

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

BETWEEN

**DELTA AIR LINES, INC.**

Appellant  
(Respondent)

and

**DR. GÁBOR LUKÁCS**

Respondent  
(Appellant)

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**MOTION FOR LEAVE TO INTERVENE OF THE PROPOSED  
INTERVENER, THE COUNCIL OF CANADIANS WITH DISABILITIES**

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

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**NOTICE OF MOTION FOR LEAVE TO INTERVENE**  
**BY THE COUNCIL OF CANADIANS WITH DISABILITIES**

(Pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)

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**TAKE NOTICE** that the applicant, the COUNCIL OF CANADIANS WITH DISABILITIES, applies to a judge, under Rule 55 of the *Rules of the Supreme Court of Canada*, for an order granting it leave to intervene in this appeal, to file a factum of up to 10 pages in length, and to present oral argument of up to 5 minutes, the whole without costs, or any further or other order that the judge may deem appropriate;

**AND FURTHER TAKE NOTICE** that the following documents will be referred to in support of the motion:

1. Affidavit of James Hicks, sworn June 19, 2017; and
2. Such further and other material as counsel may advise and this Honourable Court may permit;

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

3. The proposed intervener, the Council of Canadians with Disabilities (the “CCD”), is a prominent national cross-disability organization with an extensive and respected record of experience in advocacy, law reform and litigation (including before this Honourable Court), aimed at promoting the full participation of, and equal opportunities for, persons with disabilities in Canadian society;
4. This appeal raises issues respecting the criteria to be applied by the Canadian Transportation Agency (the “Agency”) in determining whether to hear air travel complaints regarding discriminatory practices and tariffs;
5. If granted leave to intervene, the CCD will take the position that, in keeping with the statutory obligations under the *Canada Transportation Act* (“CTA”) and broader considerations around access to justice for an already marginalized and excluded group, it is unreasonable for investigative bodies like the Agency to refuse to hear complaints because of the identity of the complainant;
6. The CCD proposes to make the following submissions:
  - a. The public depends on specialized bodies that administer complex regulatory regimes, like the Agency, to bring fairness and justice to complex areas of the law;
  - b. It is unreasonable for a specialized administrative body to deny the public its expertise based on the identity of the complainant;
  - c. Reliance by administrative bodies on overly technical legal standing tests, developed for the adversarial adjudicative context of the courts, to deny

individuals and groups the opportunity to make complaints or to avoid making decisions is inappropriate and risks compounding existing barriers to access to justice;

- d. Section 5(d) of the *CTA* explicitly aims to ensure the transportation system is accessible without undue obstacles to the mobility of persons and Part V of the *CTA* requires the Agency to apply its provisions in a manner that is consistent with the purpose and provisions of human rights legislation;
- e. Administrative bodies like the Agency have an obligation to interpret and apply the *CTA* in a manner consistent with the broad remedial purpose outlined within the *CTA* and in keeping with the purposes and provisions of human rights legislation; and
- f. Administrative bodies such as the Agency exercise their discretion in a manner that is consistent with access to justice concerns;

7. The CCD also will submit that:

- a. The only criteria used to determine whether complaints will be heard by investigative bodies such as the Agency should be: whether the complaint raises a serious issue to be tried;
- b. When administrative bodies consider complaints or issues which engage individual or collective human rights, the protection offered should be no less than the protection offered by the *Canadian Human Rights Act*;

8. The CCD's position is relevant to the Appeal because the CCD brings forward the perspective of persons with diverse disabilities regarding what is required for full and effective participation in society for persons with disabilities, including access to

justice for persons who have a greater likelihood of experiencing justiciable problems in courts and before administrative bodies. The interests of these individuals and their experiences of historical disadvantage and discrimination must be considered and undue barriers to their mobility must be removed;

9. The CCD's submission will be useful to this court as it is different from the submissions of the parties, it may not otherwise be raised if the CCD is not granted leave to intervene and it is necessary to be before the court for a full hearing of the matter;
10. The CCD is directly affected by the outcome of this case because:
  - a. As the national representative organization of persons with disabilities, the CCD has a direct interest in ensuring that the human rights of persons with disabilities are always protected, respected and enforced;
  - b. This appeal will inevitably have broader implications on the appropriate considerations for hearing complaints by other investigative administrative bodies who have the discretion to hear complaints and regulate complex areas of law;
  - c. The issue of appropriate consideration for hearing complaints under the *CTA* is of particular importance to the CCD and to persons with disabilities because it may affect their efforts to effect remedial change to the transportation system in a timely and cost-effective manner;
11. The CCD and its members will be prejudiced if the considerations for when a complaint should be heard by the Agency and similar administrative bodies are unduly restrictive;
12. Rules 55 to 59 of the *Rules of the Supreme Court of Canada*;

13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**DATED** at the City of Winnipeg, Province of Manitoba, this 19<sup>th</sup> day of June, 2017.

**SIGNED BY**



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**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.

If the motion is served and filed with the application for leave to appeal, then the Respondent may serve and file the response to the motion together with the response to the application for leave to appeal.

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**DELTA AIR LINES, INC.**

Appellant  
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Respondent  
(Appellant)

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**AFFIDAVIT OF JAMES HICKS  
SWORN THE 19<sup>TH</sup> DAY OF JUNE, 2017**

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I, James Hicks, National Coordinator of the Council of Canadians with Disabilities ("CCD"), in the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY THAT:

1. I am the National Coordinator of the Council of Canadians with Disabilities. I have held this position since June 2015. I have personal knowledge of the matters described in this affidavit.

**Nature of the Motion**

2. The CCD seeks leave to intervene in this appeal. The appeal is about the ability of individuals and groups to participate before administrative bodies. It has important implications for the ability of persons with disabilities to assert their rights before administrative bodies. Accordingly, issues of access to justice will need to be considered by this Honourable Court.

3. The CCD is a national cross-disability organization representing groups and individuals with a variety of disabilities in Canada. The CCD has a genuine interest in the outcome of this appeal and its broader implications for the community of persons with disabilities. Given its advocacy role through test case litigation and political reform activities, the CCD has seen first hand the important contributions interventions have made in removing barriers and promoting social inclusion for persons with disabilities.
4. In applying for leave to intervene to make written and oral submissions, the CCD seeks to ensure the perspectives of persons with disabilities are present among the other perspectives that will be considered in this appeal. Granting leave to the CCD is consistent with the objective of redressing the substantial barriers in access to justice faced by persons with disabilities.

**Council of Canadians with Disabilities (“CCD”)**

5. The CCD is a national not-for-profit umbrella association that represents people with disabilities. It consists of nine provincial member groups, seven national disability organizations and one affiliate member. The CCD is accountable to a membership of several hundred thousand Canadians with disabilities. It is administered by a Council of Representatives which includes one designate from each of its seventeen member groups. The member organizations of the CCD are:
  - Provincial Member Groups:
    - a. The Alberta Committee of Citizens with Disabilities;
    - b. Disability Alliance BC;
    - c. Citizens with Disabilities – Ontario;
    - d. Confédération des Organismes de Personnes Hadicapées du Québec;
    - e. Coalition of Persons with Disabilities – Newfoundland and Labrador;
    - f. Manitoba League of Persons with Disabilities;
    - g. Nova Scotia League for Equal Opportunities;

- h. PEI Council of People with Disabilities; and
- i. Saskatchewan Voice of People with Disabilities.
- National Disability Organizations:
  - a. Alliance for Equality of Blind Canadians;
  - b. Canadian Association of the Deaf;
  - c. DisAbled Women's Network/Réseau d'action des femmes handicapées;
  - d. National Educational Association of Disabled Students;
  - e. National Network for Mental Health;
  - f. People First of Canada; and
  - g. Thalidomide Victims Association of Canada.
- Affiliate Member:
  - a. Northwest Territories Disabilities Council.

(a) History

6. The CCD was founded in 1976 under the name 'the Coalition of Provincial Organizations of the Handicapped' ("COPOH"). It was founded by persons with disabilities for the purpose of ensuring that the voice of persons with disabilities is heard. In 1994, the COPOH adopted the name CCD in order to reflect its membership structure which admitted national organizations of persons with disabilities as members.
7. The CCD promotes the full participation of, and equal opportunities for, persons with disabilities in Canadian society. Its mandate encompasses a wide range of advocacy efforts to improve the status of persons with disabilities and to provide a democratic structure for them to voice their concerns. Its specific goals are:
  - a. To improve the status of persons with disabilities;
  - b. To promote self-help for persons with disabilities;
  - c. To provide a democratic structure for persons with disabilities to voice concerns;
  - d. To monitor federal legislation affecting persons with disabilities;
  - e. To promote policies determined by persons with disabilities in Canada;

- f. To share information and co-operate with disability organizations in Canada and in other countries; and
- g. To establish a positive image of persons with disabilities in Canada.

(b) An Important Role in Public Policy and Law Reform Initiatives

- 8. The CCD is actively engaged in a wide spectrum of public policy work, including accessibility regulation. Its work is guided by the principles of access, equality, citizenship, inclusion, universal design, empowerment, self-representation, self-determination, consumer control, self-management, and independent living. These principles define how service providers, employers, and governments should function to make their goods, services, facilities, and accommodations more responsive to the needs of persons with disabilities. Overall, the CCD advocates for the elimination of discriminatory and socially made barriers which prevent social inclusion of persons with disabilities.
- 9. The CCD also engages in law reform. The Government of Canada has sought out the perspective of the CCD on a variety of issues concerning the rights of persons with disabilities, including amendments to the *Canadian Human Rights Act*, the ratification of the *United Nations Convention on the Rights of Persons with Disabilities* ("CRPD"), and the reinstatement of the Court Challenges Program in Canada.
- 10. The CCD is Canada's official representative on Disabled Peoples' International, a body that has been accorded consultative status with the United Nations Economic and Social Council. It was a participant in the Canadian delegation involved in negotiating and crafting the legal language of the *CRPD* which was adopted by the United Nations in December 2006. In this regard, the CCD hosted four national consultation meetings in advance of meetings of the United Nations Ad Hoc Committee which considered the *CRPD*. The CCD has also played an international role in defining disability and drafting concepts relating to accommodation, universal design, accessibility, inclusion, dignity and discrimination.

(c) Extensive Experience in Interventions

11. The CCD aims to promote equality for persons with disabilities in all aspects of Canadian society, including before courts and tribunals. To this end it regularly intervenes in cases in support of persons with disabilities under human rights and accessibility legislation and the *Canadian Charter of Rights and Freedoms* ("the Charter").
12. The CCD's litigation work is directed by a Human Rights Committee which is composed of disability rights advocates, legal academics and practitioners who are recognized for their prominence and experience in the field of equality rights.
13. Under its former name, the COPOH, or its current name, the CCD has been granted leave to intervene in more than twenty cases before the Supreme Court of Canada.
14. One notable example (and relevant to the case before this Honourable Court) is the CCD intervention in *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236, 88 DLR (4th) 193, where the court established the test for granting public interest standing.
15. Other examples of Supreme Court of Canada interventions include:
  - *Ontario Human Rights Commission v Simpson-Sears*, [1985] 2 SCR 536, 52 OR (2d) 799 [O'Malley] and *Bhinder v CN*, [1985] 2 SCR 561, 23 DLR (4th) 481, cases which elaborated on the concept of adverse effects discrimination and the duty of accommodation;
  - *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 56 DLR (4th) 1, a case involving the discrimination analysis under s 15 of the *Charter*;
  - *Weatherall v Canada (AG)*, [1993] 2 SCR 872, 105 DLR (4th) 210, a case involving a ss 7, 15(1) and 15(2) *Charter* analysis in the context of employment and services in prison;
  - *Rodriguez v British Columbia (AG)*, [1993] 3 SCR 519, 107 DLR (4th) 342, a case

- involving the *Charter* rights of a person with a disability seeking assisted suicide;
- *Battlefords and District Co-operative Ltd v Gibbs*, [1996] 3 SCR 566, 140 DLR (4th) 1, a case involving discrimination against employees with mental health disabilities under the *Saskatchewan Human Rights Code*, SS 1979, c S-24.1;
  - *Eaton v Brant County Board of Education*, [1997] 1 SCR 241, 31 OR (3d) 574, a case involving a s 15 *Charter* analysis with respect to integrated education for students with disabilities;
  - *Eldridge v British Columbia (AG)*, [1997] 3 SCR 624, 151 DLR (4th) 577, a case involving s 15 of the *Charter* and a person with a hearing disability's right to sign language interpreters to ensure access to health care services;
  - *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 181 DLR (4th) 385, a case involving the application of the duty to accommodate in the issuance of a driver's license to a person with a disability, under British Columbia's *Human Rights Code*, RSBC 1996, c 210;
  - *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28, [2000] 1 SCR 703, a s 15 *Charter* case involving the ground of disability in the context of the *Canada Pension Plan*, RSC 1985, c C-8;
  - *Lovelace v Ontario*, 2000 SCC 37, [2000] 1 SCR 950, a case involving an analysis of the relationship between ss 15(1) and (2) of the *Charter*;
  - *R v Latimer*, 2001 SCC 1, [2001] 1 SCR 3, a case where the court discussed the application of s 12 of the *Charter* to an accused convicted of second degree murder of a child with a disability;
  - *Auton (Guardian ad litem of) v British Columbia (AG)*, 2004 SCC 78, [2004] 3 SCR 657, a case involving a s 15 *Charter* challenge with respect to the ability of children with autism to access therapy;
  - *Newfoundland (Treasury Board) v NAPE*, 2004 SCC 66, [2004] 3 SCR 381, a case involving ss 15 and 1 of the *Charter* in the context of pay equity;
  - *Honda Canada Inc v Keays*, 2008 SCC 39, [2008] 2 SCR 362, a case where the court discussed the application of human rights principles in the employment law context;

- *R v Caron*, 2011 SCC 5, [2011] 1 SCR 78, a case involving a superior court's jurisdiction to order interim costs in litigation in provincial court;
- *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2011 SCC 53, [2011] 3 SCR 471, a case involving the authority of human rights tribunals to order costs;
- *R v DAI*, 2012 SCC 5, [2012] 1 SCR 149, a case involving the impact of s. 16 of the *Canada Evidence Act*, RSC 1985, c C-5, on the rights of persons with intellectual disabilities to testify in court;
- *Moore v British Columbia (Education)*, 2012 SCC 61, [2012] 3 SCR 360, a case where the court determined that students with disabilities who require accommodation had a right to equal access to public education services;
- *Carter v Canada (AG)*, 2015 SCC 5, [2015] 1 SCR 331, a case involving a s 7 Charter challenge of ss 241 and 14 of the *Criminal Code*, RSC 1985, c C-46, prohibiting physician assisted dying in Canada; and
- *Stewart v Elk Valley Coal Corp*, 2017 SCC 30, a case involving the *prima facie* test for discrimination and the defence of bona fide occupational requirement in s 7 of the *Alberta Human Rights Act*, RSA 2000 c A-25.5.

(d) Experience with the Canadian Transportation Agency (“the Agency”)

16. In addition to its extensive experience in interventions, the CCD has direct experience with the Agency, the administrative body at issue in this case.
17. The CCD has played an important role in bringing a human rights prism to issues relating to the accessibility of the transportation system. The CCD was the initiating party in the Agency proceeding resulting in the Supreme Court of Canada's decision *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15, [2007] 1 SCR 650, (“*VIA Rail*”). In this decision, the Supreme Court of Canada ruled in favour of the CCD.
18. In 2006, the CCD intervened in *McKay-Panos v Air Canada*, 2006 FCA 8, [2006] 4 FCR 3, a case which confirmed that obesity is a disability for the purposes of Part V of the



*Canada Transportation Act*, SC 1996, c 10 (the “CTA”).

19. The CCD also was one of the initiating parties in *Norman Estate et al v Air Canada et al* (10 January 2008), 6-AT-A 2008, Canadian Transportation Agency, leave to appeal to FCA refused, 08-A-11 (5 May 2008), leave to appeal to SCC refused, 32729 (20 November 2008) [*One Person/One Fare Decision*], in which the Agency ruled in favour of a policy of One Person/One Fare for persons with disabilities.

### **The Interest of the CCD in This Appeal**

20. The CCD has played an active role in Canadian courts in an effort to promote a judicial understanding of equality and access to justice in a manner that recognizes the historical disadvantage and discrimination experienced by persons with disabilities, and the supports and services that are needed to remove disability-based barriers, including attitudinal barriers, to create an inclusive society.
21. The CCD brings a unique perspective to this appeal given its experience and expertise. It is the only national cross-disability organization representing groups and individuals with a variety of disabilities in Canada. As the national representative organization of persons with disabilities, the CCD has a direct interest in ensuring that the human rights of persons with disabilities are always protected, respected and enforced. It also has expertise in interpreting legal guarantees of non-discrimination and equality under human rights legislation and the *Charter*.
22. The CCD is concerned with access to justice issues as its purpose is to secure equality for persons with diverse disabilities in all aspects of society and law, including transportation, employment, education, housing, health care and social supports. Full and effective participation in society for persons with disabilities requires access to justice. As recognized in Article 12 of the *CRPD*, the self-determination of persons with disabilities includes their enjoyment of legal capacity on an equal basis with others in all aspects of life.

23. The treatment of the complaint at issue in this case has broad implications for access to justice for persons with disabilities as they seek to address undue barriers to mobility through remedial administrative processes.
24. Through its advocacy efforts and public policy work, the CCD has observed that persons with disabilities have a greater likelihood of experiencing justiciable problems in courts and in administrative tribunals. Given their history of exclusion and marginalization, persons with disabilities find themselves both socially and financially less able to exercise their legal interests independently.
25. Since the late 1970s, the CCD has demonstrated leadership and played an important advocacy role aimed at achieving a transportation system that is accessible without undue obstacles to the mobility of persons, including persons with disabilities.
26. Under the *CTA*, it is the Agency that has responsibility for determining whether there is an 'undue obstacle' to the mobility of persons as well as determining the appropriate remedies where such obstacles are found to exist in accordance with the *CTA*. The CCD has been concerned with ensuring that persons with disabilities can be meaningfully heard and have access to remedial human rights tools under the *CTA*.
27. The CCD is interested in ensuring that complaint regimes are available to a wide range of people and access is not restricted by a strict test of direct or public interest standing. Such an outcome is consistent with the CCD objectives of promoting equality and non-discrimination as broadly held social values.
28. This particular appeal relates to the considerations for determining whether to hear a complaint lodged against a licensed international carrier in circumstances where the party launching the complaint has not directly experienced the obstacle. One of the allegations of unduly discriminatory practices relates to the requirement that "large (obese)" passengers

purchase additional seats to avoid the risk of being denied transportation.

29. The CCD has direct experience in rebutting arguments that remedial complaints against discriminatory barriers to mobility should not be heard under the *CTA*. In the *VIA Rail* decision both the majority and dissenting judgments rejected VIA Rail's challenge to the jurisdiction of the Agency to even hear the CCD complaint.

30. The CCD also has direct experience in addressing issues relating to persons living with obesity and facing barriers to their mobility from domestic air carriers. The CCD intervention in the *McKay-Panos v Air Canada* decision supported the Appellant's position that obesity is a disability under the *CTA*, raising awareness about the national and systemic importance of the issue. As a joint complainant in the *One Person/One Fare Decision*, the CCD successfully challenged policies requiring persons with disabilities having to pay for additional seating on domestic flights to accommodate their disabilities for themselves and their attendants.

31. A case of the complexity of the *One Person/One Fare Decision* demanded the filing of extensive written pleadings, expert and other evidence and many interlocutory motions and decisions. An investment of this magnitude in terms of time, money and capacity may prove impossibly daunting to persons from historically disadvantaged communities, including persons with disabilities. Intervenors such as the CCD play a fundamental role in ensuring that persons with disabilities are not denied access to justice and are able to pursue and protect their legal rights.

32. The CCD can provide a useful perspective on why direct or public interest standing need not be demonstrated because, together with its investigative powers, the Agency can receive submissions from intervenors such as the CCD that provide considerable assistance to the Agency in investigating complaints.

33. The issue of appropriate considerations for hearing complaints under the *CTA* is of

particular importance to the CCD and to persons with disabilities because it may affect their efforts to effect remedial change to the transportation system in a timely and cost effective manner. Accessible transportation is key to providing persons with disabilities the opportunity for meaningful social inclusion.

34. The Agency and bodies like it are called to make decisions about programs and services which impact the ability of persons with disabilities to fully participate in society. This appeal will inevitably have broader implications on the appropriate considerations for hearing complaints in other investigative administrative bodies who have the discretion to hear complaints and regulate complex areas of law. The CCD seeks to ensure this appeal is interpreted in a manner consistent with the commitment of the Government of Canada and of the provinces to advance the equality, dignity and inclusion of persons with disabilities within Canadian society.

#### **Prejudice to the CCD**

35. The arguments proposed by the CCD will offer a unique and informed perspective relating to the appropriate considerations to hear complaints under the *CTA*. The CCD will offer the perspectives of a historically disadvantaged group facing longstanding barriers both to access to justice and to the transportation system. The CCD and its members will be prejudiced if the considerations for whether a complaint should be heard by the Agency and similar administrative bodies are unduly restrictive. This will further exacerbate longstanding barriers to access to justice.

#### **Proposed Legal Argument if Leave to Intervene is Granted**

36. The CCD shall argue, if granted leave, that it is unreasonable for an investigative body, like the Agency, to not hear a complaint because of the identity of the complainant. More specifically, CCD plans to argue:

- Specialized administrative bodies like the Agency govern complex regulatory regimes. The public depends upon such administrative bodies to bring fairness and justice to complex areas of the law. Accordingly, it is unreasonable for an administrative body to deny the public its expertise because of the identity of the complainant. Reliance on technical legal standing tests to deny individuals and groups the opportunity to make complaints or avoid making decisions is inappropriate and risks compounding existing barriers to access to justice;
- Unlike what was done by the Agency in this case, the CCD shall argue that any analysis of who may bring complaints must begin with the *CTA* itself. Recognizing the objective under s 5(d) of ensuring the transportation system is accessible without undue obstacles to the mobility of persons, the *CTA* has a broad remedial purpose. Part V of the *CTA* requires the Agency to apply its provisions in a manner that is consistent with the purpose and provisions of human rights legislation;
- Administrative bodies like the Agency have an obligation to interpret and apply the *CTA* in a manner consistent with the purposes and provisions of human rights legislation. In addition, these administrative bodies must exercise discretion consistent with access to justice concerns;
- The only criteria used to determine whether complaints should be heard by investigative administrative bodies such as the Agency should be: whether the complaint raises a serious issue to be tried.
- Given the access to justice challenges in Canada, administrative bodies are increasingly the gatekeepers of human rights complaints. When administrative bodies consider complaints or issues which engage individual or collective human rights, the protection offered should be no less than the protection offered by the *Canadian Human Rights Act*. This is especially the case when we consider the Agency's duty under s 171 of the *CTA* to foster complimentary practices with the Canadian Human Rights Commission.

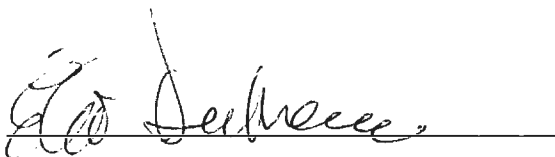
37. I am not aware of any party to this appeal that takes the same position as the CCD. Indeed, when the arguments proposed by the CCD are compared to the reasons for decision by the Agency and the Federal Court of Appeal decision, it becomes clear that the proposed argument is useful and different from but complimentary to the judgments below.

**Conclusion**

38. The Proposed Intervener respectfully asks this Honourable Court for the opportunity to make 5 minute oral submissions and to file a factum of up to 10 pages in length on a subject of fundamental importance to the entire community of persons with disabilities. The CCD will take the record as it stands. It will not seek costs against any party and would ask not to be liable to any party for costs.

39. I make this affidavit in support of the motion for leave to intervene in this appeal and for no other or improper purpose.

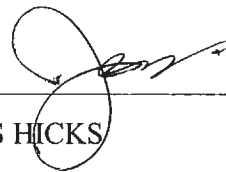
**AFFIRMED BEFORE ME** at the City of Ottawa, in the Province of Ontario, this 19<sup>th</sup> day of June, 2017.



Commissioner for Taking Affidavits

LSUC # 62499D

Eric Ducharme



JAMES HICKS

**MEMORANDUM OF ARGUMENT****PART I. STATEMENT OF FACTS**

1. The Council of Canadians with Disabilities (the “CCD”) seeks leave to intervene in the matter of *Delta Air Lines Inc v Dr. Gábor Lukács* pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*.<sup>1</sup>
2. The appeal is about the ability of individuals and groups to participate before investigative administrative bodies with broad public interest mandates as opposed to purely adjudicative and adversarial mandates.
3. Dr. Lukács initiated his complaint on August 24, 2014. He argued that certain practices of Delta were “discriminatory, contrary to subsection 111(2) of the Air Transportation Regulations”. Dr. Lukács alleged that:
  - 1) In certain cases, Delta refuses to transport large (obese) passengers on the flights on which they hold a confirmed reservation, and require[s] them to travel on later flights.
  - 2) Delta Airlines requires large (obese) passengers to purchase additional seats to avoid the risk of being denied transportation.<sup>2</sup>
4. On September 5, 2014, the Canadian Transportation Agency (the “Agency”) issued a decision letter seeking comments on Dr. Lukács interest/standing with regards to “Delta's practices governing the carriage of obese persons.”<sup>3</sup>
5. On November 25, 2015, the Agency issued a decision (the “*Decision*”) identifying the issue as whether Dr. Lukács had private interest standing and/or public interest standing.<sup>4</sup> It found

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<sup>1</sup> *Rules of the Supreme Court of Canada*, SOR/2002-156, s 55 [*SCC Rules*].

<sup>2</sup> Complaint of Dr Gábor Lukács to the Agency dated August 24, 2014, *Delta Air Lines Inc v Gábor Lukács*, Ottawa 37276 (SCC) (Record of the Appellant at 37–38).

<sup>3</sup> Letter from Canadian Transportation Agency to Dr Gábor Lukács (5 September 2014), LET-C-A-63-2014, *ibid* at 1.

<sup>4</sup> *Lukács v Delta Air Lines Inc* (25 November 2014), 425-C-A-2014 at para 50, online: Canadian Transportation Agency <otc-cta.gc.ca/eng/ruling/425-c-a-2014> [*Decision*].

that he had neither.<sup>5</sup> The Agency suggested that:

Although Mr. Lukács is not required to be a member of the group “discriminated” against in order to have standing, he must have a sufficient interest in order to be granted standing. Hence, notwithstanding the use of the words “any person” in the ATR, the Agency, as any other court, will not determine rights in the absence of those with the most at stake.<sup>6</sup>

6. In overturning the Agency's *Decision* on a reasonableness standard, the Federal Court of Appeal situated its analysis within a broader context of access to justice and the role of the Agency within the statute. It held that:

Often, such bodies are created to provide *greater and more efficient access to justice* through less formal procedures and specialized decision-makers that may not have legal training. Moreover, not all administrative bodies follow an adversarial model similar to that of courts. If an administrative body has *important inquisitorial powers*, ensuring that the particular parties before them are in a position to present *extensive evidence of their particular factual situations may be less important than in a court of law*, where judges are expected to take on a passive role and decide on the basis of the record and arguments presented to them by the parties.<sup>7</sup>

7. The Federal Court of Appeal placed heavy weight on the policy objectives of the *Canada Transportation Act* (the “CTA”) including the prevention of harm flowing from unreasonably discriminatory tariffs or conditions of carriage:<sup>8</sup>

In that perspective, the fact that a complainant has not been directly affected by the fare, rate, charge, or term or condition complained of and may not even meet the requirements of public standing, should not be determinative. If the *objective* is to ensure that *air carriers provide their services free from unreasonable or unduly discriminatory practices*, one should not have to wait until having been subjected to such practices before being allowed to file a complaint.<sup>9</sup>

## **PART II. QUESTION IN ISSUE**

8. Should this Honourable Court grant leave to the CCD to intervene in the Appeal?

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<sup>5</sup> *Ibid* at para 76.

<sup>6</sup> *Ibid* at para 52.

<sup>7</sup> *Lukács v Canada (Transportation Agency)*, 2016 FCA 220 at para 20 [emphasis added].

<sup>8</sup> *Ibid* at paras 25–26.

<sup>9</sup> *Ibid* at para 27[emphasis added].



### PART III. ARGUMENT

9. Under *Rules of the Supreme Court of Canada* 55 through 59, leave to intervene may be granted where a party has an interest in the subject matter before this Honourable Court and the proposed intervener will be able to make submissions that are useful and different from the other parties.<sup>10</sup>

#### An Argument that is Useful and Different

10. Specialized administrative bodies like the Agency administer complex regulatory regimes. The public depends upon such administrative bodies to bring fairness and justice to complex areas of the law in an accessible manner.

11. If granted leave, the CCD will argue that it is unreasonable for an investigative administrative body with a broad public interest mandate to deny the public its expertise based on the identity of the complainant. Reliance on technical legal standing tests developed for the adversarial context of the courts to screen out meritorious complaints serve to deny individuals and groups the ability to make complaints that would further the public interest objectives of the legislation. It risks compounding barriers to access to justice for persons with disabilities while failing to address existing barriers in the transportation system.

12. In the *Council of Canadians with Disabilities v VIA Rail Canada Inc* (“Via Rail”), this Honourable Court held that:

The *Canada Transportation Act* is highly specialized regulatory legislation with a strong policy focus. The scheme and object of the Act are the oxygen the Agency breathes.<sup>11</sup>

13. Any analysis of whether complaints should be heard must begin with the *CTA* itself.

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<sup>10</sup> *SCC Rules*, *supra* note 1, ss 55–57; *R v Finta*, [1993] 1 SCR 1138 at 1142, 1993 CanLII 132.

<sup>11</sup> *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15 at para 98, [2007] 1 SCR 650, [VIA Rail].

Sections 37 and 85.1(1) of the *CTA* confer on the Agency wide reaching powers to inquire, hear and make determinations regarding matters the Agency oversees. Taking into account this power of inquiry and recognizing the statutory objective under section 5(d) of the *CTA* (namely, a transportation system that is accessible without undue obstacles to the mobility of persons) as well as the authority under Part V of the *CTA* to take action to redress undue barriers to persons with disabilities, the Agency has a broad remedial purpose and extensive investigative powers to achieve its remedial mandate. The Agency failed to take section 5(d) and Part V of the *CTA* into account in making the *Decision*.

14. A transportation system that is accessible on a non-discriminatory basis is a matter of public interest to the entire community, not merely a matter of private disputes.

15. Unlike the parties to this Appeal, the CCD in addressing the question of whether complaints should be heard by the Agency will take into account Part V of the statutory scheme relating to persons with disabilities.

16. Human rights considerations formed an integral, underlying context to the initial complaint which was grounded in the allegation that the practices of Delta were discriminatory to “large (obese)” passengers. A definition of discrimination flowing from *Andrews v Law Society of British Columbia* was presented in the *Decision*<sup>12</sup> as was an argument based on human rights and *Charter* values.<sup>13</sup> In its earlier *One Person/One Fare Decision*, the Agency acknowledged that:

There is no longer any doubt that there are persons who are disabled, for the purposes of Part V of the *CTA*, by obesity where they cannot fit within the dimensions of an aircraft seat[.]<sup>14</sup>

17. Part V of the *CTA* recognizes the importance of removing undue obstacles to the mobility of persons with disabilities by authorizing the Agency to make regulations relating to

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<sup>12</sup> *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 56 DLR (4th) 1, 1989 CanLII 2, cited in *Decision*, *supra* note 4 at para 30.

<sup>13</sup> *Decision*, *supra* note 4 at para 36.

<sup>14</sup> *Norman Estate et al v Air Canada et al* (10 January 2008), 6-AT-A-2008 at para 128, online: Canadian Transportation Agency <otc-cta.gc.ca/eng/ruling/6-at-a-2008> [*One Person/One Fare Decision*]. See also, para 122.

“tariffs, rates, fares, charges and terms and conditions of carriage”<sup>15</sup> and to hear complaints relating to “whether there is an undue obstacle to the mobility of persons with disabilities.”<sup>16</sup> Part V of the *CTA* requires the Agency to apply its provisions in a manner that is consistent with the purpose and provisions of human rights legislation.<sup>17</sup>

18. In creating a robust remedial tool to address undue barriers to the transportation system, Part V of the *CTA* also serves as an important vehicle to enhance access to justice for persons with disabilities.

19. Access to justice is the “greatest challenge to the rule of law in Canada today”.<sup>18</sup> Given the social context of their disabilities and the reality that Canadians with disabilities are more likely to be impoverished, access to justice concerns are especially important for vulnerable individuals such as persons with disabilities. As Justice La Forest noted in *Eldridge v British Columbia (AG)*:

It is an unfortunate truth that the history of disabled persons in Canada is largely one of *exclusion and marginalization* [...] their entrance into the social mainstream has been conditional upon their emulation of able-bodied norms [...] One consequence of these attitudes is the *persistent social and economic disadvantage* faced by the disabled.<sup>19</sup>

20. Persons with disabilities tend to face more justiciable problems than nondisabled persons especially in the context of discrimination. However, they often find themselves both socially and financially less able to prosecute their cases and to protect their legal interests independently.<sup>20</sup>

21. Administrative bodies such as the Agency are intended to enhance efficient access to justice through their specialized expertise coupled with their less formal procedures. In delegating

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<sup>15</sup> *Canada Transportation Act*, SC 1996, c 10, s 170(1)(c).

<sup>16</sup> *Ibid*, s 172(1).

<sup>17</sup> *VIA Rail*, *supra* note 11 at para 117. See also *VIA Rail*, *supra* note 11 at para 139.

<sup>18</sup> *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 at para 1.

<sup>19</sup> *Eldridge v British Columbia (AG)*, [1997] 3 SCR 624, 1997 CanLII 327 at para 56 [emphasis added].

<sup>20</sup> *Delta Air Lines Inc v Gábor Lukács*, Ottawa 37276 (SCC) (Affidavit of James Hicks at para 24, Motion of Leave to Intervene of the Proposed Intervener Council of Canadians with Disabilities at 7) [Affidavit of James Hicks].

to the Agency the power to investigate and remedy concerns relating to undue barriers to persons with disabilities, Parliament intended to make both the process and the substance of decisions under the *CTA* more accessible. As held by the majority in *Via Rail*:

Parliament's decision to use this particular legislation as the source of human rights protection for persons with disabilities *ensures specialized protection, applying practical expertise in transportation issues to human rights principles*. This both strengthens the protection and enables its realistic implementation.<sup>21</sup>

22. Administrative bodies like the Agency have an obligation to interpret and apply the *CTA* in a manner consistent with the purposes and provisions of human rights legislation. In addition, these bodies must exercise their discretion in a manner consistent with access to justice concerns.

23. Recognizing the inquisitorial role of the Agency, its broad remedial duties under the *CTA* and the objective of enhancing access to justice, the only criteria used to determine whether complaints should be heard by investigative bodies such as the Agency should be: whether the complaint raises a serious issue to be tried.

24. To the extent that the Agency has concerns regarding the need to add other perspectives in addressing important remedial issues for disadvantaged groups, it has authority under the *Canadian Transportation Agency Rules*<sup>22</sup> to add intervenors<sup>23</sup> and to amend processes<sup>24</sup> in “a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice.”<sup>25</sup>

25. Given the access to justice challenges in Canada, administrative bodies are increasingly the gatekeepers of human rights complaints. When administrative bodies consider complaints or issues which engage individual or collective human rights, the protection offered should be no less

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<sup>21</sup> *VIA Rail*, *supra* note 11 at para 113 [emphasis added].

<sup>22</sup> *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 [Agency Rules].

<sup>23</sup> *Ibid*, s 29(1).

<sup>24</sup> *Ibid*, ss 5(2), 6.

<sup>25</sup> *Ibid*, s 5(1).

than the protection offered under the *Canadian Human Rights Act*.<sup>26</sup>

26. This is especially so given the Agency's duty under section 171 of the *CTA* to foster complimentary practices with the Canadian Human Rights Commission. As this Honourable Court has previously held:

There is, moreover, a mandatory direction found in s. 171 from Parliament to the Agency to coordinate its activities with the Canadian Human Rights Commission to ensure policy, procedural and jurisdictional complementarity.<sup>27</sup>

27. A criteria of "a serious issue to be tried" under the *CTA* for the hearing of complaints would be consistent with the consideration of complaints under the *Canadian Human Rights Act* which:

- are open to any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice;<sup>28</sup>
- makes provision for the Commission to initiate a complaint;<sup>29</sup> and
- recognizes that timely complaints should be dealt with unless they are trivial, frivolous, vexatious or made in bad faith.<sup>30</sup>

28. In the event leave is granted, the CCD will offer the distinct perspective of a historically disadvantaged group facing longstanding barriers both to access to justice and to the transportation system. No party to this Appeal takes the same position as the CCD or makes the link to human rights legislation, principles and processes.

#### Interest of the CCD in the Appeal

29. The CCD is a national not-for-profit umbrella association that represents people with disabilities. It is accountable to a membership of several hundred thousand Canadians with

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<sup>26</sup> *Canadian Human Rights Act*, RSC 1985, c H-6 [*CRHA*].

<sup>27</sup> *VIA Rail*, *supra* note 11 at para 116.

<sup>28</sup> *CRHA*, *supra* note 26, s 40(1).

<sup>29</sup> *Ibid*, s 40(3).

<sup>30</sup> *Ibid*, ss 41(1)(d), (e). See also *ibid*, ss 44(3), 49(1).

disabilities.<sup>31</sup> The CCD advocates for the elimination of discriminatory and socially made barriers which prevent social inclusion of persons with disabilities.<sup>32</sup>

30. The CCD brings a unique perspective to this Appeal given its experience and expertise. It is the only national cross-disability organization representing groups and individuals with a variety of disabilities in Canada. The CCD has a direct interest in ensuring that the human rights of persons with disabilities are always protected, respected and enforced.<sup>33</sup>

31. The CCD is a spokesperson and advocate for persons with disabilities. It has a strong interest in a robust and broadly accessible regime for the investigation and oversight of discriminatory practices. Limits on standing translate into delayed and more piecemeal removal of barriers to equal access to services for persons with disabilities.<sup>34</sup>

32. The Agency and tribunals like it are called to make decisions about programs and services which impact the ability of persons with disabilities to fully participate in society. This Appeal will inevitably have broader implications regarding the appropriate considerations for hearing complaints in other investigative administrative tribunals that have the discretion to hear complaints and regulate complex areas of law.<sup>35</sup>

33. The issue of appropriate considerations for hearing complaints under the *CTA* is of particular importance to the CCD and to persons with disabilities because it may affect their efforts to effect remedial change to the transportation system in a timely and cost effective manner. Accessible transportation is key to providing persons with disabilities the opportunity for meaningful social inclusion.<sup>36</sup>

34. The Agency hearing which led to the *VIA Rail* decision concluded that “[t]he purpose

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<sup>31</sup> Affidavit of James Hicks, *supra* note 19 at para 5.

<sup>32</sup> *Ibid* at para 8.

<sup>33</sup> *Ibid* at para 21.

<sup>34</sup> *Ibid* at para 34.

<sup>35</sup> *Ibid* at para 33.

<sup>36</sup> *Ibid* at para 32.

of Part V of the *CTA* is to ensure that persons with disabilities, a recognized minority group, are not discriminated against within the Federal transportation network.”<sup>37</sup> The protection against discrimination of persons with disabilities in all aspects of social inclusion, including the transportation network, underlies the very existence of the CCD.

**PART IV. SUBMISSIONS ON COSTS**

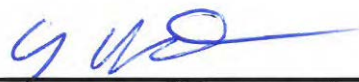
35. The CCD does not seek costs and submits that it should not be liable to pay costs.

**PART V. ORDER SOUGHT**

36. The CCD seeks an Order:

- (a) granting leave to intervene in the hearing of this Appeal pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*;
- (b) an Order granting leave to file a factum up to 10 pages in length;
- (c) an Order granting leave to make oral argument at the hearing of this Appeal up to 5 minutes in length, time permitting.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of June, 2017.**

  
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Byron Williams, Sacha Paul, Joëlle Pastora  
Sala, Alyssa Mariani

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<sup>37</sup> *Council of Canadians with Disabilities v VIA Rail Canada Inc* (27 March 2003), 175-AT-R-2003, online: Canadian Transportation Agency <otc-cta.gc.ca/eng/ruling/175-at-r-2003>, rev'd 2005 FCA 79, [2005] 4 FCR 473, aff'd 2007 SCC 15, [2007] 1 SCR 650.

## PART VI. TABLE OF AUTHORITIES

Caselaw	Para cited
<i>Andrews v Law Society of British Columbia</i> , [1989] 1 SCR 143, 56 DLR (4th) 1, <a href="#">1989 CanLII 2</a> .	16
<i>Council of Canadians with Disabilities v VIA Rail Canada Inc</i> , <a href="#">2007 SCC 15</a> , <a href="#">[2007] 1 SCR 650</a> , [VIA Rail].	12, 17, 21, 26
<i>Council of Canadians with Disabilities v VIA Rail Canada Inc</i> (27 March 2003), <a href="#">175-AT-R-2003</a> , rev'd <a href="#">2005 FCA 79</a> , <a href="#">[2005] 4 FCR 473</a> , aff'd <a href="#">2007 SCC 15</a> , <a href="#">[2007] 1 SCR 650</a> .	34
<i>Eldridge v British Columbia (AG)</i> , <a href="#">[1997] 3 SCR 624</a> , <a href="#">1997 CanLII 327</a> .	19
<i>Hryniak v Mauldin</i> , <a href="#">2014 SCC 7</a> , <a href="#">[2014] 1 SCR 87</a> .	19
<i>Lukács v Canada (Transportation Agency)</i> , <a href="#">2016 FCA 220</a> .	6, 7
<i>Lukács v Delta Air Lines Inc</i> (25 November 2014), <a href="#">425-C-A-2014</a> , [Decision].	5, 16
<i>Norman Estate et al v Air Canada et al</i> (10 January 2008), <a href="#">6-AT-A-2008</a> , [One Person/One Fare Decision].	16
<i>R v Finta</i> , [1993] 1 SCR 1138, <a href="#">1993 CanLII 132</a> .	9



## **PART VII. LEGISLATION**

*Canada Transportation Act*, [SC 1996, c 10](#), s. 5, 37, 85.1, 170 to 172.

*Loi sur les transports au Canada*, [LC 1996, c 10](#), art. 5, 37, 85.1, 170 à 172.

### **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

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

### **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 :

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

### **Inquiry into complaint**

**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

### **Enquêtes sur les plaintes**

**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.

### **Review and mediation**

**85.1 (1)** If a person has made a complaint under any provision of this Part, the Agency, or a person authorized to act on the Agency's behalf, shall review and may attempt to resolve the complaint and may, if appropriate, mediate or arrange for mediation of the complaint.

### **Examen et médiation**

**85.1 (1)** L'Office ou son délégué examine toute plainte déposée en vertu de la présente partie et peut tenter de régler l'affaire; il peut, dans les cas indiqués, jouer le rôle de médiateur entre les

parties ou pourvoir à la médiation entre celles-ci.

## **PART V**

### **Transportation of Persons with Disabilities**

## **PARTIE V**

### **Transport des personnes ayant une déficience**

#### **Regulations**

**170 (1)** The Agency may make regulations for the purpose of eliminating undue obstacles in the transportation network under the legislative authority of Parliament to the mobility of persons with disabilities, including regulations respecting  
(c) tariffs, rates, fares, charges and terms and conditions of carriage applicable in respect of the transportation of persons with disabilities or incidental services; and

#### **Règlements**

**170 (1)** L'Office peut prendre des règlements afin d'éliminer tous obstacles abusifs, dans le réseau de transport assujéti à la compétence législative du Parlement, aux possibilités de déplacement des personnes ayant une déficience et peut notamment, à cette occasion, régir :  
c) toute mesure concernant les tarifs, taux, prix, frais et autres conditions de transport applicables au transport et aux services connexes offerts aux personnes ayant une déficience;

#### **Coordination**

**171** The Agency and the Canadian Human Rights Commission shall coordinate their activities in relation to the transportation of persons with disabilities in order to foster complementary policies and practices and to avoid jurisdictional conflicts.

#### **Coordination**

**171** L'Office et la Commission canadienne des droits de la personne sont tenus de veiller à la coordination de leur action en matière de transport des personnes ayant une déficience pour favoriser l'adoption de lignes de conduite complémentaires et éviter les conflits de compétence.

#### **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.

#### **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.

*Air Transportation Regulations*, [SOR/88-58](#), s. 111.

*Règlement sur les transports aériens*, [DORS/88-58](#), art. 111.

**111 (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.

**111 (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.

*Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, [SOR/2014-104](#), s. 5, 6, 29.

*Règles de l'Office des transports du Canada (Instances de règlement des différends et certaines règles applicables à toutes les instances)*, [DORS/2014-104](#), art. 5, 6, 29.

### **Interpretation of Rules**

**5 (1)** These Rules are to be interpreted in a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice.

### **Interprétation des Règles**

**5 (1)** Les présentes règles sont interprétées de façon à faciliter le règlement le plus expéditif qui soit de l'instance de règlement des différends, l'utilisation optimale des ressources de l'Office et des parties et à promouvoir la justice.

### **Agency's initiative**

**5 (2)** Anything that may be done on request under these Rules may also be done by the Agency of its own initiative.

### **Initiative de l'Office**

**5 (2)** Toute chose qui peut être faite sur requête au titre des présentes règles peut être faite par

l'Office de sa propre initiative.

### **Dispensing with compliance and varying rule**

**6** The Agency may, at the request of a person, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will allow for the just determination of the issues.

### **Dispense d'observation et modification de règles**

**6** L'Office peut, à la requête d'une personne, soustraire une instance de règlement des différends à l'application d'une règle, modifier celle-ci ou autoriser quelque autre réparation, avec ou sans conditions, en vue du règlement équitable des questions.

### **Request to intervene**

**29 (1)** A person that has a substantial and direct interest in a dispute proceeding may file a request to intervene. The request must be filed within 10 business days after the day on which the person becomes aware of the application or before the close of pleadings, whichever is earlier, and must include the information referred to in Schedule 16.

### **Requête d'intervention**

**29 (1)** Toute personne qui a un intérêt direct et substantiel dans une instance de règlement des différends peut déposer une requête d'intervention. La requête est déposée, soit, dans les dix jours ouvrables suivant la date à laquelle la personne a pris connaissance de la demande, soit, si elle est antérieure, avant la clôture des actes de procédure. La requête comporte les éléments visés à l'annexe 16.

*Canadian Human Rights Act*, [RSC 1985, c H-6](#), s. 40, 41, 44, 49.

*Loi canadienne sur les droits de la personne*, [L.R.C. \(1985\), ch. H-6](#), art. 40, 41, 44, 49.

### **Complaints**

**40 (1)** Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

### **Plaintes**

**40 (1)** Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.

### **Investigation commenced by Commission**

**40 (3)** Where the Commission has reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice, the Commission may initiate a complaint.

### **Autosaisine de la Commission**

**40 (3)** La Commission peut prendre l'initiative de la plainte dans les cas où elle a des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire.

**Commission to deal with complaint**

**41 (1)** Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

**Irrecevabilité**

**41 (1)** Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants:

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

**Report**

**44 (1)** An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

**Rapport**

**44 (1)** L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

**Request for inquiry**

**49 (1)** At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.

**Instruction**

**49 (1)** La Commission peut, à toute étape postérieure au dépôt de la plainte, demander au président du Tribunal de désigner un membre pour instruire la plainte, si elle est convaincue, compte tenu des circonstances relatives à celle-ci, que l'instruction est justifiée.