

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

DELTA AIR LINES INC.

APPELLANT

- and -

DR. GÁBOR LUKÁCS

RESPONDENT

**MOTION RECORD OF THE PROPOSED INTERVENER,
CANADIAN TRANSPORTATION AGENCY**

Pursuant to Rules 47, 55 to 59 of the *Rules of the Supreme Court of Canada*

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DELTA AIR LINES INC.

APPELLANT

- and -

DR. GÁBOR LUKÁCS

RESPONDENT

**NOTICE OF MOTION OF THE PROPOSED INTERVENER,
THE CANADIAN TRANSPORTATION AGENCY
(Motion for Leave to Intervene)**

Pursuant to Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*

TAKE NOTICE that the Proposed Intervener, the CANADIAN TRANSPORTATION AGENCY (the “Agency”), hereby applies to a Judge of this Court pursuant to Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada* for an Order:

1. granting the Agency leave to intervene in the present appeal;
2. permitting the Agency to file a factum no longer than 20 pages;
3. permitting the Agency to file the affidavit of Patrice Bellerose, sworn June 16th, 2017 in the present appeal;
4. permitting the Agency to present oral arguments, not to exceed five minutes, at the hearing of this appeal, through its counsel; and
5. such further or other Order as deemed appropriate.

AND FURTHER TAKE NOTICE that the following documentary evidence will be relied upon in support of this motion to intervene:

1. the affidavit of Patrice Bellerose, sworn June 16th, 2017;
2. the Memorandum of Argument of the Canadian Transportation Agency; and
3. such further or other material as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that this motion shall be made on the following grounds:

The Agency's Interest in the Appeal

1. The Agency is a superior independent quasi-judicial administrative body responsible for hearing a broad range of applications involving both service providers and users of Canada's national transportation system.
2. This appeal raises the issue of whether the Agency can dismiss an application on the basis of a lack of standing. The Agency has an interest in being able to address the issue of standing in the proceedings before it, and to decline to hear a case where it is found that an applicant has an insufficient interest in the matter to be litigated. This discretion is a valuable tool in managing operational demands and ensuring the right parties are before the Agency when deciding issues of concern to industry and the travelling public.
3. Subsection 41(4) of the *Canada Transportation Act*, S.C. 1996, c. 10 states that the Agency is entitled to be heard on the argument of an appeal from its decisions in the Federal Court of Appeal. This is recognition by Parliament that the Agency has an interest when its decisions are subject to appellate review.

The Position of the Agency

4. The Agency proposes to intervene on the issue of whether it should be entitled to apply the law of standing. The Agency's position is that the Agency as an administrative tribunal should have the ability to apply the law of standing, and decline to hear a case where the applicant does not have a sufficient interest in the matter he or she proposes to litigate.

The Agency is Able to Make a Useful Contribution to the Resolution of this Appeal

5. If granted leave, the Agency's role would differ from that of the parties. The Agency will provide a fresh perspective which will be grounded in the Agency's mandate, functions, and experience as an expert administrative tribunal.
6. If granted leave to intervene, the Agency will ensure that its submissions are not duplicative of those made by the parties, and will ensure that it makes different and useful submissions to this Court.
7. Granting this motion for leave to intervene would not cause delay in the appeal or prejudice the rights of the parties.
8. The Agency does not seek its costs and requests no costs be awarded against it.
9. Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156.
10. Such further and other grounds as counsel may advise and as this Honourable Court may permit.

Dated at Gatineau, Quebec this 19th day of June, 2017.



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Respondent

NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

DELTA AIR LINES INC.

APPELLANT

- and -

DR. GÁBOR LUKÁCS

RESPONDENT

AFFIDAVIT OF PATRICE BELLEROSE
SWORN JUNE 16, 2017

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

1. I am the Director, Registrar and Secretariat Services, with the Canadian Transportation Agency ("Agency") and, as such, have personal knowledge of the matters to which I hereinafter depose.
2. First established in 1904 as the Board of Railway Commissioners, and continued as the Canadian Transportation Agency in 1996, the Agency is Canada's longest-standing independent, quasi-judicial tribunal and regulator.
3. As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves commercial and consumer disputes respecting federal transportation services. As a regulator, the Agency assumes both an administrative function and a legislative function. The Agency makes regulations; establishes Codes of Practice; issues licenses,

permits and certificates of fitness; and makes decisions and determinations on a wide range of matters involving federal air, rail and marine transportation, and, in the case of accessibility, extraprovincial bus services.

4. The Agency has three core mandates: (1) to help to ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians, including travelers; (2) to protect the fundamental right of persons with disabilities to an accessible transportation system; and (3) to provide consumer protection for air travelers.
5. Each year the Agency receives a large volume of applications, most of which are air passenger-related consumer complaints. The complaints relate to claims involving such matters as flight disruptions; lost, damaged or delayed baggage; and denied boarding.
6. The volume of consumer complaints resolved by the Agency is increasing dramatically. Below is a table with the relevant statistics.

Fiscal year	Number of complaints
2014-15	841
2015-16	757
2016-17	2,195

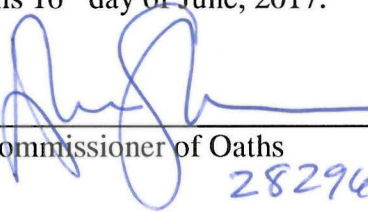
7. In April of 2017, the first month of the current fiscal year, the Agency resolved 454 complaints, which means that if the current trend continues the Agency could expect to resolve more than 5,400 consumer complaints this fiscal year, more than any other year before it.
8. It has been rare that the Agency has declined to hear an application on the basis of a lack of standing. A review of the Agency's records indicates that this has happened on only three occasions since 2008. The three cases are the *Amalgamated Transit Union Local*

279¹ case; the Agency's decision that is the subject matter of this appeal; and another application brought by the Respondent against Porter Airlines².

- 9. This appeal will address the issue of whether the Agency as an administrative tribunal has the authority to address the issue of standing. The Agency has an interest in whether it has this discretion and whether it can decline to hear a case where it is found that an applicant has an insufficient interest in the matter to be litigated. This discretion is a valuable tool in managing operational demands and ensuring the right parties are before the Agency when deciding issues of concern to industry and the travelling public. If leave is not granted to intervene in this appeal, the Agency would not be entitled to make submissions on the issue of standing, the determination of which will have an impact on the Agency's operations.
- 10. I make this Affidavit in support of the motion for leave to intervene in the appeal proceedings before this Court, in support of the proposed intervention, and for no other improper purpose.

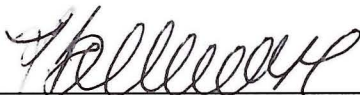
DATED at the City of Gatineau, in the Province of Quebec, this 16th day of June, 2017.

SWORN BEFORE ME
at the City of Gatineau
in the Province of Quebec
this 16th day of June, 2017.



Commissioner of Oaths
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Patrice Bellerose

¹ Decision No. 431-AT-MV-2008.

² *Lukacs v. Porter Airlines Inc.*, Decision No. 121-C-A-2016.

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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RESPONDENT

**MEMORANDUM OF ARGUMENT ON THE MOTION TO INTERVENE
CANADIAN TRANSPORTATION AGENCY, PROPOSED INTERVENER**

PART I – OVERVIEW & STATEMENT OF FACTS

A. Overview

1. The Canadian Transportation Agency (the “Agency”) seeks an Order granting it leave to intervene in this appeal.
2. In the original decision that is the subject of this appeal, the Agency dismissed a complaint by the Respondent, Gabor Lukács, which alleged that certain practices of the Appellant, Delta Airlines Inc., relating to the transportation of large (obese) persons were “unjustly discriminatory”, contrary to paragraph 111(2)(a) of the *Air Transportation Regulations*.¹ The Agency determined that the Respondent did not have standing to bring the complaint.
3. The Respondent appealed the Agency’s decision to the Federal Court of Appeal. While the Agency was a party to the proceedings, it did not participate in the appeal. The Federal Court of Appeal determined that the Agency erred in law in dismissing the

¹ SOR/88-58 (the “ATR”).

complaint because it does not have discretion to decline to hear a case for lack of standing.

B. The Agency

4. First established in 1904 as the Board of Railway Commissioners, and continued as the Canadian Transportation Agency in 1996, the Agency is Canada's longest-standing independent, quasi-judicial tribunal and regulator.²
5. As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves commercial and consumer disputes respecting federal transportation services. As a regulator, the Agency assumes both an administrative function and a legislative function. The Agency makes regulations; establishes Codes of Practice; issues licenses, permits and certificates of fitness; and makes decisions and determinations on a wide range of matters involving federal air, rail and marine transportation, and, in the case of accessibility, extraprovincial bus services.³
6. The Agency has three core mandates: (1) to help to ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians, including travelers; (2) to protect the fundamental right of persons with disabilities to an accessible transportation system; and (3) to provide consumer protection for air travelers.⁴
7. The Agency's enabling statute is the *Canada Transportation Act*.⁵ It is highly specialized regulatory legislation with a strong policy focus.⁶
8. This Court has stated that "the Agency is expected to bring its transportation policy knowledge and experience to bear on its interpretations of its assigned statutory mandate."⁷ The Federal Court of Appeal has also confirmed that the Agency legitimately draws upon its regulatory experience, its knowledge of the industry and its expertise in

² Affidavit of Patrice Bellerose, sworn the 16th day of June, 2017 at para 2 [Bellerose affidavit].

³ Bellerose affidavit at para 3.

⁴ Bellerose affidavit at para 4.

⁵ S.C. 1996, c. 10 (the "Act").

⁶ *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650 at para 98 [*CCD v. VIA Rail*].

⁷ *Ibid.*

the transportation sector when interpreting legislation within its mandate.⁸

9. Section 5 of the Act declares the National Transportation Policy that includes key public policy objectives guiding the economic and socio-economic regulation of Canada's transportation system.⁹
10. Parliament has entrusted the Agency with expansive authority to control its own process. For example, section 25 of the Act confers upon the Agency all the powers, rights and privileges that are vested in a superior court with respect to all matters necessary or proper for the exercise of its jurisdiction.¹⁰
11. The Courts have affirmed that the Agency possesses inherent jurisdiction to stay its decisions and to otherwise control its process and functions.¹¹ The Courts have also recognized that section 25 bestows on the Agency the authority to enforce orders and regulations made under the Act.¹²
12. Section 37 of the Act grants the Agency the discretionary power to inquire into issues that come before it by way of complaint. Section 37 applies to a very broad range of matters.¹³
13. Pursuant to paragraph 17(b) of the Act, the Agency may make rules respecting the manner of and the procedures for dealing with matters and business before it, including the conduct of proceedings before it.¹⁴
14. The Act and the ATR contain various provisions on which an air passenger may rely to complain about the policies of an air carrier. For example, the Agency can consider a complaint that the holder of a domestic licence has applied a fare, rate, charge or term or condition of carriage applicable to the domestic service it offers that is not set out in its

⁸ *Canadian National Railway Company v. Emerson Milling Inc. et al.*, 2017 FCA 79 at para 73.

⁹ *Canada Transportation Act*, *supra* note 5, s. 5.

¹⁰ *Canada Transportation Act*, *supra* note 5, s. 25.

¹¹ *Lukács v. Canada (Canadian Transportation Agency)*, [2015] F.C.J. No. 1155 at para 5.

¹² *Lukács v. Canada (Transportation Agency)*, [2014] F.C.J. No. 301 at para 37.

¹³ *Canada Transportation Act*, *supra* note 5, s. 37.

¹⁴ *Canada Transportation Act*, *supra* note 5, s. 17(b); *CCD v. VIA Rail*, *supra* note 6 at para 230.

tariffs.¹⁵ The Agency also considers complaints that an air carrier has failed to properly apply its tariff.¹⁶

15. Paragraph 111(2)(a) of the ATR applies to international air carriers and states that no carrier shall, in respect of tolls or the terms and conditions of carriage, make any unjust discrimination against any person or other carrier.¹⁷ In determining whether a toll or term and condition of a carrier is “unjustly discriminatory”, the Agency has engaged in a two-step analysis. Firstly, the Agency determines if the toll or term and condition is “discriminatory”. The Agency then considers whether such discrimination is “unjust”.¹⁸
16. The Agency has held that a toll or term and condition of carriage would be discriminatory if it singled out a particular passenger or group of passengers for different treatment for reasons which could not be justified.¹⁹
17. In addition to considering whether a toll or term and condition is unduly discriminatory, the Agency is also responsible for determining whether there is an “undue obstacle” to the mobility of persons with disabilities. Where these obstacles are found to exist, the Agency is also responsible for determining what corrective measures are appropriate in accordance with the Act and human rights principles.²⁰
18. Each year the Agency receives a large volume of applications, most of which are air passenger-related consumer complaints. The complaints relate to claims involving such matters as flight disruptions; lost, damaged or delayed baggage; and denied boarding.²¹
19. The volume of consumer complaints resolved by the Agency continues to increase dramatically. Below is a table with the relevant statistics of complaints that the Agency has resolved.²²

¹⁵ *Canada Transportation Act*, *supra* note 5, s. 67.1.

¹⁶ *Air Transportation Regulations*, *supra* note 1, s. 113.1.

¹⁷ *Air Transportation Regulations*, *supra*, note 1 at para 111(2)(a).

¹⁸ *Krieger v. WestJet et al.*, Decision No. 459-C-A-2014 at para 127; *Black v. Air Canada*, Decision No. 746-C-A-2005 at para. 34.

¹⁹ *Krieger v. WestJet et al.*, *supra* note 18 at para 129.

²⁰ *CCD v. VIA Rail*, *supra* note 6 at para 2; *Canada Transportation Act*, *supra* note 5, ss. 5(d) and 172(1).

²¹ Bellerose affidavit at para 5.

²² Bellerose affidavit at para 6.

Fiscal year	Number of complaints
2014-15	841
2015-16	757
2016-17	2,195

20. In April of 2017, the first month of the current fiscal year, the Agency resolved 454 complaints,²³ which means that if the current trend continues the Agency is expected to resolve more than 5,400 consumer complaints this fiscal year, more than any other year before it.²⁴
21. It has been rare that the Agency has declined to hear an application on the basis of a lack of standing. A review of the Agency's records indicates that this has happened on only three occasions since 2008. In *Amalgamated Transit Union Local 279*,²⁵ the union representing employees of OC Transpo, the City of Ottawa's public transit system, alleged that the failure of the City of Ottawa to purchase and install an automated announcement system for stops for its bus fleet created an undue obstacle for members of the community with disabilities. The second instance where the Agency declined to hear a case due to lack of standing is the decision that is the subject matter of this appeal. The third is another application brought by the Respondent against Porter Airlines.²⁶

PART II – QUESTION IN ISSUE

22. The issue is whether the Agency should be granted leave to intervene in this appeal.

PART III – STATEMENT OF ARGUMENT

23. The test on a motion for leave to intervene is as follows:
- a) Does the proposed intervener have a real interest in the subject-matter of the appeal?

²³ Bellerose affidavit at para 7.

²⁴ Bellerose affidavit at para 7.

²⁵ Decision No. 431-AT-MV-2008.

²⁶ *Lukacs v. Porter Airlines Inc.*, Decision No. 121-C-A-2016; see also the Appellant's factum at paras. 45-46.

b) Will the proposed interveners' submissions be useful to this Court, and different from those of the other parties?²⁷

24. A motion to intervene must also set out the position the proposed intervenor intends to take with respect to the questions on which they propose to intervene²⁸ and must set out the submissions to be advanced by the proposed intervenor.²⁹

A. The Agency has a Real Interest in this Appeal

25. The Agency's interest in this appeal stems from its role as an independent, quasi-judicial tribunal responsible for hearing a broad range of applications involving both service providers and users of Canada's national transportation system. The majority of complaints that come before the Agency are consumer complaints brought by air passengers. This appeal raises important issues about the extent to which, as an adjudicator that operates less formally than a court, the Agency, and other administrative tribunals, can exercise discretion to decline to hear a case where an applicant does not have a sufficient interest in the matter he or she is seeking to litigate. The Agency has an interest in being able to address the issue of standing and to decline to hear a case where it is found that an applicant has an insufficient interest in the matter to be litigated. This discretion is a valuable tool in managing operational demands and ensuring the right parties are before the Agency when deciding issues of concern to industry and the travelling public.

26. Subsection 41(4) of the Act states that the Agency is entitled to be heard on the argument of an appeal from its decisions in the Federal Court of Appeal. This is recognition by Parliament that the Agency has an interest when its decisions are subject to appellate review. This further supports the Agency's position that it has a real interest in this appeal.

B. The Agency will Present Useful and Different Submissions

²⁷ *Rules of the Supreme Court of Canada*, SOR/2002-156, s. 57(2); *Reference re Workers' Compensation Act (1983) (Nfld.)*, [1989] 2 S.C.R. 335 at para 8 [*Reference re Workers' Compensation Act*].

²⁸ *Rules of the Supreme Court of Canada*, *supra* note 28 at para 57(2)(a).

²⁹ *Rules of the Supreme Court of Canada*, *supra* note 28 at para 57(2)(b).

27. This Court has stated that “an intervention is welcomed if the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue.”³⁰
28. As the tribunal which received the original complaint at issue, and as a tribunal generally, the Agency’s role in this appeal is distinct from those of the two parties. An administrative tribunal’s role is to ensure an accessible approach to dispute resolution that is both efficient and cost-effective.³¹ The Agency will provide a fresh perspective which will be grounded in the Agency’s mandate, functions, and experience as an expert administrative tribunal.
29. The Agency intends to bring submissions that elaborate on its role and mandate in resolving air passenger complaints, its statutory duties, and the policy objectives that guide the Agency’s regulatory and adjudicative functions.

C. The Agency’s Position

30. The Agency proposes to intervene on the issue of whether it should be entitled to apply the law of standing. The Agency’s position is that an administrative tribunal should have the ability to apply the law of standing, and decline to hear a case where the applicant does not have sufficient interest in the matter he or she proposes to litigate.

D. The Agency’s Proposed Submissions

31. If the Agency succeeds in its motion for leave to intervene, the Agency will expand upon the submissions outlined below in support of its position.

(a) Law of standing not a “court-like” procedure

32. As an administrative tribunal, the Agency provides access to justice through less formal procedures compared to a court.³² This approach allows for a more accessible,

³⁰ *Reference re Workers’ Compensation Act*, *supra* note 28 at para 12.

³¹ See, for example, *Reininghaus v. Municipal Property Assessment Corp. Region No. 15*, [2016] O.A.R.B.D. No. 20 at para 11; *Jasea Holdings Inc. (Re)*, [1998] B.C.E.S.T.D. No. 93 at para 9; *Y.A.T. (Re)*, [2004] R.P.D.D. No. 10 at para 33.

³² *Lukács v. Delta Airlines Inc. et al.*, 2016 FCA 220 at para 20. [*Lukács v. Delta*].

expeditious and efficient approach to decision-making.³³

33. The Federal Court of Appeal, in the decision which is the subject of this appeal, referenced decisions of this Court that indicate that procedures before a tribunal must be consistent with their enabling statute and need not replicate court procedure. It also referenced the fact that there has been criticism of “a tendency to impose court-like procedures on administrative bodies in the context of judicial review for breach of procedural fairness obligations.”³⁴
34. It is accepted that tribunals such as the Agency should be able to operate in a manner which is more flexible than a court. Tribunals should not be burdened with overly complicated procedures. The law should not go “too far in the nature and the extent of procedural fairness obligations that are imposed on or adopted by some decision-makers.”³⁵
35. However, this is not what is at stake here. The *discretion* to decline to hear a case where the tribunal does not have the right parties before it, and where the factual record may be lacking, is not an overly legalistic procedural burden on a tribunal. It embodies a tribunal’s ability to focus its resources on those cases involving parties affected by the issue being litigated, or those with a sufficient interest in the matter so as to be granted standing.

(b) Purpose of the law of standing

36. This Court has identified various factors which are seen as justifying limitations on standing.³⁶ Some of these factors are equally relevant for an adjudicative tribunal such as the Agency. It is the Agency’s submission that these considerations favour recognizing a tribunal’s authority to address the issue of standing.

(i) Scarce Judicial Resources

37. This Court has recognized that a complainant “with a personal stake in the outcome of a

³³ David Mullan, “Tribunal Imitating Courts – Foolish Flattery or Sound Policy?” (2005) 28 Dal. L. J. 1.

³⁴ *Lukács v. Delta*, *supra* note 32 at para 21.

³⁵ Mullan, *supra* note 33 at page 2.

³⁶ *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 S.C.R. 524 at para 25 [*Downtown Eastside Sex Workers*].

case should get priority in the allocation of judicial resources.”³⁷

38. Such is a valid concern for an administrative tribunal such as the Agency. The Agency operates with limited resources and is facing an unprecedented caseload of consumer complaints brought by air passengers arguing that they have been adversely affected by the policies of air carriers. It is submitted that these persons should get priority in the allocation of those resources compared to an applicant who has no interest in these policies.

(ii) Ensuring Contending Points of View

39. Another purpose of limiting standing relates to the need to have the benefit of contending points of view of the persons most directly affected by the issue. “Concrete adverseness sharpens the debate of the issues and the parties’ personal stake in the outcome helps ensure that the arguments are presented thoroughly and diligently.”³⁸
40. Having before it contending points of view is especially important in the context of paragraph 111(2)(a) of the ATR which prohibits unjust discrimination against any person or other carrier. Should a person with insufficient interest in the proceeding be permitted to bring an application pursuant to this provision, the Agency could be called upon to determine whether the terms and conditions of carriage of a particular carrier unjustly discriminate against a particular group of people, without the interests of these people being properly represented. A decision on a case such as this may have a significant impact on the federal transportation network, and the people that use it, and should, it is submitted, be made with a sufficient factual record and with parties at the table who have a sufficient interest in the matter being considered.
41. This Court has recognized the dangers of hearing a case in the absence of those persons with a personal stake in the matter, namely, that a negative decision may prejudice other challenges by parties with specific and factually established complaints.³⁹
42. Agency decisions necessarily affect the federal transportation system. It is submitted that

³⁷ *Downtown Eastside Sex Workers*, *supra* note 36 at para 27.

³⁸ *Downtown Eastside Sex Workers*, *supra* note 36 at para 29.

³⁹ *Downtown Eastside Sex Workers*, *supra* note 36 at para 27.

these decisions should not be without a proper evidentiary record, nor should they be made in the absence of those parties with a sufficient interest in the issue being argued. The Agency should have the discretion to address the issue of standing.

PART IV – SUBMISSIONS CONCERNING COSTS

43. The Agency seeks to intervene in this appeal and provide useful submissions to assist this Court in addressing the issues raised by the parties. In the circumstances the Agency will not be seeking costs and asks that costs not be awarded against the Agency.

PART V – ORDERS SOUGHT

44. The Agency seeks an order granting it leave to intervene in this appeal, including leave to file a factum not to exceed 20 pages in length, and to present oral submissions not to exceed five minutes. The Agency also seeks leave to file a copy of the affidavit of Patrice Bellerose sworn the 16th day of June, 2017.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Gatineau, in the Province of Quebec, this 19th day of June, 2017.



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VII – STATUTORY PROVISIONS

Canada Transportation Act, SC 1996, c. 10

National Transportation Policy

Declaration

5 It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when

(a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;

(b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;

(c) rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada;

(d) the transportation system is accessible without undue obstacle to the mobility of persons, including persons with disabilities; and

(e) governments and the private sector work together for an integrated transportation system.

Loi sur les transports au Canada, LC 1996, ch. 10

Politique nationale des Transports

Déclaration

5 Il est déclaré qu'un système de transport national compétitif et rentable qui respecte les plus hautes normes possibles de sûreté et de sécurité, qui favorise un environnement durable et qui utilise tous les modes de transport au mieux et au coût le plus bas possible est essentiel à la satisfaction des besoins de ses usagers et au bien-être des Canadiens et favorise la compétitivité et la croissance économique dans les régions rurales et urbaines partout au Canada. Ces objectifs sont plus susceptibles d'être atteints si :

(a) la concurrence et les forces du marché, au sein des divers modes de transport et entre eux, sont les principaux facteurs en jeu dans la prestation de services de transport viables et efficaces;

(b) la réglementation et les mesures publiques stratégiques sont utilisées pour l'obtention de résultats de nature économique, environnementale ou sociale ou de résultats dans le domaine de la sûreté et de la sécurité que la concurrence et les forces du marché ne permettent pas d'atteindre de manière satisfaisante, sans pour autant favoriser indûment un mode de transport donné ou en réduire les avantages inhérents;

(c) les prix et modalités ne constituent pas un obstacle abusif au trafic à l'intérieur du Canada ou à l'exportation des marchandises du Canada;

(d) le système de transport est accessible sans obstacle abusif à la circulation des personnes, y compris les personnes ayant une déficience;

(e) les secteurs public et privé travaillent ensemble pour le maintien d'un système de transport intégré.

Rules**Règles****Rules****Regles**

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.

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.

Powers of Agency**Attributions de l'Office****Agency powers in general****Pouvoirs generaux**

25 The Agency has, with respect to all matters necessary or proper for the exercise of its jurisdiction, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders or regulations and the entry on and inspection of property, all the powers, rights and privileges that are vested in a superior court.

25 L'Office a, à toute fin liée à l'exercice de sa compétence, la comparution et l'interrogatoire des témoins, la production et l'examen des pièces, l'exécution de ses arrêtés ou règlements et la visite d'un lieu, les attributions d'une cour supérieure.

Inquiries**Enquêtes****Inquiry into complaint****Enquetes sur les plaints**

37 The Agency may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under any Act of Parliament that is administered in whole or in part by the Agency.

37 L'Office peut enquêter sur une plainte, l'entendre et en décider lorsqu'elle porte sur une question relevant d'une loi fédérale qu'il est chargé d'appliquer en tout ou en partie.

Licence for Domestic Service**Service intérieur****Fares or rates not set out in tariff****Prix, taux, frais ou conditions non inclus**

67.1 If, on complaint in writing to the Agency by any person, the Agency finds that, contrary to subsection 67(3), the holder of a domestic licence has applied a fare, rate, charge or term or condition of carriage applicable to the domestic service it offers that is not set out in its tariffs, the Agency may order the licensee to

(a) apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs;

(b) compensate any person adversely affected for any expenses they incurred as a result of the licensee's failure to apply a fare, rate, charge or term or condition of carriage that was set out in its tariffs; and

(c) take any other appropriate corrective measures.

Transportation of Persons with Disabilities

Inquiry re obstacles to persons with disabilities

172 (1) The Agency may, on application, inquire into a matter in relation to which a regulation could be made under subsection 170(1), regardless of whether such a regulation has been made, in order to determine whether there is an undue obstacle to the mobility of persons with disabilities.

Air Transportation Regulations, SOR/88-58

Filing of Tariffs

111 (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with

au tarif

67.1 S'il conclut, sur dépôt d'une plainte, que le titulaire d'une licence intérieure a, contrairement au paragraphe 67(3), appliqué à l'un de ses services intérieurs un prix, un taux, des frais ou d'autres conditions de transport ne figurant pas au tarif, l'Office peut, par ordonnance, lui enjoindre :

(a) d'appliquer un prix, un taux, des frais ou d'autres conditions de transport figurant au tarif;

(b) d'indemniser toute personne lésée des dépenses qu'elle a supportées consécutivement à la non-application du prix, du taux, des frais ou des autres conditions qui figureraient au tarif;

(c) de prendre toute autre mesure corrective indiquée.

Transport des personnes ayant une déficience

Enquête : obstacles au déplacement

172 (1) Même en l'absence de disposition réglementaire applicable, l'Office peut, sur demande, enquêter sur toute question relative à l'un des domaines visés au paragraphe 170(1) pour déterminer s'il existe un obstacle abusif aux possibilités de déplacement des personnes ayant une déficience.

Règlements sur les transports aériens, DORS/88-58

Dépôt des tarifs

111 (1) Les taxes et les conditions de transport établies par le transporteur aérien, y compris le transport à titre gratuit ou à taux réduit, doivent être justes et raisonnables et doivent, dans des circonstances et des

respect to all traffic of the same description, be applied equally to all that traffic.

- (2) No air carrier shall, in respect of tolls or the terms and conditions of carriage,
- (a) make any unjust discrimination against any person or other air carrier;
 - (b) give any undue or unreasonable preference or advantage to or in favour of any person or other air carrier in any respect whatever; or
 - (c) subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate; and
- (b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

Rules of the Supreme Court of Canada, SOR/2002-156

Particular Motions

Motion for Intervention

57 (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

- (2) A motion for intervention shall

conditions sensiblement analogues, être imposées uniformément pour tout le trafic du même genre.

- (2) En ce qui concerne les taxes et les conditions de transport, il est interdit au transporteur aérien :
- (a) d'établir une distinction injuste à l'endroit de toute personne ou de tout autre transporteur aérien;
 - (b) d'accorder une préférence ou un avantage indu ou déraisonnable, de quelque nature que ce soit, à l'égard ou en faveur d'une personne ou d'un autre transporteur aérien;
 - (c) de soumettre une personne, un autre transporteur aérien ou un genre de trafic à un désavantage ou à un préjudice indu ou déraisonnable de quelque nature que ce soit.

113.1 Si un transporteur aérien n'applique pas les prix, taux, frais ou conditions de transport applicables au service international qu'il offre et figurant à son tarif, l'Office peut lui enjoindre :

- (a) de prendre les mesures correctives qu'il estime indiquées;
- (b) de verser des indemnités à quiconque pour toutes dépenses qu'il a supportées en raison de la non-application de ces prix, taux, frais ou conditions de transport.

Règles de la Cour suprême du Canada, DORS/2002-156

Requêtes spéciales

Requête en intervention

57 (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

- (2) La requête expose ce qui suit:

(a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and

(b) set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(a) la position que cette personne compte prendre relativement aux questions visées par son intervention;

(b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.