

Court File No. CV-25-00100065-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant /
Responding Party

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent /
Responding Party

FACTUM OF THE APPLICANT / RESPONDING PARTY
(Airlines' Motion for Leave to Intervene)

February 6, 2026

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PART I – OVERVIEW

1. The applicant/responding party, Air Passenger Rights [**“Applicant”**], has brought the underlying application for a declaration that subsection 85.09(1) of the *Canada Transportation Act* [**“CTA”**] violates the right to freedom of expression guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms* [**“Charter”**] and cannot be reasonably justified by section 1.¹

2. Subsection 85.09(1) of the *CTA* prohibits the sharing of any documents or information pertaining to air passenger complaint proceedings against airlines.² Those claims are heard by Complaint Resolution Officers [**“CROs”**] under a process set out under the *CTA*.³ Subsection 85.09(1)’s blanket statutory gag applies to both the optional mediation stage of the process and final adjudicative decisions and orders of CROs.⁴ The application of this section to adjudicative documents and information is contrary to the open court principle.

3. The Applicant seeks a reading down of subsection 85.09(1) to narrow its application to settlement privileged and mediation documents only.⁵ The ongoing operation of the impugned provision to adjudicative records is prejudicial to the Applicant’s ability to engage in its core activities of public advocacy and information-sharing relating to air passenger rights.⁶

4. The moving parties/proposed intervenors, the National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet [together, **“Airlines”**], seek leave to intervene in the Applicant’s application as an added party or, alternatively, as a friend of the court.⁷ The Airlines’ motion fails to satisfy the test for intervention under rule 13 and should be dismissed for three independent reasons:

- a. The Airlines have no interest in the subject matter at issue because their submissions are predicated on the fiction that they are normally entitled to default sealing of records they file in response to passenger complaints, civil claims, and proceedings before the Canada Transportation Agency [**“Agency”**];⁸

¹ Affidavit of Dr. Gábor Lukács, affirmed February 6, 2026 [**“Lukács Affidavit”**], at para. 10 and Ex. “B”, Motion Record of the Applicant/Responding Party, dated February 6, 2026 [**“MR”**], at Tabs 1 and 1-B; *Canadian Charter of Rights and Freedoms* [**“Charter”**], at ss. 1 and 2(b), Part I of the *Constitution Act, 1982* [**“Constitution Act”**], being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11; *Constitution Act* at s. 52(1).

² *Canada Transportation Act*, S.C. 1996, c. 10 [**“CTA”**], at s. 85.09(1).

³ *CTA* at s. 85.02.

⁴ *CTA* at s. 85.05-85.06.

⁵ Lukács Affidavit at Ex. “B” (para. 32), MR at Tab 1-B.

⁶ Lukács Affidavit at paras. 12-15, MR at Tab 1.

⁷ Notice of Motion, dated January 21, 2026 [**“NOM”**], at paras. (a)-(b), Motion Record of the Moving Parties/Proposed Intervenors, dated January 21, 2026 [**“Airlines’ MR”**], at Tab 1.

⁸ Lukács Affidavit at paras. 46-47 and Ex. “X” (paras. 22-35), MR at Tabs 1 and 1-X.

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- b. The Airlines' motion is dilatory – brought after the close of the evidentiary record, completion of cross-examinations, and delivery of the Applicant's factum for the March 17, 2026 hearing – and any resulting delay of the hearing is prejudicial to the Applicant's *Charter*-protected rights;⁹
 - c. The Airlines' proposed submissions seek to impermissibly stand in the constitutional shoes of the respondent/responding party, the Attorney General of Canada [**Respondent**], by displacing the Respondent's justification of the *Charter* breach with its own alternative pressing and substantial objective;¹⁰ and
 - d. The Airlines' further proposed submissions are duplicative of the submissions of the Respondent on the need for an efficient process, and are thus not useful to the court.¹¹
5. The Applicant seeks an order dismissing the Airlines' motion in its entirety. Alternatively, the Applicant submits that the Airlines ought to be permitted leave to intervene as a friend of the court only, on the same terms and timetable as the Canadian Broadcasting Corporation [**CBC**].¹²
6. In the further alternative, the Applicant submits that the Airlines' participation as an added party should confer limited rights to file evidence and make submissions, with no right of cross-examination or appeal. In this circumstance, the Applicant also requests an order for the payment of its costs thrown away arising from the need to re-prepare facta and hearing submissions.
7. The Applicant requests an order for the payment of its costs of this motion by the Airlines. The Applicant is available to attend an oral hearing of this motion, if necessary.

PART II – THE FACTS

A. The Parties on this Motion

8. The Applicant is a federal not-for-profit corporation with a registered office in Halifax, Nova Scotia. The Applicant provides information and resources to members of the public relating to air passenger rights, issues, rules, and legal processes. It advocates on behalf of the general public to improve air passenger rights and conditions for air travellers in Canada.¹³
9. The Applicant has brought this application seeking a declaration, under section 52(1) of

⁹ Lukács Affidavit at paras. 30-37 and Exs. "O" to "U", MR at Tabs 1 and 1-O to 1-U.

¹⁰ Lukács Affidavit at paras. 43-45 and Exs. "V" and "W", MR at Tabs 1, 1-V, and 1-W.

¹¹ Lukács Affidavit at paras. 41-42 and Exs. "V" and "W", MR at Tabs 1, 1-V, and 1-W.

¹² Lukács Affidavit at para. 26 and Ex. "Q", MR at Tabs 1 and 1-Q.

¹³ Lukács Affidavit at paras. 3-8 and Ex. "A", MR at Tabs 1 and 1-A.

the *Constitution Act, 1982*, that subsection 85.09(1) of the *CTA* violates the right to freedom of expression guaranteed by section 2(b) of the *Charter*, and cannot be saved by section 1.¹⁴

10. The Airlines include several of Canada's largest commercial air carriers and their industry association. The Airlines have brought this motion, together, seeking leave to intervene in this application as added parties, or alternatively, as friends of the court.¹⁵

B. The Impugned Statutory Provision

11. In 2023, new sections of the *CTA* were enacted that diverted most air passenger complaint proceedings from a process administered by the Agency under its 2014 procedural rules [**"2014 Rules"**]¹⁶ to a process set out in sections 85.04 to 85.12 of the *CTA* itself.¹⁷ Under this new framework, recourse is available to passengers where an airline has not fulfilled its obligations under the *Air Passenger Protection Regulations*¹⁸ or in respect of the airline's tariff.

12. Air passenger complaints brought under this new statutory process are determined by CROs. The *CTA* stipulates that when an air passenger complaint is filed, the CRO shall first attempt to mediate the complaint. This step is optional for the parties.¹⁹ If a mediated resolution is not possible, the complaint is adjudicated by the CRO based on representations from the passenger and airline.²⁰ The CRO's decision is enforceable as an order of the Agency, which, in turn, can be enforced as a court order.²¹

13. Within the statutory framework governing this process is subsection 85.09(1), which states:

85.09 (1) All matters related to the process of dealing with a complaint shall be kept confidential, unless the complainant and the carrier otherwise agree, and information provided by the complainant or the carrier to the complaint resolution officer for the purpose of the complaint resolution officer dealing with the complaint shall not be used for any other purpose without the consent of the one who provided it.²²

14. This section is broadly crafted and imposes a sweeping confidentiality requirement over all documents dealt with by a CRO, whether arising from mediation or adjudication.²³ The only exceptions to this blanket prohibition are (i) where the parties to the complaint consent (which is

¹⁴ Lukács Affidavit at para. 10 and Ex. "B", MR at Tabs 1 and 1-B; *Charter* at ss. [1](#) and [2\(b\)](#); *Constitution Act* at s. [52\(1\)](#).

¹⁵ NOM, Airlines' MR at Tab 1.

¹⁶ *Canadian Transportation Agency Rules (Dispute Proceedings at Certain Rules Applicable to All Proceedings)*, [SOR/2014-104](#) [**"2014 Rules"**].

¹⁷ *CTA* at ss. [85.04-85.12](#).

¹⁸ *Air Passenger Protection Regulations*, [SOR/2019-150](#).

¹⁹ Lukács Affidavit at Exs. "W" (qq. 49-50) and "X" (paras. 19-21), MR at Tabs 1-W and 1-X.

²⁰ *CTA* at s. [85.06](#).

²¹ *CTA* at ss. [33](#) and [85.07\(3\)](#).

²² *CTA* at s. [85.09\(1\)](#).

²³ Lukács Affidavit at Exs. "W" (qq. 25-28), MR at Tab 1-W.

illusory), or (ii) limited statutory carveouts.²⁴

15. The Agency aggressively enforces this confidentiality requirement, including by sending threatening communications to passengers who make complaints,²⁵ policing the social media of persons who share CRO decisions,²⁶ refusing to release CRO decisions and orders to members of the public (as well as any documents relied on by the CRO to make their decisions),²⁷ and by proposing to levy monetary fines for violations of subsection 85.09(1).²⁸

C. The Positions of the Main Parties to the Application

16. The Applicant claims that subsection 85.09(1) of the *CTA* offends the open court principle, which attracts the constitutional protection of section 2(b) of the *Charter*. The Applicant seeks a reading-down of the subsection such that it only applies to without-prejudice, mediation-related materials and not to adjudicative documents and decisions and orders of the CRO.²⁹

17. The Respondent's evidence is that the state seeks to justify the alleged infringement of section 2(b) of the *Charter* on the basis that (i) confidentiality is necessary for the mediation stage of the process and (ii) to improve the efficiency of these quasi-judicial proceedings.³⁰ The Applicant disputes the factual and legal basis for these assertions, which are issues for the main hearing.

18. Notably, the Respondent is unequivocal in its evidence that (i) subsection 85.09(1) of the *CTA* **was not** enacted to protect the confidential information of airlines, but the personal information of passengers,³¹ and (ii) subsection 85.09(1) **was not** a provision lobbied for by the Airlines, but rather was a policy recommendation of Transport Canada.³²

D. The Status of the Application

19. The application was commenced on May 28, 2025 and is scheduled to be heard on March 17, 2026.³³ The evidentiary record is complete, cross-examinations have concluded, and the Applicant's factum was delivered on January 23, 2026, in accordance with the timetable.³⁴

²⁴ *CTA* at ss. [85.09\(2\)](#) and [85.14-85.15](#).

²⁵ Lukács Affidavit at paras. 16(b) and 17 and Ex. "C" (paras. 16-27), MR at Tabs 1 and 1-C.

²⁶ Lukács Affidavit at paras. 16(c) and 17 and Ex. "D" (paras. 30-33), MR at Tabs 1 and 1-D.

²⁷ Lukács Affidavit at paras. 16(a) and 17 and Ex. "D" (paras. 34-36), MR at Tabs 1 and 1-D.

²⁸ Lukács Affidavit at paras 16(d) and 17 and Ex. "D" (paras. 37-40), MR at Tabs 1 and 1-D.

²⁹ Lukács Affidavit at para. 10 and Ex. "B", MR at Tabs 1 and 1-B.

³⁰ Lukács Affidavit at paras. 41-42 and Exs. "V" (paras. 15, 21-24, and 40-41) and "W" (qq. 72-75 and 140-145), MR at Tabs 1, 1-V, and 1-W.

³¹ Lukács Affidavit at para. 43 and Exs. "V" (para. 41) and "W" (q. 75), MR at Tabs 1, 1-V, and 1-W.

³² Lukács Affidavit at paras. 44-45 and Ex. "W" (q. 73), MR at Tabs 1 and 1-W.

³³ Lukács Affidavit at paras. 10 and 24 and Exs. "B" and "P", MR at Tabs 1, 1-B, and 1-P.

³⁴ Lukács Affidavit at para. 27 and Ex. "P", MR at Tabs 1 and 1-P.

20. The remaining steps in the application are as follows:
- a. the Respondent's factum is due on February 27, 2026;
 - b. the Confirmation of Application will be filed on March 9, 2026;
 - c. the Applicant's reply factum, if any, is due on March 11, 2026; and
 - d. the CBC's intervenor factum is due on March 12, 2026.³⁵

E. The Airlines' Delay in Bringing this Motion

21. The application has been widely publicized, including by the following means:
- a. at least four articles in the national media, dated June 3 and 4, 2025;³⁶
 - b. several social media posts made by the Applicant and others on X (formerly Twitter), BlueSky, Reddit, and Facebook between June 3 and 4, 2025;³⁷ and
 - c. a podcast episode, a recording, transcript, and accompanying materials which have been published online since November 13, 2025.³⁸
22. Each of the Airlines is a sophisticated major corporation or industry association that presumably has media monitoring staff. They are also known to surveil the Applicant's social media, in particular.³⁹ Yet, no communication was received by the Airlines about this proceeding until December 17, 2025.⁴⁰
23. On that date, Clay Hunter, counsel for the Airlines, indicated that the Airlines would be seeking leave to intervene on the motion. His correspondence did not specify the form of intervention, despite Douglas Judson, the Applicant's counsel, immediately responding to advise him that two motions for leave to intervene as friends of the court would be heard the next day.⁴¹
24. No one representing the Airlines attended the December 18, 2025 motion.⁴² On December 22, 2025, Mr. Judson wrote to Mr. Hunter to advise him of the outcome of the December 18 motions, the terms of the court's order permitting the CBC's intervention, and the timetable for the

³⁵ Lukács Affidavit at para. 28 and Ex. "P", MR at Tabs 1 and 1-P.

³⁶ Lukács Affidavit at para. 18 and Exs. "E" to "H", MR at Tabs 1 and 1-E to 1-H.

³⁷ Lukács Affidavit at para. 19 and Exs. "I" to "L", MR at Tabs 1 and 1-I to 1-L.

³⁸ Lukács Affidavit at paras. 21-22 and Exs. "M" to "N", MR at Tabs 1, 1-M, and 1-N.

³⁹ Lukács Affidavit at paras. 20, MR at Tab 1.

⁴⁰ Lukács Affidavit at paras. 30 and Ex. "R", MR at Tabs 1 and 1-R.

⁴¹ Lukács Affidavit at paras. 30-31 and Ex. "R", MR at Tabs 1 and 1-R.

⁴² Lukács Affidavit at para. 32, MR at Tab 1.

remaining steps in the application. Mr. Judson also indicated that the Applicant would be in a position to consider consenting or taking no position on the Airlines' motion, if materials were delivered by January 9, 2026.⁴³

25. No further communication was received from the Airlines until January 14, 2026, almost a month after their initial outreach. On that date, Alison Dudu, a lawyer from Mr. Hunter's office, emailed draft materials for the Airlines' motion for leave to intervene. These materials disclosed, for the first time, that the Airlines intended to seek leave to intervene as parties.⁴⁴

26. On January 18, 2026, Mr. Judson wrote to Mr. Hunter to object to the dilatory nature of the Airlines' motion and to formalize the Applicant's objection to the Airlines' request to intervene. Mr. Judson's letter also objected to the Airlines' proposition to lead evidence and its attempt to stand in the shoes of the Respondent to generate alternate justifications for the constitutional infringement that were not advanced by the government. Mr. Judson indicated that his clients would seek costs on the motion, in light of the delay and resulting prejudice to his client, particularly given the imminent deadline to deliver the Applicant's factum on the main application.⁴⁵

27. On January 22, 2026, Mr. Hunter's office served the Airlines' motion, well over a month after their initial communication to the main parties.⁴⁶

F. The Airlines' Proposed Submissions

28. The Airlines propose to make submissions "along the following lines":

(i) If granted leave to intervene, the [Airlines] intend to develop submissions along the following lines:

(i) the importance of confidentiality in the Air Travel Complaint process;

(ii) the disproportionate burden on airlines to ensure that, in the event confidentiality is removed, their documents are properly redacted not to disclose personal information and commercially sensitive documents/contents, including those that are subject to proprietary rights and interests of third parties;

(iii) the undermining of the important purpose of the Air Travel Complaint process, which is not an exclusive recourse, but a means of alternate dispute resolution, that includes an economical and efficient determination of passenger complaints; and

(iv) that public disclosure risks undermining aviation safety culture. Canada's aviation safety management system depends on a "just culture" in which flight, maintenance, and dispatch personnel can report safety concerns candidly and without fear of external scrutiny or misinterpretation. If internal safety

⁴³ Lukács Affidavit at para. 33 and Ex. "S", MR at Tabs 1 and 1-S.

⁴⁴ Lukács Affidavit at para. 34 and Ex. "S", MR at Tabs 1 and 1-S.

⁴⁵ Lukács Affidavit at para. 35 and Ex. "T", MR at Tabs 1 and 1-T.

⁴⁶ Lukács Affidavit at para. 36 and Ex. "U", MR at Tabs 1 and 1-U.

communications or operational assessments are made public, employees may hesitate to report issues, weakening the proactive reporting environment that aviation safety requires.⁴⁷

29. In addition, in the draft submissions contained in their motion record, the Airlines state:

[The Airlines] submit that if s. 85.09(1) of the [CTA] is found to be in violation of Section 2(b) of the *Charter*, it should be saved under its Section 1 on the grounds that the documents submitted to the CRO are kept confidential for a pressing and substantial goal, and keeping these documents confidential is a proportionate means to achieve this objective, which is rationally connected and minimally impairing, thus fulfilling the test set out in *R. v. Oakes*.⁴⁸

G. Delay is Prejudicial to the Applicant

30. Through the underlying application, the Applicant seeks to vindicate a fundamental constitutional right that has unique impacts on its ability to engage in protected expressive activities at the heart of its operations and public interest mandate.⁴⁹ Subsection 85.09(1) precludes the Applicant from commenting on or sharing resources and insights about *any* air passenger complaint proceedings before CROs or about CRO decisions.⁵⁰

31. The impugned provision of the *CTA* prevents the Applicant from being able to receive or disseminate meaningful information to assist air passengers in enforcing their legal rights, to engage in advocacy or other communications to strengthen air passenger protections, or to provide insights about how cases before CROs are decided.⁵¹

32. As the leading voice for air passenger rights in Canada, subsection 85.09(1) prohibits the Applicant from being able to engage in informed political or news media commentary about air passenger complaint proceedings before CROs or about how CROs are applying the law to render their decisions.⁵²

33. All of this obstructs the Applicant's ability to engage in the *Charter*-protected activities at the core of the section 2(b) guarantee. This contrasts with the informational advantages of Canada's largest airlines, who have access to their own private databases of thousands of CRO files given the concentration of their industry.⁵³

34. Consequently, the ongoing operation of this subsection and its vigorous and overbearing

⁴⁷ NOM at para. (i) (p. 4), Airlines' MR at Tab 1 (p. 005).

⁴⁸ Draft Submissions, undated, at para. 2, Airlines' MR at Tab 6.

⁴⁹ Lukács Affidavit at paras. 12-15, MR at Tab 1.

⁵⁰ CTA at s. [85.09\(1\)](#); Lukács Affidavit at Ex. "W" (qq. 25-28), MR at Tab 1-W.

⁵¹ Lukács Affidavit at paras. 12-15, MR at Tab 1.

⁵² Lukács Affidavit at paras. 12-15, MR at Tab 1.

⁵³ Lukács Affidavit at Ex. "W" (qq. 40-41), MR at Tab 1-W.

enforcement is incredibly prejudicial to the Applicant's ability to exercise its essential, expressive fundamental freedom.⁵⁴ The Applicant is concerned that this prejudice will be compounded by any delay in this proceeding that is occasioned by the Airlines' late motion to intervene.⁵⁵

PART III – THE ISSUES

35. The only substantive issue on this motion is whether to grant the Airlines leave to intervene in the underlying application, and if so, whether their participation should be as added parties or as friends of the court, and on what terms.

36. The Applicant submits that the motion should be dismissed. In the alternative, the Applicant submits that the Airlines should only be granted leave to intervene as a friend of the court, on the same terms as the CBC.

37. In the further alternatively, the Applicant submits that the Airlines' participation as an added party should confer a limited right to file evidence, limited written and oral submissions, with no right of cross-examination, no right to appeal, and an order for the payment of the Applicant's costs thrown away arising from any need to re-prepare facta and oral submissions.

38. The Applicant seeks its costs of the motion, payable by the Airlines. Depending on the court's order, it also requests an order for payment of costs thrown away.

PART IV – LAW AND ARGUMENT

A. The Test for Leave to Intervene

39. Intervention is governed by rule 13 of the *Rules of Civil Procedure*, which sets out the test for leave to intervene as an added party or a friend of the court:

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

⁵⁴ Lukács Affidavit at paras. 12-15, MR at Tab 1.

⁵⁵ Lukács Affidavit at para. 29, MR at Tab 1.

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.⁵⁶

40. On a motion for leave to intervene as an added party, the moving party must satisfy at least one of the elements listed in rule 13.01(1), though the court retains discretion to refuse the order, including on the basis of subrule (2).⁵⁷ The Superior Court has recently stated:

[12] 686 Ontario moved for leave to intervene as an added party pursuant to r. 13.01 of the *Rules of Civil Procedure*. The factors the court is to consider in determining whether to grant leave to intervene are the nature of the case, the issues that arise, whether the issues are essentially private or whether they involve a public interest component, the likelihood of the proposed intervenor making a useful contribution to the resolution of the issues, and whether the proposed intervenor's participation would be unfair to the immediate parties[.]⁵⁸

41. An “interest in the subject matter of the proceeding”, for the purposes of rule 13.01(1)(a), means more than a mere financial or commercial interest or corporate relationship.⁵⁹

42. When it comes to intervention as a friend of the court, the Court of Appeal for Ontario has recently affirmed the legal test, which it described as follows:

In determining motions for leave to intervene as a friend of the court, the court is to generally consider “the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties”.⁶⁰

43. Central to both tests is thus the question of the usefulness of the proposed intervenor's contribution to the case and fairness to the immediate parties. But where the proposed intervenor is seeking to participate as an added party, they do so akin to a person whose legal rights are impacted by the relief sought. For the reasons expanded on below, the Airlines' legal rights are not impacted by the relief sought by the Applicant.

B. The Airlines are Not Impacted by the Remedy

44. As a preliminary matter, it must be understood that the Airlines' proposed submissions are

⁵⁶ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 [“*Rules*”], at rr. [13.01-13.02](#).

⁵⁷ *S.G.B. v. S.J.L.*, 2010 ONCA 578, at paras. [13-15](#); *Durham Area Citizens for Endangered Species v. Ontario (Minister of Natural Resources and Forestry)*, 2014 ONSC 7167, at paras. [32-33](#).

⁵⁸ *Karkoulis v. Karkoulis*, 2023 ONSC 499, at para. [12](#) (emphasis added, citations omitted), citing *Affleck v. AGO*, 2019 ONSC 1292, at para. [15](#).

⁵⁹ *Baffinland Iron Mines v. Tower-EBC*, 2021 ONSC 5639, at para. [23](#); *Gotham Green Partners, LLC v. iAnthus Capital Holdings, Inc.*, 2021 ONSC 6474, at paras. [24-25](#); see also 2505243 *Ontario Limited (By Peter and Paul.com) v. Princes Gates Hotel Limited Partnership*, 2022 ONCA 700, at paras. [13-23](#). See also *Seismotech IP Holdings Inc. v. John Does*, 2023 FC 1335, at para. [11](#), *Mclver v. Alberta (Ethics Commissioner)*, 2017 ABQB 695, at para. [28](#), and *Save the Eaton's Building Coalition v. Winnipeg (City)*, 2001 MBCA 186, at para. [21](#).

⁶⁰ *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619 [“*Fair Voting BC*”], at para. [9](#) (emphasis added), citing *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada*, 1990 CanLII 6886 (Ont. C.A.) at p. [167](#).

propped up by a misleading pretense. Namely, that they were ever ordinarily entitled to, requested statutory enactments to create, or otherwise benefited from blanket confidentiality over records they file in answer to civil disputes, claims under processes governed by the *CTA*, or in other forums.

45. This strikes at the heart of the Airlines' bid to intervene because the test for intervention generally requires an interest in the subject matter of the proceeding and that the person be adversely affected by a judgment in the proceeding. Neither of these factors are present because the confidentiality entitlement asserted by the Airlines is a red herring. The Airlines therefore cannot establish either an "interest in the subject matter of the proceeding" or that they "may be adversely affected by a judgment," as required by rule 13.01(1).

46. The suggestion in the Airlines' materials that the Applicant's claim will adversely impact them or materially change the nature of public access to information that they produce in response to passenger claims is immaterial and misleading. These types of records have *always* been subject to exposure on the public record unless they satisfy the extraordinary requirements for sealing. The relief sought by the Applicant, if granted, does not compel or restrain the Airlines from doing anything. They remain free to seek sealing orders governing truly confidential material filed with the CRO, as they would do in any other type of proceeding where appropriate. The regulatory regime and case law is replete with authorities that confirm this reality.

47. First, the CRO process is *not* the only forum for air passengers to seek compensation from airlines. Claims can also be advanced in civil courts (typically Small Claims Court, given the lower monetary value of such claims).⁶¹ Filings made by airlines in response to claims brought in a court – which are often voluminous⁶² – would be subject to the open court principle. Those materials would require the defendant airline to meet the requirements for a sealing order for any part of those documents to be concealed from public view.

48. Second, in parallel to the current CRO process, the 2014 Rules – which are explicitly recognized by the Agency and the courts as governed by the open court process – continue to apply to air passenger complaints relating to accessibility issues.⁶³ The Airlines would not be subject to confidentiality in those proceedings *unless* they satisfied the Agency of the need to seal

⁶¹ See *International Air Transport Association v. Canadian Transportation Agency*, 2022 FCA 211, at para. [133](#), and *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, at para. [97](#).

⁶² In *Geddes v. Air Canada*, 2021 NSSM 27, at para. [3](#) – in which the Applicant's president acted as agent for the claimant – the Nova Scotia Small Claims Court observed that close to 1,000 pages of material were filed in relation to the \$400 claim. All of those documents remain on the public record.

⁶³ 2014 Rules at s. [2](#); *CTA* at ss. [85.03-85.04](#) and [172-172.1](#); Lukács Affidavit at Ex. "W" (qq. 17-18 and 24), MR at Tab 1-W.

or redact a portion of a record, in accordance with the restrictive requirements of the 2014 Rules.

49. Third, prior to the enactment of the 2023 amendments to the CTA, all air passenger complaints were subject to the 2014 Rules, and before that, the Agency's 2005 rules.⁶⁴ Both iterations of the Agency's procedural rules specify that confidentiality of material filed by the parties is exceptional, and must be justified against a legal test, just as it would in a court.

50. The 2014 Rules state:

7 (1) Any document filed under these Rules must be filed with the Secretary of the Agency.

(2) All filed documents are placed on the Agency's public record unless the person filing the document files, at the same time, a request for confidentiality under section 31 in respect of the document.

...

31 (1) A person may file a request for confidentiality in respect of a document that they are filing. The request must include the information referred to in Schedule 17 and must be accompanied by, for each document identified as containing confidential information,

(a) one public version of the document from which the confidential information has been redacted; and

(b) one confidential version of the document that identifies the confidential information that has been redacted from the public version of the document and that includes, at the top of each page, the words: "CONTAINS CONFIDENTIAL INFORMATION" in capital letters.⁶⁵

51. The 2005 Rules – now repealed – set out a similar framework:

23. (1) The Agency shall place on its public record any document filed with it in respect of any proceeding unless the person filing the document makes a claim for its confidentiality in accordance with this section.

(2) No person shall refuse to file a document on the basis of a claim for confidentiality alone.

(3) A claim for confidentiality in respect of a document shall be made in accordance with subsections (4) to (9).⁶⁶

52. Under both sets of rules, the Airlines would be required to identify *specific* harms arising from the disclosure of their materials on the public record. For instance, in Decision No. LET-P-A-67-2011, the Agency wrote:

... Air Canada's burden is to prove the specific harm exception pursuant to subsection 24(2) of the General Rules. Subsection 24(2) of the General Rules states that the Agency shall place a document in respect of which a claim for confidentiality has been made on the public record if the document is relevant to the proceeding and no specific direct harm would likely

⁶⁴ Canadian Transportation Agency General Rules, [SOR/2005-35](#); [2014 Rules](#).

⁶⁵ 2014 Rules at rr. [7](#) and [31](#).

⁶⁶ 2005 Rules at r. [23](#).

result from its disclosure or any demonstrated specific harm is not sufficient to outweigh the public interest in having it disclosed. If Air Canada fails to meet the test, the general rule of disclosure applies.

Air Canada has not identified any specific direct harm that could arise from the disclosure of the curriculum vitae. Although Air Canada points out that the curriculum vitae contains information about Professor Baumol's education and employment history, it has not explained the nature and extent of the harm that could result if the curriculum vitae was disclosed. Vague claims of unspecified harm will not suffice.⁶⁷

53. Both sets of rules have been explicitly acknowledged by the Agency⁶⁸ and determined by the Federal Court of Appeal⁶⁹ to create a public record that is subject to the open court principle.

54. Fourth, the Respondent's witness was unequivocal that subsection 85.09(1) of the CTA was not enacted at the behest of air carriers, but rather as a policy recommendation from Transport Canada.⁷⁰ Consequently, it does not appear that the Airlines have any longstanding, established interest in this statutory provision.

55. Finally, even if the Applicant's application is granted, nothing prevents the enactment of new procedural rules in the CRO's process by which a party could request sealing of truly confidential information from the public record, on the same or similar basis as is set out in the 2014 Rules or the rules of court.

56. Notably, the Airlines' evidence does not include a single CRO decision or document, nor any sample confidentiality order made by the Agency, which contains or refers to the species of confidential information they now express concern about in this motion.⁷¹ This is particularly odd, as the Respondent has confirmed that four air carriers are the respondents to 80 percent of complaints before CROs.⁷² Presumably, if the issue the Airlines wish to make submissions on were widespread, they would include specific examples from the large volume of CRO documents at their disposal.

57. Consequently, it is apparent that the Airlines have not demonstrated a material interest in the subject matter of the application, nor any basis to assert that they will be materially impacted if the Applicant's relief is granted in the main application. As a result, they do not meet the basic criteria to participate as intervenors.

⁶⁷ Agency Decision No. [LET-P-A-67-2011](#).

⁶⁸ Agency Decision No. 19-AT-A-2024, at para. [15](#); Agency Decision No. 149-C-A-2022, at para. [8](#).

⁶⁹ *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, at paras. [37](#) and [74-80](#).

⁷⁰ Lukács Affidavit at Ex. "W" (q. 73), MR at Tab 1-W.

⁷¹ NOM at para. (i)(iv) (p. 4), Airlines' MR at Tab 1 (p. 005); Draft Submissions, undated, at para. 19, Airlines' MR at Tab 6 (p. 044).

⁷² Lukács Affidavit at Ex. "W" (qq. 40-41), MR at Tab 1-W

C. The Airlines' Delayed Motion is Prejudicial to the Applicant

58. Rule 13.01(2) requires the court to consider whether the proposed intervention will “unduly delay or prejudice the determination of the rights of the parties”. The Airlines’ motion must fail on this basis. It has been brought far too late *not* to unduly prejudice the Applicant, whose core advocacy functions, public information, and expressive activities are significantly obstructed by the operation of subsection 85.09(1) of the CTA – particularly if delay in the hearing arises from the proposed addition of parties.

59. The Federal Court of Appeal (which has been recently cited by the Court of Appeal for Ontario on the test for intervention⁷³) has stated that the timeliness of the motion to intervene has been recognized under the rubric of “the interests of justice”:⁷⁴

[21] Late interventions can disrupt the orderly progress of a matter: *ViiV Healthcare ULC v. Teva Canada Limited*, 2015 FCA 33, 474 N.R. 199 at para. 11. They can also cause prejudice: *Pictou Landing* at paras. 10, 32. As a result, intervention motions should be brought early: *Zaric* at para. 23; *Canada (Attorney General) v. Canadian Doctors for Refugee Care*, 2015 FCA 34, 470 N.R. 167 at paras. 27-29; *Ignace v. Canada (Attorney General)*, 2019 FCA 266 at para. 8. Bringing a motion early also shows that the proposed intervenor monitors the area closely, has a keen interest in the area and is dedicated to it. In *Canadian Doctors*, the Court put it this way (at para. 28):

[T]hose who have a valuable perspective to offer to an appeal court jump off the starting blocks when they hear the starter’s pistol. Keen for their important viewpoint to be heard, soon after the notice of appeal is filed, they move quickly.

To the same effect, this Court has observed that “[t]hose really concerned about a proceeding, who have much to say about it, and who are concerned that no one else will say it, proceed quickly”: *ViiV Healthcare ULC* at para. 11.⁷⁵

60. In *Pictou Landing*, the Federal Court of Appeal – referencing the same interpretive principle set out in rule 1.04 of the Ontario *Rules of Civil Procedure* – adopted the following consideration on a motion to intervene:

- Is the proposed intervention inconsistent with the imperatives in rule 3, namely securing “the just, most expeditious and least expensive determination of every proceeding on its merits”? For example, some motions to intervene will be too late and will disrupt the orderly progress of a matter. Others, even if not too late, by their nature may unduly complicate or protract the proceedings. Considerations such as these should now pervade the interpretation and application of procedural rules: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87.⁷⁶

⁷³ *Fair Voting BC* at para. 13, citing *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67 (Stratas JA), at para. 15.

⁷⁴ *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 13 [“CCR”] (Stratas JA), at para. 19.

⁷⁵ CCR at para. 21 (emphasis added).

⁷⁶ *Pictou Landing First Nation v. Canada (Attorney General)*, 2014 FCA 21, at para. 10 (italics in original, underscoring added); *Rules* at r. 1.04.

61. Appellate courts have also been clear that unjustified delay in vindicating public access to adjudicative documents and information is prejudicial to the section 2(b) *Charter* rights of those engaged in disseminating that information to the public.⁷⁷

62. These authorities reflect the exact prejudice imposed on the Applicant by the Airlines' eleventh-hour motion. Despite extensive national publication of the issues at bar in this application, the Airlines – each national, sophisticated corporate entities – sat on their hands from June to December 2025. Once they did make contact with the main parties:

- a. they then took no urgent action, despite prompt information being provided by the Applicant's counsel about the status of the proceeding and timetable;⁷⁸
- b. they did not disclose that their intent was to seek to be added as parties (rather than simply to participate as friends of the court) for almost an entire month after their counsel's initial outreach to the main parties;⁷⁹ and
- c. they failed to serve any motion until the day before the Applicant's factum in the main application was due, despite having notice of the existing timetable.⁸⁰

63. The Airlines have offered no evidence on this motion explaining the reason for their delay, particularly in light of the extensive media coverage and online commentary relating to the proceeding over the 7-month period preceding the service of their motion.⁸¹

64. The Airlines' participation – particularly as added parties – will fundamentally alter the record, and necessitate additional delay, further cross-examinations (by the Airlines or the Applicant), and a need for the Applicant to reformulate its factum and submissions. This is a costly proposition for a small, grassroots organization run by volunteers.⁸²

65. The Applicant is, by far, the least-resourced participant in this litigation, and the motion proposes to add five of the most well-known corporations in Canada to one side of the dispute. One of the factors the court routinely considers in granting leave to intervene is how the interest of justice is impacted by the "equality of arms", as a matter of fairness.⁸³ Appellate courts have acknowledged that an imbalance "is especially harmful in public law cases that should be decided on the basis of doctrine, not subjective impressions, aspirations, personal preconceptions,

⁷⁷ *R. v. White*, 2005 ABCA 435, at para. 6.

⁷⁸ Lukács Affidavit at paras. 30-36, MR at Tab 1.

⁷⁹ Lukács Affidavit at para. 34, MR at Tab 1.

⁸⁰ Lukács Affidavit at paras. 31, 33, and 36, MR at Tab 1.

⁸¹ Lukács Affidavit at para. 37, MR at Tab 1. See also the Airlines' MR at Tabs 2-5.

⁸² Lukács Affidavit paras. 3-8, MR at Tab 1.

⁸³ CCR at paras. 13-18.

ideological visions, or freestanding policy opinions”.⁸⁴

D. The Airlines are Trying to Displace the Respondent

66. The Airlines’ participation seeks to impermissibly expand the record beyond the *Charter* challenge advanced by the Applicant and the response and justification put into evidence by the Respondent. Their proposed submissions seek to displace the role of the Attorney General of Canada in defending the constitutionality of federal legislation. The Respondent is the party constitutionally responsible for defending the legislation; intervention should not be used to supplant deficiencies in the government’s evidentiary record. The Airlines’ alternate rationale can only possibly be accepted if the court concludes that the Respondent’s evidence is inaccurate.

67. While the Applicant concedes that the test for leave in constitutional cases is “more relaxed” than in litigation between private parties,⁸⁵ appellate jurisprudence is clear that intervenors must accept the proceeding as framed by the main parties:

In this Court, an intervener is not an applicant[.] An intervener cannot introduce new issues or claim relief that an applicant has not sought. Instead, an intervener is limited to addressing the issues already raised in the proceedings, *i.e.*, within the scope of the notices of application. [...] intervenors are guests at a table already set with the food already out on the table. Interveners can comment from their perspective on what they see, smell and taste. They cannot otherwise add food to the table in any way. [...] To allow them to do more is to alter the proceedings that those directly affected—the applicants and the respondents—have cast and litigated under for months, with every potential for procedural and substantive unfairness.⁸⁶

68. Similarly, the Superior Court has stated that “the usual restriction” on the participation of added parties is that “they may only participate in the issues that directly affect them”.⁸⁷

69. Instead, the Airlines contemplate making submissions which – while ostensibly offering support of the Respondent’s position – veer far outside the lines of the justification offered by the Attorney General of Canada. Through their motion, these private enterprises presume to stand in the shoes of Canada’s constitutional executive⁸⁸ and offer an alternative reality of legislative intent and pressing and substantial objectives that conflicts with the Respondent’s uncontradicted evidence. These bald assertions have no basis in the record advanced by the government.

70. This is apparent from comparing the Airlines’ proposed submissions to the Respondent’s

⁸⁴ CCR at para. 17; *Fair Voting BC* at paras. 13-14.

⁸⁵ *Fair Voting BC* at para. 9.

⁸⁶ *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 174, at para. 54 (citations omitted), cited in *Canada (Attorney General) v. Canadian Civil Liberties Association*, 2026 FCA 6, at para. 479.

⁸⁷ *North American Financial Group Inc. v Ontario Securities Commission*, 2017 ONSC 2965 [“**North American**”], at para. 8.

⁸⁸ See *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), at Part III.

evidence. The Respondent indicates (i) that the principal reason for implementing subsection 85.09(1) was to maintain the confidentiality of *mediation*, and (ii) that this confidentiality requirement was intended to protect the *personal information of passengers*, not the confidential information of air carriers.

71. In contrast, the Airlines now seek to substantiate the Respondent's assertion of a pressing and substantial objective by asserting that there was a legislative objective of protecting their confidential information and that the confidentiality requirements are necessary for the entire process – neither of which are the Respondent's justification evidence. In fact, the Respondent's affiant expressly denied that air carriers had ever asked for confidentiality when the legislation was developed.⁸⁹ The Airlines' assertions on the objective of subsection 85.09(1) can only possibly be accepted if the court is willing to conclude that the Respondent's witness has fundamentally misrepresented the basis of this provision and what it is meant to achieve.

72. Consequently, the Airlines' arguments impermissibly expand the scope of the Respondent's argument and introduce new, nonexistent justifications from the state for the impugned legislation. These may suit the aims of private industry, but it is apparent that they are not relevant concerns in the case advanced by the executive branch of government, and thus are not useful to the court.

E. The Airlines' Proposed Submissions are Duplicative

73. To the extent that the Airlines are proposing submissions that are not inappropriate attempts at co-opting and expanding the Respondent's evidence, their arguments are duplicative. It is widely recognized in the jurisprudence that central to the intervention test is whether the proposed intervener will make a "useful contribution to the litigation", as required by the test to participate as an added party or as a friend of the court. The Airlines' duplicative arguments are *not* useful contributions.

74. The Court of Appeal for Ontario has recently cautioned that the presence or absence of the three factors from the jurisprudence is not determinative of whether a proposed intervenor will make a useful contribution:

[11] [...] Although previous cases have identified three factors as helpful to determining whether an applicant will likely make a useful contribution, the presence or absence of any of them is not determinative: (1) the applicant has a real, substantial, and identifiable interest in the subject matter of the proceeding; (2) the applicant has an important perspective distinct from the immediate parties; or (3) the applicant has special expertise: *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, para. 2. These

⁸⁹ Lukács Affidavit at para. 44 and Ex. "W" (q. 73), MR at Tabs 1 and 1-W.

are non-exclusive factors in the service of answering the ultimate question: will the applicant likely make a useful contribution.⁹⁰

75. The inference from this binding appellate authority is that the fact that the Airlines operate in the industry impacted by the CTA is not determinative, on its own, of their suitability to usefully contribute to the issues before the court. Their participation must offer more to meet the utility threshold set out in the case law. As Doyle J wrote on a previous intervention motion in this application, a desire to shape the law or proximate involvement in an enterprise (in that case, *Charter* litigation), on its own, does not demonstrate a distinct perspective from that of the immediate parties.⁹¹

76. The Court of Appeal for Ontario has also stated that “[s]ubmissions which are duplicative of others are not useful, and can in fact imperil the fairness of the hearing.”⁹² It has also recently cited the Federal Court of Appeal’s guidance, which calls on the proposed intervenors to explain how they will advance “different and valuable insights” and “to offer much detail and particularity” on how they will assist the court on “specific issues”:

This factor really matters. Time and time again, applicants fail to address whether they will advance different and valuable insights and perspectives that will actually further the Court’s determination of the matter. Instead, often they stress their lofty aims, good policy work and previous valuable interventions. Others raise issues that they find interesting but have nothing at all to do with the case. Some promise in one paragraph that they will take the evidentiary record as they find it but then in the next paragraph offer arguments dependent on facts absent from the evidentiary record. Still others assure us that if admitted to the proceedings they will have something important to say, but they don’t tell us what they will say. Sometimes we get words that sound nice but don’t really mean much at all. And sometimes we are confused for legislators or constitutional framers who can enshrine grand policies into law.

Applicants that are successful investigate the evidentiary record and the **specific issues** in the case, enabling them to offer much detail and particularity on how they will assist the Court. They know that success depends upon the extent to which they can hone into the true nature of the case, locating the particular itch in the case that needs to be scratched, and telling us specifically how they will go about scratching it.⁹³

77. Similarly, in *Jones*, the Court of Appeal for Ontario observed that “a proposed intervenor must have more to offer than mere repetition of the position advanced by a party. The “me too” intervention provides no assistance[.]”⁹⁴

78. It is on this basis that the Airlines’ proposed submissions relating to the “important purpose

⁹⁰ *Fair Voting BC* at para. 11 (emphasis added).

⁹¹ *Air Passenger Rights v. The Attorney General of Canada*, 2025 ONSC 7189, at para. 35.

⁹² *Fair Voting BC* at para. 13.

⁹³ *Fair Voting BC* at para. 12 (emphasis added), citing *Ishaq v. Canada (Citizenship and Immigration)*, 2015 FCA 151, at paras. 9-10.

⁹⁴ *Jones v. Tsige*, 2011 CanLII 99894 (Ont. C.A.), at para. 29.

of [...] an economical and efficient determination of passenger complaints” is deficient and not useful to the court.

79. This subject matter is thoroughly canvassed by the Respondent’s evidence already, including by evidence given by affidavit and under cross-examination. The Respondent’s witness provides evidence:

- a. on the need to ensure “effective and efficient recourse for air travelers”;
- b. that the 2023 CTA amendments were “intended to streamline complaints and make the process more efficient”;
- c. that the process was “designed to reduce the number of complaints requiring substantive handling by GIC-appointed Agency Members, thereby contributing to faster processing”;
- d. that a more “efficient and streamlined process” was needed; and
- e. describing the average complaint processing timeline of 373 days as “the impetus” for the 2023 CTA reforms which implemented the CRO process.

80. The participant in the litigation with first-hand knowledge and information about these considerations is the Respondent and its evidence is already in the record. Consequently, the Airlines’ contribution on this topic is unnecessary, particularly as an added party to the litigation. They offer nothing new on this issue.

F. If Leave is Granted, the Terms Should be Restrictive

81. For all of the reasons set out above, the Applicant disputes that the Airlines are an appropriate, timely, or useful intervenor on this application, or that they have a true interest in the subject matter or will be adversely impacted by the outcome of the application.

82. However, if leave were granted, the Applicant submits that it should be limited to an intervention as friends of the court. Intervenors who are added parties to the litigation necessarily expand and complicate litigation, including by conferring the rights of the main parties on latecomers to the dispute, introducing new cross-examinations, and conferring rights of appeal.⁹⁵

83. Alternatively, if the Airlines were permitted to participate as added parties, the Applicant submits that the material they can add to the record ought to be limited to the issues they are

⁹⁵ *North American* at para. 8.

permitted to address, and they should have no rights of cross-examination, limited written and oral submissions, and no right of appeal.

84. The Applicant submits that while none of the proposed submissions would appear to provide new, useful, or relevant information to the court, to the extent any issues do, they are limited in scope and more germane to participation as a friend of the court than as an added party.

PART V – ORDER REQUESTED

85. For all of the above reasons, the Applicant requests:

- a. an order dismissing the Airlines' motion;
- b. in the alternative, an order granting the Airlines with leave to intervene in the application as friends of the court only, on the same terms as the CBC;
- c. in the further alternative, if leave to intervene as an added party is granted, an order limiting the material the Airlines can add to the record to the issues they are permitted to address, prohibiting any cross-examination by the Airlines, and awarding the Applicant its costs thrown away arising from any need to prepare new facts or re-prepare oral submissions; and
- d. an order awarding the Applicant the costs of this motion, payable by the Airlines.

86. The Applicant remains available if an oral hearing of this motion is necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of February, 2026.



Douglas W. Judson
Judson Howie LLP

Lawyers for the Applicant / Responding Party

LAWYER'S CERTIFICATE

In accordance with rule [4.06.1](#) of the *Rules of Civil Procedure*, the undersigned is satisfied as to the authenticity of every authority cited herein.

DATED this 6th day of February, 2026.



Douglas W. Judson [LSO No. 70019H]
Judson Howie LLP

Lawyers for the Applicant / Responding Party

SCHEDULE "A" – LIST OF CITED AUTHORITIES

A. **Statutes**

Canada Transportation Act, [S.C. 1996, c. 10](#)

[Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11

[Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.)

[Constitution Act, 1982](#), being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

B. **Regulations**

Air Passenger Protection Regulations, [SOR/2019-150](#)

Canadian Transportation Agency Designated Provisions Regulations, [SOR/99-244](#)

Canadian Transportation Agency General Rules, [SOR/2005-35](#) (repealed)

Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings), [SOR/2014-104](#)

Rules of Civil Procedure, [R.R.O. 1990, Reg. 194](#)

C. **Jurisprudence**

2505243 Ontario Limited (ByPeterandPaul.com) v. Princes Gates Hotel Limited Partnership, [2022 ONCA 700](#)

Affleck v. AGO, [2019 ONSC 1292](#)

Agency Decision No. [19-AT-A-2024](#)

Agency Decision No. [149-C-A-2022](#)

Agency Decision No. [LET-P-A-67-2011](#)

Air Passenger Rights v. The Attorney General of Canada, [2025 ONSC 7189](#)

Baffinland Iron Mines v. Tower-EBC, [2021 ONSC 5639](#)

Canada (Attorney General) v. Canadian Civil Liberties Association, [2026 FCA 6](#)

Canada (Citizenship and Immigration) v. Canadian Council for Refugees, [2021 FCA 13](#)

Durham Area Citizens for Endangered Species v. Ontario (Minister of Natural Resources and Forestry), [2014 ONSC 7167](#)

Fair Voting BC v. Canada (Attorney General), [2024 ONCA 619](#)

Geddes v. Air Canada, [2021 NSSM 27](#)

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Gotham Green Partners, LLC v. iAnthus Capital Holdings, Inc., [2021 ONSC 6474](#)

International Air Transport Association v. Canada (Transportation Agency), [2024 SCC 30](#)

International Air Transport Association v. Canadian Transportation Agency, [2022 FCA 211](#)

Ishaq v. Canada (Citizenship and Immigration), [2015 FCA 151](#)

Jones v. Tsige, [2011 CanLII 99894](#) (Ont. C.A.)

Karkoulis v. Karkoulis, [2023 ONSC 499](#)

Lukács v. Canada (Transport, Infrastructure and Communities), [2015 FCA 140](#)

McIver v. Alberta (Ethics Commissioner), [2017 ABQB 695](#)

North American Financial Group Inc. v Ontario Securities Commission, [2017 ONSC 2965](#)

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada, [1990 CanLII 6886](#)

Pictou Landing First Nation v. Canada (Attorney General), [2014 FCA 21](#)

R. v. White, [2005 ABCA 435](#)

Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour),
[2022 FCA 67](#)

S.G.B. v. S.J.L., [2010 ONCA 578](#)

Save the Eaton's Building Coalition v. Winnipeg (City), [2001 MBCA 186](#)

Seismotech IP Holdings Inc. v. John Does, [2023 FC 1335](#)

Tsleil-Waututh Nation v. Canada (Attorney General), [2017 FCA 174](#)

SCHEDULE “B” – EXCERPTS FROM RELEVANT STATUTES AND REGULATIONS

A. Canada Transportation Act

AIR TRAVEL COMPLAINTS

Complaint resolution officers

[85.02](#) (1) The Chairperson, or a person designated by the Chairperson, shall designate, from among the members and staff of the Agency, persons to act as complaint resolution officers for the purpose of sections 85.04 to 85.12.

Limits on powers and duties

(2) A member of the Agency or its staff who acts as a complaint resolution officer has the powers, duties and functions of a complaint resolution officer and not of the Agency.

Clarification — proceedings

(3) Proceedings before a complaint resolution officer are not proceedings before the Agency.

Non-application of certain provisions

[85.03](#) Sections 17, 25 and 36.1 do not apply in respect of any matter that may be dealt with under sections 85.04 to 85.12.

Complaints related to tariffs

[85.04](#) (1) A person may file a complaint in writing with the Agency if

- (a) the person alleges that a carrier failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs;
- (b) the person is adversely affected by the failure to apply that fare, rate, charge or term or condition of carriage;
- (c) the person seeks compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred as a result of that failure; and
- (d) the person made a written request to the carrier to resolve the matters to which the complaint relates but they were not resolved within 30 days after the day on which the request was made.

Refusal to deal with complaint

(2) A complaint resolution officer may refuse to deal with a complaint or, at any time, cease dealing with it if they are of the opinion that

- (a) the criteria set out in subsection (1) have not been met;
- (b) it is clear on the face of the complaint that the carrier has complied with the obligations set out in its tariffs; or
- (c) the complaint is vexatious or made in bad faith.

Mediation

[85.05](#) (1) If the complaint resolution officer does not refuse under subsection 85.04(2) to deal with a complaint, they shall mediate the complaint and start the mediation no later than the 30th day after the day on which the complaint is filed.

Filing of mediation agreement

(2) An agreement that is reached as a result of mediation may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

Decision on complaint

[85.06](#) (1) If no agreement is reached as a result of mediation, and the complaint resolution officer does not cease dealing with the complaint under subsection 85.04(2), the complaint resolution officer shall, no later than the 60th day after the day on which the mediation started, and based on the information provided by the complainant and the carrier,

- (a) make an order under subsection 85.07(1); or
- (b) make an order dismissing the complaint.

Status of order

(2) An order referred to in subsection (1) is not an order or decision of the Agency.

Order related to tariffs

[85.07](#) (1) If the complaint resolution officer finds that the carrier that is the subject of the complaint has failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs, the complaint resolution officer may order the carrier to

- (a) apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs; and
- (b) compensate the complainant for any expenses they incurred as a result of the carrier's failure to apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs.

Onus

(2) If a complaint raises an issue as to whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for safety reasons or is outside a carrier's control, it is presumed to be within the carrier's control and not required for safety reasons unless the carrier proves the contrary.

Filing of order and enforcement

(3) An order made under subsection (1) may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

Prior decisions to be taken into account

[85.08](#) In regards to the issue of whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for safety reasons or is outside a carrier's control, a complaint resolution officer who is dealing with a complaint in respect of a

flight shall take into account any prior decision on that issue that is contained in an order made by a complaint resolution officer in respect of that flight.

Confidentiality of information

[85.09](#) (1) All matters related to the process of dealing with a complaint shall be kept confidential, unless the complainant and the carrier otherwise agree, and information provided by the complainant or the carrier to the complaint resolution officer for the purpose of the complaint resolution officer dealing with the complaint shall not be used for any other purpose without the consent of the one who provided it.

Communication of information

(2) Subsection (1) does not apply so as to prohibit

- (a) the communication of information to the Agency;
- (b) the communication of information to complaint resolution officers for the purpose of assisting them in the exercise of their powers or the performance of their duties and functions; or
- (c) the making public by the Agency of information under sections 85.14 and 85.15.

Procedure

[85.10](#) Subject to the procedure set out in the guidelines referred to in section 85.12, a complaint resolution officer shall deal with complaints in the manner that they consider appropriate in the circumstances.

Assistance by Agency

[85.11](#) The Agency may, at a complaint resolution officer's request, provide administrative, technical and legal assistance to the complaint resolution officer.

Guidelines

[85.12](#) (1) The Agency may issue guidelines

- (a) respecting the manner of and procedures for dealing with complaints filed under subsection 85.04(1); and
- (b) setting out the extent to which and the manner in which, in the Agency's opinion, any provision of the regulations applies with regard to complaints.

Guidelines binding

(2) A guideline is, until it is revoked or modified, binding on any complaint resolution officer dealing with a complaint filed under subsection 85.04(1).

Publication

(3) Each guideline shall be published on the Agency's website, in the Canada Gazette and in any other manner that the Agency considers appropriate.

Statutory Instruments Act

(4) The Statutory Instruments Act does not apply to the guideline.

Referral to panel

85.13 (1) If no agreement is reached as a result of the mediation of a complaint under section 85.05, the Chairperson or a person designated by them may, at the request of the complaint resolution officer who conducted the mediation, and if the Chairperson or person designated by them, as the case may be, considers that the complexity of the complaint requires it, refer the complaint to a panel of at least two members. Those members, none of whom is to be the complaint resolution officer who conducted the mediation, shall act as the complaint resolution officers in respect of the complaint for the purposes of sections 85.06 to 85.12.

Clarification – panels

(2) A reference in subsections 85.02(2) and (3) and sections 85.06 to 85.12 to a complaint resolution officer is considered to include a reference to a panel.

Publication — order or summary of order

85.14 (1) The Agency shall make public

(a) in the case of an order made by a single complaint resolution officer

(i) the number of the flight to which the order relates,

(ii) the date of departure of the flight that is indicated on the complainant's ticket,

(iii) any decision contained in the order in regards to the issue of whether any flight delay, flight cancellation or denial of boarding was within the carrier's control, was within the carrier's control but was required for safety reasons or was outside the carrier's control, and

(iv) a statement as to whether or not the complaint resolution officer ordered the carrier to provide compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred; and

(b) subject to subsection (2), in the case of an order made by a panel, the entire order.

Exception

(2) The Agency may, at the request of a complainant or carrier, decide to keep confidential any part of an order, other than the information referred to in subparagraphs (1)(a)(i) to (iv).

Part of annual report

85.15 The Agency shall, as part of its annual report, indicate the number and nature of the complaints filed under subsection 85.04(1), the names of the carriers against whom the complaints were made, the number of complaints for which an order was made under subsection 85.07(1) and the systemic trends observed.

Fees and charges

85.16 (1) The Agency shall establish fees or charges for the purpose of recovering all or a portion of the costs that the Agency determines to be related to the process of dealing with complaints — other than complaints disposed of under subsection 85.04(2) — under sections 85.05 to 85.12.

Carrier's liability

(2) The carriers that are the subject of complaints — other than complaints disposed of under subsection 85.04(2) — are liable for the payment of the fees or charges.

[...]

TRANSPORTATION OF PERSONS WITH DISABILITIES

[...]

Inquiry — barriers to mobility

[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 barrier to the mobility of persons with disabilities.

Remedies

(2) On determining that there is an undue barrier to the mobility of persons with disabilities, the Agency may do one or more of the following:

- (a) require the taking of appropriate corrective measures;
- (b) direct that compensation be paid for any expense incurred by a person with a disability arising out of the barrier, including for any costs of obtaining alternative goods, services or accommodation;
- (c) direct that compensation be paid for any wages that a person with a disability was deprived of as a result of the barrier;
- (d) direct that compensation be paid up to a maximum amount of — subject to the annual adjustments made under section 172.2 — \$20,000, for any pain and suffering experienced by a person with a disability arising out of the barrier;
- (e) direct that compensation be paid up to a maximum amount of — subject to the annual adjustments made under section 172.2 — \$20,000, if the Agency determines that the barrier is the result of a wilful or reckless practice.

Compliance with regulations

(3) If the Agency is satisfied that regulations made under subsection 170(1) that are applicable in relation to a matter have been complied with or have not been contravened, the Agency may determine that there is an undue barrier in relation to that matter but if it does so, it may only require the taking of appropriate corrective measures.

Inquiry — subsection 170(1)

[172.1](#) (1) The Agency may, on application, inquire into a matter concerning any regulations made under subsection 170(1) to determine if the applicant has suffered physical or psychological harm, property damage or economic loss arising out of — or has otherwise been adversely affected by — a contravention of any provision of those regulations.

Remedies

(2) On determining that an applicant has suffered physical or psychological harm, property damage or economic loss arising out of — or has otherwise been adversely affected by — a contravention referred to in subsection (1), the Agency may do one or more of the following:

- (a) require the taking of appropriate corrective measures;
- (b) direct that compensation be paid to the applicant for any expense incurred by them arising out of the contravention, including for any costs of obtaining alternative goods, services or accommodation;
- (c) direct that compensation be paid to the applicant for any wages that they were deprived of as a result of the contravention;
- (d) direct that compensation be paid to the applicant up to a maximum amount of — subject to the annual adjustments made under section 172.2 — \$20,000, for any pain and suffering experienced by them arising out of the contravention;
- (e) direct that compensation be paid to the applicant up to a maximum amount of — subject to the annual adjustments made under section 172.2 — \$20,000, if the Agency determines that the contravention is the result of a wilful or reckless practice.

B. Canadian Transportation Agency – 2005 Rules (repealed)

Claim for confidentiality

23. (1) The Agency shall place on its public record any document filed with it in respect of any proceeding unless the person filing the document makes a claim for its confidentiality in accordance with this section.

Prohibition

(2) No person shall refuse to file a document on the basis of a claim for confidentiality alone.

Form of claim

(3) A claim for confidentiality in respect of a document shall be made in accordance with subsections (4) to (9).

C. Canadian Transportation Agency – 2014 Rules

Filing

1 (1) Any document filed under these Rules must be filed with the Secretary of the Agency.

Agency's public record

(2) All filed documents are placed on the Agency's public record unless the person filing the document files, at the same time, a request for confidentiality under section 31 in respect of the document.

[...]

[31](#) (1) A person may file a request for confidentiality in respect of a document that they are filing. The request must include the information referred to in Schedule 17 and must be accompanied by, for each document identified as containing confidential information,

(a) one public version of the document from which the confidential information has been redacted; and

(b) one confidential version of the document that identifies the confidential information that has been redacted from the public version of the document and that includes, at the top of each page, the words: "CONTAINS CONFIDENTIAL INFORMATION" in capital letters.

D. Canadian Charter of Rights and Freedoms

GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

[1](#) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

[2](#) Everyone has the following fundamental freedoms: [...]

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication [...]

E. Constitution Act, 1982

GENERAL

Primacy of Constitution of Canada

[52](#) (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

F. Rules of Civil Procedure

RULE 13: INTERVENTION

Leave to Intervene as an Added Party

[13.01](#) (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

Leave to Intervene as a Friend of the Court

[13.02](#) Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

AIR PASSENGER RIGHTS v. THE ATTORNEY GENERAL OF CANADA
Applicant / Responding Party *Respondent / Responding Party*

Court File No. CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Ottawa

**FACTUM OF THE APPLICANT /
RESPONDING PARTY**
(Airlines' Motion for Leave to Intervene)

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