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VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Consultation on accessible transportation

Please accept the following submissions concerning accessible transportation, being part of the Canadian Transportation Agency's Regulatory Modernization Initiative.

I. Preliminary matter: concern about the integrity and impartiality of the process

Parliament chose to create a regulatory regime for the national transportation system, and resolved to achieve a number of policy objectives set out in section 5 of the *Canada Transportation Act* [the *CTA*]. These objectives include the elimination of undue obstacles to the mobility of persons with disabilities. The Canadian Transportation Agency [Agency] has been tasked with implementing these policy objectives.

In the years 2000-2010, the Agency has issued a number of powerful and significant rulings in the area of passengers with disabilities, bringing substantial improvements in areas such as service animals, allergies, and the accommodation of passengers requiring more than one seat on domestic flights.

Yet, since 2013, the trend seems to have been reversed, and the Agency has been grasping for every possible excuse for not carrying out its mandate, and not dealing with the substance of significant disability-related complaints.

In *Lukács v. Delta*, Decision No. 425-C-2014, the Agency refused to deal with the substance of a discrimination complaint on the basis that the complainant was not a member of the group discrim-

inated against, and as such he had no “standing.” In *Cheung v. WestJet*, Decision No. 324-AT-A-2015, the Agency failed to address the substance of the complaint, which was the obstacles faced by passengers with disabilities travelling internationally.

Most recently, in *Lukács v. Canada (Transportation Agency)*, 2016 FCA 220, the Federal Court of Appeal rebuked the Agency for failing to carry out its mandate, and noted (at para. 26) that:

[...] it is incumbent on the Agency to intervene at the earliest possible opportunity, in order to prevent harm and damage that could result from unreasonable and unduly discriminatory terms and conditions of carriage, rather than to merely compensate those who have been affected *ex post face*.

In these circumstances, one is left wondering about the true purpose of the present consultation, which transpires as a disingenuous attempt to justify decisions that have already been made on the one hand, and taking no action on immediate and ongoing concerns relating to passengers with disabilities on the other hand. This concern is particularly grave in light of Decision No. LET-AT-A-23-2016 of the Agency, which stayed the application by the Council of Canadians with Disabilities (CCD) against Air Canada, seeking to extend the “one person one fare” policy to international flights.

Therefore, it is submitted that the Agency’s recent track record creates significant concerns as to the integrity and impartiality of the consultation process, and its true purpose.

II. Binding regulations and enforceable rights are needed

The Agency’s mandate under s. 170 of the *CTA* is to make regulations for the purpose of eliminating undue obstacles to the mobility of persons with disabilities in the transportation network under the legislative authority of Parliament.

Regulations create legally enforceable obligations for carriers, and legally enforceable rights for passengers with disabilities. These rights can also be enforced by way of Administrative Monetary Penalties (although the Agency’s track record in this regard can be best characterized by its lack of action) or by way of criminal prosecution under s. 174 of the *CTA*.

In sharp contrast, voluntary codes of conduct are not binding on carriers, and as such cannot be enforced by the passengers or the Agency even if a carrier fails to comply with its obligations under the code.

Therefore, it is submitted that only binding regulations, which set out clearly defined obligations for carriers and clearly defined rights for passengers, can offer adequate protection for passengers with disabilities. It is further submitted that making such regulations is necessary in order to comply with Canada’s obligations under Article 5 of the *UN Convention on the Rights of Persons with Disabilities*.

III. Areas to be covered in the regulations

It is submitted that regulations concerning the rights of passengers with disabilities should address the following non-exhaustive list of issues:

1. The obligation to accept service animals set out in s. 149 of the *Air Transportation Regulations* should be extended to all modes of transportation, and should include transborder and international flights. The regulations should also codify the longstanding position of the Agency that service animal should not be muzzled on board (see Decision Nos. 521-AT-A-1999 and 221-AT-A-2004).
2. The regulations should explicitly address the rights of hearing impaired passengers to:
 - (a) safety videos with subtitles; and
 - (b) alternative methods for the communication of information that is announced over the PA during a flight.
3. The regulations should codify the “one person one fare” decision of the Canadian Transportation Agency (Decision No. 6-AT-A-2008), and should extend the rights set out therein to all flights within, to, and from Canada.

In this context, it is important to note that the Agency has no jurisdiction to make regulations that would effectively vary the rights conferred on passengers with disabilities in Decision No. 6-AT-A-2008, as doing so would violate the principle of *functus officio*.

Therefore, the only legitimate question in this regard is how to *expand* the rights set out in Decision No. 6-AT-A-2008.

All of which is most respectfully submitted.

Dr. Gábor Lukács