2d) 85; 55 D.L.R. (3d) 632; 32 C.R.N.S. 376; 5 N.R. 43;

Minister of Justice of Canada et al. v. Borowski, [1981] 2 S.C.R. 575; (1981), 130 D.L.R. (3d) 588;

[1982] 1 W.W.R. 97; 12 Sask.R. 420; 64 C.C.C. (2d) 97; 24 C.P.C. 62; 24 C.R. (3d) 352; 39 N.R. 331;

Finlay v. Canada (Minister of Finance), [1986] 2 S.C.R. 607; (1986), 33 D.L.R. (4th) 321; [1987] 1 W.W.R. 603; 23 Admin. L.R. 197; 17 C.P.C. (2d) 289; 71 N.R. 338;

Bhatnager v. Minister of Employment and Immigration, [1985] 2 F.C. 315 (T.D.);

Restrictive Trade Practices Commission v. Director of Investigation and Research, Combines Investigation Act, [1983] 2 F.C. 222; (1983), 145 D.L.R. (3d) 540; 70 C.P.R. (2d) 145; 48 N.R. 305 (C.A.); revg [1983] 1 F.C. 520; (1982), 142 D.L.R. (3d) 333; 67 C.P.R. (2d) 172 (T.D.);

Maple Lodge Farms Ltd. v. Government of Canada, [1980] 2 F.C. 458 (T.D.); affd Maple Lodge Farms Ltd. v. R., [1981] 1 F.C. 500; (1980), 114 D.L.R. (3d) 634; 42 N.R. 312 (C.A.); affd Maple Lodge Farms Ltd. v. Government of Canada, [1982] 2 S.C.R. 2; (1982), 137 D.L.R. (3d) 558; 44 N.R. 354;

Kahlon v. Canada (Minister of Employment and Immigration), [1986] 3 F.C. 386; (1986), 30 D.L.R. (4th) 157; 26 C.R.R. 152 (C.A.);

Harelkin v. University of Regina, [1979] 2 S.C.R. 561; (1979), 96 D.L.R. (3d) 14; [1979] 3 W.W.R. 676; 26 N.R. 364;

Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources), [1987] 1 F.C. 406; (1987), 35 D.L.R. (4th) 693; 27 Admin. L.R. 79; 73 N.R. 241 (C.A.); appeal dismissed [1989] 2 S.C.R. 49; (1989), 61 D.L.R. (4th) 604; 97 N.R. 241;

Friends of the Oldman River Society v. Canada (Minister of Transport), [1990] 2 F.C. 18; (1990), 68 D.L.R. (4th) 375; [1991] 1 W.W.R. 352; 76 Alta. L.R. (2d) 289; 5 C.E.L.R. (N.S.) 1; 108 N.R. 241 (C.A.); affd [1992] 1 S.C.R. 3; (1992), 88 D.L.R. (4th) 1; [1992] 2 W.W.R. 193; 84 Alta. L.R. (2d) 129; 3 Admin. L.R. (2d) 1; 7 C.E.L.R. (N.S.) 1; 132 N.R. 321;

Landreville v. The Queen, [1973] F.C. 1223; (1973), 41 D.L.R. (3d) 574 (T.D.);

Beauchemin v. Employment and Immigration Commission of Canada (1987), 15 F.T.R. 83 (F.C.T.D.);

Penner v. Electoral Boundaries Commission (Ont.), [1976] 2 F.C. 614 (T.D.);

Haines v. Attorney General of Canada (1979), 32 N.S.R. (2d) 271; 54 A.P.R. 271; 47 C.C.C. (2d) 548 (C.A.);

Carrier-Sekani Tribal Council v. Canada (Minister of the Environment), [1992] 3 F.C. 316 (C.A.);

Toronto Corporation v. Roman Catholic Separate Schools Trustees, [1926] A.C. 81 (P.C.);

Re Hall and City of Toronto et al. (1979), 23 O.R. (2d) 86; 94 D.L.R. (3d) 750; 8 M.P.L.R. 155; 10 R.P.R. 129 (C.A.);

Howard Smith Paper Mills Ltd. et al. v. The Queen, [1957] S.C.R. 403; (1957), 8 D.L.R. (2d) 449; 118 C.C.C. 321; 29 C.P.R. 6; 26 C.R. 1;

Gardner v. Lucas (1878), 3 App. Cas. 582 (H.L.);

De Roussy v. Nesbitt (1920), 53 D.L.R. 514 (Alta. C.A.);

Angus v. Sun Alliance Insurance Co., [1988] 2 S.C.R. 256; (1988), 65 O.R. (2d) 638; 52 D.L.R. (4th) 193; 34 C.C.L.T. 237; 47 C.C.L.T. 39; [1988] I.L.R. 1-2370; 9 M.V.R. (2d) 245; 87 N.R. 200; 30 O.A.C. 210;

Gustavson Drilling (1964) Ltd. v. Minister of National Revenue, [1977] 1 S.C.R. 271; (1975), 66

D.L.R. (3d) 449; [1976] C.T.C. 1; 75 D.T.C. 5451; 7 N.R. 401;
 Attorney General of Quebec v. Expropriation Tribunal et al., [1986] 1 S.C.R. 732; (1986), 66 N.R. 380;
 Venne v. Quebec (Commission de protection du territoire agricole), [1989] 1 S.C.R. 880; (1989), 95 N.R. 335; 24 Q.A.C. 162; 4 R.P.R. (2d) 1;
 Lorac Transport Ltd. v. Atra (The), [1987] 1 F.C. 108; (1986), 28 D.L.R. (4th) 309; 69 N.R. 183;
 Northern & Central Gas Corp. v. National Energy Board, [1971] F.C. 149; (1971), 26 D.L.R. (3d) 174; [1971] 4 W.W.R. 413 (T.D.);
 Minister of National Revenue v. Gustavson Drilling (1964) Ltd., [1972] F.C. 92; [1972] C.T.C. 83; (1972), 72 D.T.C. 6068 (T.D.);
 Zong v. Commissioner of Penitentiaries, [1976] 1 F.C. 657; (1975), 29 C.C.C. (2d) 114; 10 N.R. 1 (C.A.).

Authors Cited

Côté, Pierre-André. *The Interpretation of Legislation in Canada*, 2nd ed. Cowansville, Que.: Yvon Blais, 1991.
 de Smith, S.A. *Judicial Review of Administrative Action*, 4th ed. by J.M. Evans. London: Stevens & Sons Ltd., 1980.
 Evans, J. M. et al. *Administrative Law: Cases, Text, and Materials*, 3rd ed. Toronto: Emond Montgomery, 1989.
 Halsbury's Laws of England, Vol. 1(1), 4th ed. reissue. London: Butterworths, 1989.
 Macdonald, R. A. and M. Paskell-Mede, "Annual Survey of Canadian Law: Administrative Law" (1981), 13 *Ottawa L. Rev.* 671.
 Makuch, Stanley M. *Canadian Municipal and Planning Law*. Toronto: Carswell, 1983.
 Mercer, Peter P. Annot. (1983), 3 *Admin. L.R.* 248.
 Wade, Sir William. *Administrative Law*, 6th ed. Oxford: Clarendon Press, 1988.

APPEAL and CROSS-APPEAL from a Trial Division decision ((1993), 49 C.P.R. (3d) 161; 66 F.T.R. 36 (F.C.T.D.)) allowing application for mandamus to compel the Minister of National Health and Welfare to issue a notice of compliance with respect to a generic drug, and dismissing appellant's application for prohibition. Appeal and Minister's cross-appeal dismissed.

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 H. Lorne Murphy, Q.C., and Steve J. Tenai for respondents (respondents) Attorney General of Canada and the Minister of National Health and Welfare.

Solicitors:

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Goodman & Goodman, Toronto, for respondent (applicant) Apotex Inc.
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the Minister of National Health and Welfare.

The following are the reasons for judgment rendered in English by

1 ROBERTSON J.A.:-- The respondent, Apotex Inc. ("Apotex"), is a "generic" manufacturer and distributor of drugs. That is to say it manufactures and distributes drugs which were researched, developed and first brought to market by "innovator" companies. Apotex sought an order in the nature of mandamus to compel the Minister of National Health and Welfare (the "Minister") to issue a notice of compliance ("NOC") with respect to Apo-Enalapril, its generic version of the drug enalapril. Armed with a NOC, Apotex would have been in a position to market Apo-Enalapril in direct competition with "VASOTEC", the trade-mark under which the appellants, Merck & Co., Inc. and Merck Frosst Canada Inc. ("Merck"), manufacture and sell enalapril.

2 Merck, an "innovator" drug manufacturer, is the leading pharmaceutical company in Canada in terms of sales. Its drug "VASOTEC" is used for the treatment of congestive heart failure and hypertension and is the largest selling pharmaceutical in Canada, contributing approximately \$140 million toward Merck's annual revenue of \$400 million. It is thus not surprising that Merck sought an order prohibiting the Minister from issuing the NOC to Apotex. The mandamus and prohibition applications were consolidated by order of the Court and heard together. Apotex was the victor and hence the matter is before us for further consideration.

3 This is not the first time the competing economic interests of Canadian generic and innovator drug manufacturers have collided: e.g., Pfizer Canada Inc. v. Minister of National Health & Welfare et al. (1986), 12 C.P.R. (3d) 438 (F.C.A.); leave to appeal to Supreme Court refused (1987), 14 C.P.R. (3d) 447; Glaxo Canada Inc. v. Canada (Minister of National Health and Welfare), [1988] 1 F.C. 422 (T.D.), additional reasons at (1988), 19 C.I.P.R. 120 (F.C.T.D.); affd (1990), 68 D.L.R. (4th) 761 (F.C.A.); and Apotex Inc. v. Attorney General of Canada et al. (1986), 11 C.P.R. (3d) 43 (F.C.T.D.); application for reconsideration denied (1986), 11 C.P.R. (3d) 62; affirmed (1986), 12 C.P.R. (3d) 95 (F.C.A.); leave to appeal to Supreme Court of Canada refused (1987), 14 C.P.R. (3d) 447.

4 This appeal, however, represents more than a private law skirmish about the economic and health interests of Canadians. At least one aspect of that issue was supposedly resolved by Parliament when it enacted the Patent Act Amendment Act, 1992, S.C. 1993, c. 2, amending [Patent Act] R.S.C., 1985, c. P-4, ("Bill C-91") with the intent of thwarting the possible appropriation by generic drug companies, such as Apotex, of the research and development initiatives of innovators,

such as Merck. The principal issue we must address here is the effect of Bill C-91 on what Apotex argues is a vested right to the NOC. The enactment of Bill C-91 between the date that Apotex's mandamus application was filed and the date it was heard, together with the Minister's continuing failure to issue the Apo-Enalapril NOC, were the legal catalysts which propelled both Apotex and Merck into the courtrooms of the Trial and Appeal Divisions of this Court.

5 Aside from reviewing the traditional requirements for mandamus, this Court must determine whether the Minister could withhold the NOC on the basis of the then unproclaimed provisions of Bill C-91. Alternatively, it is asked whether the delay occasioned by the need to obtain legal advice with respect to the legality of issuing the NOC prevented Apotex from acquiring a vested right to the NOC. Now that Bill C-91 is law, Merck argues that Apotex must comply with its provisions which, if applicable, clearly deny Apotex that which it seeks. Moreover, Merck submits that this Court has the discretion to refuse mandamus where the effect would be to "frustrate the will of Parliament." That argument essentially invites this Court to consider what has been labelled the "balance of convenience" test in evaluating Apotex's mandamus application. These issues, among others, may only be addressed against the legislative framework in place at the time Apotex submitted its NOC application and that currently in effect.

LEGISLATIVE FRAMEWORK

6 In part, this appeal hinges on the scope of ministerial discretion as set out in the Food and Drugs Act, R.S.C., 1985, c. F-27, (the "FDA") and the regulations enacted pursuant to that Act (the "FDA Regulations") [Food and Drug Regulations, C.R.C., c. 870]. The responsibility for administering the FDA rests principally with the Health Protection Branch of the Department of National Health and Welfare (the "HPB").

7 Under the FDA, the Minister must ensure that "new drugs" meet health and safety requirements. A "new drug" is defined in section C.08.001 of the FDA Regulations as a drug which contains a substance which has not been sold in Canada for a sufficient time and in sufficient quantity to establish its safety and effectiveness.

8 A "new drug" must undergo rigorous testing before it may be sold. The manufacturer of the drug must file a New Drug Submission ("NDS") with the HPB setting out, inter alia, the drug's qualities, ingredients and methods of manufacture and purification. The NDS also includes the results of the manufacturer's clinical studies supporting the drug's safety and effectiveness. All aspects of the NDS are examined by multidisciplinary teams of the Drugs Directorate of the HPB. A NOC will only issue if the drug is found to be both effective and safe for human use. The relevant provisions [C.08.002 (as am. by SOR/85-143, s. 1), C.08.004 (as am. idem, s. 3, SOR/88-257, s. 1)] of the FDA Regulations state:

C.08.002. (1) No person shall sell or advertise for sale a new drug unless

- (a) the manufacturer of the new drug has filed with the Minister, in duplicate, a new drug submission relating to that new drug, having a content satisfactory to the Minister;
- (b) the Minister has issued a notice of compliance to the manufacturer of the new drug in respect of that new drug submission pursuant to section C.08.004;
- (c) that notice of compliance is not suspended pursuant to section C.08.006 . . .

. . .

C.08.004. (1) The Minister shall, after completing an examination of a new drug submission or supplement thereto,

- (a) if that submission or supplement complies with the requirements of section C.08.002 or C.08.003, as the case may be, and section C.08.005.1, issue a notice of compliance [Emphasis added.]

9 Prior to the proclamation of Bill C-91, a generic drug company could obtain a compulsory licence from the Commissioner of Patents authorizing it to advertise, manufacture and sell any drug in respect of which a NOC had been issued. Although the generic drug company was required to pay royalties to the drug's innovator, it could sell the drug notwithstanding the innovator's patent rights. This arrangement was governed by subsection 39(4) of the Patent Act, R.S.C., 1985, c. P-4, (the "Patent Act"):

39. . . .

(4) Where, in the case of any patent for an invention intended or capable of being used for medicine or for the preparation or production of medicine, an application is made by any person for a licence to do one or more of the following things as specified in the application, namely,

- (a) where the invention is a process, to use the invention for the preparation or production of medicine, import any medicine in the preparation or production of which the invention has been used or sell any medicine in the preparation or production of which the invention has been used, or
- (b) where the invention is other than a process, to import, make, use or sell the invention for medicine or for the preparation or production of medicine,

the Commissioner shall grant to the applicant a licence to do the things specified in the application except such, if any, of those things in respect of which he sees good reason not to grant a licence.

10 Subsection 39(14) of the Patent Act required the Commissioner of Patents to notify the Department of National Health and Welfare of all compulsory licence applications. To this extent, there was a "linkage" between NOCs and patent rights.

11 Bill C-91 was drafted in order to protect innovator pharmaceutical companies' distribution and sales rights to patented drugs and represents a reversal of government policy adopted by Parliament in 1923: see The Patent Act, S.C. 1923, c. 23, section 17; but compare Order in Council respecting patents of invention held by alien enemies [Orders and Regulations respecting Patents of Invention made under The War Measures Act, 1914], P.C. 1914-2436, The Canada Gazette, October 10, 1914, enacted pursuant to the War Measures Act, 1914 (The), S.C. 1914, (2nd Sess.), c. 2. Bill C-91 was introduced in the House of Commons on June 23, 1992 and passed its third reading on December 10, 1992. It was given Royal Assent on February 4, 1993.¹

12 The immediate effects of Bill C-91 are well known. Section 3 of the Bill repealed the compulsory licensing provisions of the Patent Act, while subsection 12(1) extinguished all compulsory licences issued on or after December 20, 1991, as follows:

12. (1) Every licence granted under section 39 of the former Act on or after December 20, 1991 shall cease to have effect on the expiration of the day preceding the commencement day, and all rights or privileges acquired or accrued under that licence or under the former Act in relation to that licence shall thereupon be extinguished.

13 Section 4 of the Bill adds section 55.2 to the Patent Act. Subsection 55.2(4) authorizes the Governor in Council to make regulations concerning, inter alia, the issuance of NOCs, as follows:

55.2 . . .

(4) The Governor in Council may make such regulations as the Governor in Council considers necessary for preventing the infringement of a patent by any person who makes, constructs, uses or sells a patented invention in accordance with subsection (1) or (2) including, without limiting the generality of the foregoing, regulations

(a) respecting the conditions that must be fulfilled before a notice, certificate,

- permit or other document concerning any product to which a patent may relate may be issued to a patentee or other person under any Act of Parliament that regulates the manufacture, construction, use or sale of that product, in addition to any conditions provided for by or under that Act;
- (b) respecting the earliest date on which a notice, certificate, permit or other document referred to in paragraph (a) that is issued or to be issued to a person other than the patentee may take effect and respecting the manner in which that date is to be determined;
 - (c) governing the resolution of disputes between a patentee or former patentee and any person who applies for a notice, certificate, permit or other document referred to in paragraph (a) as to the date on which that notice, certificate, permit or other document may be issued or take effect;
 - (d) conferring rights of action in any court of competent jurisdiction with respect to any disputes referred to in paragraph (c) and respecting the remedies that may be sought in the court, the procedure of the court in the matter and the decisions and orders it may make; and
 - (e) generally governing the issue of a notice, certificate, permit or other document referred to in paragraph (a) in circumstances where the issue of that notice, certificate, permit or other document might result directly or indirectly in the infringement of a patent.

14 On February 12, 1993, the Governor in Council fixed February 15 as the date Bill C-91, with the exception of section 55.2, would come into force. On March 12, 1993, that section and the Patented Medicines (Notice of Compliance) Regulations, SOR/93-133, (the "Patented Medicines Regulations") were brought into effect.

15 The Patented Medicines Regulations prohibit the issuance of NOCs in respect of "patent-linked" drugs. A "patent-linked" drug is one in respect of which both a NOC and an unexpired patent have been issued. The patent may relate to either the medicine itself or the method of using the drug to treat an illness.

16 Subsections 5(1) and (2) of the Patented Medicines Regulations refer to NDSs filed before March 12, 1993 (the date the Regulations were brought into effect) and read as follows:

5. (1) Where a person files or, before the coming into force of these Regulations, has filed a submission for a notice of compliance in respect of a drug and wishes to compare that drug with, or make reference to, a drug that has been marketed in Canada pursuant to a notice of compliance issued to a first person in respect of which a patent list has been submitted, the person shall, in the submission, with respect to each patent on the patent list,

- (a) state that the person accepts that the notice of compliance will not issue until the patent expires; or
- (b) allege that
 - (i) the statement made by the first person pursuant to paragraph 4(2)(b) is false,
 - (ii) the patent has expired,
 - (iii) the patent is not valid, or
 - (iv) no claim for the medicine itself and no claim for the use of the medicine would be infringed by the making, constructing, using or selling by that person of the drug for which the submission for the notice of compliance is filed.

(2) Where, after a second person files a submission for a notice of compliance, but before the notice of compliance is issued, a patent list is submitted or amended in respect of a patent pursuant to subsection 4(5), the second person shall amend the submission to include, in respect of that patent, the statement or allegation that is required by subsection (1).

Subsection 7(1) of the Patented Medicines Regulations prohibits the Minister from issuing a NOC to generic drug companies who have not complied with section 5 of the Regulations.

17 One of the principal issues on appeal is whether the above provisions apply to Apotex's NDS. In this regard, Merck notes that Parliament specifically introduced a special paramountcy rule in subsection 55.2(5) of the Patent Act to explicitly reinforce the objective of Bill C-91:

55.2 . . .

- (5) In the event of any inconsistency or conflict between
 - (a) this section or any regulations made under this section, and
 - (b) any Act of Parliament or any regulations made thereunder,

this section or the regulations made under this section shall prevail to the extent of the inconsistency or conflict. [Emphasis added.]

FACTS

18 There are two factual matters in dispute. In addition, one factual matter—the precise reason or reasons underlying the Minister's failure to issue the NOC—has apparently eluded the parties' consideration. The import of this gap will be evaluated following an outline of the commonly-held facts giving rise to this appeal.

(a) Common Ground

19 On July 3, 1989, the Minister delegated the authority to sign NOCs to persons occupying the positions of Assistant Deputy Minister ("ADM") and Director General of the Drugs Directorate. Throughout the relevant period in this appeal, Kent Foster was the ADM and the only person to whom the Minister's authority to sign NOCs had devolved.

20 Apotex submitted a NDS in respect of Apo-Enalapril on February 15, 1990.² Eight months later, on October 16, 1990, Merck was granted a seventeen-year patent in respect of enalapril to expire on October 16, 2007.

21 Bill C-91 received third reading on December 10, 1992. On December 22, thirty-four months after filing its NDS, Apotex initiated an application for judicial review against the Minister in which it sought an order in the nature of mandamus in respect of the Apo-Enalapril NOC.

22 Apotex's NDS was incomplete when it filed its mandamus application. The HPB had notified Apotex in writing of the deficiencies in the bio-equivalence portion of the Apo-Enalapril NDS on July 20, 1992 and did not receive all of the required information from Apotex until January 11, 1993. Additional information concerning the chemistry and manufacturing portion of the NDS was also requested and received from Apotex. Finally, on February 2, 1993, the HPB requested clean product monographs, which were provided on February 3, 1993. As of that date Apotex's NDS satisfied both the clinical and the chemistry and manufacturing requirements prescribed in the FDA Regulations. In other words, by February 3, 1993, Apo-Enalapril met all of the scientific safety and efficacy conditions required for a NOC to issue.

23 Two events relevant to this appeal transpired on February 4, 1993: Bill C-91 received Royal Assent and the Apo-Enalapril NOC was placed on Foster's desk for signature. Foster admitted that the NDS had "cleared the scientific and regulatory review process" and that he and the ADM of National Pharmaceutical Strategy were of the view that the NOC ought to issue. However, Foster had been advised by the Minister's Chief of Staff on January 21, 1993 that he should keep the Minister apprised of any "patent-linked" NDSs in view of the impending passage of Bill C-91. In a note accompanying the Apo-Enalapril NOC, the ADM of National Pharmaceutical Strategy intimated that the Apo-Enalapril NOC was one in respect of which Foster's signing authority had been effectively fettered.

24 Foster did not see the NOC-related documents until approximately 6:00 p.m. on February 4.

On the next day, because of the fetter placed on his authority and aware of Apotex's court application, he contacted his Deputy Minister. Together they decided to seek legal advice regarding the authority of the Minister or Foster to issue the Apo-Enalapril NOC in light of the passage of Bill C-91. Later that day, the president of Merck telephoned Foster, indicating that Foster was obligated to refrain from issuing the NOC. On February 8, 1993, the Department of National Health and Welfare sought and obtained legal opinions from outside counsel and the Department of Justice regarding the Minister's authority to issue the NOC. The substance of these opinions has not been released on the ground of privilege.³

25 Between February 12 and February 23, 1993, Merck forwarded eight legal opinions obtained from private law firms to the Minister. Those opinions supported Merck's position that it would be inappropriate and even unlawful for the Minister or Foster to issue a NOC in respect of Apo-Enalapril. To make sense of this flurry of unsolicited opinions, Foster sought further legal advice on February 24, 1993. He stated:

My concern was that whatever action I took or did not take might have the Minister, by virtue of my delegated authority, contravening the law. I didn't know the answer to that and I wanted the answer to that.

26 To dispel any doubt harboured by the Minister and his staff, Merck submitted additional legal opinions which substantively reiterated those previously sent. Between February 12 and March 5, 1993, Merck provided the Government with a total of seventeen legal opinions. All were placed before the Trial Judge and this Court. None support Apotex's position that the Minister did not have the right to consider impending government policy in denying Apotex its NOC.

27 On February 22, 1993, Merck commenced an application for judicial review seeking, inter alia, a prohibition order preventing the Minister from issuing the Apo-Enalapril NOC. Apotex brought a motion for judgment directing the Minister to issue this NOC on March 4, 1993. On March 9, 1993, the Minister sought and received an adjournment of the Apotex application until March 16, 1993.⁴ On March 12, 1993, subsection 55.2(4) of the Patent Act and the Patented Medicines Regulations came into effect.

28 On March 18, 1993, the applications of Merck and Apotex were consolidated by order of a Trial Judge. They were heard on June 21, 1993. On July 16, 1993, Dubé J. allowed Apotex's application for mandamus and denied Merck's application for prohibition [*Apotex Inc. v. Canada (Attorney-General)* (1993), 49 C.P.R. (3d) 161].

(b) Disputed Facts

29 In oral argument, Merck sought to establish that the Minister was still investigating allegations that Apo-Enalapril was unsafe after February 4, 1993. The HPB has apparently determined these allegations to be unfounded and, in any event, they are contrary to the Minister's position at trial that Apo-Enalapril had met all the criteria and conditions prescribed by the existing FDA

Regulations by February 3, 1993 (Apotex, *supra*, at page 176).

30 By counter-offensive, Apotex suggested that the Minister did not fairly consider the NDS. It alleged that other "patent-linked" generic NDSs were being approved while Apotex's NOC was being delayed. (From the appeal record, I note that Merck had accused the Minister of "accelerating" the processing of Apotex's NDS.) The Trial Judge acknowledged the issue but did not address it, either because it was unnecessary or because it was not deserving of attention (at page 170). Apotex did not launch a cross-appeal with respect to this issue.

(c) The Factual Lacuna

31 Only the Minister possessed the discretionary power to issue a NOC to Apotex once the NDS review was completed. Neither he nor Foster signed the NOC. However, the Minister's reasons for failing to issue the NOC are unclear.

32 Merck first maintains that there is no evidence the NOC had been formally presented to the Minister for his consideration, a fact acknowledged by the Trial Judge (appellants' memorandum of fact and law, paragraph 42, Apotex, *supra*, at pages 167-168). It also seeks to establish that the Minister was entitled to have regard to pending legislative policy in issuing the NOC (appellants' memorandum of fact and law, paragraph 67). The former submission implies that the Minister had not yet had the opportunity to review Apotex's application. The inference to be drawn from the latter is that, not only did the Minister review the NDS, but his lawful consideration of pending government legislation was one reason why the NOC did not issue. There is no evidence that the Minister received, much less acted upon, the legal advice sought on February 24, 1993.

33 Regrettably, no one has sought to elicit from the Minister the very reason or reasons underlying his failure to authorize the NOC prior to March 12, 1993.⁵ Upon reflection, we are left with the following possibilities (there are others): Was the Minister still in search of the "definitive" legal opinion? Did he not have the opportunity to review the NDS? Or did the Minister conclude that as a matter of law the NOC could not issue? Since Apotex has neither impeached the motives of the Minister nor argued unreasonable delay, I am left with the legal arguments pursued by the parties.

DECISION UNDER APPEAL

34 At trial, Dubé J. perceived the central issue to be whether the Minister, prior to March 12, 1993, possessed the discretionary power to decline to issue the NOC to Apotex on the basis of anticipated changes to the Patent Act. He concluded (at page 177):

In my view, there can be no doubt that the FDR did entitle the Minister to exercise his discretion in the Apotex NDS approval process. However, this discretion, like all discretionary authority, was not unfettered. The scope of the Minister's discretion was limited strictly to a consideration of factors relevant to

the purposes of the FDR as they relate to the process for approval of new drugs to be marketed in Canada. . . . It was limited to a decision as to whether the HPB review of the Apotex NDS established that Apo-enalapril was safe and effective. Once that question had been answered in the affirmative, as it was in this case, any other extraneous consideration was irrelevant to the issuance of a NOC under the FDR.

The Minister was not entitled to refuse to issue a NOC to Apotex on the basis of anticipated changes to the patent statute and regulations thereunder, an area within the authority of his colleague, the Minister of Consumer and Corporate Affairs.

35 The learned Judge found support for his position in three decisions of the Trial Division of this Court. First, he applied the reasoning of MacKay J. in *Apotex Inc. v. Canada (Attorney General) et al.* (1993), 59 F.T.R. 85, where it was held (at pages 108-109):

[T]he words "having a content satisfactory to the Minister" qualify the words "new drug submission" so that in every case the content of a submission is a matter within the discretion of the Minister and those acting on his or her behalf to determine.

. . .

[T]he Regulations vest complete and exclusive discretion in the respondent Minister and the Director of HPB to determine the requirements of a new drug submission in terms of the information or evidence to be provided by the manufacturer. [Emphasis not in original.]

36 The second decision is *Glaxo Canada Inc. v. Canada (Minister of National Health and Welfare)*, supra, where Rouleau J. concluded (at page 426):

The central purpose of the Regulations is to ensure that any new drug meets rigorous safety profile standards in order to protect the Canadian public. If, upon review, the Minister finds the new drug submission to be satisfactory, he is compelled to issue a notice of compliance

37 Finally, Dubé J. turned to the decision of Muldoon J. in *C.E. Jamieson & Co. (Dominion) v. Canada (Attorney General)*, [1988] 1 F.C. 590 (T.D.), in which the Trial Judge held (at page 651):

[W]hatever discretion is accorded by these clear and detailed Regulations is quite restricted Under regulation C.08.004 the Minister is bound either to issue a notice of compliance or to notify the manufacturer why the submission . . . does

not comply The Minister is subject to the Court's supervising power to order mandamus in that regard These delegated powers do not permit the Minister or the Director to do as they please: they have no unfettered discretions.

38 Dubé J. had little difficulty in deciding that the Minister did not possess the broad discretion to justify his refusal to issue the NOC. It remained to be determined whether the Minister and his delegate, Foster, were entitled to seek legal advice and otherwise delay issuing the NOC. Dubé J. observed that the Minister did not know, either when Bill C-91 was passed or when it was proclaimed, that the Patented Medicines Regulations would come into force on March 12, 1993. In other words, the delay in determining whether the NOC could issue may have been considerably protracted. Acceding to Foster's pragmatic observation that "either the law is in effect or it isn't" the Trial Judge concluded "that the Minister's delay in issuing the Apotex NOC was not warranted" (at page 181).

39 Dubé J. went on to reject the argument that issuing mandamus in cases where new regulatory regimes are clearly pending would "frustrate the will of Parliament." He cautioned that the line of municipal law cases commencing with the Supreme Court's decision in *Ottawa, City of v. Boyd Builders Ltd.*, [1965] S.C.R. 408 should not be "transported facilely to an entirely unrelated legal context" (at page 181).

40 Finally, the learned Trial Judge rejected the argument that Apotex's claim for mandamus was premature because its NDS was incomplete when the application was filed. He reasoned (at page 182):

Before closing, I take the opportunity to dispose of a "preliminary" matter raised by Merck, that Apotex' December 22, 1992 originating notice of motion was premature because, as of that date, the Apo-enalapril NDS was incomplete. According to the terms of the notice of motion, Apotex sought an order directing the Minister to disclose the status of a number of NDS filed by Apotex, including that for Apo-enalapril; to complete the reviews of these submissions, should they not have been completed; and to issue NOCs "if the results of the reviews are satisfactory". Thus, Apotex was not requesting relief divorced from the normal requirements of the FDR, or "jumping the gun". And, as of February 3, 1993, long before this matter came on for hearing, the results of the Apo-enalapril NDS has been recommended for issuance of a NOC. The argument based on prematurity must therefore fail.

41 For the above reasons, the application for mandamus was allowed and the application for prohibition denied.

ISSUES RAISED ON APPEAL

42 An appeal provides both parties with the opportunity to reflect on, refine and reformulate

substantive arguments which may or may not have been pursued below. The following issues were identified by Merck in its memorandum of fact and law and addressed on appeal:

- (1) Does mandamus lie against the Minister on the facts of this case?
- (2) Was the Minister entitled to seek advice after February 4, 1993 about the legality of what Apotex was asking him to do, plus any other relevant information that may have occurred to him?
- (3) In the exercise of his statutory power under the Food and Drug Regulations, was the Minister entitled to have regard to the provisions of Bill C-91 after they were enacted but before they were proclaimed in effect?
- (4) Was the Minister acting unlawfully when he failed to reach a decision on the NOC application by March 12, 1993?
- (5) If so, was the effect to give Apotex a "vested right" to the issuance of an NOC prior to March 12, 1993?
- (6) If Apotex had acquired a "vested" right prior to March 12, 1993, was such right nevertheless divested by the Patented Medicines (Notice of Compliance) Regulations?
- (7) Did the rights and remedies created by Bill C -91 and the Patented Medicines (Notice of Compliance) Regulations oust the jurisdiction of this Court from and after March 12, 1993 to grant judicial review in the circumstances of this case to compel issuance of the notice of compliance?
- (8) Do the principles set out in *Ottawa, City of v. Boyd Builders Ltd.*, [1965] S.C.R. 408 apply to the exercise of the Court's discretion in mandamus cases generally, or are they confined to building permit cases?
- (9) If Apotex is otherwise entitled to the issuance of mandamus, is this a case in which the Court ought to have exercised its discretion (which Dubé J. believed he did not possess) against Apotex in light of the public policy enunciated in Bill C-91 and the Regulations?
- (10) Does prohibition lie against the Minister on the facts of this case?

43 By cross-appeal, the Minister argues that the Trial Judge erred in finding the delay in issuing the NOC to be unwarranted. Like Merck he remains convinced that as a matter of law the NOC cannot issue.

ANALYSIS

44 Most issues raised by counsel concern the availability of orders in the nature of mandamus. I propose to outline in general terms the principles governing such orders before clarifying those issues central to this appeal.

(1) Mandamus-The Principles

45 Several principal requirements must be satisfied before mandamus will issue. The following general framework finds support in the extant jurisprudence of this Court (see generally *O'Grady v. Whyte*, [1983] 1 F.C. 719 (C.A.), at pages 722-723, citing *Karavos v. Toronto & Gillies*, [1948] 3 D.L.R. 294 (Ont. C.A.), at page 297; and *Mensinger v. Canada (Minister of Employment and Immigration)*, [1987] 1 F.C. 59 (T.D.), at page 66.

1. There must be a public legal duty to act: *Minister of Employment and Immigration v. Hudnik*, [1980] 1 F.C. 180 (C.A.); *Jefford v. Canada*, [1988] 2 F.C. 189 (C.A.); *Winegarten v. Public Service Commission and Canada (Minister of Transport)* (1986), 5 F.T.R. 317 (F.C.T.D.); *Rossi v. The Queen*, [1974] 1 F.C. 531 (T.D.); *Canadian Wildlife Federation Inc. v. Canada (Minister of the Environment)*, [1989] 3 F.C. 309 (T.D.); *affd* [1990] 2 W.W.R. 69 (F.C.A.); *Bedard v. Correctional Service of Canada*, [1984] 1 F.C. 193 (T.D.); *Carota v. Jamieson*, [1979] 1 F.C. 735 (T.D.); *affd* [1980] 1 F.C. 790 (C.A.); and *Nguyen v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 232 (C.A.).
2. The duty must be owed to the applicant:⁶ *Rothmans of Pall Mall Canada v. Minister of National Revenue (No. 1)*, [1976] 2 F.C. 500 (C.A.); *Distribution Canada Inc. v. M.N.R.*, [1991] 1 F.C. 716 (T.D.); *affd* [1993] 2 F.C. 26 (C.A.); *Secunda Marine Services Ltd. v. Canada (Minister of Supply & Services)* (1989), 38 Admin. L.R. 287 (F.C.T.D.); and *Szoboszloi v. Chief Returning Officer of Canada*, [1972] F.C. 1020 (T.D.); see also *Jefford v. Canada*, *supra*.
3. There is a clear right to performance of that duty, in particular:
 - (a) the applicant has satisfied all conditions precedent giving rise to the duty; *O'Grady v. Whyte*, *supra*; *Hutchins v. Canada (National Parole Board)*, [1993] 3 F.C. 505 (C.A.); and see *Nguyen v. Canada (Minister of Employment and Immigration)*, *supra*;
 - (b) there was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay; see *O'Grady v. Whyte*, *supra*, citing *Karavos v. Toronto & Gillies*, *supra*; *Bhatnager v. Minister of Employment and Immigration*, [1985] 2 F.C. 315 (T.D.); and *Canadian Wildlife Federation Inc. v. Canada (Minister of the Environment)*, *supra*.
4. Where the duty sought to be enforced is discretionary, the following rules apply:

- (a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as "unfair", "oppressive" or demonstrate "flagrant impropriety" or "bad faith";
- (b) mandamus is unavailable if the decision-maker's discretion is characterized as being "unqualified", "absolute", "permissive" or "unfettered";
- (c) in the exercise of a "fettered" discretion, the decision-maker must act upon "relevant", as opposed to "irrelevant", considerations;
- (d) mandamus is unavailable to compel the exercise of a "fettered discretion" in a particular way; and
- (e) mandamus is only available when the decision-maker's discretion is "spent"; i.e., the applicant has a vested right to the performance of the duty.

See *Restrictive Trade Practices Commission v. Director of Investigation and Research*, *Combines Investigation Act*, [1983] 2 F.C. 222 (C.A.); *revg* [1983] 1 F.C. 520 (T.D.); *Carota v. Jamieson*, *supra*; *Apotex Inc. v. Canada (Attorney General) et al.*, *supra*; *Maple Lodge Farms Ltd. v. Government of Canada*, [1980] 2 F.C. 458 (T.D.); *affd* [1981] 1 F.C. 500 (C.A.); *affd* [1982] 2 S.C.R. 2; *Jefford v. Canada*, *supra*; *Merck & Co. Inc. v. Sherman & Ulster Ltd.*, *Attorney-General of Canada, Intervenant* (1971), 65 C.P.R. 1 (Ex. Ct.); *appeal dismissed* [1972] S.C.R. vi; *Distribution Canada Inc. v. M.N.R.*, *supra*; and *Kahlon v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 386 (C.A.).

5. No other adequate remedy is available to the applicant: *Carota v. Jamieson*, *supra*; *Maple Lodge Farms Ltd. v. Government of Canada*, *supra*; *Jefford v. Canada*, *supra*; *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561; and see *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1987] 1 F.C. 406 (C.A.); *appeal dismissed* [1989] 2 S.C.R. 49.
6. The order sought will be of some practical value or effect: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1990] 2 F.C. 18 (C.A.), per Stone J.A., at pages 48-52; *affd* [1992] 1 S.C.R. 3, per La Forest J., at pages 76-80; *Landreville v. The Queen*, [1973] F.C. 1223 (T.D.); and *Beauchemin v. Employment and Immigration Commission of Canada* (1987), 15 F.T.R. 83 (F.C.T.D.).
7. The Court in the exercise of its discretion finds no equitable bar to the relief sought: *Penner v. Electoral Boundaries Commission (Ont.)*, [1976] 2 F.C. 614 (T.D.); *Friends of the Oldman River Society v. Canada (Minister of Transport)*, *supra*.
8. On a "balance of convenience" an order in the nature of mandamus should (or should not) issue.

46 In this appeal, it is understood that the Minister had a duty to act which was owed to Apotex and not the Crown. Merck has not sought to show that Apotex is disentitled in equity to the relief sought. Nor has it sought to establish that an order of mandamus would be ineffectual. On the other hand, it argues that Apotex's application was premature to the extent that not all conditions precedent had been satisfied at the time the application was initiated. As well, it contends that an alternative and adequate remedy is available to Apotex. Aside from the balance of convenience issue noted earlier, the remaining issues central to this appeal may be stated as follows: Did Apotex have a vested right to the NOC as of March 12, 1993? If Apotex did have such a right, was that right divested by the Patented Medicines Regulations? Does the paramountcy provision in Bill C-91 oust the jurisdiction of this Court to grant the order sought by Apotex?

(2) An Alternative and Adequate Remedy

47 Bill C-91 authorizes Apotex to challenge the validity of Merck's patent. If successful, not only would Apotex be entitled to the NOC but Merck would be liable in damages for wrongfully delaying its issue (see section 6, Patented Medicines Regulations). Accordingly, Merck argues that compliance with the existing legislation is of itself an adequate remedy. This reasoning, of course, merely begs the question. I would note that Merck has not sought to establish that an order of mandamus would itself be ineffectual. Conversely, Apotex has not sought to show that Merck has a more adequate remedy—an action for patent infringement—as an alternative to its application for prohibition.

(3) Prematurity

48 Merck takes the position that the Minister owed no duty to Apotex at the time it commenced its judicial review application on December 22, 1992 or on the hearing date. This submission is certainly correct in part. The Minister owed no duty to Apotex on December 22; the HPB's review of Apotex's NDS was ongoing at that time. Merck maintains that filing an application before a duty is owed constitutes a bar to mandamus. It relies on *Karavos v. Toronto & Gillies*, supra, a decision of the Ontario Court of Appeal which has been cited with approval by this Court in *O'Grady v. Whyte*, supra, per Urie J.A., at page 722. In *Karavos*, Laidlaw J.A. stated (at page 297):

I do not attempt an exhaustive summary of the principles upon which the Court proceeds on an application for mandamus, but I shall briefly state certain of them bearing particularly on the case presently under consideration. Before the remedy can be given, the applicant for it must show (1) "a clear, legal right to have the thing sought by it done, and done in the manner and by the person sought to be coerced": *High op. cit.*, p. 13, art. 9; p. 15, art 10. (2) "The duty whose performance it is sought to coerce by mandamus must be actually due and incumbent upon the officer at the time of seeking the relief, and the writ will not lie to compel the doing of an act which he is not yet under obligation to perform"; *ibid.*, supra, p. 44, art. 36. (3) That duty must be purely ministerial in

nature, "plainly incumbent upon an officer by operation of law or by virtue of his office, and concerning which he possesses no discretionary powers": *ibid.*, supra, p. 92, art. 80. (4) There must be a demand and refusal to perform the act which it is sought to coerce by legal remedy: *ibid.*, supra, p. 18, art. 13. [Emphasis added.]

49 Merck seeks to extract from the phrase "at the time of seeking the relief" a rule of law to the effect that mandamus must be denied if a duty to act is not owing at the time the application for mandamus is filed. In my view, such a rule would be extremely short-sighted and finds no support in the facts of either Karavos or O'Grady.

50 In Karavos, the applicant sought an order of mandamus compelling the issue of a building permit even though he had not submitted his permit application as of the hearing date. Similarly in O'Grady, the applicant failed to submit an application for "landing" as of the date when an immigration officer was required to decide upon his sponsorship application. In both cases, it was held that the absence of the required application was fatal to the granting of mandamus.

51 The legal principle derived from these two cases is simply stated. An order of mandamus will not lie to compel an officer to act in a specified manner if he or she is not under an obligation to act as of the hearing date. The question remains whether the rule retains its validity if applied as of the date that the application for mandamus was filed. In my opinion, it cannot.

52 In its application Apotex requested the Court to issue two directives. First, it asked that the Minister process the NDS which had been submitted some thirty-four months prior to the mandamus application. Second, it sought an order directing the issuance of the NOC once the NDS review process was complete.

53 Whether or not the application for mandamus had the effect of propelling the HPB into action is a matter for speculation. We do know that safety and efficacy requirements for the Apo-Enalapril NOC had been met by February 3. We also know that an application to strike the mandamus application was made on January 27, 1993 by the Minister and the Attorney General of Canada. That application was apparently dismissed from the Bench for reasons which are not apparent on the face of the record (see Appeal Book, Vol. I, Tabs 4 & 5).

54 As a general proposition, it is not difficult to accept a rule which seeks to eliminate premature applications for mandamus. It is certainly open to a respondent to pursue dismissal of an application where the duty to perform has yet to arise. However, unless compelling reasons are offered, an application for an order in the nature of mandamus should not be defeated on the ground that it was initiated prematurely. Provided that the conditions precedent to the exercise of the duty have been satisfied at the time of the hearing, the application should be assessed on its merits. Those who unnecessarily complicate the proceedings may expose themselves to costs even if successful. For the foregoing reasons this submission must fail.

(4) Discretion Spent-Vested Rights

55 Simply stated, this Court must decide whether Apotex is entitled to the advantages of the "old" law or bound to accept the disadvantages arising from the "new". The traditional approach to this issue focusses on whether the decision-maker reached a decision before the intervening legislation came into effect. In other words, did Apotex acquire a vested right to the NOC by March 12, 1993?

56 If a decision-maker has an unfettered discretion which he or she has not exercised as of the date a new law takes effect, then the applicant cannot successfully assert either a vested right or even the right to have the decision-maker render a decision. This is the ratio of the Judicial Committee of the Privy Council in *Director of Public Works v. Ho Po Sang*, [1961] A.C. 901. In that case, the Court distinguished a "vested right" from a "mere hope or expectation" and determined that an applicant for a rebuilding permit had only a mere hope or expectation that the permit would be granted at the time that repealing legislation came into force. *Ho Po Sang* has been applied by the Exchequer Court in *Merck & Co. Inc. v. Sherman & Ulster Ltd., Attorney-General of Canada, Intervenant*, supra. These cases provide the necessary background for an appreciation of the principles underlying the "vested rights" issue.

57 In *Ho Po Sang*, the lessee of Crown lands in Hong Kong was entitled by Ordinance to vacant possession of buildings occupied by sub-lessees on the condition that he erect new buildings and receive approval from the Director of Public Works. The legislation also exempted the lessee from compensating the sub-lessees with respect to termination of their tenancies. On July 20, 1956, the Director purported to give the lessee the required certificate. Upon receipt of their notices to quit the premises, the sub-lessees launched an appeal to the Governor in Council. The lessee immediately cross-appealed. On April 9, 1957, after the appeal had been initiated, the relevant provisions of the Ordinance were repealed to provide tenants with the right to compensation. As of that date the Governor in Council had not reached a decision.

58 The issue on appeal was whether on April 9, 1957, the lessee possessed "rights" under the Ordinance which remained unaffected by the repeal. The Privy Council based its conclusion on the "absolute" discretion which the Ordinance accorded the Governor in Council: "[The lessee] had no more than a hope that the Governor in Council would give a favourable decision" (at pages 920-921). The lessee's argument that he had an accrued right unaffected by the repeal to have the matter considered by the Governor in Council was rejected on the same grounds.

59 The decision of Thurlow J. (as he then was) in *Merck & Co. Inc. v. Sherman & Ulster Ltd., Attorney-General of Canada, Intervenant*, supra, provides guidance in determining whether Apotex had a vested right to the NOC rather than a mere hope or expectation. The issue in that case was whether the Commissioner of Patents erred in fixing the royalty payable to Merck by Sherman under a compulsory licence. Sherman had submitted its patent specifications and the Commissioner had assessed the royalty on the basis of subsection 41(3) of the Patent Act, R.S.C. 1952, c. 203. That subsection was subsequently repealed and replaced with subsection 41(4) (S.C. 1968-69, c. 49, s. 1). The Commissioner did not hear the parties' oral arguments or receive their written submissions until after these amendments came into effect. The issue before the Trial Judge was

straightforward: Which statutory provision was applicable when fixing the royalty—the old or the new? After a careful analysis of competing provisions of the Interpretation Act, R.S.C. 1952, c. 158, Thurlow J. concluded that the "new" subsection 41(4) prevailed. His reasoning bears directly on the "vested rights" issue.

60 Paragraph 37(c) of the Interpretation Act, S.C. 1967-68, c. 7 (now Interpretation Act, R.S.C., 1985, c. I-21, paragraph 44(c)) considered the effect of proceedings commenced under a "former enactment" and was relied upon by Merck to sustain its argument that the proceedings could only be continued in accordance with the new provision. That section read as follows:

37. Where an enactment (in this section called the "former enactment") is repealed and another enactment (in this section called the "new enactment") is substituted therefor

...

(c) every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment;

61 The respondent Sherman relied on paragraph 36(c) (now paragraph 43(c)) of the Interpretation Act in support of its argument that it had an "accrued" or "accruing" right as of the date of its application for the compulsory licence.⁷ Paragraph 36(c) read:

36. Where an enactment is repealed in whole or in part, the repeal does not

...

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;

...

and an investigation, legal proceeding or remedy as described in paragraph (e) may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed as if the enactment had not been so repealed.⁸

62 Following an extensive analysis of Ho Po Sang, Thurlow J. concluded (at page 12):

Here when s. 41(3) was repealed the procedure which the Commissioner had prescribed had not reached the stage where the matter was ready for decision, since the respondent's reply to the counterstatement had not been filed and had indeed been delayed at the respondent's request. But even if it had reached that stage and had been simply awaiting decision I do not think the

respondent could properly be said to have had an accrued right either to a licence or to have the matter dealt with on the law as it had been. The Commissioner's authority, as I see it, is not merely to deprive an applicant of a licence where he sees good reason to do so but is an authority to decide whether or not a licence should be granted to which is coupled a direction that the licence is to be granted in the absence of good reason for refusing it. The distinction is perhaps a fine or narrow one but it is for the Commissioner rather than the applicant to say whether or not there will be a licence and the applicant has no control over the decision which the Commissioner may make on the question. As in the Ho Po Sang case the question itself was unresolved and the issue rested in the future. I agree with the submission of counsel for the appellant that at the stage which the proceeding had reached what the respondent had (whether it was stronger or not, by reason of the statutory direction for reaching a decision which s. 41(3) prescribed, than what the respondent had in the Ho Po Sang case) was nothing more than a hope. Nor do I think what the respondent had at that stage can be regarded as an "accruing" right (or privilege) within the meaning of s. 36(c) since the difficulty lies not with the words "accrued" or "accruing" but with the lack of anything that answers to the description of the words "right" or "privilege" in s. 36(c).

In my opinion therefore s. 36(c) does not apply and the authority for continuing the proceeding commenced before the repeal is that contained in s. 37(c) of the Interpretation Act.

63 This analytical framework focusses the determination of whether Apotex had an "accrued" or "vested" right to the NOC. It is common ground that by February 4, 1993, "the matter was ready for decision". The question is whether the Minister's discretion with respect to the NOC had been spent as of that date.

64 Four issues are relevant to the determination of whether Apotex had a vested right to the NOC: (a) the scope of the Minister's discretion; (b) the relevance of legal advice; (c) the relevance of "pending legislative policy"; and (d) whether the matter had reached the Minister for his consideration.

(a) Ministerial Discretion-Narrow or Broad

65 The scope of a decision-maker's discretion is directly contingent upon the characterization of various considerations as "relevant" or irrelevant to its exercise: see generally, R. A. Macdonald and M. Paskell-Mede, "Annual Survey of Canadian Law: Administrative Law" (1981), 13 Ottawa L. Rev. 671, at page 720. Merck argues that the Minister's discretion under subsection C.08.002(1) of the FDA Regulations ("no person shall sell . . . a new drug unless . . . [the drug has] a content

satisfactory to the Minister") is, as a matter of statutory construction, sufficiently broad to embrace considerations other than those dealing with safety and efficacy. In my view, there is no merit in the submission. The law on this issue was carefully and extensively reviewed by the learned Trial Judge and three other judges of the Trial Division; see *Glaxo Canada Inc. v. Canada (Minister of National Health and Welfare)*, supra; *C.E. Jamieson & Co. (Dominion) v. Canada (Attorney-General)*, supra; and *Apotex Inc. v. Canada (Attorney-General) et al.*, supra.

66 I am in agreement with the Trial Judge that the FDA Regulations restrict the factors to be considered by the Minister in the proper exercise of his discretion to those concerning a drug's safety and efficacy. In reaching this conclusion, I am mindful of the two authorities cited by Merck. In *Glaxo Canada Inc.*, supra, Rouleau J. stated that the "Minister's determination is one made in contemplation of public health and represents the implementation of social and economic policy" (at page 439). This Court made similar observations in *Pfizer Canada Inc. v. Minister of National Health & Welfare et al.*, supra, where MacGuigan J.A. stated that "the Minister's determination was a decision made in contemplation of public health, and so amounted to an implementation of social and economic policy in a broad sense,' rather than application of substantive rules' to an individual case" (at page 440).

67 The above statements do not suggest that the Court was willing to overlook rudimentary canons of statutory construction. The matter to be resolved in *Pfizer* and on the *Glaxo Canada* appeal was the standing of the respective applicants.⁹ In both cases, the drug in question had fulfilled the safety and efficacy requirements under the FDA Regulations. In both cases, the Court held that the NOC could issue. Viewed in this context, these cases do not detract from the reasoning of Dubé J. that the FDA Regulations neither expressly nor implicitly contemplate the broad scope of ministerial discretion advocated by Merck.

68 Apotex submits that the narrow scope of the Minister's discretion necessarily implies that its right to the NOC crystallized as of February 4, 1993, or in any event, prior to March 12, 1993, when the Patented Medicines Regulations came into force. Merck contends that irrespective of how the discretion is construed, the Minister is residually entitled as a matter of law to have regard to considerations other than those touching on the safety and efficacy of Apo-Enalapril. Merck has identified the need to obtain legal advice and the pending changes to the Patent Act found within Bill C-91 ("pending legislative policy") to be considerations relevant to the exercise of even a narrowly circumscribed discretion.

(b) Legal Advice

69 Merck has essentially asked this Court to find that the time needed to enable a decision-maker to seek and obtain legal advice in any decision-making process is of itself a basis for denying mandamus. It also implies that confessed ignorance of a law upon which divergent judicial legal opinions have been expressed affects the public's right to performance of a statutory duty. In my opinion, both submissions must be denied.

70 Merck's only support for its argument is the House of Lords' decision in *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service*, [1980] 1 W.L.R. 302 (H.L.). In that case, the House of Lords determined that a labour relations board had the power to suspend, for a period of over two years, its process relating to conflicting accreditation applications. The Board felt compelled to await the outcome of indirectly related court proceedings before reaching a decision. Merck would apply this decision to maintain that as the Minister was entitled to seek legal advice, he was under no obligation to issue the NOC prior to March 12, 1993. I do not agree.

71 First, the relevant statute in *Engineers'* conferred upon the tribunal a significantly broader discretion than that accorded the Minister under the Patented Medicines Regulations. Second, the proceedings in that case were at a preliminary stage rather than at the final stage reached with Apotex's NDS (both reasons were offered by Dubé J.: at page 180). Finally, unlike the case before us, in *Engineers'* the delay caused by the need for legal clarification did not and could not automatically divest the parties of rights established under the relevant legislation.

72 The right of a decision-maker to obtain legal advice with respect to the legality of the performance of a duty is not in issue. Indeed, in light of the overwhelming opinion evidence with respect to the "legality" of issuing Apotex's NOC, the Minister's failure to seek departmental or outside opinions could have been perceived as an abdication of responsibility. But that self-imposed obligation cannot of itself deprive Apotex of its right to mandamus. In the absence of intervening legislation, the "legal advice" issue would not have arisen. It cannot now be invoked to argue that the Patented Medicines Regulations governed the ongoing decision-making process the moment they became law.

73 I am in agreement with Dubé J. that the legal advice justification is potentially endless and would almost necessarily result in allegations of abuse of discretion or unreasonable delay. Furthermore, the legal advice sought in this case had no bearing on the exercise of the Minister's narrowly circumscribed discretion. Its relevance transcends the principal question to be answered by the Minister: Is Apo-Enalapril a safe drug? This is not to suggest that once that question was answered the Minister can be said to have acted unlawfully by seeking legal advice. But the inevitable delay arising from the solicitation of legal advice (as opposed to unreasonable delay) cannot prejudice the right to performance of a statutory duty. The guiding principle is well known-equity deems to be done what should have been done. Moreover, to deny mandamus because of legal concerns generated by a party adverse in interest (Merck) is to judicially condone what might be regarded as a tactical manoeuvre intended to obfuscate and delay the decision-making process.

74 In light of the foregoing, it is unnecessary to deal with the learned Trial Judge's conclusion that [at page 181], "the Minister's delay in issuing the Apotex NOC was not warranted." Whether or not the delay was reasonable is not an issue upon which we can adjudicate as the necessary facts are not before us. Unless the Minister can establish another basis upon which to justify the decision to

withhold performance of a duty otherwise owed, Merck's argument must fail.

(c) Pending Legislative Policy-Relevant or Irrelevant Consideration

75 In support of its submission that pending legislative policy is a consideration relevant to the exercise of the Minister's discretion, counsel for Merck has referred us to three cases. In my opinion, none support the proposition stated. Nonetheless, I shall deal with each case and then turn to the more general question: As a matter of law, should the Minister be entitled to refrain from issuing the NOC on the basis of pending legislative policy?

76 The first of the decisions is *Distribution Canada Inc. v. M.N.R.*, supra. In that case, the applicant sought mandamus to compel the Minister of National Revenue to enforce strictly the collection of duties on non-exempt groceries being purchased in the United States. At that time it was departmental policy not to collect duties of less than \$1 or even higher amounts if other factors such as traffic volumes dictated. The Trial Judge drew a distinction between a total abdication of responsibility and conflicting views regarding how the law should be enforced and found that mandamus is only available in respect of the former. On appeal, this Court held that the Minister must take all reasonable measures to enforce the customs legislation; "[t]he reasonableness of [which] requires the assessment of policy considerations which are outside the domain of the courts since they deal with the manner in which the law ought to be enforced" (at page 40).

77 In *Distribution Canada*, the exercise of a ministerial discretion by reference to government policy did not have as its principal objective the divestiture of acquired rights. The Court simply concluded that the Minister enjoyed a discretion with which the law would not interfere. In any event, the precedential value of this decision has been misplaced. Its relevance arises in the context of the "balance of convenience" issue and accordingly will be addressed below.

78 The second case is *Wimpey Western Ltd. and W-W-W Developments Ltd. v. Director of Standards and Approvals of the Department of the Environment, Minister of the Environment and Province of Alberta* (1983), 49 A.R. 360 (C.A.).¹⁰ Here, the Alberta Court of Appeal was required to determine whether a Minister's policy views were relevant to the exercise of a discretion. The relevant subsection of the Clean Water Act, R.S.A. 1980, c. C-13, provides:

3 . . .

(4) The Director of Standards and Approvals may issue or refuse to issue a permit or may require a change in location of the water facility or a change in the plans and specifications as a condition precedent to giving a permit under this section.

79 In *Wimpey Western*, the respondent denied the appellant a permit to construct its own waste water treatment facility on an industrial development site because it was felt that the erection of such treatment facilities should be deferred until a regional sewage plant was operational. That justification was in accord with the policy of the Minister of the Environment. The Court of Appeal held that the respondent's discretion was not limited to considerations of technical matters. The panel was unanimous in its analysis of the basis on which ministerial policy was deemed a relevant consideration (at pages 368-369):

The purpose of the permit granting process in s. 3 is to give the Department power to control or limit potential sources of water contaminants before they are constructed. In my view, it is consistent with this purpose and with the wording of the section to allow the Director to consider a policy of his Minister aimed at limiting the number of points of discharge of contaminants into a waterway. It would seriously hamper the permit-granting system if the director could only look at applicants individually, but could not consider water quality objectives for the total river system.

80 The rather expansive view of relevant considerations advocated in *Wimpey Western* must be read in light of the broad discretionary power granted to the decision-maker. As well, the environmental aspects in *Wimpey Western* suggest a judicial predisposition, framed in terms of statutory construction, to recognize the promotion of public health concerns over a developer's self-interest. The Minister's discretion is carefully circumscribed in the case before us and specifically addresses health and efficacy concerns.

81 The last of the three cases cited, in my view, severely undermines Merck's position. In *Reg. v. Anderson; Ex parte Ipec-Air Pty. Ltd.* (1965), 113 C.L.R. 177 (Aust. H.C.), the applicant sought an order of mandamus directing the respondent to allow it to import an aircraft and to issue the licence necessary for it to carry freight between cities. The legislation provided (at page 177):

Regulation 199 of the Regulations provides:-" . . . (2) Where the proposed service is an interstate service, the Director-General shall issue an aerial work, charter or airline licence, as the case requires, unless the applicant has not complied with, or has not established that he is capable of complying during the currency of the licence with, the provisions of these Regulations, or of any direction or order given or made under these Regulations, relating to the safety of the operations." [Emphasis added.]

The respondent had refused both requests on the grounds of governmental policy against increasing the number of companies engaged in inter-State airfreight services.

82 On the issue of whether the charter licence should issue, a majority of the High Court of Australia held that mandamus was available as the respondent did not possess an unfettered discretion when deciding to issue a charter licence. The Court's rejection of government policy as a

relevant consideration is antithetical to Merck's submission. At pages 187-188, the High Court stated:

The evidence, and particularly the Director-General's own statements, make it clear that his refusal of the charter licence had nothing whatever to do with any question of safety, and that in truth the prosecutor has established to the satisfaction of the Director-General that it is capable of complying with any and all provisions relating to the safety of the proposed operations. I read the Director-General's letter refusing the charter licence as acknowledging, even if unintentionally, that it was in spite of, and not because of, the concluding words of reg. 199(2) that the charter licence was being refused. I think the truth of the matter should be faced: the refusal of the licence was based upon nothing whatever but a policy against allowing anyone to participate in the relevant form of inter-State trade other than those already engaged in it. However wise and well-grounded in reason that policy may be, if the Regulations on their true construction authorize a refusal so based I should find great difficulty in avoiding the conclusion that reg. 197, in so far as it requires a charter licence for charter operations in inter-State air navigation, is invalid as being in conflict with s. 92 of the Constitution. In my opinion, however, such a refusal is contrary to the direct command of reg. 199(2).

I regard this as a clear case for a writ of mandamus; and since on the view I take of the facts the Director-General is now under an absolute duty to issue a charter licence, a duty which is unqualified by any discretionary judgment still remaining to be exercised, I am of opinion that the tenor of the writ should be to command that that duty be performed. [Emphasis added.]

83 With respect to the application to import aircraft, the majority held that mandamus should not issue. Two of the three Judges held that this matter was within the ambit of the respondent's discretion. In a concurring judgment, the third Judge opined that the respondent was under an obligation to consider and act upon government policy (at pages 204-206). I should point out that the reasoning of the minority with respect to the first issue was premised on the reality that an order directing the respondent to issue a charter licence would be a practical nullity in light of the applicant's inability to obtain aircraft.

84 Anderson stands for the proposition that decision-makers vested with an unfettered discretion may have regard to existing government policy. What constitutes government policy (versus ministerial policy) is another matter. As the Minister's discretion in the instant case was narrowly circumscribed, it is evident that this case advances Apotex's position rather than Merck's.

85 Ultimately, the question before this Court is whether pending legislative policy can be a

relevant consideration notwithstanding the narrow scope of the Minister's discretion. As a matter of first impression, I am of the view that the law should not preclude the possibility of recognizing the Minister's right to refuse to perform a public duty on the basis of policy rationales underscoring impending legislation. Assuming that the Minister's discretion does not embrace health and safety criteria, it is conceivable that mandamus would not or should not issue where, for example, a person is entitled to a permit authorizing importation and sale of a product which the Minister, acting in good faith, believes poses an unacceptable health risk to Canadians. In this situation, a court may well adjourn a mandamus hearing if it could be shown that amending legislation is about to be brought into effect. In so doing, it would be effectively acknowledging and applying the "balance of convenience" test as a ground for refusing mandamus. It is thus not a question of whether the Minister has the power to refuse to perform a duty on the basis of pending changes to the legislation but whether the Court is willing to exercise its discretion to grant mandamus in light of the potential consequences.

86 Returning to the facts before us, in my view it cannot be said that in the exercise of his statutory power under the FDA Regulations the Minister was entitled to have regard to the provisions of Bill C-91 after they were enacted but before they were proclaimed in effect. In the circumstances of this case, pending legislative policy is not a relevant consideration which can be unilaterally invoked by the Minister.

(d) De Facto-Decision Never Made

87 Merck argues that the reason that the NOC did not issue before March 12, 1993, was because the Minister never considered Apotex's application. Since the Minister did not exercise his discretion, the learned Trial Judge erred in purporting to dictate the outcome of the Minister's deliberations. In the absence of a finding of bad faith on the part of the Minister Merck argues that Apotex could not have acquired a vested right to the NOC. Both parties support their arguments on this issue with reference to court decisions generated by the tightening of gun control measures in the late 1970s.

88 In 1977, Parliament introduced various amendments to the Criminal Code [R.S.C. 1970, c. C-34] (Criminal Law Amendment Act, 1977, S.C. 1976-77, c. 53) with a view to further restricting the use and sale of firearms in Canada. The legislation came into effect on January 1, 1978 and as a result, orders of mandamus were sought in a number of reported instances.¹¹ In each case the applicant had applied for a permit and had fulfilled all conditions precedent prior to January 1.

89 In *Martinoff v. Gossen*, [1979] 1 F.C. 327 (T.D.), the Trial Judge found that the applicant did not have an accrued right as of January 1 to a restricted weapons business permit. The Judge based his decision upon the fact that the respondent's authority to issue the permit had been revoked and that therefore there was no one who could issue the permit. Interestingly, he does not appear to have been influenced by the fact that the application was still being processed at the time the law came into effect.

90 In *Lemyre v. Trudel*, [1978] 2 F.C. 453 (T.D.); *affd* on other grounds, [1979] 2 F.C. 362 (C.A.), the applicant sought mandamus ordering the respondent to issue a registration certificate with respect to a fully automatic Walther MPL 9mm. At the time of the application the gun was classified as a restricted weapon which was required to be registered with the Commissioner of the RCMP. The amended Criminal Code prohibited possession of such a weapon unless [at page 363] "on the day on which this paragraph comes into force, [it] was registered as a restricted weapon." The applicant's registration was not approved by January 1. At trial, the Judge held that the applicant had no "acquired right to possess his weapon, since without the permit and certificate such possession was quite simply prohibited" (at page 457). In brief oral reasons, the Court of Appeal concluded that the only basis on which the appellant could succeed was by establishing that: "his weapon fell within this exception, namely that it was registered (not that it might or should have been) on January 1, 1978." (at page 364).

91 *Lemyre* contrasts sharply with the decision of the Saskatchewan Court of Appeal in *Abell v. Commissioner of Royal Canadian Mounted Police* (1979), 49 C.C.C. (2d) 193 (Sask. C.A.). In *Abell*, the applicant was successful in obtaining a registration permit for a "F.A. Mark II (1944) Sten gun". After canvassing the decisions in *Ho Po Sang* and *Merck & Co. Inc. v. Sherman & Ulster Ltd.*, Attorney-General of Canada, *Intervenant*, *supra.*, the Saskatchewan Court of Appeal concluded that the applicant had complied with the requisite Criminal Code provisions as fully as possible prior to January 1, 1978 and therefore had acquired a right to have the weapon registered.

92 One commentator has noted that the decisions of this Court are "hard to reconcile" with *Abell*; see P.-A. Côté, *supra.*, at pages 149-150. Yet it is not a question of choosing between *Lemyre* and *Abell*. *Stare decisis* dictates that the reasoning in *Merck & Co. Inc. v. Sherman & Ulster Ltd.*, Attorney-General of Canada, *Intervenant*, *supra.* prevails. This is not to suggest that *Lemyre* or *Martinoff* would be decided any differently today; certainly, it is arguable that the "balance of convenience" would favour the same result.

93 In the end, I must conclude that *Apotex* had a vested right to the NOC notwithstanding the Minister's failure to render a decision by March 12, 1993.

(5) Balance of Convenience

94 If *Apotex* were found to be entitled to mandamus, *Merck* submits that this Court ought to exercise its discretion to refuse the order sought. It argues that mandamus should be denied where the effect would be to frustrate legislative change. *Merck* maintains that the principle established in *Ottawa, City of v. Boyd Builders Ltd.*, *supra.*, is persuasive authority for the proposition that this Court should not enforce the old legislation as Bill C-91 and the Patented Medicines Regulations were in place at the time of the hearing.

95 It is true that in *Boyd Builders* the Supreme Court acknowledged the relevance of pending legislative change when deciding whether to grant an order of mandamus. Unlike the Trial Judge, and with respect, I do not believe the argument can be side-stepped. *Merck* has touched upon what

has been described as a "controversial ground" upon which some courts have been prepared to deny mandamus. The decision in *Boyd Builders* has been cited as but one case in which courts have employed what has been labelled the "balance of convenience" test by weighing competing interests in determining the proper exercise of discretionary power: see J. M. Evans et al., *Administrative Law: Cases, Text, and Materials*, 3rd ed. (Toronto: Emond Montgomery, 1989), at page 1083.

96 Despite the way in which the issue was originally framed, three separate questions must be raised: (1) does the Court have the discretion to invoke the "balance of convenience" test as a ground for refusing mandamus? (2) if so, what are the criteria for its exercise? and (3) is this a case in which mandamus should be refused? I shall deal with each of the questions as required.

(a) The Ambit of the Court's Discretion-Balance of Convenience

97 The case law governing mandamus reveals a number of legal techniques by which courts have, on occasion, balanced competing interests. For example, when determining the relevancy or irrelevancy of considerations influencing the decision-maker, a Court may construe either broadly or narrowly the statutory discretion imposed by apparently clearly worded legislation. The same is true of provisions which seek to encroach upon vested rights. Indeed, a discussion of vested rights can be found to be underscored by policy considerations implicit in the formal reasons for judgment. Professor Côté offers a penetrating analysis of this process in *The Interpretation of Legislation in Canada*, supra, at page 143:

It seems that judges, in ruling on the recognition of vested rights, silently weigh individual and social consequences. The greater the prejudice suffered by the individual, the greater are the chances that vested rights will be recognized. If the individual prejudice is relatively limited (for example, when the law simply determines a "procedure"), the court is more likely to apply the new law immediately. If the judge perceives the social consequences of delays in the application of the new statute to be significant (for example, if the health or safety of the public is endangered), there will be considerable hesitation to recognize vested rights. Where survival of the earlier statute is not viewed as a threat to the interests of society, the courts find it easier to admit the existence of vested rights.

98 The Court's discretion must be exercised discriminantly. One commentator cautions that as the scope of the Court's discretion can intrude upon the rule of law, it must be exercised with the greatest of care: see Sir W. Wade, *Administrative Law*, 6th ed. (Oxford: Clarendon, 1988), at page 709. Another has observed that the Court has no discretion to refuse mandamus when it is the only means of securing performance of a ministerial duty, while assuming at the same time that it is not available as of right: see S. A. de Smith, *Judicial Review of Administrative Action*, 4th ed. by J. M. Evans (London: Stevens, 1980), at page 558.

99 Merck has asked this Court to decline to interfere with the Minister's discretion even though

his failure to perform a statutory duty has been found to be unjustified, in effect rendering lawful that which has been deemed unlawful. It is perhaps with these concerns in mind that Dubé J. implied that the decision in *Boyd Builders* prohibited the Court from exercising its discretion to deny mandamus (at page 181). Certainly, the introduction of the "balance of convenience" variable into the mandamus equation ultimately leads to the question of whether there are any limits to the considerations upon which a Court may exercise its discretion.

100 Despite obvious concerns, the law reports yield a thread of cases which may collectively lead one to conclude that the courts have all but formally recognized another guiding principle in law of mandamus.¹² In *Distribution Canada Inc. v. M.N.R.*, supra, discussed earlier, it could be argued that the Court effectively balanced the benefits of strict enforcement of a duty against the interests of the enforcers and the general public. Arguably, a similar balancing technique was adopted in the gun control decisions.

101 By contrast, the "balance of convenience" test was effectively recognized in *Re Central Canada Potash Co. Ltd. et al. and Minister of Mineral Resources for Saskatchewan* (1972), 30 D.L.R. (3d) 480 (Sask. Q.B.); affd (1973), 32 D.L.R. (3d) 107 (Sask C.A.); appeal to Supreme Court dismissed (1973), 38 D.L.R. (3d) 317. The Minister's discretion in that case was unfettered and mandamus could have been denied on that ground alone. However, both the trial and appeal Courts supported an alternative ground for refusing mandamus: such an order "would lead to confusion and disorder in the potash industry." At the Court of Appeal, Chief Justice Culliton stated (at page 115):

The learned Chambers Judge also held that even if mandamus lay he would not, in the exercise of his discretion, grant it in any event. There can be no doubt that mandamus is above all a discretionary remedy. While it would be difficult to state, with certainty, all of the grounds upon which a Judge would be justified in refusing the writ in the exercise of his discretionary right, such grounds are indeed broad and extensive. No doubt the learned Chambers Judge felt that to grant mandamus in this case would lead to confusion and disorder in the potash industry. That this conclusion is sound is evident from the fact that all other potash producers opposed the application for mandamus. In my opinion, such a reason would be a valid one for the exercise of the learned Chambers Judge's discretion.

102 Other courts have presumed that the Court retains an inherent discretion to refuse mandatory relief in certain circumstances. In *Fitzgerald v. Muldoon*, [1976] 2 N.Z.L.R. 615 (S.C.) the then recently elected Prime Minister of New Zealand announced the abolition of a superannuation scheme as promised during the election campaign. After the announcement, the Board stopped enforcing payment under the superannuation legislation on the assurance of the Prime Minister that repealing legislation would be forthcoming. Although the Court granted a declaration that the actions of the Prime Minister were illegal, it refused to grant a mandatory injunction compelling the

Board to collect the required contributions. Instead it adjourned the proceedings for six months with a view to seeing whether the Government fulfilled its promise to repeal the superannuation scheme.

103 On the one hand, Fitzgerald ostensibly supports the principle that the executive branch of government has no power to suspend the operation of a law. To quote Marceau J.A. in *Carrier-Sekani Tribal Council v. Canada (Minister of the Environment)*, [1992] 3 F.C. 316 (C.A.), at page 347: "It is obvious that the will of Parliament is paramount and no administrative or executive authority is entitled to contravene it, whether directly or indirectly." However, by adjourning the mandamus hearing, the Court effectively suspended the operation of the law in any case.

104 In Fitzgerald, the Trial Judge was clearly motivated by the practical consequences of granting the order. Even if the superannuation scheme were reinstated immediately, it would have taken six weeks before its operation became effective while the recovery of contributions in arrears would take considerably longer. The Trial Judge concluded (at page 623):

[I]t would be an altogether unwarranted step to require the machinery of the New Zealand Superannuation Act 1974 now to be set in motion again, when the high probabilities are that all would have to be undone again within a few months.

105 It should be noted that the evidence before the Trial Judge supported the belief that Parliament was in a position to pass such legislation within the time frame envisaged by the adjournment.

106 Having regard to the above jurisprudence, I conclude that this Court possesses the discretion to refuse mandamus on the ground of "balance of convenience". The more difficult task is to identify the criteria to be applied in determining whether to exercise this discretionary power.

(b) Criteria for the Exercise of the Discretion

107 The jurisprudence reveals three factual patterns in which the balance of convenience test has been implicitly acknowledged. First, there are those cases where the administrative cost or chaos that would follow upon the order's issue is obvious and unacceptable; see *Distribution Canada Inc. v. M.N.R.*, supra; *Re Central Canada Potash Co. Ltd. et al. and Minister of Mineral Resources for Saskatchewan*, supra; and *Fitzgerald v. Muldoon*, supra. It is noteworthy that in most of these cases the duty in question was owed to the public at large rather than the individual applicant. In this sense, the law of mandamus and the law of standing may be said to intersect. This relationship was implicitly acknowledged by Desjardins J.A. in *Distribution Canada v. M.N.R.*, supra, at page 39:

I am, for my part, inclined to think that with the addition of the Finlay case, the jurisprudence does not clearly exclude the possibility of extending standing to a proceeding in mandamus where there is public interest to be expressed and there is no other reasonable way for it to be brought to court.

Whether the "balance of convenience" test may be employed as an ostensive vehicle by which standing requirements may be further relaxed I leave for another day.

108 The second, if more speculative, ground for denying mandamus appears to arise in instances where potential health and safety risks to the public are perceived to outweigh an individual's right to pursue personal or economic interests; see *Martinoff v. Gossen*, supra; *Lemyre v. Trudel*, supra; and *Wimpey Western Ltd. and W-W-W Developments Ltd. v. Director of Standards and Approvals of the Department of the Environment Minister of the Environment and Province of Alberta*, supra.

109 In this case, there is no issue that an order of mandamus would precipitate administrative chaos. It is true that such an order may well have the effect of encouraging other generic drug manufacturers who submitted NDSs before Bill C-91 and the Patented Medicines Regulations came into effect to file for mandamus. However, as only those manufacturers who meet the traditional mandamus requirements will be successful, this is not a case in which arguments in favour of administrative efficiency are particularly persuasive. Further, as Apo-Enalapril has met the safety and efficacy requirements under the FDA Regulations, no issue with respect to public health and safety arises. This leaves us with the line of authority as represented by *Boyd Builders*.

(c) *Boyd Builders*

110 Merck argues that the *Boyd Builders* principle enables this Court to exercise its discretion to deny mandamus since in that case the Court adjourned a mandamus hearing to allow a new regulatory regime to be implemented. In my view, this principle is misconceived. Indeed, even the interpretation forwarded by Merck does not advance its case.

111 *Boyd Builders* applied for a building permit at a time when the extant zoning by-law would have allowed for the proposed development. News of the proposed development generated adverse public reaction in response to which the city initiated the passage of a by-law amendment to thwart the developer's project. Prior to *Boyd Builders*, an application for a building permit could be defeated by the passage of a by-law amendment by the Municipal Council any time up to the issuing of the permit; see *Toronto Corporation v. Roman Catholic Separate Schools Trustees*, [1926] A.C. 81 (P.C.). On application for mandamus the city of Ottawa sought an adjournment until such time as the Ontario Municipal Board had the opportunity to approve or reject the by-law amendment. The Supreme Court set out a tri-partite test in determining whether to grant the adjournment: (1) the municipality must establish a pre-existing intent to rezone the property prior to the application for a permit; (2) the municipality must have acted in good faith; and (3) the municipality must have acted with dispatch in seeking passage and approval of the amending by-law.

112 It is now well established that the prima facie right of a property owner to utilize his or her property in accordance with existing zoning regulations is not to be disturbed unless an intent to rezone is shown to exist prior to the application for the permit. Of course, strict application of the *Boyd Builders* principle does not advance Merck's case. Apotex's application for a NOC preceded

Parliament's intent to introduce amending legislation by a period exceeding two years. Leaving that aside, it is my opinion that the Supreme Court was not inviting courts to become embroiled in the daily political skirmishes surrounding land use planning decisions by balancing the so-called "equities": it merely sought to establish a principle by which it could be determined whether a property owner had acquired a vested right to a building permit pending approval of a by-law amendment.

113 The current state of municipal law is that if a prior intent to rezone cannot be established, then the property owner can make claim to a vested right to a building permit. This principle cannot be invoked to support the exercise of the Court's discretion in issuing mandamus by balancing competing interests. Admittedly, there are those who argue that the judiciary should play a greater role in "balancing the equities", even in planning law (see Makuch, *Canadian Municipal and Planning Law*, (Toronto: Carswell, 1983), at pages 251-261), and undoubtedly cases in which courts have been willing to become embroiled in the politics of land use can be found in the reports; e.g., *Re Hall and City of Toronto et al.* (1979), 23 O.R. (2d) 86 (C.A.). But that, in my view, does not undermine the proper application of *Boyd Builders*.

114 In effect, the balance of convenience test authorizes the Court to use its discretion to displace the law of relevant considerations and the doctrine of vested rights. It should therefore be used only in the clearest of circumstances and not be perceived as a panacea for bridging legislative gaps. Unless courts are prepared to be drawn into the forum reserved for those elected to office, any inclination to engage in a balancing of interests must be measured strictly against the rule of law.

115 The argument that social or economic costs outweigh the rights of Apotex obfuscates what is essentially a private law issue. In the end, I conclude that the principle set out in *Boyd Builders* is of no relevance to the case before us, nor to the issue of the Court's discretion to refuse mandamus in this case on the ground of "balance of convenience." Accordingly, there is no legal basis upon which the "balance of convenience" test can be applied to deny Apotex the order which it seeks. I turn now to consider whether Apotex's vested right to the NOC was divested by Bill C-91 and the Patented Medicines Regulations.

(6) Retroactive or Retrospective

116 Merck argued that if Apotex acquired a vested right prior to March 12, 1993, such right was divested by subsections 5(1) and (2) of the Patented Medicines Regulations:

5. (1) Where a person files or, before the coming into force of these Regulations, has filed a submission for a notice of compliance in respect of a drug and wishes to compare that drug with, or make reference to, a drug that has been marketed in Canada pursuant to a notice of compliance issued to a first person in respect of which a patent list has been submitted, the person shall, in the submission, with respect to each patent on the patent list,

...

(2) Where, after a second person files a submission for a notice of compliance, but before the notice of compliance is issued, a patent list is submitted or amended in respect of a patent pursuant to subsection 4(5), the second person shall amend the submission to include, in respect of that patent, the statement or allegation that is required by subsection (1). [Emphasis added.]

117 Leaving aside the question of the impact of the "balance of convenience" arguments on retrospective legislation, Merck proffers three distinct submissions.

118 Merck's first submission is policy-based. It asserts that Apotex created a "window of opportunity" for itself by obtaining a NOC notwithstanding the current legislation. Merck also maintains that Apotex is in effect seeking the assistance of this Court to facilitate patent infringement. (Illegality was not raised as an equitable bar to granting relief.) The relevant paragraphs from Merck's Memorandum state (appellants' memorandum of fact and law, paragraphs 87-89):

87. The Courts were not oblivious to patent rights when dealing with NOCs even under the former law. NOCs and patent rights have never occupied unrelated juristic solitudes. Under the former law, the Courts constantly emphasized that it was the compulsory license that affected the patent owners rights, and that the NOC merely enabled the generic drug company to exercise its rights under the compulsory license. The Court is now clearly confronted with a situation where Parliament has linked NOCs to protection of patent rights and the Court's assistance is being invoked to facilitate patent infringement.

...

88. Neither the Minister (nor the Court) should turn a blind eye to the fact that from and after February 4, 1993 the "compulsory license" provisions had been repealed, and the "property interests" of patent owners such as Merck were directly and expressly referenced in Bill C-91 and the Patented Medicines (Notice of Compliance) Regulations. Parliament could hardly make clearer the mischief it intended to address in these enactments.

89. Apotex seeks to create a "window of opportunity" for itself between the former statutory regime (where patent rights were dealt with under the compulsory licence provisions) and the present statutory regime (where issuance of an NOC is tied to patent protection). The President, CEO and COO of Apotex, Bernard Sherman, has repeatedly testified in these proceedings that he intends to market enalapril across Canada as soon as possible, notwithstanding the fact that the Merck patent does not expire until October 16, 2007.

119 While NOCs and patent rights are linked, they have never been mutually dependent. One of the purposes of the compulsory licensing scheme was to avoid costly and protracted litigation surrounding possible patent infringement provided that the generic was willing to pay royalties. This reality, however, does not lead inevitably to the conclusion that all generic products infringe patents. In my view all that can be said is that Apo-Enalapril is a "safe" drug. To refuse mandamus on the basis of Merck's argument would be to essentially prejudge the patent issue.

120 Practically speaking, Merck is seeking an interlocutory injunction against Apotex with respect to possible patent infringement without having to satisfy the conditions precedent imposed at law to the granting of such relief. (How section 6 of the Patented Medicines Regulations will be interpreted is another matter.) In the circumstances, an order in the nature of mandamus cannot reasonably be viewed as an instrument which "facilitates" patent infringement. This Court should not close the window of opportunity by ignoring the fact that Parliament had at its disposal an effective legislative tool for divesting Apotex of what the law holds to be an acquired right. Nor can this Court turn a blind eye to the availability of conventional legal procedures to thwart patent infringement.

121 Merck's second submission is premised on the Patented Medicines Regulations being "procedural" in nature. Unquestionably, if those regulations are so characterized then it is clear that Apotex's NDS would be subject to the new statutory regime; see *Howard Smith Paper Mills Ltd. et al. v. The Queen*, [1957] S.C.R. 403, per Cartwright J., at pages 419-420, quoting with approval Lord Blackburn in *Gardner v. Lucas* (1878), 3 App. Cas. 582 (H.L.), at page 603. However, the question we must address "is not simply whether the enactment is one affecting procedure but whether it affects procedure only and does not affect substantial rights of the parties": *DeRoussy v. Nesbitt* (1920), 53 D.L.R. 514 (Alta. C.A.), at page 516, per Harvey C.J., cited with approval in *Angus v. Sun Alliance Insurance Co.*, [1988] 2 S.C.R. 256, at page 265, per La Forest J.

122 In the instant case, we are not dealing with procedural regulations per se. The imposition of a criterion that a NOC cannot issue with respect to a patent-linked NDS is clearly a substantive change in the law and hence subject to the rules of statutory construction applicable to legislation purporting to affect vested rights.

123 Merck's third submission is that the intended scope of subsection 5(1) is unambiguous. If that premise is valid then it necessarily follows that there is no room to invoke the canons of statutory construction designed to assist in the interpretation of ambiguous enactments. Merck seeks to avoid the application of the presumption against retroactive operation of statutes and the presumption of non-interference with vested rights, which: "only appl[y] where the legislation is in some way ambiguous and reasonably susceptible of two constructions"; *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 S.C.R. 271, at page 282, per Dickson J. (as he then was). In my view, subsections 5(1) and (2) do not manifestly seek to divest persons of acquired rights. They are at best ambiguous.

124 At this juncture the issue can be tackled in one of two ways. The first invokes an extensive analysis of the law dealing with retroactivity and retrospectivity. Critical to that analysis is the need to distinguish between the principle of non-retroactivity of statutes and the principle of non-interference with vested rights. Today, it is well recognized that a statutory enactment which is forward looking but which also impairs or affects vested rights is not necessarily retroactive. The distinctions are addressed in three Supreme Court decisions:¹³ *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, *supra*; *Attorney General of Quebec v. Expropriation Tribunal et al.*, [1986] 1 S.C.R. 732; and *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880 (see also *Lorac Transport Ltd. v. Atra (The)*, [1987] 1 F.C. 108 (C.A.), per Hugessen J.A., at page 117). The second approach is much simpler and reinforces my opinion that in the circumstances of this case both interpretative presumptions are applicable and that Parliament had not intended subsections 5(1) and (2) of the Patented Medicines Regulations to intrude upon vested rights.

125 For the sake of argument, assume that subsection 5(1) expressly applies to all NOCs "in the pipeline", including those to which applicants have a vested right. No one can question the fact that Parliament has the authority to pass retroactive legislation, thereby divesting persons of an acquired right. It is equally clear, however, that vested rights cannot be divested by the Patented Medicines Regulations unless the enabling legislation, that is the Patent Act or Bill C-91, implicitly or explicitly authorize such encroachments; see generally *Côté*, *supra*, at page 152. The Supreme Court endorsed this approach to regulatory interpretation in *A.G. for British Columbia et al. v. Parklane Private Hospital Ltd.*, [1975] 2 S.C.R. 47, at page 60, per Dickson J. (as he then was):

If *intra vires*, Order in Council 4400 would serve to extinguish retrospectively the entire claim of *Parklane*, but in my view it fails to have that effect. The Lieutenant Governor in Council is empowered to enact regulations for the purposes of carrying into effect the provisions of the Act, but nothing expressly or by necessary implication contained in the Act authorizes the retrospective impairment by regulation of existing rights and obligations. [Emphasis added.]

126 It is one thing for a provision of an Act of Parliament to attempt to affect vested rights and quite another for a subsection of a regulation to do the same. With one exception, I could find no provision in the Bill C-91 specifically authorizing regulations to interfere with existing or vested rights. Certainly, subsection 55.2(4) of the Patent Act, the regulation-making provision, does not expressly or implicitly authorize regulations of a retroactive nature. This explains why the legislative draftsman did not craft subsection 5(1) of the Patented Medicines Regulations so as to embrace all NDSs "in the pipeline" by referring specifically to those in which the applicant had acquired a vested right. In my estimation, the draftsman knew that such formulation would be *ultra vires* the Governor in Council.

127 By contrast, subsection 12(1) of Bill C-91 expressly extinguishes all compulsory licences granted after December 20, 1991. Like the learned Trial Judge, I am driven to the conclusion that

Parliament could have done the same for NOCs "in the pipeline". A purposive interpretation of subsection 5(1) of the Patented Medicines Regulations and an appreciation of the ejusdem generis canon of statutory interpretation reveal that it only applies to NDSs which had not reached the point where the Minister's discretion was spent as of March 12, 1993.

(7) Jurisdiction of the Court

128 The final issue is whether the jurisdiction of this Court to grant judicial review has been "ousted" by the paramountcy provision in Bill C-91. Subsection 55.2(5) [of the Patent Act] reads:

55.2 . . .

(5) In the event of any inconsistency or conflict between

- (a) this section or any regulations made under this section, and
- (b) any Act of Parliament or any regulations made thereunder,

this section or the regulations made under this section shall prevail to the extent of the inconsistency or conflict. [Emphasis added.]

129 Merck's novel argument is succinctly outlined in its memorandum (at paragraphs 91-95 inclusive):

- 91. As previously discussed, the Patented Medicines (Notice of Compliance) Regulations on their face expressly apply to NOC applications pending before the Minister on March 12, 1993.
- 92. As of March 12, 1993 accordingly, Parliament had put in place a new procedure to govern disputes about the issuance or non-issuance of NOCs. The new procedure is set out in Sections 6 and 8 of the Patented Medicines (Notice of Compliance) Regulations.
- 93. The constitutional basis for the Federal Court Act is s. 101 of the Constitution Act 1867 which is directed to "the better Administration of the Laws of Canada".
- 94. The prohibition against issuance of an NOC in s. 7 of the Regulations until the procedure set out in ss. 6 and 8 of the Regulations has been complied with is as much "a law of Canada" as is s. 18 of the Federal Court Act. Indeed, and more importantly, Parliament has declared in s. 55.2(5) of the Regulations that the prohibition in the Regulations is paramount to s. 18 of the Federal Court Act and every other federal statute.

95. Accordingly, when this matter came on for a hearing on June 21, 1993, the Court had no more jurisdiction to issue mandamus to the Minister to issue an NOC than the Minister had jurisdiction on his own behalf to issue an NOC in the face of the prohibition in s. 7 of the Regulations.

130 I fail to see how subsection 55.2(5) or any other regulation thereunder can be said to be paramount to section 18 of the Federal Court Act [R.S.C., 1985, c. F-7 (as am. by S.C. 1990, c. 8, s. 4)]: see generally *Friends of the Oldman River Society v. Canada (Minister of Transport)*, supra, per La Forest J., at pages 38-39. Am I to assume that as the Supreme Court of Canada is a statutory Court, it too lacks jurisdiction in this matter? The answer to this submission is self-evident. There is no paramountcy issue. We have been asked to determine whether the Patented Medicines Regulations are applicable. Subsection 55.2(5) cannot be construed as a privative clause insulating the Minister and the relevant legislation from judicial review. This submission is without merit.

CONCLUSION

131 The appeal and cross-appeal should be dismissed with costs.

132 Mahoney J.A.:-- I agree.

133 McDonald J.A.:-- I agree.

1 On January 5, 1993, Apotex attempted unsuccessfully to cause the Federal Court of Canada to enjoin Parliament from enacting the Bill.

2 On September 20, 1991, Merck sued Apotex for exporting enalapril to the United States and the Caribbean. Those patent infringement proceedings are still pending.

3 On appeal, Apotex encouraged this Court to infer from the Minister's refusal to disclose the substance of these opinions that they must support Apotex's legal position. I wish only to point out that I can think of a number of valid reasons why the Minister might not want a legal opinion, either favourable or unfavourable to the respective litigants, released.

4 I think it important to note that when counsel for the Minister sought the adjournment, he was not aware that the Patented Medicines Regulations would come into effect on March 12, 1993. No one, including counsel for Apotex, implied otherwise.

5 I am aware, however, that Apotex did allude to this matter; see memorandum by cross-appeal, Apotex, at p. 6, subparas. 8(c)(vi) and (vii).

6 Generally, the rule is that mandamus cannot issue with respect to a duty owed to the Crown. Historically, this issue has been framed as one concerning standing to bring a mandamus application. The Supreme Court has considerably loosened the requirements for standing over the decades; see *Thorson v. Attorney General of Canada et al.*, [1975] 1 S.C.R. 138; *Nova Scotia Board of Censors v. McNeil*, [1976] 2 S.C.R. 265; *Minister of Justice of Canada et al. v. Borowski*, [1981] 2 S.C.R. 575; *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607. For a discussion of the application of these cases to mandamus proceedings, see *Distribution Canada Inc. v. M.N.R.*, *supra*, per Desjardins J.A. at pp. 38-39.

7 These paragraphs of the Interpretation Act are narrower in scope than the common law principles which they essentially codify: see P.-A. Côté, *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Que.: Yvon Blais, 1991), at p. 94.

8 Merck vigorously disputed the application of ss. 43(c) and 44(c) of the Interpretation Act to this appeal. It argued that since the Patented Medicines Regulations constitute a legislative enactment rather than a repeal, the provisions of the Interpretation Act which ostensibly concern the repeal of an enactment are irrelevant. In my view a change in the law effected by the addition of a further criterion is equivalent to the repeal and replacement of the previous criteria. S. 10 of the Interpretation Act directs that substance prevail over form.

9 It is arguable that Pfizer undermines Merck's legal standing to seek an order of prohibition. In that case, Pfizer, an innovator drug manufacturer, sought to have this Court set aside a decision of the Minister to issue a NOC to Apotex for the drug Piroxicam. Apotex successfully had the application quashed since, *inter alia*, Pfizer was not a person directly affected by the decision of the Minister. Similarly, in *Glaxo Canada*, *supra*, Glaxo's application for an interlocutory injunction to restrain the Minister from issuing Apotex a NOC for the drug Ranitidine was dismissed for lack of standing. It follows that what one cannot do directly cannot be done indirectly. In this case, the issue of standing may have been subject to one of the numerous applications preceding the appeal. In the circumstances, I assume that Merck has the requisite standing.

10 See also case annotation, Peter P. Mercer, at pp. 248-251 [of (1983), 3 Admin. L.R. 248].

11 The only other case I am aware of is *Haines v. Attorney General of Canada* (1979), 32 N.S.R. (2d) 271 (C.A.). The facts of that case are too singular to be of use in this appeal.

12 Under English law it is said that mandamus may not issue where it would cause administrative chaos and public inconvenience despite conflicting authorities on this point (see *Halsbury's Laws of England*, 4th ed. reissue, Vol. 1(1): Administrative Law, para. 130, and conflicting cases gathered at note 12).

13 The distinction had been drawn earlier by this Court; see *Northern & Central Gas Corp. v. National Energy Board*, [1971] F.C. 149 (T.D.); *Minister National Revenue v. Gustavson*

Drilling (1964) Ltd., [1972] F.C. 92 (T.D.); and Zong v. Commissioner of Penitentiaries, [1976] 1 F.C. 657 (C.A.).

Indexed as:
Merck & Co. v. Apotex Inc.

Between
Merck & Co. Inc. and Merck Frosst Canada Inc., plaintiffs, and
Apotex Inc., defendant

[1996] F.C.J. No. 405

[1996] A.C.F. no 405

110 F.T.R. 155

67 C.P.R. (3d) 147

62 A.C.W.S. (3d) 673

Court File No. T-2408-91

Federal Court of Canada - Trial Division
Ottawa, Ontario

Nadon J.

Heard: March 26, 1996

Judgment: March 27, 1996

(4 pp.)

Practice -- Evidence -- Affidavits -- Cross-examination of affiant -- Duty of affiant to inform himself of matter in issue.

This was an appeal from an order allowing in part the appellant's motion to compel a witness, McCracken, to reattend for further cross-examination and to provide answers to certain questions objected to during the cross-examination. The Associate Senior Prothonotary ordered McCracken to provide an answer to only one of the questions, but only to the extent that he had knowledge of the requested information. The witness then informed the appellant that he had no such knowledge. The appellant submitted that if he did not have the knowledge to answer the questions, the witness had a

duty to inform himself.

HELD: Appeal dismissed. The deponent of an affidavit had a duty to inform himself on matters in issue which were within his knowledge or means of knowledge. In the present case the witness testified that the requested information was not within his knowledge or means of knowledge. If the matter was within his knowledge or means of knowledge but he simply did not have the answers, he would be compelled to inform himself. However, even if the matter was within the knowledge of his employer generally, that did not mean that it was within the means of his knowledge. To compel the witness to inform himself as required by the appellant would allow it to discover the respondent in regard to the issues raised in the motion. There was no right of discovery in regard to motions.

Counsel:

G. Alexander Macklin Q.C., Emmanuel Manolakis and Constance Too, for the plaintiffs.
H.B. Radomski and Nando De Luca, for the defendant.

1 NADON J. (Order and Reasons for Order):-- I have come to the conclusion that Associate Senior Prothonotary Giles did not err when he made the Order which Apotex appeals from.

2 By his Order of March 25, 1996, Giles A.S.P. allowed, in part, Apotex' motion to compel Mr. Donald W. McCracken to reattend for further cross-examination and to provide answers to certain questions objected to during the cross-examination of Mr. McCracken at Ottawa on March 21, 1996 in regard to Mr. McCracken's Affidavit of January 30, 1996.

3 The Associate Senior Prothonotary ordered Mr. McCracken to provide an answer to Apotex' question concerning Merck's profits (in regard to paragraphs 17 and 18 of his Affidavit), but only to the extent that Mr. McCracken had knowledge of the requested information. Merck has informed Apotex that Mr. McCracken does not have such knowledge.

4 Although it appears from the Associate Senior Prothonotary's Order that he was of the view that the question relating to profits was relevant, he obviously did not believe that there was a duty on the witness to inform himself if he did not have the required knowledge.

5 Counsel for Apotex submits that all of the questions asked, in regard to which there are objections (see Schedule 1 of Apotex' Motion), are relevant and that, accordingly, Mr. McCracken should be ordered to answer them and, in the event that Mr. McCracken cannot answer because he does not have the knowledge, he should be ordered to inform himself.

6 In support of that proposition, counsel for Apotex relies on the decision of Martin J. in *Mary Bland v. National Capital Commission* (1989), 29 F.T.R. 232. In my view, that decision stands for

the proposition that an affiant must answer all relevant questions concerning matters specifically raised in his Affidavit and also collateral questions which arise from his answers. At pages 233 and 234 of his decision, Martin J. refers to the decision of Muldoon J. in *Swing Paints Ltd. v. Minwax Company Inc.*, [1984] 2 F.C. 521 where, at page 531, Mr. Justice Muldoon states:

"The person making the affidavit must submit himself to cross-examination not only on matters specifically set forth in his affidavit, but also to those collateral questions which arise from his answers. Indeed he should answer all questions, upon which he can be fairly expected to have knowledge, without being evasive, which relate to the principal issue in the proceeding upon which his affidavit touches, if it does."

7 Muldoon J.'s view appears to be that the affiant must answer all questions in regard to which "he can be fairly expected to have knowledge, ...".

8 The *Mary Bland* decision also appears to stand for the proposition that a witness must inform himself on the matters in issue. In that regard, Martin J. refers to two decisions of Walsh J., namely *Leesona Corp. v. Reliable Hosiery Mills Ltd.* (1974), 14 C.P.R. (2d) 168 and *Ethicon Inc. et al. v. Cyanamid of Canada Ltd.* (1977), 35 C.P.R. (2d) 126.

9 In *Leesona Corp.*, supra, Mr. Justice Walsh held that a deponent on an Affidavit had to answer questions relating to facts which were within his knowledge or means of knowledge. In *Ethicon*, supra, Mr. Justice Walsh observed that a witness should be required to inform himself in regard to the matters in issue.

10 In my view, a deponent has a duty to inform himself on matters in issue which are within his knowledge or means of knowledge. In the present case, Mr. McCracken testified that the requested information was not within his knowledge or means of knowledge. Mr. McCracken testified that his area of responsibility was sales and that he had no responsibility whatsoever in regard to the financial side of his employer. If the questions posed by Apotex required answers which were within Mr. McCracken's means of knowledge, but in regard to which he did not have the answers, then certainly I would have no hesitation in compelling Mr. McCracken to inform himself. However, the questions clearly relate to matters which are not, in my view, within his means of knowledge. The matters are obviously within the means of knowledge of Merck but that does not, in itself, mean that they are within Mr. McCracken's means of knowledge.

11 Thus, I am of the view that Mr. McCracken should not be compelled to inform himself, in the present circumstances, as Apotex requires. To compel Mr. McCracken to inform himself, as Apotex requires, would, in my view, be allowing Apotex to discover Merck in regard to the issues raised in the Motion. There is no right of discovery in regard to Motions presentable before this Court.

12 For these reasons, Apotex' appeal is dismissed with costs.

NADON J.

Case Name:
**Sherman v. Canada (Minister of National Revenue -
M.N.R.)**

Between
David M. Sherman, appellant, and
The Minister of National Revenue, respondent

[2004] F.C.J. No. 136

[2004] A.C.F. no 136

2004 FCA 29

2004 CAF 29

236 D.L.R. (4th) 546

317 N.R. 84

30 C.P.R. (4th) 149

2004 D.T.C. 6591

[2004] G.S.T.C. 6

129 A.C.W.S. (3d) 258

Docket A-387-02

Federal Court of Appeal
Ottawa, Ontario

Desjardins, Létourneau and Evans JJ.A.

Heard: In writing.
Judgment: January 23, 2004.

(17 paras.)

Civil Procedure -- Parties -- Representation of -- Self-representation -- Costs -- Assessment or fixing of costs -- Considerations -- Tariffs

Motion brought by appellant taxpayer for costs awarded on an appeal which was successful against the respondent federal government. The respondent contended that the bill of costs tendered ought not to have exceeded an award for party and party costs. The appellant had been awarded a moderate allowance to recognize the time and effort he spent representing himself at trial and on the appeal.

Motion allowed in part. The taxpayer was a reputable tax expert. His award for costs should not have exceeded the amount to which he would have been entitled if he had been represented by counsel. A moderate allowance only permitted partial, not full, indemnity of the taxpayer's cost.

Statutes, Regulations and Rules Cited:

Federal Court Rules, Tariff B, Tariff B Column III, Rules 369, 397, 403.

Counsel:

Written representations by:

David M. Sherman, the appellant, on his own behalf.

Sointula Kirkpatrick and Louis L'Heureux, for the respondent.

The judgment of the Court was delivered by

1 LÉTOURNEAU J.A.:-- In a judgment dated May 6, 2003, this Court concluded in part:

The appellant is entitled to disbursements and a moderate allowance for the time and effort he devoted to preparing and presenting his case before the Trial and the Appeal Divisions of this Court on proof that, in so doing, he incurred an opportunity cost by foregoing remunerative activity.

2 By motion made under Rule 369, the appellant requests that this Court fix the award of costs at \$30,528.00 for his time spent and \$684.18 for disbursements plus costs of his motion in the amount of \$5,760.00 plus disbursements for the twelve hours he spent to prepare and file his motion for costs. The appellant filed an affidavit to his motion detailing his costs. He submits that he worked 66.1 hours on the trial and the appeal. He calculates one half of the opportunity costs of his time at the rate of \$550.00 an hour, the other half at \$600.00 per hour. He discounted the total figure by 20% in order to meet the requirement that the allowance be moderate.

3 The respondent does not dispute the appellant's request for \$684.08 in disbursements but otherwise opposes both his other requests. I should add that the appellant kept a detailed account of the time spent and effort devoted to the preparation and defence of his case. I do not think that the number of hours is unreasonable or subject to argument.

4 The objection is based on two grounds. Firstly, the respondent says that the appellant did not indicate the provisions on which the motion is based, except for Rule 369, which is procedural. The appellant is long out of time to bring his motion either under Rule 397 or under Rule 403 and has not asked for an extension.

5 Secondly, the respondent claims that it is implicit in this Court's judgment and reasons for judgment that the appellant was awarded party and party costs to be calculated according to Tariff B, the applicable tariff under the Rules.

6 This Court's decision, issued on May 6, 2003, was based on case law on which the Court relied to award to the appellant "a moderate allowance for the time and effort devoted to preparing and presenting the case". Rule 397 does not apply as there are no grounds for reconsideration.

7 The appellant could have sought an extension of time and brought a motion under Rule 403 for directions to the taxation officer. In the part of its order dealing with costs, this Court intended not to fix the actual quantum of the costs awarded, but to leave it to a taxation officer to determine such quantum within the parameters of the reasons for the costs order. However, since the Court is now seized with the issue, which is novel, and in view of the wide gap separating the parties with respect to the meaning of a "moderate allowance", it would be better for this Court to rule on it than merely to issue directions. Consequently, the appellant's bill of costs was appropriately brought under Rule 369.

8 The purpose of the costs rules is not to reimburse all the expenses and disbursements incurred by a party in the pursuit of litigation, but to provide partial compensation. The costs awarded, as a matter of principle, are party-and-party costs. Unless the Court orders otherwise, Rule 407 requires that they be assessed in accordance with column III of the table to Tariff B. As the Federal Court properly said in *Apotex Inc. v. Wellcome Foundation Ltd.* (1998), 159 F.T.R. 233, Tariff B represents a compromise between compensating the successful party and burdening the unsuccessful party.

9 Column III of the table to Tariff B is intended to address a case of average complexity: *Apotex Inc. v. Syntex Pharmaceuticals International Ltd.*, [2001] F.C.J. No. 727, 2001 FCA 137. The Tariff includes counsel fees among the judicial costs. Since it applies uniformly across Canada, it obviously does not reflect a counsel's actual fees as lawyers' hourly rates vary considerably from province to province, from city to city and between urban and rural areas.

10 There is no doubt that the appellant, who was unrepresented, expended time and effort in the pursuit of his claims. However, as the Alberta Court of Appeal pointed out in *Dechant v. Law*

Society of Alberta, [2001] A.J. No. 373, 2001 ABCA 81, "represented litigants also sacrifice a considerable amount of their own time and effort for which no compensation is paid". Furthermore, their lawyers' fees are not fully reimbursed. I agree that "applying an identical cost schedule to both represented and unrepresented litigants will work an inequity against the represented litigant who, even with an award of costs, will be left with some legal fees to pay and no compensation for a personal investment of time": *ibid*, paragraph 16. It could also promote self-litigation as an occupation: *ibid*, paragraph 17; see also *Lee v. Anderson Resources Ltd.*, 2002 ABQB 536, (2002) 307 A.R. 303 (Alta Q.B.).

11 In the present instance, if the appellant had been represented, he would have been awarded party and party costs according to column III of the table to Tariff B. I believe that his award of costs as an unrepresented litigant can, at best, equal, but should not exceed, what would have otherwise been paid to him if he had been represented by counsel. I should add that the unrepresented litigant enjoys no automatic right to the full amount contemplated by the tariff. The amount of the award is in the discretion of the Court. The concept of a "moderate allowance" is an indication of a partial indemnity although, as previously mentioned, I accept that, in appropriate but rare cases, the amount of that indemnity could be equal to what the tariff would grant to a represented litigant.

12 Like Registrar Doolan in *City Club Development (Middlegate) Corp. v. Cutts* (1996) 26 B.C.L.R. (3d) 39, Registrar Roland of the Supreme Court of Canada concluded in *Metzner v. Metzner*, [2000] S.C.C.A. No. 527, that the "reasonably competent solicitor approach was unworkable when assessing special costs awarded to a lay litigant": S.C.C. Bulletin 2001, p. 1158. She endorsed the conclusion that the only reasonable approach was to make an award on a quantum meruit basis.

13 In *Clark v. Taylor* [2003] N.W.T.J. No. 67, Vertes J. of the Northwest Territories Supreme Court was called upon to assess costs for an unrepresented female litigant. At paragraph 12 of the decision, he wrote:

In considering what would be a "reasonable" allowance for the applicant's loss of time in preparing and presenting her case, I am not convinced that it is at all appropriate to simply apply what she herself would charge for her hourly fees to a client. The reality is that any litigation will eat up time and expenses whether one is represented or not.

14 He went on to add that the tariff can provide useful benchmarks, even if costs are not assessed on the tariff basis. I agree. The hourly rate claimed by the appellant in the present case is not the benchmark to be used in determining the quantum of a moderate allowance. It is much in excess of the allocation rate contemplated by the tariff.

15 In the present case, this Court was of the view that the appellant, who is a reputable tax expert, raised new issues of public interest as regards the interpretation of an international tax convention

and the right to access the information obtained and exchanged pursuant to that Convention: see paragraph 44 of the decision. The work submitted by the appellant was of good quality . The submissions to the Court were well documented and helpful. There is no doubt that his attendance at the hearing before the Federal Court and our Court was necessary and caused him to lose time from work. Furthermore, the appellant behaved with great propriety throughout the litigation.

16 Bearing all these factors in mind, including the legitimate purpose pursued by the appellant and the fact that costs under Tariff B would have amounted to some \$7,200.00, I would fix the moderate allowance at \$6,000.00 plus disbursements in the undisputed amount of \$684.08. As for the costs and disbursements of bringing this motion, I would allow the sum of \$350.00.

17 It would have been useful if the parties, or at least the respondent who was opposing the bill of costs, had given us some of the existing jurisprudence relating to the interpretation and application of the "moderate allowance" notion.

LÉTOURNEAU J.A.

DESJARDINS J.A.:-- I concur.

EVANS J.A.:-- I agree.

cp/e/qw/qlaim/qlhcs