

**FEDERAL COURT OF APPEAL**

**BETWEEN :**

**DR. GÁBOR LUKÁCS**

Appellant

- and -

**CANADIAN TRANSPORTATION AGENCY and  
BRITISH AIRWAYS PLC**

Respondents

**MEMORANDUM OF FACT AND LAW OF  
THE RESPONDENT BRITISH AIRWAYS PLC**

October 11, 2016

**PATERSON, MacDOUGALL LLP**  
Barristers & Solicitors  
Box 100, Suite 900  
1 Queen Street East  
Toronto, Ontario  
M5C 2W5

Carol E. McCall LSUC#: 16926Q  
E-mail: cmccall@pmlaw.com  
Tel: (416) 643-3309  
Fax: (416) 366-3743

Lawyers for the Respondent,  
British Airways PLC

**TO: DR. GÁBOR LUKÁCS**

Halifax, NS

E-mail: [lukacs@airpassengerrights.ca](mailto:lukacs@airpassengerrights.ca)

Appellant

**AND TO: CANADIAN TRANSPORTATION AGENCY**

Legal Services Branch  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0N9

Allan Matte

E-mail: [Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)

Tel: (819) 994-2226

Fax: (819) 953-9269

Counsel for the Respondent,  
Canadian Transportation Agency

**FEDERAL COURT OF APPEAL**

**BETWEEN:**

**DR. GÁBOR LUKÁCS**

**Appellant**

**- and -**

**CANADIAN TRANSPORTATION AGENCY and  
BRITISH AIRWAYS PLC**

**Respondents**

**MEMORANDUM OF FACT AND LAW OF  
THE RESPONDENT BRITISH AIRWAYS PLC**

**TABLE OF CONTENTS**

	<b>PAGE</b>
<b>PART I – STATEMENT OF FACTS</b>	<b>1</b>
<b>PART II – STATEMENT OF POINTS IN ISSUE</b>	<b>13</b>
<b>PART III – STATEMENT OF SUBMISSIONS</b>	<b>13</b>
<b>PART IV – ORDER SOUGHT</b>	<b>17</b>
<b>PART V – LIST OF AUTHORITIES</b>	<b>18</b>

**FEDERAL COURT OF APPEAL**

**B E T W E E N:**

**DR. GÁBOR LUKÁCS**

**Appellant**

**- and -**

**CANADIAN TRANSPORTATION AGENCY and  
BRITISH AIRWAYS PLC**

**Respondents**

**MEMORANDUM OF FACT AND LAW  
OF THE RESPONDENT, BRITISH AIRWAYS PLC**

**PART I – STATEMENT OF FACTS**

1. On January 30, 2013, the Appellant (“Mr. Lukács”) filed a complaint with the Canadian Transportation Agency (the “Agency”) and challenged the reasonableness and clarity of certain policies of the Respondent (“British Airways”) set out in its tariff filed with the Agency pursuant to Canadian regulatory requirements set out in the *Air Transportation Regulations*, S.O.R./88-58, ss 110.

**Complaint of Dr. Lukács to the Canadian  
Transportation Agency, dated January 30, 2013,  
Appeal Book, Tab 11, pp. 76-103**

2. In the complaint, Part VI dealt with British Airways’ Tariff Rule 87 (B)(3)(b) on denied boarding compensation. Firstly, Mr. Lukács challenged the reasonableness of the Rule and secondly, he submitted that British Airways’ Tariff

Rule ought to reflect its legal obligations to provide denied boarding compensation in accordance with Regulation (EC) No. 261/2004.

**Complaint of Dr. Lukács to the Canadian  
Transportation Agency, dated January 30, 2013,  
Appeal Book, Tab 11, p. 97**

3. Mr. Lukács set out in his complaint as Exhibit “H” Regulation (EC) No. 261/2004 and stated that it “applies to every flight departing from an airport in the United Kingdom, regardless of the destination and the carrier.”

**Complaint of Dr. Lukács to the Canadian  
Transportation Agency, dated January 30, 2013,  
Appeal Book, Tab 11, p. 98**

4. In Part VII (E) set out in the complaint, Mr. Lukács sought as relief from the Agency that Rule 87 (B)(3)(b) be disallowed and that British Airways be directed to incorporate into its rules the obligations set out in Regulation (EC) No. 261/2004.

**Complaint of Dr. Lukács to the Canadian  
Transportation Agency, dated January 30, 2013,  
Appeal Book, Tab 11, p. 101**

5. In the response of British Airways dated March 22, 2013, it stated that British Airways complies with Regulation (EC) No. 261/2004 which was legislated by the European Parliament and provides rights to passengers under that law and that the Regulation does not grant passengers contractual rights.

**Answer of British Airways, dated March 22, 2013,  
Appeal Book, Tab 10, p. 74**

6. British Airways submitted in its response that it is inappropriate for the Agency to be enforcing foreign laws by requiring air carriers to include provisions of a European regulation in Canadian contracts of carriage and that neither the *Canadian Transportation Act* nor the *Air Transportation Regulations* empower or authorize the Agency to enforce foreign laws.

**Answer of British Airways, dated March 22, 2013,  
Appeal Book, Tab 10, p. 74**

7. British Airways submitted that in the absence of any authority or jurisdiction to enforce foreign laws directly, neither did the Agency have any authority or jurisdiction to enforce foreign laws indirectly by requiring air carriers to incorporate rights granted by foreign laws as terms of their contracts of carriage in their Canadian Tariff Rules.

**Answer of British Airways, dated March 22, 2013,  
Appeal Book, Tab 10, p. 74**

8. In Decision No. 10-C-A-2014, dated January 17, 2014 the Agency considered Mr. Lukács' request that it disallow Rule 87(B)(3)(b) and direct British Airways to incorporate into its rules the obligations set out in Regulation (EC) No. 261/2004.

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 12**

9. The Agency considered the issue of whether British Airways' Tariff should reflect British Airways' legal obligation under Regulation (EC) No. 261/2004 and in its "Analysis and findings" referred to the Agency's Decision No. 432-C-A-2013 in

which the Agency had addressed a submission that Sunwing's tariff neglected to reflect its obligations relating to denied boarding as imposed by Regulation (EC) No. 261/2004 and stated:

“As to the reasonableness of carriers' tariffs filed with the Agency, the Agency makes determinations on provisions relating to legislation or regulations that the Agency is able to enforce. Legislation or regulations promulgated by a foreign authority, such as the European Union's Regulation (EC) No. 261/2004, do not satisfy that criterion. If a carrier feels compelled or has been instructed by a foreign authority to include a reference in its tariff to that authority's law, the carrier is permitted to do so, but it is not a requirement imposed by the Agency.”

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 30**

10. Accordingly, the agency did not require British Airways to incorporate the provisions of Regulation (EC) No. 261/2004 into British Airways' Tariff, or to make reference to that Regulation.

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 30**

11. The Agency decided that it would not require British Airways to incorporate the provisions of Regulation (EC) No. 261/2004 into its Tariff, or make reference to that Regulation.

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 33**

12. The Agency concluded that British Airways Rule 87 (B)(3)(b), as it relates to the denied boarding compensation provided to passengers, may be unreasonable within the meaning of subsection 111(1) of the *Air Transportation Regulations*.

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 33**

13. The Agency provided British Airways with the opportunity to show cause why the Agency should not require British Airways, with respect to denied boarding compensation tendered to passengers under Rule 87 (B)(3)(b), apply either:

1. The regime applicable in the United States of America;
2. The regime proposed by Mr. Lukács in the proceedings related to Decision No. 342-C-A-2013;
3. The regime proposed by Air Canada during the proceedings related to Decision No. 442-C-A-2013; or
4. Any other regime that British Airways may wish to propose that Agency may consider to be reasonable.

**Decision No. 10-C-A-2014 of the Canadian  
Transportation Agency, dated January 17, 2014,  
Appeal Book, Tab 4, p. 34**

14. Mr. Lukács has not sought leave to appeal Decision No. 10-C-A-2014.



15. British Airways proposed to apply the regime proposed by Air Canada as set out in Decision No. 442-C-A-2013 and set out the wording from that decision on denied boarding compensation and proposed the following wording of a revised Rule 87(B)(3)(b):

Amount of compensation payable for flights from Canada to the United Kingdom

(I) Subject to the provisions of paragraph (B)(3)(a) of this Rule, carrier will tender liquidated damages for delay at arrival at point of destination caused by involuntary denied boarding cash or equivalent in the amount of CAD 400 for delay of 0 to 4 hours and in the amount of CAD 800 for delay over 4 hours.

The destination changed from European Union to the United Kingdom because British Airways operates flights from Canada to the United Kingdom.

**Decision No. 201-C-A-2014 of the Canadian Transportation Agency, dated May 26, 2014, Appeal Book, Tab 5, p. 44**

16. Mr. Lukács filed a reply to British Airway's submission challenging the reasonableness of its proposed Rule 87(B)(3)(b) based on Air Canada's proposed regime in Decision No. 442-C-A-2013 because it failed to deal with denied boarding compensation for passengers on flights to and from Canada and asserts that British Airway's proposed rule purports to exempt itself from the obligation to pay denied boarding compensation on flights to Canada.

**Decision No. 201-C-A-2014 of the Canadian  
Transportation Agency, dated May 26, 2014, Appeal  
Book, Tab 5, p. 44**

17. On May 26, 2014, the Agency, by Decision No. 201-C-A-2014 on the issue of whether British Airways' Proposed Rule complies with the show cause direction set out in Decision No. 10-C-A-2014, ordered that British Airways file the Proposed Rule, with the application being for travel from Canada to the European Union, as reflected in the proposal made by Air Canada during the proceedings related to Decision No. 442-C-A-2013.

**Decision No. 201-C-A-2014 of the Canadian  
Transportation Agency, dated May 26, 2014, Appeal  
Book, Tab 5, p. 45**

18. British Airways filed the revision to its International Tariff Rule 87(B)(3)(b) with the Agency in compliance with Decision No. 201-C-A-2014. The revised tariff wording is:

AMOUNT OF COMPENSATION PAYABLE FOR  
FLIGHTS FROM THE EUROPEAN UNION TO CANADA

(I) SUBJECT TO THE PROVISIONS OF PARAGRAPH  
(B)(3)(A) OF THIS RULE, CARRIER WILL TENDER  
LIQUIDATED DAMAGES FOR DELAY AT ARRIVAL AT  
POINT OF DESTINATION CAUSED BY INVOLUNTARY  
DENIED BOARDING CASH OR EQUIVALENT IN THE  
AMOUNT OF 400 CAD FOR DELAY OF 0 TO 4 HOURS

AND IN THE AMOUNT OF 800 CAD FOR DELAY OVER  
4 HOURS.

**British Airways' International Tariff Rule 87(B)(3)(b),  
Appeal Book, Tab 6, p.47**

19. Mr. Lukacs appealed Decision No. 201-C-A-2014 to the Federal Court of Appeal and the Court remitted the matter back to the Agency for re-determination and stated that:

“ the Agency must clarify whether the tariff must in all instances set out denied boarding compensation provisions for flights to and from Canada, or whether the fact that British Airways passengers from the E.U. to Canada are covered by E.U. Regulation (EC) No. 261/2004 is sufficient.”

**Reasons for Judgment of the Federal Court of Appeal,  
dated November 27, 2015, Appeal Book, Tab 7, p. 60**

20. Mr. Lukacs has never challenged or appealed regarding the words SUBJECT TO THE PROVISIONS OF PARAGRAPH (B)(3)(A) OF THIS RULE in Rule 87(B)(3)(B) and the Federal Court of Appeal did not deal with the wording of revised Tariff Rule 87(B)(3)(B) applicable to passengers travelling from Canada to the European Union.

21. The Agency re-determined the matter and issued Decision No. 49-C-A-2016 on February 18, 2016 in which it reviewed the issue of the Agency's power to enforce E.U. Regulation (EC) No. 261/2004 and stated the legal basis for not enforcing foreign legislation or regulations is lack of jurisdiction because the *Canada Transportation Act* does not empower the Agency to enforce foreign instruments.

**Decision No. 49-C-A-2016 of the Canadian  
Transportation Agency, dated February 18, 2016,  
Appeal Book, Tab 8, p. 67**

22. The Agency's decision provided that British Airways' Tariff must clearly state its policy with respect to denied boarding compensation with respect to flights from the European Union to Canada.

**Decision No. 49-C-A-2016 of the Canadian  
Transportation Agency, dated February 18, 2016,  
Appeal Book, Tab 8, p. 67**

23. The Agency ordered British Airways to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including incorporation by reference to Regulation (EC) 261/2004.

**Decision No. 49-C-A-2016 of the Canadian  
Transportation Agency, dated February 18, 2016,  
Appeal Book, Tab 8, p. 68**

24. Agency Decision No. 442-C-A-2013 does not contain a regime proposed by Air Canada that provides denied boarding compensation other than for flights from Canada to the European Union. There is a reference to an existing denied boarding compensation Rule fixing "the amount of denied boarding compensation for passengers travelling from the EU to Canada at 600 euros in cash, an amount that can be reduced to 300 euros if the resulting delay is less than four hours."

***Azar v. Air Canada*, Decision No. 442-C-A-2013, para.  
21, Book of Authorities of the Respondent, British  
Airways, Tab 1**

25. Agency Decision No. 442-C-A-2013 also refers to the complainant having pointed out that “Air Canada’s main competitors on routes from Canada to the EU are various European carriers, each of which has to pay the amount of denied boarding compensation prescribed by Regulation (EC) No. 261/2004 of the European Parliament and of the Council on all of its flights, regardless of the points of origin and destination. She contends that these carriers have to compensate passengers who are denied boarding according to the “600 EUR/300 EUR rule” on flights from Canada to the EU.” The complainant argued that “Air Canada would not suffer any competitive disadvantage by applying the same “600 EUR/300 EUR rule”, which is already incorporated into the Existing Denied Boarding Rule, to its passengers travelling from Canada to the EU.”

***Azar v. Air Canada*, Decision No. 442-C-A-2013, para. 24, Book of Authorities of the Respondent, British Airways, Tab 1**

26. Agency Decision No. 442-C-A-2013 does not contain a proposed Tariff Rule by Air Canada with respect to flights from the EU to Canada. The Agency ordered “Air Canada, by no later than December 30, 2013, to amend its Tariff by filing its proposed denied boarding compensation amounts for travel from Canada to the EU.”

***Azar v. Air Canada*, Decision No. 442-C-A-2013, para. 59, Book of Authorities of the Respondent, British Airways, Tab 1**

27. The proposed denied boarding compensation amounts were:

Proposed denied boarding compensation amounts for travel from Canada to the European Union	
<b>Delay at arrival caused by involuntary denied boarding</b>	<b>Cash or equivalent</b>
0-4 hours	CAD 400
Over 4 hours	CAD 800

***Azar v. Air Canada*, Decision No. 442-C-A-2013, Appendix, p. 18, Book of Authorities of the Respondent, British Airways, Tab 1**

28. In compliance with the order of the Agency that British Airways revise its tariff “to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including incorporation by reference to Regulation (EC) 261/2004”, British Airways proposed amended tariff wording with the Agency that applied “600 EUR/300 EUR rule” to its passengers travelling from Canada to the EU.

29. In its proposed wording for the amendment to Rule 87(B)(3)(b) for denied boarding compensation for passengers travelling from the EU to Canada, British Airways used wording for the tariff rule that paralleled its previous revision to Rule 87(B)(3)(b) for passengers travelling from Canada to the EU that had been accepted by the Agency and added section (c) to Rule 87(B)(3).

30. The wording proposed was:

**RULE 87(B)(3)(C)**

**AMOUNT OF COMPENSATION PAYABLE FOR  
FLIGHTS FROM THE EUROPEAN UNION TO CANADA**

(I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (B)(3)(A) OF THIS RULE, CARRIER WILL TENDER LIQUIDATED DAMAGES FOR DELAY AT ARRIVAL AT POINT OF DESTINATION CAUSED BY INVOLUNTARY DENIED BOARDING CASH OR EQUIVALENT IN THE AMOUNT OF 300 EUR FOR DELAY OF 0 TO 4 HOURS AND IN THE AMOUNT OF 600 EUR FOR DELAY OVER 4 HOURS.

**British Airways' International Tariff Rule 87(B), issued in response to Decision No. 201-C-A-2014, Appeal Book, Tab 6, p. 47**

31. Agency Decision No. 91-C-A-2016 was issued March 23, 2016 and considered whether the wording proposed by British Airways complied with Agency Decision No. 49-C-A-2016 that ordered British Airways to make reference to Regulation (EC) No. 261/2004 in its Tariff in relation to its policy for the payment of denied boarding compensation for flights from the EU to Canada.

**Decision No. 91-C-A-2016 of the Canadian Transportation Agency, dated March 23, 2016, Appeal Book, Tab 2, p. 7**

32. The Agency found that by including the relevant terms of Regulation (EC) No. 261/2004 in its Tariff, "British Airways has not only complied with the Decision, but has done so in a way that has provided greater clarity in its tariff than if it had simply included a cross-reference to the provision."

**Decision No. 91-C-A-2016 of the Canadian Transportation Agency, dated March 23, 2016, Appeal Book, Tab 2, p. 8**

## **PART II – STATEMENT OF POINTS IN ISSUE**

33. The issue to be decided is whether the inclusion of the exceptions found in Rule 87(B)(3)(a) of the proposed Tariff would result in the Tariff not being in compliance with the order of the Canadian Transportation Agency found in Decision No. 49-C-A-2016 to amend its Tariff “to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation by reference of Regulation (EC) 261/2004.”

**Order of the Federal Court of Appeal granting Leave to Appeal, dated May 20, 2016, Appeal Book, Tab 12, p. 104**

## **PART III – STATEMENT OF SUBMISSIONS**

34. Under Section 41 of the *Canada Transportation Act*, the scope of appeals is limited to an error of law or jurisdiction.

35. The Agency is a federal regulator and is established pursuant to the provisions of the *Canada Transportation Act*.

***Canada Transportation Act*, S.C. 1996, c. 10, s. 86,  
Book of Authorities of the Appellant**

36. The Agency has jurisdiction and authority to review any tariff of an air carrier and to disallow any tariff or portion of a tariff that appears not to conform with the requirement that it be just and reasonable, and to establish or substitute another tariff or portion thereof for the disallowed tariff or portion thereon.



***Air Transportation Regulations, S.O.R./88-58, ss. 111  
and 113, Book of Authorities of the Appellant***

37. The standard of review on appeal of decisions of the Agency is a standard of reasonableness.

***Council of Canadians with Disabilities v. Via Rail  
Canada Inc., [2007] 1 S.C.R. 650 at para. 99, Book of  
Authorities of the Respondent, British Airways, Tab 2***

38. The Agency is a highly specialized and expert tribunal, charged with the responsibility of overseeing a complex array of transportation matters.

***Northwest Airlines Inc. v. Canadian Transportation  
Agency, 2004 FCA 238 at para. 30, Book of Authorities  
of the Respondent, British Airways, Tab 3***

39. Determining whether tariffs or portions thereof are just and reasonable engages the specialized knowledge and expertise of the Agency on matters relating to the regulation of air transportation.

40. The issue on appeal is whether it was reasonable for the Agency to accept the inclusion of the exceptions found in Rule 87(B)(3)(a) of the proposed Tariff as being in compliance with the order of the Canadian Transportation Agency found in Decision No. 49-C-A-2016 to amend its Tariff “to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation by reference of Regulation (EC) 261/2004.”

41. Air Canada did not propose any regime in Decision No. 442-C-A-2013 that dealt with the incorporation by reference of Regulation (EC) 261/2004. Air Canada

did have a tariff rule at that time that referred to Regulation (EC) 261/2004 for flights from the EU to Canada that was not part of the proposed regime being considered by the Agency in Decision No. 442-C-A-2013. Accordingly, it was reasonable for the Agency to consider the proposed wording by British Airways that dealt with the actual amount of denied boarding compensation under “600 EUR/300 EUR rule” and to decide that British Airways complied with the Order of the Canadian Transportation Agency found in Decision No. 49-C-A-2016 to amend its Tariff for denied boarding compensation in respect of flights from the European Union to Canada.

42. Decision No. 49-C-A-2016 did not require British Airways to copy the tariff filed by Air Canada that states in Rule 90(A) that Air Canada will apply the provisions of EC Regulation No. 261/2004 to flights departing from the European Union, and in fact British Airways proposed Tariff Rule wording that exceeded the requirement in the Order and provided greater clarity and enabled enforcement of the Rule by the Agency.

43. The wording that Mr. Lukács objects to in Rule 87(B)(3)(a) that provides that a passenger will not be eligible to compensation if the flight is unable to accommodate him because of substitution of equipment of lesser capacity when required by operational or safety reasons was challenged by Mr. Lukács and was considered by the Agency in Decision No. 204-C-A-2013. The Agency stated that the carrier “should have the flexibility to control its fleet and determine when aircraft should be substituted for operational or safety reasons”, provided that it “is able to demonstrate that the events prompting the substitution were beyond its control.” The

Agency decided that the carrier should have the flexibility to control its fleet but that the burden must rest with the carrier to establish the events prompting the substitution were beyond its control and that all reasonable measures were taken to avoid the substitution or that it was impossible to take such measures.

***Lukács v. Air Canada*, Decision No. 204-C-A-2013,  
paras. 41, 44, Book of Authorities of the Appellant**

44. British Airways submits that in the event of passenger complaints arising from British Airways' failure to comply with its new Tariff Rule 87(B)(3)(c), a passenger can file a complaint with the Agency, and the Agency can decide that British Airways' Tariff Rule 87(B)(3)(a) is to be applied in a manner consistent with Decision No. 204-C-A-2013 if British Airways does not demonstrate that a substitution was required as a result of events beyond its control and that all reasonable measures were taken or it was impossible to take such measures.

45. It is submitted that the Agency would have been well aware of its prior Decision No. 204-C-A-2013, in which it considered exemptions from payment of denied boarding compensation based on substituted aircraft, when it decided that British Airways' proposed Tariff Rule 87(B)(3)(c) complied with the Agency's Order in Decision No. 49-C-A-2016 and that the Agency has adequate powers under the *Canada Transportation Act* and the *Air Transportation Regulations* to intervene in the event that British Airways engages in inappropriate and unjustifiable substitutions of aircraft and declines to pay the denied boarding compensation set out in the proposed Rule 87(B)(3)(c) accepted by the Agency.

46. British Airways' new Rule 87(B)(3)(c) has the same preamble "Subject to the provisions of paragraph (B)(3)(a) of this Rule", that was accepted by the Agency in Rule 87(B)(3)(b) as compliance with its Decision No.201-C-A-2014, and that was not challenged by Mr. Lukács when filed by British Airways.

47. British Airways submits that its Tariff Rule 87(B)(3)(c) more than complies with the Agency's Order in Decision No. 49-C-A-2016.

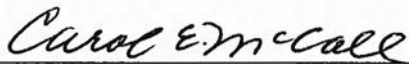
**PART IV – ORDER SOUGHT**

48. British Airways respectfully requests that this Honourable Court dismiss the appellant's appeal of Decision No. 91-C-A-2016.

49. British Airways seeks an order granting its costs of this appeal and such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 11, 2016

  
\_\_\_\_\_  
Carol E. McCall  
**PATERSON, MacDOUGALL LLP**  
Barristers & Solicitors  
1 Queen Street East, Suite 900  
Toronto, Ontario  
M5C 2W5

E-mail: cmccall@pmlaw.com  
Tel: (416) 643-3309  
Fax: (416) 366-3743

Counsel for the Respondent,  
British Airways PLC

**PART V – LIST OF AUTHORITIES**

1. *Azar v. Air Canada*, Canadian Transportation Agency, Decision No. 442-C-A-2013;
2. *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650; and
3. *Northwest Airlines Inc. v. Canadian Transportation Agency*, 2004 FCA 238.

DR. GÁBOR LUKÁCS      and      BRITISH AIRWAY PLC et al.  
Appellant                              Respondents

Court File No. A-238-16

**FEDERAL COURT OF APPEAL**

Proceeding commenced at Halifax

**MEMORANDUM OF FACT AND LAW OF  
THE RESPONDENT BRITISH AIRWAYS PLC**

**PATERSON, MacDOUGALL LLP**  
Barristers & Solicitors  
Box 100, Suite 900  
1 Queen Street East  
Toronto, Ontario  
M5C 2W5

Carol E. McCall LSUC#: 16926Q  
E-mail: cmccall@pmlaw.com  
Tel: (416) 643-3309  
Fax: (416) 366-3743

Lawyers for the Respondent,  
British Airways PLC