

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160725

Docket: A-167-14

Citation: 2016 FCA 202

**CORAM: WEBB J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

Heard at Halifax, Nova Scotia, on April 27, 2016.

Judgment delivered at Ottawa, Ontario, on July 25, 2016.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

**WEBB J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] This is an application for judicial review of a decision of the Canadian Transportation Agency (the Agency) refusing to render a decision regarding a complaint filed by Dr. Gábor Lukács (the applicant) alleging that Expedia, Inc. (Expedia) advertised flight ticket prices in violation of Part V.1 of the *Air Transportation Regulations*, S.O.R./88-58 (the ATR). More specifically, it was alleged that Expedia failed to include fuel surcharges under the heading "Air

Transportation Charges” and included airline-imposed service charges under the heading “Taxes, Fees and Charges”. The applicant is now seeking a *mandamus* order from this Court to force the Agency to hear his complaint.

[2] For the reasons that follow, I would this dismiss the application.

I. The facts

[3] The applicant is a frequent advocate for Canadian air passengers’ rights. In the past, he has filed several complaints and litigated a number of cases before the Agency.

[4] On February 24, 2014, the applicant filed a complaint with the Agency alleging that Expedia had been advertising prices on its website in a format that did not comply with sections 135.8 and 135.91 of the ATR.

[5] The applicant asked the Agency to order Expedia to modify its website to comply with the ATR. More specifically, that Expedia’s website include fuel surcharges under the heading “Air Transportation Charges” and cease to improperly list airline-imposed charges in “Taxes, Fees and Charges” under the heading “YR – Service Charge”.

[6] Further to an informal exchange of emails between the applicant and the Agency, which had taken the position that it would not commence a formal pleadings process as this was an enforcement matter, the Chair and Chief Executive Officer of the Agency replied to the applicant in a formal letter, dated March 27, 2014, which reads as follows:

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 [Designated Enforcement Officer] 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 *Canada 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.

...

[7] As part of this application, the respondent filed the affidavit of Ms. Simona Sasova, Manager of Enforcement at the Agency who was in charge of the investigation on this file.

Ms. Sasova explained that Expedia made some changes to its website. However, she admitted that even though Expedia was not completely complying with the ATR, she was satisfied that the changes made met the objective of the ATR, that is to properly inform consumers of the actual costs of their airfares.

[8] On September 4 and 15, 2014, the applicant cross-examined Ms. Sasova on her affidavit. Dissatisfied with her answers, the applicant brought a motion before this Court requiring costs of the September 15 cross-examination. He also wanted Ms. Sasova to attend another cross-examination at her own cost.

[9] His motion was dismissed by Gauthier J.A. on November 25, 2014.

II. Legislation

[10] The relevant legislation has been appended to these reasons.

III. The issues

[11] After reviewing both parties' submissions, I would frame the issues as follows:

- (a) What is the standard of review?
- (b) Does the Agency have a statutory duty to hear and decide a complaint regarding compliance with Part V.1 of the ATR?
- (c) Are the other requirements for an order in *mandamus* met?
- (d) Should the applicant be awarded increased costs, or his disbursements and an allowance for time?

IV. First issue - The standard of review

[12] The applicant asserts that an order in *mandamus* is sought on the premise that no decision has been made by the Agency. Consequently, there is no decision to defer to (*Apotex v. Canada (Attorney General)*, [1994] 1 F.C. 742, [1993] F.C.J. No. 1098 [*Apotex*]).

[13] The Agency refers to *Ermineskin First Nation v. Canada*, 2008 FC 1065, 2008 CarswellNat 3384 to point out that the standard of reasonableness applies on the discretionary aspects of a *mandamus* application.

[14] In *Canadian National Railway Company v. Canadian Transportation Agency*, 2013 FCA 270, 454 N.R. 125, a similar argument on the applicable standard of review was made in favour of applying the standard of correctness. Sharlow J.A. rejected the argument:

[3] Generally, this Court reviews the Agency's decisions, including its interpretation of the governing statute, the *Canada Transportation Act*, S.C. 1996, c. 10, on the standard of reasonableness (*Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650).

[4] In applying the reasonableness standard of review, the Court is guided by paragraph 47 of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, which reads as follows:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[5] CN argues that the standard of review in this case should be correctness because CN is challenging the Agency's decision with respect to "jurisdiction

limiting issues”. I do not accept that characterization of the issues in this appeal. In substance, CN is challenging the Agency’s interpretation of the statutory provisions defining its mandate.

[15] Similarly, in the context of an application for an order for *mandamus*, deference should be given to the Agency’s interpretation of its home statute, which means that the standard of reasonableness will apply to the question of the Agency’s statutory duty. That said, the range of outcomes is fairly narrow given that this is a straight question of statutory interpretation.

V. Second issue - Does the Agency have a statutory duty to hear and decide a complaint regarding compliance with Part V.1 of the ATR?

A. *The position of the parties*

(1) The applicant

[16] The applicant asserts that he meets all of the criteria identified in *Apotex* and his representations focussed primarily on establishing the Agency’s duty under the Act.

[17] In the applicant’s view, the *Canada Transportation Act*, S.C. 1996, c. 10, (the Act) imposes a statutory duty on the Agency to render decisions on complaints because subsection 29(1) indicates in clear mandatory language that the Agency “shall make its decision in any proceedings before it”.

[18] The applicant relies equally on the term “any proceedings”, found in section 1 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35, to argue that it includes a complaint or any matter commenced by application to the Agency.

[19] At the hearing, the applicant also directed the Court towards the legislative history of the Act, arguing that it supports his view that Parliament's intention was to create an obligation on the Agency to hear any complaint on a matter within its jurisdiction. The applicant also turned to the testimony of Ms. Moya Greene, Assistant Deputy Minister of Transport Canada, who stated before the Standing Committee on Transport during the study of section 29 that the Agency "does not have discretion to say 'well, that one I'm not going to look at'. The agency must decide the matter, and must decide the matter with dispatch". In the applicant's view, section 29 was enacted to ensure access to the Agency.

[20] The applicant alleges that sections 26 and 37 of the Act grant the Agency the power to inquire into complaints, regardless of whether they have been "designated" or not as giving rise to administrative monetary penalties under the *Canadian Transportation Agency Designated Provisions Regulations*, S.O.R./99-244 (the DPR).

[21] In his view, the purpose of the DPR is not to limit the public's right to have their complaints determined, but to provide the Agency with an additional enforcement mechanism that it can initiate unilaterally, even in the absence of a complaint.

[22] The applicant also referred to *Witvoet v. First Air et al.*, 378-C-A-2000 (CTA) [*Witvoet*], wherein the Agency considered section 29 of the Act and found that it had a duty to render a decision notwithstanding the fact that the complaint was related to a violation of a designated provision.

[23] Finally, the applicant asserts that the Agency also hears applications to review “warning letters” issued by enforcement officers pursuant to sections 135.8 and 135.91 of the ATR. It is unclear where this power comes from. The applicant suggests that it is unusual that the Agency reviews enforcement matters only to the benefit of airlines, and not to members of the public filing complaints.

(2) The Agency

[24] Before this Court, the Agency enumerated the specific provisions of the Act that provide its mandate to adjudicate applications and complaints, such as section 116 of the Act regarding complaints by shippers against railways, and underlined that there is no complaint provision with respect to Part V.1 of the ATR.

[25] With respect to Ms. Greene’s comments on the obligation to decide a complaint under section 29 of the Act, the Agency noted that her testimony was provided in response to concerns that provisions of the Act might limit the ability of shippers to file complaints against railways, which is addressed by a specific complaint provision. The Agency also argued that those comments cannot override the actual wording of the Act.

[26] For the Agency, section 29 of the Act is simply a statutory deadline provision requiring decisions to be rendered “expeditiously”. As such, that section does not grant substantive jurisdiction on the Agency.

[27] Turning to the definitions of “application”, “complaint” and “proceeding” in the *Canadian Transportation Agency General Rules*, S.O.R./2005-35, the Agency asserts that they are not the source of its jurisdiction as they only establish procedures to deal with complaints initiated under specific provisions of the Act. The Agency also underlined that these Rules have since been repealed and replaced by the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104, which provide no definition of the word “complaint”.

[28] Finally, the Agency indicated that properly read, section 37 of the Act are discretionary as their text states that it “may inquire into”, which does not create a general obligation and leaves room for the proper exercise of discretion.

B. *Analysis*

[29] Both parties acknowledge that the legal test for an order of *mandamus* was clearly set out by this Court in *Apotex*. Eight requirements must be satisfied before an order of *mandamus* is to be issued:

- (1) there must be a legal duty to act;
- (2) the duty must be owed to the applicant;
- (3) there must be a clear right to performance of that duty;
- (4) where the duty sought to be enforced is discretionary, certain additional principles apply;
- (5) no adequate remedy is available to the applicant;
- (6) the order sought will have some practical value or effect;
- (7) the Court finds no equitable bar to the relief sought; and
- (8) on a balance of convenience an order of *mandamus* should be issued.

[30] I am of the view, for the reasons that follow, that the Agency has no statutory duty to inquire into complaints that fall within Part V.1 of the ATR. Although the Agency has the power to launch an inquiry, it may look into alternative methods to address a complaint, including investigations by a designated enforcement officer leading ultimately to the imposition of monetary penalties.

[31] The Agency is right in stating that the Act creates no general obligation to deal with any complaint regarding compliance with the Act and its regulations. Part I – Administration of the Act - contains the provisions that create the Agency and generally defines the Agency’s powers. The Agency possesses broad powers to require a person to comply with the Act, as provided by section 26 of the Act.

[32] As for complaints, section 37 provides that “[t]he 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”. That language is permissive and imposes no obligation to hear every complaint. If Parliament had intended to create an obligation to assess every complaint contemplated, it would have used the term “shall” instead of “may”.

[33] Moreover, Ms. Greene’s testimony at the committee stage cannot modify the clear vocabulary used by Parliament. In fact, it appears that Ms. Greene was only responding to a specific concern that provisions of the Act might limit the ability of shippers to file complaints against railways.

[34] Also, I must underline that subsection 29(1) does not support the applicant's theory. The provision only creates an obligation to render decisions within a certain timeframe, as illustrated by the heading. It creates no obligation to hear any given complaint:

Time for making decisions

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.

Délais

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.

[35] As I review the statutory scheme, I must point out that the Act and the ATR enable the Agency to inquire into certain complaints or to determine certain types of applications. For example:

- In Part II – Air Transportation, the Act identifies specific types of complaints related to air carriers and determines the Agency's powers with respect to them. The following subject matters are identified:
 - Failure to comply with discontinuance of license (section 65);
 - Unreasonable fares or rates (section 66);
 - Fares or rates not set out in tariff (subsection 67.1(1));
 - Unreasonable or unduly discriminatory terms or conditions (subsection 67.2(1)).
- In Part III of the Act – Railway Transportation, the Act grants the Agency powers to determine:
 - Applications by shippers (subsection 132(1));

- Applications by the company to determine the carrier's liability (subsection 137(2));
- Applications by railway companies regarding running rights and joint track usage (section 138);
- Applications by a party to the negotiations to determine the net salvage value of a railway line (subsection 144(3.1)).

[36] In the present case, the applicant's complaint concerns compliance with the ATR's requirements on air transportation advertising prices, governed by Part V.1. The ATR does not contain complaint provisions regarding advertising prices (Part V.1) similar to section 135.4 for unjust or unreasonable tariffs (Part V). Even though the Agency can inquire into such complaints given section 37 of the Act, there is no specific complaint provision as for other types of applications.

[37] Consequently, with respect to the applicant's position that the Agency did rely on section 29 of the Act to enforce violations of other provisions that are also "designated", which means they were giving rise to administrative monetary penalties under the PDR, I note that the Agency referred to this section in *Witvoet* only to establish the deadline to render its decision after having made the discretionary decision to hear the complaint. *Witvoet* must also be distinguished as it concerned Part V of the ATR. As mentioned above, Part V.1 of the ATR, which was enacted in 2012, contains no specific complaint provision comparable to section 135.4 for unjust or unreasonable tariffs (Part V).

[38] Finally, I do not find that any argument of substance can be based on the repealed definitions found in the Agency's procedural rules (*Canadian Transportation Agency General*

Rules, S.O.R./2005-35, s.1 (repealed); Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings), S.O.R./2014-104).

[39] As the Agency has no statutory duty to inquire into all complaints, I must conclude that on the first leg of the test, *mandamus* cannot be obtained. It follows that the Third issue – Are the other requirements for an order in *mandamus* met? - does not arise.

VI. Fourth issue - Should the applicant be awarded increased costs, or his disbursements and an allowance for time?

A. *The position of the parties*

(1) The applicant

[40] Without regards for the outcome of the case, the applicant seeks disbursements and an allowance for time on the basis that his case is not frivolous, and is in the nature of public interest litigation.

[41] The applicant also asks for increased costs against the Agency, claiming that the affidavit of Ms. Sasova created the impression that Expedia's website had become compliant with the ATR, when it was not fully the case. It is argued that to demonstrate that Expedia's compliance with the Regulations remained an outstanding issue, and to have the Agency concede this point, required extensive cross-examination.

(2) The Agency

[42] In response, the Agency points out that self-represented litigants are not normally entitled to costs.

[43] Furthermore, the Agency submits that, as an administrative decision-maker, costs are normally not awarded against it when responding to a court proceeding to address its jurisdiction and where there has been no misconduct on its part (*Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244, 254 D.L.R. (4th) 111). The Agency underlines that it was acting in good faith in referring the matter to the enforcement branch. For those reasons, no costs should be awarded against it.

[44] As for Ms. Sasova, it is argued that she acknowledged in her affidavit and early in cross-examination that Expedia was not fully compliant. This Court has dismissed a request by the applicant to have Ms. Sasova personally bear the costs of the cross-examination on a motion to re-attend. As such, there was no need for such an extensive cross-examination. The request for increased costs should consequently be denied according to the Agency.

B. *Analysis*

[45] As the applicant is unsuccessful on this application, he should not be awarded disbursements or an allowance for time as claimed. I acknowledge that awards are sometimes granted to unsuccessful self-represented litigants, on a matter involving the public interest where the issue is not frivolous (*Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at paragraph

62, 456 N.R. 186). However, while the issue was not *per se* frivolous and concerned the Agency's jurisdiction, the claim was marginal and the Agency showed no signs of bad faith. I do not think this case warrants an award of costs against the Agency.

[46] Additionally, I am not convinced that Ms. Sasova's affidavit and cross-examination should give rise to any increased costs. Rule 400 of the *Federal Courts Rules*, S.O.R./98-106 grants the Court discretion to sanction the reprehensible conduct of a party; this is not the case here (*Apotex v. Pfizer Canada*, 2009 FCA 8 at paragraph 47, [2009] 4 F.C.R. 223). It is also awarded to ensure adequate compensation in complex or costly cases (*Ultima Foods v. Agro-Farma Canada*, 2013 FC 238 at paragraphs 22-26, 2013 CarswellNat 1185). Admittedly, Ms. Sasova's affidavit could have been clearer with respect to Expedia's degree of compliance or whether she had exercised her discretion not to pursue the matter further. Nonetheless, since Ms. Sasova believed she was rightfully exercising her discretion as the Enforcement officer in these circumstances, I do not think it can be said that there was any bad faith on her or the Agency's part.

VII. Conclusion

[47] For those reasons, I would dismiss the application for judicial review, without costs.

"A.F. Scott"

J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Yves de Montigny J.A."

ANNEX I

RELEVANT LEGISLATION

*Air Transportation Regulations,
S.O.R./88-58)*

PART IV DIVISION V Powers of the agency

135.4 Where the Agency, on receiving a complaint or of its own motion, determines that any term or condition of carriage set out in a tariff is unjust or unreasonable, the Agency may

(a) suspend or disallow the tariff or a portion thereof;

(b) establish and substitute another tariff or portion thereof for the suspended or disallowed tariff or portion thereof; or

(c) prohibit an air carrier from advertising, offering or applying the suspended or disallowed tariff or portion thereof.

...

PART V.1 Advertising Prices

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;

*Règlement sur les transports aériens,
D.O.R.S./88-58*

PARTIE IV SECTION V Pouvoirs de l'Office

135.4 Si l'Office détermine, à la suite d'une plainte ou de son propre chef, que des conditions de transport figurant dans un tarif sont injustes ou déraisonnables, il peut :

a) suspendre ou refuser tout ou partie du tarif;

b) établir un autre tarif ou partie de tarif et le substituer au tarif ou à la partie de tarif suspendu ou refusé;

c) interdire au transporteur aérien d'annoncer, d'offrir ou d'appliquer tout ou partie du tarif suspendu ou refusé.

[...]

PARTIE V.1 Publicité des prix

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) 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.

135.8(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.

135.8(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.

135.8(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

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.

135.8(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.

135.8(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.

135.8(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;

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.

135.8(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.

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.

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.

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.

135.8(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.

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.

135.91 Il est interdit de présenter dans une publicité un frais du transport aérien comme étant une somme perçue pour un tiers ou d'y utiliser le terme taxe pour désigner un frais du transport aérien.

***Canada Transportation Act, S.C.
1996, c. 10***

26 The Agency may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.

...

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.

(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.

...

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.

...

116(1) On receipt of a complaint made by any person that a railway company is not fulfilling any of its service obligations, the Agency shall

***Loi sur les transports au Canada,
L.C. 1996, ch. 10***

26 L'Office peut ordonner à quiconque d'accomplir un acte ou de s'en abstenir lorsque l'accomplissement ou l'abstention sont prévus par une loi fédérale qu'il est chargé d'appliquer en tout ou en partie.

[...]

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.

(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.

[...]

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.

[...]

116(1) Sur réception d'une plainte selon laquelle une compagnie de chemin de fer ne s'acquitte pas de ses obligations prévues par les articles 113 ou 114, l'Office mène, aussi

rapidement que possible, l'enquête qu'il estime indiquée et décide, dans les cent vingt jours suivant la réception de la plainte, si la compagnie s'acquitte de ses obligations.

(a) conduct, as expeditiously as possible, an investigation of the complaint that, in its opinion, is warranted; and

(b) within one hundred and twenty days after receipt of the complaint, determine whether the company is fulfilling that obligation.

116(2) If a company and a shipper agree, by means of a confidential contract, on the manner in which service obligations under section 113 are to be fulfilled by the company, the terms of that agreement are binding on the Agency in making its determination.

116(3) If a shipper and a company agree under subsection 136(4) on the manner in which the service obligations are to be fulfilled by the local carrier, the terms of the agreement are binding on the Agency in making its determination.

116(4) If the Agency determines that a company is not fulfilling any of its service obligations, the Agency may

(a) order that

(i) specific works be constructed or carried out,

(ii) property be acquired,

116(2) Dans les cas où une compagnie et un expéditeur conviennent, par contrat confidentiel, de la manière dont la compagnie s'acquittera de ses obligations prévues par l'article 113, les clauses du contrat lient l'Office dans sa décision.

116(3) Lorsque, en application du paragraphe 136(4), un expéditeur et une compagnie s'entendent sur les moyens à prendre par le transporteur local pour s'acquitter de ses obligations prévues par les articles 113 et 114, les modalités de l'accord lient l'Office dans sa décision.

116(4) L'Office, ayant décidé qu'une compagnie ne s'acquitte pas de ses obligations prévues par les articles 113 ou 114, peut :

a) ordonner la prise de l'une ou l'autre des mesures suivantes :

(i) la construction ou l'exécution d'ouvrages spécifiques,

(ii) l'acquisition de biens,

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| <p>(iii) cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Agency, or</p> <p>(iv) any specified steps, systems or methods be taken or followed by the company;</p> | <p>(iii) l'attribution, la distribution, l'usage ou le déplacement de wagons, de moteurs ou d'autre matériel selon ses instructions,</p> <p>(iv) la prise de mesures ou l'application de systèmes ou de méthodes par la compagnie;</p> |
| <p>(b) specify in the order the maximum charges that may be made by the company in respect of the matter so ordered;</p> | <p>b) préciser le prix maximal que la compagnie peut exiger pour mettre en oeuvre les mesures qu'il impose;</p> |
| <p>(c) order the company to fulfil that obligation in any manner and within any time or during any period that the Agency deems expedient, having regard to all proper interests, and specify the particulars of the obligation to be fulfilled;</p> | <p>c) ordonner à la compagnie de remplir ses obligations selon les modalités de forme et de temps qu'il estime indiquées, eu égard aux intérêts légitimes, et préciser les détails de l'obligation à respecter;</p> |
| <p>(c.1) order the company to compensate any person adversely affected for any expenses that they incurred as a result of the company's failure to fulfill its service obligations or, if the company is a party to a confidential contract with a shipper that requires the company to pay an amount of compensation for expenses incurred by the shipper as a result of the company's failure to fulfill its service obligations, order the company to pay that amount to the shipper;</p> | <p>c.1) ordonner à la compagnie d'indemniser toute personne lésée des dépenses qu'elle a supportées en conséquence du non-respect des obligations de la compagnie ou, si celle-ci est partie à un contrat confidentiel avec un expéditeur qui prévoit qu'elle versera, en cas de manquement à ses obligations, une indemnité pour les dépenses que l'expéditeur a supportées en conséquence du non-respect des obligations de la compagnie, lui ordonner de verser à l'expéditeur cette indemnité;</p> |
| <p>(d) if the service obligation is in respect of a grain-dependent branch line listed in Schedule I, order the company to add to the plan it is required to prepare under subsection 141(1) an indication that it intends to take steps to discontinue operating the line; or</p> | <p>d) en cas de manquement à une obligation de service relative à un embranchement tributaire du transport du grain mentionné à l'annexe I, ordonner à la compagnie d'ajouter l'embranchement au plan visé au paragraphe 141(1) à titre de ligne dont elle entend cesser l'exploitation;</p> |

(e) if the service obligation is in respect of a grain-dependent branch line listed in Schedule I, order the company, on the terms and conditions that the Agency considers appropriate, to grant to another railway company the right

(i) to run and operate its trains over and on any portion of the line, and

(ii) in so far as necessary to provide service to the line, to run and operate its trains over and on any portion of any other portion of the railway of the company against which the order is made but not to solicit traffic on that railway, to take possession of, use or occupy any land belonging to that company and to use the whole or any portion of that company's right-of-way, tracks, terminals, stations or station grounds.

116(5) Every person aggrieved by any neglect or refusal of a company to fulfil its service obligations has, subject to this Act, an action for the neglect or refusal against the company.

116(6) Subject to the terms of a confidential contract referred to in subsection 113(4) or a tariff setting out a competitive line rate referred to in subsection 136(4), a company is not relieved from an action taken under subsection (5) by any notice, condition or declaration if the damage claimed in the action arises from any negligence or omission of the

e) en cas de manquement à une obligation de service relative à un embranchement tributaire du transport du grain mentionné à l'annexe I, ordonner à la compagnie, selon les modalités qu'il estime indiquées, d'autoriser une autre compagnie :

(i) à faire circuler et à exploiter ses trains sur toute partie de l'embranchement,

(ii) dans la mesure nécessaire pour assurer le service sur l'embranchement, à faire circuler et à exploiter ses trains sur toute autre partie du chemin de fer de la compagnie, sans toutefois lui permettre d'offrir des services de transport sur cette partie du chemin de fer, de même qu'à utiliser ou à occuper des terres lui appartenant, ou à prendre possession de telles terres, ou à utiliser tout ou partie de l'emprise, des rails, des têtes de lignes, des gares ou des terrains lui appartenant.

116(5) Quiconque souffre préjudice de la négligence ou du refus d'une compagnie de s'acquitter de ses obligations prévues par les articles 113 ou 114 possède, sous réserve de la présente loi, un droit d'action contre la compagnie.

116(6) Sous réserve des stipulations d'un contrat confidentiel visé au paragraphe 113(4) ou d'un tarif établissant un prix de ligne concurrentiel visé au paragraphe 136(4), une compagnie n'est pas soustraite à une action intentée en vertu du paragraphe (5) par un avis, une condition ou une déclaration, si les dommages-intérêts réclamés sont causés par la négligence ou les

company or any of its employees.

omissions de la compagnie ou d'un de ses employés.

...

[...]

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

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.

(a) the penalty, established in accordance with the regulations made under section 177, for the violation that the person is liable to pay; and

(b) the particulars concerning the time for paying and the manner of paying the penalty.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-167-14

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.

STYLE OF CAUSE:

DR. GABOR LUKACS v.
CANADIAN TRANSPORTATION
AGENCY

PLACE OF HEARING:

HALIFAX, NOVA SCOTIA

DATE OF HEARING:

APRIL 27, 2016

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

WEBB J.A.
DE MONTIGNY J.A.

DATED:

JULY 25, 2016

APPEARANCES:

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Gatineau, Quebec

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