Federal Court of Appeal  Cour d'appel fédérale

Date: 20240812

Docket: A-102-20

Citation: 2024 FCA 128

CORAM: **DE MONTIGNY C.J.**
LASKIN J.A.
WALKER J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

CANADIAN TRANSPORTATION AGENCY

Intervener

Heard at Vancouver, British Columbia, on April 17, 2024.

Judgment delivered at Ottawa, Ontario, on August 12, 2024.

REASONS FOR JUDGMENT BY: WALKER J.A.

CONCURRED IN BY: DE MONTIGNY C.J.
LASKIN J.A.

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REASONS FOR JUDGMENT

WALKER J.A.

I. Overview

[1] Air Passenger Rights (APR) seeks judicial review of a Statement on Vouchers published by the intervener, Canadian Transportation Agency (CTA), on or about March 25, 2020, and a CTA webpage titled “Important Information for Travellers During COVID-19” that referred to the Statement. The Statement was issued in response to the mass cancellation of domestic and international flights that occurred during the first weeks of the COVID-19 pandemic in Canada in March 2020. This was a period of air travel chaos and uncertainty for travellers and airlines alike. APR asserts that the Statement and webpage violated the CTA’s *Code of Conduct* and gave rise to a reasonable apprehension of bias on the part of the CTA as a whole and on the part of CTA members who endorsed the Statement. APR alleges that the CTA published the Statement for the improper purpose of assisting airlines by stifling the surge in credit card chargebacks they were then facing. APR also asserts that the Statement misled air passengers regarding their refund rights in the event of flight cancellations.

[2] APR is a Canadian non-profit entity established to continue the work of Dr. Gábor Lukács, a long-standing advocate for the rights of air passengers. Its mandate includes education for air passengers and the public of their rights in relation to air travel, enforcement of those rights, appearances before Parliamentary committees regarding air passenger protection, and participation in the CTA consultation processes that resulted in the *Air Passenger Protection Regulations*, S.O.R./2019-150 (the Regulations).

[3] APR has assumed responsibility for the extensive litigation undertaken by Dr. Lukács in furtherance of his work regarding the interests of air travellers and seeks public interest standing to bring this application.

[4] The CTA was established under the *Canada Transportation Act*, S.C. 1996, c. 10 (the *Transportation Act*), as a quasi-judicial tribunal and regulator with a broad mandate in respect of transportation matters within the legislative authority of Parliament. Its mandate includes air transportation and airlines' obligations to passengers. The CTA has significant expertise in the transportation sector (see, e.g., *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] S.C.R. 650 at para. 98; *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79 at paras. 72-73) and regularly publishes guidance on matters that fall within its regulatory and decision-making roles.

[5] The CTA sought and was granted intervener status in this proceeding for the purpose of providing written and oral submissions explaining its jurisdiction and practice of publishing guidance materials on the CTA website.

[6] For the reasons that follow, I find that the Statement is not amenable to judicial review because it does not affect legal rights, impose legal obligations or cause prejudicial effects. The Statement contains non-binding guidance only and expressly reserves the rights of air travel passengers to submit claims to the CTA, each of which will be examined on its merits. I would therefore dismiss this application.

II. Statement on Vouchers and CTA information webpage

[7] The Statement opens by referring to the COVID-19 pandemic and the widespread disruption of domestic and international air travel that began in Canada in March 2020. The

Statement next refers to the combined effect of the *Transportation Act*, Regulations and airline tariffs that establish the obligations of airlines in the event of flight disruptions outside of their control. The CTA notes that those legislative provisions and tariffs were developed to address localized and short-term flight disruptions; they did not contemplate the spectre of worldwide flight cancellations caused by the pandemic.

[8] The Statement attempts to balance the interests of passengers and airlines, stating that passengers who had no prospect of completing their planned itineraries should not be out of pocket for the cost of cancelled flights, but that airlines were facing huge drops in passenger volumes and revenues and "should not be expected to take steps that could threaten their economic viability". The Statement continues:

> While any specific situation brought before the CTA will be examined on its merits, the CTA believes that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time (24 months would be considered reasonable in most cases).

[9] The CTA information webpage included in APR's request for judicial review referred readers to the Statement.

[10] The CTA informs the Court that the Statement remained on its website for approximately 18 months. It has been removed from the website but remains publicly available as an archived document.

III. Preliminary Questions

[11] There are two preliminary questions that must be answered before the Court can consider the merits of this application:

1. Is the Statement subject to judicial review?

2. If so, should the Court grant APR public interest standing?

[12] The respondent argues that APR's application for judicial review of the Statement is intrinsically flawed because it is not a matter, decision or order that falls within subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the *FC Act*). APR disagrees with the respondent and requests public interest standing to bring the application, arguing that it meets each of the factors set forth in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 at paragraph 37.

1. Availability of judicial review

[13] The respondent submits that the Statement is not amenable to judicial review; in other words, that it is not justiciable. The respondent relies on this Court's decision in *Democracy Watch v. Canada (Attorney General)*, 2021 FCA 133 (*Democracy Watch 2021*), to argue that, for a matter to be subject to judicial review under the *FC Act*, it must "affect legal rights, impose legal obligations, or cause prejudicial effects" (at para. 29). In the respondent's view, the Statement does not do so and is no more than non-binding guidance that had no legal effect or prejudicial consequence, and imposed no legal obligation.

[14] APR acknowledges that the Statement is not a decision but submits that the Court must nonetheless review the Statement and rebuke the conduct of the CTA and its members on the basis that: (a) the Statement is a pre-judgment by the CTA of air passengers' rights to refunds for cancelled flights, and (b) the CTA acted in response to improper third-party influence in formulating and posting the Statement contrary to its *Code of Conduct*, giving rise to reasonable apprehension of bias.

[15] Subsequent to the hearing of this matter, APR requested the opportunity to file supplemental submissions regarding the Court's recent decision in *Sierra Club Canada Foundation v. Canada (Environment and Climate Change)*, 2024 FCA 86 (*Sierra Club*). The Court agreed and directed APR and the respondent to each provide submissions, and, for APR, brief reply submissions. The two parties did so and I address their submissions on the *Sierra Club* decision following my analysis of the parties' initial written and oral submissions.

[16] An application for judicial review may be brought by the Attorney General of Canada or by anyone directly affected by a "matter in respect of which relief is sought" (ss. 18.1(1) of the *FC Act*). A "matter" is not restricted to a decision or order. It extends to "any matter in respect of which a remedy may be available" under section 18 of the *FC Act* (*Air Canada v. Toronto Port Authority Et Al*, 2011 FCA 347 at para. 24 (*Toronto Port Authority*), citing *Krause v. Canada*, [1999] 2 F.C. 476 (C.A.)). Further, subsection 18.1(3) of the *FC Act* provides that the Federal Courts may on judicial review grant relief relating to the failure, refusal or unreasonable delay to do any "act or thing" and to a "decision, order, act or proceeding of a federal board, commission or other tribunal". In *Democracy Watch 2021* (at para. 29), the Court confirmed that a

reviewable matter is broader than a decision but cautioned that the matter must include something in respect of which a remedy may be available under subsection 18.1(3).

[17] APR submits that the Statement is justiciable because it is a matter for which remedies are available pursuant to subsections 18.1(1) and 18.1(3) of the *FC Act*. APR urges the Court to consider the Statement not from a legal perspective but from the perspective of the consumer. APR argues that the Statement gave legitimacy to the airlines' swift decision to issue vouchers for cancelled flights once the scale of the COVID-19 disruptions became clear. In its opinion, the public would view the Statement as binding, leaving them no choice but to accept their airline's voucher for future travel and forego any right to a refund.

[18] I agree that the Court may review the conduct of an administrative body in issuing statements, guidance, bulletins or other matters that fall "short of formal decisions or orders" (*Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 72 at para. 94 (*Canadian Council for Refugees*)). The fact that the Statement does not take the form of a formal decision or order is not determinative of its justiciability. However, not all administrative conduct is subject to judicial review: "One such situation is where the conduct attacked in an application for judicial review fails to affect legal rights, impose legal obligations, or cause prejudicial effects" (*Toronto Port Authority* at para. 29, citing *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116, and *Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15; see also *Sganos v. Canada (Attorney General)*, 2018 FCA 84 at para. 6 (*Sganos*)).

[19] The Court confirmed the parameters within which matters involving administrative actions are reviewable in paragraph 94 of *Canadian Council for Refugees*:

> [94] Applications for judicial review are possible where a matter—usually administrative conduct or inaction—affects legal rights, imposes legal obligations or causes real prejudicial effects: *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116, [2010] 2 F.C.R. 488 at paras 21-25; *Democracy Watch v. Conflict of Interest and Ethics Commission*, 2009 FCA 15, 387 N.R. 365. As a result, there are examples of judicial reviews for administrative conduct or inaction falling short of formal decisions or orders […]. (My emphasis.)

[20] APR refers to a number of cases in support of its argument that the Statement is justiciable as a manifestation of the CTA's improper conduct and/or reasonably indicative of bias. In my view, the decisions in *Apotex Inc. v. Canada (Health)*, 2015 FC 1161 (*Apotex*), *CNG Transmission Corp. v. Canada (National Energy Board) (T.D.)*, [1992] 1 FC 346, 48 F.T.R. 20 (*CNG*) and *C.D. Lee Trucking Ltd. v. Industrial Wood and Allied Workers of Canada*, 1998 CanLII 6678 (BCSC) (*C.D. Lee*)), are of limited utility to APR's justiciability arguments. The conduct attacked in each of the three applications resulted in binding decision(s) that clearly affected the legal rights of and had prejudicial effects on the affected applicant.

[21] APR also argues that the circumstances of the present case are indistinguishable from those before the Ontario Courts in *E.A. Manning Ltd. v. Ontario Securities Commission*, 18 O.R. (3d) 97, [1994] O.J. No. 1026 (QL) (Div. Ct.) (*E.A. Manning Div. Ct.*) and *E.A. Manning Ltd. v. Ontario Securities Commission*, 23 O.R. (3d) 257), [1995] O.J. No. 1305 (QL) (C.A.) (*E.A. Manning CA*). At issue in the *E.A. Manning* cases was an application for an order of prohibition to prevent the Ontario Securities Commission (the Commission) from proceeding with two hearings relating to alleged improper sales practices. The appellant companies raised issues of

bias and reasonable apprehension of bias arising principally from the adoption by the Commission of Policy Statement 1.10. Previously, the Ontario Court of Appeal had concluded that the Commission acted outside of its statutory mandate in adopting Policy 1.10 by seeking to impose a "de facto legislative regime complete with detailed substantive requirements": *Ainsley Financial Corp. v. Ontario Securities Commission*, 21 O.R. (3d) 104, [1994] O.J. No. 2966 (QL) (C.A.) at para. 21 (*Ainsley CA*). In *E.A. Manning CA*, the Court noted that the Policy was held in *Ainsley CA* to have crossed the line between a non-mandatory guideline and a mandatory pronouncement having the same effect as a statutory instrument (*E.A. Manning CA* at para. 21). In effect, the Commission had already determined that the E.A. Manning parties were guilty of the practices set out in the Policy Statement (*E.A. Manning Div. Ct.* at paras. 40, 51-55).

[22] In my view, the Commission's impugned Policy 1.10 and the Statement are fundamentally different in scope and effect. The Ontario Court of Appeal described Policy 1.10 as setting out "a minutely detailed regime complete with prescribed forms, exemptions from the regime, and exceptions to the exemptions" (*Ainsley CA* at para. 19). The prejudicial effects of the adoption by the Commission of the Policy on the E.A. Manning companies were both obvious and at the centre of the dispute before the Ontario courts.

[23] In contrast, the Statement contains only general guidance. It is a one-page statement from the CTA that expressly preserves the appeal and review rights of air passengers. The Statement was issued by the CTA, and not by one or more of its individual members, and states that: "any specific situation brought before the CTA will be examined on its merits…" Each air passenger retains all legal rights available to them under the *Transportation Act* and the *FC Act*, including

the right to file a complaint with the CTA. If the complainant is not satisfied with the resulting decision, they have the right to file an appeal of the CTA's decision on a question of law or jurisdiction under subsection 41(1) of the *Transportation Act* or an application for judicial review of the decision in this Court.

[24] The question for the Court is whether APR has established that the Statement prejudicially affected the rights of airline passengers whose flights were cancelled amidst the disruption of the COVID-19 pandemic in Canada. The test is one of causation (*Democracy Watch* at para. 43): Did the Statement cause the prejudicial effects outlined by APR?

[25] APR submits that the Statement swayed the public and adversely affected passengers' refund rights because airlines relied on the Statement to refuse refund claims and issue vouchers, while credit card companies denied their clients' attempts to claim chargebacks.

[26] APR distinguishes the record currently before the Court from that in May 2020 when the Court refused APR's motion for a mandatory interlocutory injunction to remove the Statement and webpage from the CTA's website. The Court found that the Statement did not affect "rights, impose legal obligations, or cause prejudicial effects on either APR or airline passengers" (*Air Passenger Rights v. Canada (Transportation Agency)*, 2020 FCA 92 at para. 27). APR argues that it has now filed uncontroverted evidence of such prejudicial effects and that the Statement is justiciable.

[27] APR has filed no evidence that a COVID-19 complaint relating to the Statement was filed with the CTA. As a result, APR has not established that the Statement affected any complainant's legal rights or had prejudicial effects on a complaint. APR has also not demonstrated that the Statement was effectively a prejudgment of air passengers' refund rights due to COVID-19 flight cancellations (as in the *E.A. Manning* cases) or fettered the discretion of a CTA member to adjudicate a complaint (the issue addressed by the Court in *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196).

[28] Instead, APR relies on unsworn, third-party evidence in the form of exhibits to the affidavit of Dr. Lukács to establish the Statement's alleged prejudicial effects. The evidence includes a series of email chains between air passengers and the CTA from March and April 2020 (Exhibits 96-99), in which air passengers requested information or assistance from the CTA regarding their right to a refund for cancelled flights or attempted refund claims, and/or expressed their concerns with the Statement. The evidence includes a statement released by Sunwing to travel agents advising of its new policy to issue vouchers instead of refunds, "consistent with the "ruling" made by the Canadian Transportation Agency on March 26, 2020" (Exhibits 100-101). APR's evidence then sets out (i) communications between Canadian airlines and their passengers denying refund requests with reference to the Statement and the CTA's "approval" of the airlines' use of vouchers (Exhibits 102-106), (ii) information from travel agencies referencing the Statement (Exhibits 107-108), and (iii) a series of chargeback refusals in which airlines invoked the Statement to dispute air passengers' credit card chargebacks and credit card companies accepted the airlines' explanation (Exhibits 120-135).

[29] At its core, APR's argument that the Statement is justiciable is based on the premise that the actions of third parties (airlines and credit card companies) taken in reliance on the Statement prejudicially affected air passengers' rights and access to refunds for cancelled flights in circumstances where refunds should arguably have been available to them. APR insists that the Statement had the practical effect of facilitating the airlines' retention of passengers' money without providing services.

[30] APR's evidence and arguments are not persuasive. The actions of third parties are not the actions of the CTA, nor is the CTA responsible for the decisions taken by airlines and credit card companies. APR's evidence demonstrates only that third parties used the Statement to justify refund and credit card chargeback refusals. The prejudicial effects asserted by APR flow not from the Statement or the conduct of the CTA but from the interpretation and use of the Statement by third parties. APR asks the Court to consider the Statement from the public's perspective but there is little evidence in the record of that perspective outside of a limited number of email chains in which frustrated air travellers vented their dissatisfaction with the Statement. In any event, the public's possible interpretation of the Statement does not establish prejudicial effect or justiciability.

[31] In concluding this section of my analysis, I find that the Statement and references to the Statement on the CTA Information webpage are not justiciable. APR has not established that the Statement affected or caused prejudicial effects on the rights of air passengers to refunds for flight cancellations due to the COVID-19 pandemic. While APR has demonstrated the frustrations experienced by a number of air travellers in dealing with Canadian airlines and credit

card companies in the aftermath of mass flight cancellations, those frustrations were caused by the third parties. Similarly, any denial of refunds and chargeback credits was imposed or acceded to by the airlines and credit card companies. Third-parties' mischaracterization of the Statement, whether as a ruling or approval, was not endorsed by the CTA and does not transform the Statement into a mandatory pronouncement.

[32] The Statement is written in simple language and conveys a possible way forward in unprecedented circumstances, subject to the adjudication of each case on its own merits. It is drafted using permissive language and addresses one topic. It does not purport to provide a detailed overview of the state of Canadian legislation and jurisprudence regarding the right to refunds, nor does the Statement alter an air passenger's legal entitlement to a refund for certain cancelled flights. Although APR asserts that the Statement misinforms the travelling public about their refund rights, it has pointed to no requirement that the CTA reference the relevant refund legislation, tariff and case law when issuing an interim statement that makes clear reference to travellers' ability to file a complaint despite the guidance in the Statement.

[33] I now turn to the parties' submissions regarding the Court's recent decision in *Sierra Club*. Initially, APR focussed its request for judicial review on the Statement and related CTA webpage references. APR expands its challenge to the conduct of the CTA in its post-hearing submissions and asserts an independent ground of review regardless of the justiciability of the Statement, premised on its allegations of reasonable apprehension of bias. APR argues that its application raises legal and/or jurisdictional issues that must be addressed by the Court as a supervisory court "consistent with the Court's constitutional and judicial review role".

[34] By way of background, to establish its position that the CTA acted on the prompting and for the benefit of Canadian airlines in issuing the Statement, APR relies on Dr. Lukács' affidavit evidence that details emails and communications in the days leading up to March 25, 2020, among Canadian airline executives, representatives of Transport Canada, and senior CTA officers, notably Mr. Scott Streiner, then CTA Chair, and Ms. Marcia Jones, CTA's Chief Strategy Officer at the time.

[35] In APR's narrative, these communications point to a regulator who acted in response to airline pressure, to assist those airlines to evade their obligations to provide refunds for cancelled flights. APR argues that this conduct was improper and gives rise to a reasonable apprehension of bias. Conversely, the respondent submits that there is nothing suspicious in the communications between the CTA as regulator, Transport Canada and industry participants. Indeed, in the exigent circumstances of March 2020, such communications were inevitable and necessary. The respondent notes that there is no smoking gun in the communications that suggests bias in favour of the airlines.

[36] The legislative framework for the *Sierra Club* decision was the complex federal impact assessment scheme established under the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 (the *IAA*). The *IAA* contemplated a three-phase regional assessment process: planning stage, regional assessment and, finally, decision making, including the making of a regulation by the Minister of the Environment (*Sierra Club* at para. 45). A number of issues were before the Court, only one of which is relevant to the present case: the validity of a March 2020 report (the Report) that

resulted from a regional assessment of offshore oil and gas exploratory drilling in a defined area east of Newfoundland and Labrador.

[37] The Federal Court concluded that the regional assessment and resulting Report were not amenable to judicial review (*Ecology Action Centre v. Canada (Environment and Climate Change)*, 2021 FC 1367 at para. 32). On appeal, this Court agreed. Writing for the Court, Justice Goyette found that neither the regional assessment nor the Report were decisions "because they did not affect 'legal rights, impose legal obligations, or cause prejudicial effects'" (*Sierra Club* at para. 46, citing *Sganos* at para. 6). Rights were affected or obligations imposed only at the third phase when the Minister decided whether to make a regulation excluding potential projects from project-specific assessments (*Sierra Club* at para. 47).

[38] The Court continued, stating (at para. 61):

> [61] That said, just because a regional assessment, *standing alone*, is not amenable to judicial review, does not mean it is *always* immune from judicial review. If a regional assessment is materially deficient (unreasonable or procedurally unfair), the resulting regulation may be quashed on the basis that the Minister lacked the legal prerequisite set out in subsection 112(2) to make that regulation: *FC Decision* at paras. 26, 31, citing *Trans Mountain* at para. 201; *Mikisew* at paras. 108–109. (emphasis in original)

[39] APR relies on paragraph 61 to argue that *Sierra Club* confirms "that procedural fairness is an independent basis that is always justiciable, despite that the contents of the subject document may not be amenable to judicial review". APR states that its allegation of reasonable apprehension of bias is the primary issue in this application and that, if the Court finds reasonable apprehension of bias, it need not consider whether the Statement is justiciable.

[40] APR explains its reading of paragraph 61 in its supplemental submissions. It argues that if a regional assessment under the *IAA* were prepared in a manner contrary to the requirements of procedural fairness, the resulting regulation could be struck down. This I agree with. APR then states, "[b]y the same token, if the Statement gave rise to a reasonable apprehension of bias, this Court can issue a writ of prohibition (i.e. injunction) and/or a declaration, all pursuant to s. 18 of the *Federal Courts Act*".

[41] APR's second statement finds no basis in paragraph 61 of *Sierra Club*. There, the Court does not suggest that a regional assessment or second-stage report could be subject to independent judicial action if prepared in procedurally flawed circumstances. Rather, the Court acknowledges that the resulting regulation may be struck down because the regional assessment, a legal prerequisite under the *IAA*, was materially deficient (whether unreasonable or procedurally unfair).

[42] In the present case, the closest analogy is that of an air passenger complaint to the CTA. If a complaint were rejected by the CTA in reliance on the Statement, the Court on judicial review could be asked to grant the application and quash the CTA's decision because the Statement was procedurally unfair (e.g., because there was prejudgment or reasonable apprehension of bias). However, the analogy is far from perfect because the Statement does not have the status or role of a report under the *IAA*.

[43] I find that *Sierra Club* does not support APR's argument that the Court may assess allegations of reasonable apprehension of bias before (or without) considering whether the

Statement is justiciable. Paragraph 61 does not establish this principle. In addition, the paragraph cannot be read in isolation. The Court reviewed the question of justiciability in paragraphs 44-47 and concluded that neither the regional assessment nor the Report was amenable to judicial review. They did not "affect legal rights, impose legal obligations or cause prejudicial effects" (see, e.g., *Toronto Port Authority* at para. 29, *Democracy Watch 2021* at para. 29, and *Sganos* at para. 6). In my view, the Court's decision in *Sierra Club* confirms the Court's existing jurisprudence regarding the requirements for justiciability.

[44] This Court does not have plenary jurisdiction to intervene in the conduct of a federal board, commission or tribunal based on allegations of misconduct or perception of bias absent a matter in respect of which a remedy is available. Essentially, APR is asking the Court to censure the CTA regardless of the legal effects of its conduct. This is not the Court's role. At the admitted risk of repetition, for a remedy to be available a matter must "affect legal rights, impose legal obligations, or cause prejudicial effects" (*Democracy Watch* at para. 29). The Statement does not do so and it is not otherwise amenable to judicial review.

2. Public interest standing

[45] In light of my conclusion regarding the issue of justiciability, I need not consider the question of whether the Court should exercise its discretion to grant public standing to APR.

IV. Conclusion and Costs

[46] The Court's finding that the Statement is not amenable to judicial review is sufficient to dismiss this application for judicial review.

[47] The respondent, as the successful party, seeks costs in the amount of $5,220.00, and attaches a Bill of Costs to its supplemental submissions.

[48] APR submitted that, if successful, it should be awarded solicitor-client costs due to the public interest nature of the proceeding or, as an alternative, a lump sum award of $5,000.00. If unsuccessful, APR argues that there should be no costs award against it or at most an award of $1,000.00. APR emphasizes that it is a non-profit organization with a genuine interest in the protection of air passengers' rights and is not attempting to establish a private interest. APR also points to the superior ability of the respondent to absorb its own costs and emphasizes that there were no other litigants who could bring this application for judicial review in part because of the difficulty in obtaining evidence of the CTA's conduct.

[49] There is no doubt that APR is a non-profit litigant with a long history (through Dr. Lukács) of genuine interest and involvement in the establishment and safeguarding of air passenger rights. I would add that it is clear that APR has expended considerable effort in furtherance of its belief in the merits of the application.

[50] That said, I find little merit in certain of APR's submissions in support of either no costs award or a maximum costs award of $1,000.00. APR speculates that the Statement has deterred air passengers from filing CTA complaints but there is no evidence to this effect. The same is

true of APR's assertion that its actions have ensured that the CTA maintain pertinent information rather than deleting records due to its "lax" preservation practices. Finally, the mere fact that APR is a public interest litigant does not immunize it from costs awards: see, e.g., *Greenpeace Canada v. Canada (Attorney General)*, 2016 FCA 114 at para. 79.

[51] Taking these factors into account, the application will be dismissed with costs to the respondent in the amount of $3,000.00 inclusive of all disbursements and taxes.

"Elizabeth Walker"
J.A.

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

"I agree.
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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