

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed September 11, 2025)

I, **Dr. Gábor Lukács**, of the City of Halifax, in the Province of Nova Scotia, **AFFIRM**:

1. I have personal knowledge of the matters I address in this affidavit, except where I indicate otherwise or the context suggests that I have obtained the information from other sources, in which case I have stated the source of my information and I verily believe that information to be true.
2. On May 28, 2025, I provided an affidavit in support of the within application. I have since reviewed the responding evidence of the Attorney General of Canada, namely the Affidavit of Vincent Millette, affirmed August 29, 2025.
3. I make the following statements in reply to Mr. Millette's affidavit. Unless otherwise indicated, where I have used terms in this affidavit, they have the same meanings as defined in my May 28, 2025 affidavit.

A. Mr. Millette's Misrepresents the Involvement of Agency Members in Air Passenger Complaints Prior to 2023

4. Starting at para. 13 of Mr. Millette's affidavit, he describes the air passenger complaints process as it existed at the inception of the *APPR* in 2019.

5. His affidavit suggests that complaints were managed, at all stages, by Agency "members". At para. 14 of Mr. Millette's affidavit, he states:

14. This process allowed for three stages, each conducted by a different individual if the previous one did not resolve the complaint: facilitation, mediation and adjudication. Thus, if facilitation, overseen by a first Agency Member, was unsuccessful, a second Agency Member would engage the parties in mediation. If this were unsuccessful, a third Agency Member would adjudicate the complaint. Adjudication was resource-intensive, as it was conducted by GIC-appointed Agency Members with a high level of expertise in addressing complex, highly specialized and high-stakes transportation industry matters, and required full written decisions, with reasons. These decisions were published in English and French on the Agency website.¹

6. At para. 19 of Mr. Millette's affidavit, he states:

19. Agency members quickly became bogged down by the number of *APPR*-related complaints, including those with respect to delay, cancellation or denial of boarding complaints which did not require their level of expertise. Since the complaint resolution process entailed three separate steps as outlined above and the quasi-judicial Agency Members were required to issue lengthy decisions for each complaint, the system was untenable and consumers were deprived of the timely protection intended by the *APPR*.²

7. Neither "Agency Members" nor "Agency members" is defined in Mr. Millette's affidavit; however, section 7(2) and 9(1) of the *CTA* define the composition of the Agency and its members as follows:

7 ... (2) The Agency shall consist of not more than five members appointed by the Governor in Council, and such temporary members as are appointed under subsection 9(1), each of whom must, on appointment or reappointment and while serving as a member, be a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

...

¹ Emphasis added.

² Emphasis added.

9(1) The Minister may appoint temporary members of the Agency from the roster of individuals established by the Governor in Council under subsection (2).

8. Prior to September 29, 2023 – which is the period to which Mr. Millette’s evidence on this point refers – the *CTA* contained the following sections governing the air passenger complaints process:

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

(2) The Agency or a person authorized to act on the Agency’s behalf shall report to the parties outlining their positions regarding the complaint and any resolution of the complaint.

(3) If the complaint is not resolved under this section to the complainant’s satisfaction, the complainant may request the Agency to deal with the complaint in accordance with the provisions of this Part under which the complaint has been made.

(4) A member of the Agency or any person authorized to act on the Agency’s behalf who has been involved in attempting to resolve or mediate the complaint under this section may not act in any further proceedings before the Agency in respect of the complaint.

(5) The period of 120 days referred to in subsection 29(1) shall be extended by the period taken by the Agency or any person authorized to act on the Agency’s behalf to review and attempt to resolve or mediate the complaint under this section.³

The duties described in the above provisions are clearly not exclusive to Agency members.

9. I note that sections 13 and 19 of the *CTA* govern the manner with which persons employed as the staff of the Agency are authorized to carry out various business on its behalf:

13 The Chairperson is the chief executive officer of the Agency and has the supervision over and direction of the work of the members and its staff, including the apportionment of work among the members and the assignment of members to deal with any matter before the Agency. ...

³ Emphasis added.

19 The Secretary of the Agency and the other officers and employees that are necessary for the proper conduct of the business of the Agency shall be appointed in accordance with the *Public Service Employment Act*.⁴

I believe that it is these sections by which Agency staff – not “members” – were assigned to conduct mediations under the former air passenger complaints process.

10. In fact, I am aware from my longstanding involvement in air passenger rights and complaint proceedings that at the time that section 85.1 was in force, the Agency had a staff division referred to as Mediation Services, which was housed within its Dispute Resolution Branch.

11. Mediation Services had specifically designated staff whose responsibility was mediation. For example, I corresponded, at the time, with Lora Thacker, whose title was “Officer, Mediation Services”, and with Mariko Nagata, whose title was “Mediator/Team Leader”. These individuals were Agency staff, not “members” of the Agency, within the meaning of the statute.

12. Moreover, I have previously given evidence of the Agency staff’s performance and conduct under the previous complaint regime. On June 25, 2017, I provided an affidavit describing the practices I had observed, among Agency staff, of discouraging and turning away complainants. I attach as exhibits several pieces of correspondence between complainants and Agency staff reflecting my concerns. These Agency staff had closed complaints without lawful authority, misled complainants to believe their complaint was dismissed, and discourage complainants from pursuing formal adjudication of their complaints. None of these individuals were “members”, as Mr. Millette’s evidence suggests. Attached hereto as [Exhibit “A”](#) is an excerpt of my 2017 affidavit (which I have side-barred to highlight the relevant statements), as well as the correspondence exhibit material.

13. The former section 85.1 of the *CTA* was repealed and replaced by section 459 of the *Budget Implementation Act, 2023, No. 1*, S.C. 2023, c. 26, to implement the current

⁴ Emphasis added.

statutory framework for air passenger complaints. The amending statute and legislative history of the *CTA* are both available online.⁵

B. Mr. Millette Conflates Mediation with Issuing a Legally Binding Decision

14. Starting at para. 37 of Mr. Millette’s affidavit, he describes the current air passenger complaints process as a “collaborative dispute resolution model”. At para. 39 of his affidavit, he states:

39. The new process was developed for a more collaborative dispute resolution model. CROs were primarily supposed to mediate disputes where parties could not resolve them on their own, with a CRO decision coming only if the parties could not agree. Confidentiality is a crucial component of mediation processes to encourage frank, open discussion and therefore, the 2023 *CTA* amendments included a confidentiality provision that covers the mediation and decision-making process. This is similar to what the *CTA* provided for prior to the 2023 amendments, where all matters pertaining to the mediation were confidential. These confidentiality measures guarantee protection of information for all parties involved, unless parties mutually agree to waive confidentiality.

15. However, the *CTA* itself distinguishes between mediation and adjudication as separate stages. It states:

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.

(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.

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.

16. When the CRO finds, under section 85.06(1), that the carrier is liable to passenger, section 85.07(1) states:

⁵ See https://laws.justice.gc.ca/eng/AnnualStatutes/2023_26/page-41.html#h-106 and [https://laws-
lois.justice.gc.ca/eng/Acts/C-10.4/PITIndex.html](https://laws-
lois.justice.gc.ca/eng/Acts/C-10.4/PITIndex.html).

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.

...

(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.⁶

17. The authority and enforcement of an order of the Agency is set out in section 33(1) of the *CTA*:

33 (1) A decision or order of the Agency may be made an order of the Federal Court or of any superior court and is enforceable in the same manner as such an order.⁷

18. In addition to the procedure set out in the statute, section 85.12 of the *CTA* permits the Agency to create guidelines governing procedures for air passenger complaints, which are *binding* until revoked or modified:

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.

(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).

(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.

19. The Agency has issued a guideline entitled the *Guideline on the Canadian Transportation Agency's Complaint Resolution Office air travel complaints process*

⁶ Emphasis added.

⁷ Emphasis added.

[“**Guideline**”]. The *Guideline* is published on the Agency’s website.⁸ A copy is attached hereto as [Exhibit “B”](#).

20. The *Guideline* also distinguishes “Mediation” as a separate stage from “Final decision and order”. It also specifies that the complainant and the airline *must agree* to participate in mediation in order for mediation to even occur. The necessary implication of this is that the default dispute route – if mediation is not agreed to – is adjudication and the rendering of a final decision and order.

21. The specific sections of the *Guideline* I refer to above state as follows:

12. Mediation

(1) If a complaint is eligible, the Complaint Resolution Officer will perform a check to determine whether the passenger and airline have agreed to mediate the complaint.

(2) The Complaint Resolution Officer will send an acknowledgment to the passenger and airline indicating whether the parties agreed to mediate after the receipt of the reply, but no later than 30 calendar days after the day on which the Start Notice was issued.

(3) If in their acknowledgment the Complaint Resolution Officer indicates that the passenger or the airline have refused mediation, the mediation ends and the complaint will proceed to final decision-making.

(4) If both parties have agreed to mediate, the Complaint Resolution Officer will provide the passenger and the airline with information about:

- (a) the mediation process;
- (b) how to engage in settlement discussions;
- (c) the issues that arise from the passenger's complaint and that would need to be decided by the Complaint Resolution Officer; and
- (d) any statutory or tariff obligations that apply to the complaint.

(5) The passenger and airline will be given 20 calendar days to attempt to reach a settlement agreement.

13. Final decision and order

(1) If the passenger and airline did not agree to mediate or if they did not reach a settlement agreement, the Complaint Resolution Officer must make a final, binding and confidential decision.

⁸ <https://otc-cta.gc.ca/eng/guideline-canadian-transportation-agencys-complaint-resolution-office-air-travel-complaints-process>.

(2) A final decision and order will be issued no later than 60 calendar days after the start of mediation.

(3) A copy of the final decision and order will be provided to the passenger and the airline.

(4) The complaint process and the Complaint Resolution Officer's role end when the final decision and order are issued. The Complaint Resolution Officer will provide no other explanation regarding their decision or respond to any communication relating to the complaint or the final decision and order.⁹

C. Mr. Millette's Evidence on the Confidentiality Measures Previously Taken by the Agency is Incorrect and Misleading

22. In his affidavit, Mr. Millette comments on the confidentiality practices under the previous complaint system operated. At para. 41 of his affidavit, he states:

41. Additionally, complainants under the previous system would frequently provide personal information, seemingly unaware that it would be part of a public record. The Agency would have to be proactive in identifying potentially sensitive information and taking steps to protect it. This was both a time-consuming task and one which posed risks of sensitive personal information being disclosed in the published reports.

23. The Agency's previous rules, cited as the *Canadian Transportation Agency General Rules*, SOR/2005-35 [**Old Rules**], which have been repealed but are available online,¹⁰ provide that documents filed under the previous complaint system form part of its "public record":

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).

⁹ Bold emphasis in original; underlined emphasis added.

¹⁰ <https://laws-lois.justice.gc.ca/eng/regulations/sor-2005-35/page-1.html>.

24. The Agency's current rules, cited as *Canadian Transportation Agency Rules (Dispute Proceedings at Certain Rules Applicable to All Proceedings)*, SOR/2014-104 ["**New Rules**"], which are available online,¹¹ contain similar language:

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.

25. I have dealt with at least two dozen complaints before the Agency, including confidentiality issues in those proceedings. Some of those proceedings have dealt with the Agency's confidentiality rules and related issues. In my experience, under the above-referenced sections of both the Old Rules and the New Rules, confidentiality is triggered when the request of a party is granted to a party, which occurs when the party satisfies the legal test. Confidentiality is not imposed at the Agency's own, unilateral volition. As such, is unclear to me why Mr. Millette suggests that Agency staff were screening filings for redaction outside of the process defined in their own rules.

26. I will provide four further examples which illustrate that the confidentiality of materials before the Agency is the exception, not the rule – and that confidentiality was never unilaterally imposed by the Agency, as Mr. Millette suggests.

27. First, in 2011, the Agency issued a decision on a confidentiality request made by Air Canada. In that decision letter, it is clear that the requestor must identify *specific* harms

¹¹ <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-104/page-1.html>.

arising from the disclosure of the material on the public record. The decision includes the following statements:

... 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 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.

A copy of this decision, numbered LET-P-A-67-2011, is attached hereto as [Exhibit "C"](#). It is also available online.¹²

28. Second, in 2015, the Federal Court of Appeal considered the "public record" sections of the Old Rules and the New Rules in its decision in *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, which is available online.¹³

29. I was a party to this judicial review proceeding. In its decision, the court agreed that "the open court principle applies to the Agency when it undertakes dispute resolution proceedings in its capacity as a quasi-judicial tribunal" (para. 37). In respect of the "public record", Ryer JA, writing for a unanimous panel of the court, stated:

[74] In interpreting the term [public] record, in subsection 23(1) of the Old Rules, I adopt the meaning referred to above, namely a documentary memorialization of the proceedings that have come before the Agency. The additional word "public" provides a useful contrast to the situation in which materials on the record have been determined by the Agency to be confidential. In other words, ... the Agency's Public Record can be viewed as a record that contains no confidential documents.

30. The court also distinguished between documents held by the Agency as a government institution from those held as an adjudicative body:

[78] The documents initiating a dispute may well be required to be kept in Personal Information Banks, immediately after their receipt by the Agency. However, compliance

¹² <https://otc-cta.gc.ca/eng/ruling/let-p-a-67-2011>

¹³ <https://canlii.ca/t/gjfvv>.

by the Agency with its obligation in subsection 23(1) of the Old Rules means that those documents have left the cloistered confines of such banks and moved out into the sunlit Public Record of the Agency. In my view, the act of placing documents on the Public Record is an act of disclosure on the part of the Agency. Thus, documents placed on the Agency's Public Record are no longer "held" or "under the control" of the Agency acting as a Government Institution. From the time of their placement on the Public Record, such documents are held by the Agency acting as a quasi-judicial, or court-like body, and from that time they become subject to the full application of open court principle. It follows, in my view, that, once on the Public Record, such documents necessarily become Publicly Available. ...

[80] In conclusion, it is my view that once the Agency placed the documents in the Cancun Matter on its Public Record, as required by subsection 23(1) of the Old Rules, those documents became Publicly Available. As such, the limitation on their disclosure, contained in subsection 8(1) of the *Privacy Act*, was no longer applicable by virtue of subsection 69(2) of the *Privacy Act*. Accordingly, Dr. Lukács was entitled to receive the documents that he requested and the Agency's refusal to provide them to him was impermissible.¹⁴

31. Third, prior to the institution of the current complaint process in 2023, the Agency published a brochure on its website entitled *Protecting your personal information during adjudication: A guide for air passengers*. This brochure, dated April 2022, explains as follows:

Going to adjudication is like going to court, except usually you don't appear in person. You give your side of the complaint, and the airline gives its side, in emails and other documents. Anyone can ask to see these emails and documents, just like they could ask to see items from a court case.

This is one way that adjudication is different from other complaint stages. In the other stages, information you give us stays private. But once you move to adjudication, other people could ask to see it -- even if it includes things like your credit card or passport details.¹⁵

Attached hereto as [Exhibit "D"](#) is a copy of this brochure.

32. Fourth, in Decision No. 149-C-A-2022 (a 2022 decision), the Agency dealt with confidentiality requests in the following terms:

[8] The Agency varies section 31 to conform with the approach to court openness articulated in *Sherman Estate*, pursuant to subsection 5(2) and section 6 of the [New] Rules. Accordingly, a person seeking confidentiality over information that is relevant to

¹⁴ Emphasis added.

¹⁵ Emphasis added.

the dispute proceeding must establish all of the three prerequisites outlined above for the threshold to be met under section 31 of the [New] Rules.¹⁶

Attached hereto as [Exhibit “E”](#) is a copy of this decision. It is available online.¹⁷

33. In the current model – enacted in 2023 – section 85.02(3) of the *CTA* states that “[p]roceedings before a complaint resolution officer are not proceedings before the Agency.” As such, prior to this enactment, the New Rules applied to air passenger complaints. Air passenger complaint procedures are now governed by the relevant sections of the *CTA* directly and the *Guidelines*, which are created under section 85.12 (as described above).

34. Nonetheless, the prior air passenger complaint process described by Mr. Millette was previously subject to the New Rules, and before that, the Old Rules, which are not as he describes in relation to confidentiality. The new process also continues to clearly delineate mediation and adjudication, and even maintains that mediation is optional.

35. I also note that even since the current air passenger complaint model was enacted in 2023, the Agency continues to publicly acknowledge that its adjudicative role is subject to the open courts principle. For instance, air passenger complaints relating to accessibility are not dealt with by CROs. A decision from one such complaint, numbered 19-AT-A-2024, states:

[15] The open court principle applies to the Agency in its capacity as a quasi-judicial tribunal. This principle requires that, with limited exceptions, proceedings and their associated records be made public unless the Agency grants a request for confidentiality under the Rules. In *Sherman Estate v Donovan (Sherman Estate)*, the Supreme Court of Canada (SCC) acknowledged court openness as a constitutionally protected right because it helps keep the justice system fair and accountable. The SCC explained that, because of this importance to liberal democracy, the bar for overturning the open court principle and granting confidentiality in court proceedings is high, even when disclosure may result in inconvenience or embarrassment for participants. The SCC further explained that, as a result, confidentiality orders limiting court openness can only be made in rare circumstances. This principle not only applies to the courts but also applies to the Agency when it acts in its capacity as a quasi-judicial decision-maker.

¹⁶ Emphasis added.

¹⁷ <https://otc-cta.gc.ca/eng/ruling/149-c-a-2022>.

Attached hereto as [Exhibit "F"](#) is a copy of this decision. It is also available online.¹⁸

D. Conclusion

36. I affirm this affidavit for use in this proceeding and for no other or improper purpose.

AFFIRMED remotely by Dr. Gábor Lukács, stated as being located in the City of Halifax, in the Province of Nova Scotia, before me in the Town of Fort Frances, in the District of Rainy River, on the 11th day of September, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits

Douglas W. Judson
Barrister & Solicitor (LSO No. 70019H)
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DR. GÁBOR LUKÁCS

¹⁸ <https://otc-cta.gc.ca/eng/ruling/19-at-a-2024>.

This is

Exhibit “A”

to the Affidavit of Dr. Gábor Lukács,
affirmed September 11, 2025



COMMISSIONER FOR TAKING AFFIDAVITS

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- (b) *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, relating to denied boarding compensation.
5. I have been offering *pro bono* assistance and representation to passengers in their disputes with airlines to the extent that I am permitted to do so given that I am not a member of the bar in any capacity.
 6. I have been promoting air passenger rights and referring passengers mistreated by airlines to legal information and resources through the press and the social media.
 7. I am a co-founder and administrator of the “Air Passenger Rights (Canada)” Facebook Group, which numbers over 4,000 members, and serves as a discussion forum for passengers to exchange information about their travel and disputes with airlines.

B. The Agency’s practice of discouraging and turning away complainants

8. Between 2000 and 2017, the Agency issued a total of 369 final decisions and determinations relating to air travel, that is, 21 per year on average. In 2016 and 2017, the Agency issued 11 such decisions and determinations per year. A printout of the Agency’s official website on decisions and determinations is attached and marked as **Exhibit “A”**.
9. Starting in 2014, I began to receive communications from passengers not only about their disputes with airlines, but also about Canadian Transportation Agency (“Agency”) staff turning them away and advising them that their complaint filed with the Agency would be closed. Common features of these cases are that:
 - (a) the complaint file was closed by a case officer reviewing the complaint under s. 85.1(1) of the *Canada Transportation Act* (the “Act”), not a Member of the Agency;
 - (b) the Agency did not make a decision or order dismissing the complaint, yet complainants were made to understand that their complaint had been dismissed; and
 - (c) complainants were either not informed about their right under s. 85.1(3) of the *Act* to ask for formal adjudication of their complaints or were discouraged by Agency staff to exercise that right.

10. Ms. Anna Bartell advised me and I do verily believe that:

- (a) In 2013, Ms. Bartell filed a complaint with the Agency against Air Canada.
- (b) In August 2013, an Agency case officer advised her by telephone that in the case officer's opinion, Air Canada acted properly.
- (c) Ms. Bartell received no written communication about the outcome of her complaint.
- (d) On or around May 7, 2014, Ms. Bartell contacted the Agency to follow up on her complaint, and spoke on the telephone to Ms. Yinka A. Aiyede, Director, Air Travel Complaints at the Agency. During the conversation, Ms. Aiyede attempted to dissuade Ms. Bartell from proceeding to formal adjudication under s. 85.1(3), and also attempted to dissuade her from associating with me.
- (e) On or around May 13, 2014, Ms. Bartell put her concerns about the conduct of Agency staff into writing, and wrote to Ms. Aiyede, among other things, that:

I will say I have been deeply disturbed by your attempt to dissuade me from filing a formal complaint, which is, as I understand, is my right as a citizen. And Lastly I have been also troubled by your attempt to dissuade me from associating with Mr. Lukacs and from involving him in my case.

A copy of Ms. Bartell's email, which was carbon copied to me, is attached and marked as **Exhibit "B"**.

11. Mr. Tony Mariani advised me and I do verily believe that:

- (a) On September 8, 2015, Mr. Mariani filed a complaint with the Agency against Air Canada.
- (b) On April 1, 2016, Mr. Robert Armitage, Case Officer, Dispute Resolution Branch at the Agency, called Mr. Mariani and advised him that the complaint would be closed. On the same day, Mr. Armitage informed Mr. Mariani by email that:

For the reasons discussed, it would appear that Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce. As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its domestic tariff, the complaint you filed with the Agency will be closed.

- (c) On May 13, 2016, in response to further inquiries about the reasons for the closing of his complaint, Mr. Armitage repeated that:

[...] it would appear that the airline has acted in a manner that is consistent with the provisions and regulations which the Agency has the authority to enforce. Because the Agency's role in the review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions in its tariff, the complaint you filed with the Agency has been closed.

- (d) Neither Mr. Armitage nor anyone else at the Agency informed Mr. Mariani about his right pursuant to s. 85.1(3) of the *Act* to ask that the Agency deal with his complaint by way of formal adjudication.

A copy of the chain of emails between Mr. Mariani and Mr. Armitage is attached and marked as **Exhibit "C"**.

12. Mr. Frank Morris advised me and I do verily believe that:

- (a) On or around June 13, 2016, Mr. Morris filed a complaint with the Agency against WestJet.
- (b) On July 29, 2016, Ms. Debra Orr, Senior Complaints Officer, Air & Accessibility ADR Directorate at the Agency, informed Mr. Morris that:

As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its international tariff, the complaint you filed with the Agency will be closed.

A copy of Ms. Orr's email, which is notably lacking any information about the right of Mr. Morris under s. 85.1(3) of the *Act*, is attached and marked as **Exhibit "D"**.

- (c) It was only after Ms. Sophia Harris, a reporter at the Canadian Broadcasting Corporation (CBC), inquired into the Agency's practice of turning away complaints that Mr. Morris's file was swiftly reopened and resolved.

13. Mr. Jonathan Hislop advised me and I do verily believe that:

- (a) In 2016, Mr. Hislop filed a complaint with the Agency against Air Transat.
- (b) Mr. Hislop was contacted by Mr. Armitage by telephone.

(c) Mr. Armitage stated that in his opinion there was no evidence that Air Transat did not follow the tariff. Mr. Armitage declined to answer whether the Agency had any role in ensuring that the tariff was clear.

(d) On October 6, 2016, Mr. Armitage wrote to Mr. Hislop that:

Despite our efforts to resolve your complaint with Air Transat, we were unable to facilitate a resolution to your full satisfaction. In light of this outcome, we are closing your facilitation complaint file.

A copy of Mr. Armitage's email, which is notably lacking any information about the right of Mr. Hislop under s. 85.1(3) of the *Act*, is attached and marked as **Exhibit "E"**.

14. Mr. Gerard Cooke advised me and I do verily believe that:

(a) In May 2015, Mr. Cooke filed a complaint with the Agency against Air Canada.

(b) In October 2015, Ms. Angela Gaetano, Case Officer, Air Travel Complaints Division, Dispute Resolution Branch at the Agency, contacted Mr. Cooke by telephone and advised him that his complaint had been closed. Ms. Gaetano communicated to Mr. Cooke that the closing of his file was final, and did not inform Mr. Cooke about the possibility of taking his complaint to mediation or formal adjudication under s. 85.1(3) of the *Act*.

(c) On January 2, 2017, Mr. Cooke complained to Mr. Douglas W. Smith, Chief Dispute Resolution Officer, Dispute Resolution Branch at the Agency, about the conduct of Ms. Gaetano:

I am writing to complaint about the conduct of Angela Gaetano who was assigned to my complaint case No. 15-50516 against Air Canada, dated May 5, 2015.

First, Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

I have recently found out that this was clearly not the case. Gaetano is not a Member of the Agency within the meaning of s. 7(2) of the *Canada Transportation Act*, and as such she has no authority to rule on my complaint.

Second, Gaetano misrepresented to me the obligations of Air Canada

under its Tariff. She neither considered nor informed me about the liability of Air Canada under Article 19 of the *Montreal Convention*, which is incorporated in Air Canada's International Tariff Rule 105(B)(5).

A copy of Mr. Cooke's email, which was carbon copied to me, is attached and marked as **Exhibit "F"**.

- (d) Mr. Cooke denies receiving email communication from Ms. Gaetano with information about his right under s. 85.1(3) of the *Act* to seek formal adjudication. On January 11, 2017, Mr. Cooke wrote to Mr. Smith:

I dispute the authenticity of Ms. Gaetano's email purporting to be dated October 14, 2015. I have grounds to believe that this document has been fabricated recently and backdated to fraudulently cover up the misconduct of Ms. Gaetano.

1. I have no record of said email and substantial portions of its content have never been communicated to me.

2. Ms. Gaetano communicated to me orally the opposite, namely, that the closing of my case is final, and the end of the road. She did not advise me about the possibility of taking my issue to mediation or formal adjudication.

A copy of Mr. Cooke's email, which was carbon copied to me, is attached and marked as **Exhibit "G"**.

- (e) On February 1, 2017, Ms. Gaetano wrote to Ms. Isabelle Lacroix, a technician at the Agency:

Are you able to open my case (15-50516-Cooke) that has already been certified so that I can save some documents into it.

[Emphasis Added.]

On February 3, 2017, Ms. Lacroix confirmed that the case had been reopened. On February 6, 2017, Ms. Gaetano asked for the file to be closed, and it was closed on the same day. A copy of the chain of correspondence between Ms. Gaetano and Ms. Lacroix, which was obtained by Mr. Cooke under the *Access to Information Act*, is attached and marked as **Exhibit "H"**.

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From ambartell@hotmail.com Tue May 13 08:09:33 2014
 Date: Tue, 13 May 2014 06:09:22 -0500
 From: anna bartell <ambartell@hotmail.com>
 To: Yinka Aiyede <yinka.aiyede@otc-cta.gc.ca>
 Cc: "lukacs@airpassengerrights.ca" <lukacs@airpassengerrights.ca>
 Subject: RE: Correspondence # 14-02429

[The following text is in the "Windows-1252" character set.]
 [Your display is set for the "ISO-8859-2" character set.]
 [Some special characters may be displayed incorrectly.]

Good Morning Yinka,

I have never received such an email. Otherwise I would have used the information from it and continued my complaint. Instead of calling in again to tell you I wanted to proceed with a formal complaint.

As I advised you, it is my intent to proceed by way of a formal complaint; however, I would like to draft said complaint, and I will be forwarding it to the Secretary of the Agency on my own. Thus, at the moment, no action is sought or required on your part in this regard

I will say I have been deeply disturbed by your attempt to dissuade me from filing

a formal complaint, which is, as I understand, is my right as a citizen. And Lastly I have been also troubled by your attempt to dissuade me from associating with Mr. Lukacs and from involving him in my case. I would be grateful if you clarified, in writing, your reasons for this view.

Sincerely yours,
 Anna Bartell

> Date: Thu, 8 May 2014 11:36:10 -0400
 > From: Yinka.Aiyede@otc-cta.gc.ca
 > To: ambartell@hotmail.com
 > Subject: RE: Correspondence # 14-02429

>
 > Good morning, Anna:
 >
 > It was a pleasure speaking with you yesterday also.

>
 > The letter to which I was referring was the email that Susan Mayo, the
 > case officer assigned to your complaint, sent on September 25, 2013. Ms.
 > Mayo's correspondence provided you with the results of her review of
 > your complaint through the Agency's informal facilitation process. I
 > have attached a copy for your records.

>
 > As discussed yesterday, upon receipt by the Canadian Transportation
 > Agency (Agency) of a consumer complaint about an air carrier, Agency
 > staff will initially review and attempt to resolve the matter through
 > its informal facilitation process. Agency staff evaluate all air travel
 > complaints against the provisions included in an air carrier's tariff -
 > the contract of carriage between the air carrier and its passengers. By
 > law, carriers must apply those provisions at all times and upon receipt
 > of a complaint, it is the Agency's responsibility to ensure that it
 > does.

>
 > In addition, the law in Canada states that carriers cannot offer a
 > remedy or relief to the passenger that is less than that established in
 > its tariff. Therefore, in facilitating the resolution of an air travel
 > complaint, Agency staff will review the matter up to the point where it
 > appears that the passenger has received the remedy or relief to which
 > he/she is legally entitled.

>
 > When the consumer advises in writing that the complaint has not been

> resolved informally to his/her satisfaction, he/she may request the
> Agency to deal with the matter through other dispute resolution
> methods.
>
> I mentioned yesterday that, where appropriate, consumer complaints
> about an air carrier may be mediated. The Agency offers mediation as an
> alternative to both its informal facilitation and formal adjudication
> process. Although you stated that you were not interested in having your
> complaint mediated, I wanted to make sure that you were fully informed
> about the Agency's mediation process before you made a final decision.
>
> To that end, I should advise that mediation is an informal, voluntary
> and confidential process. It is also a collaborative process that
> enables parties to come to a mutually agreeable solution that might not
> otherwise be available under either the informal facilitation or formal
> adjudication process.
>
> Both parties to a dispute must agree to mediation before the mediation
> process is initiated. If one party is agreeable to try mediation and
> submits a mediation request, the Agency will contact the other party to
> gain its consent.
>
> Information about the mediation process and associated forms can be
> found on the Agency's web site at
> <https://www.otc-cta.gc.ca/eng/mediation-docs>. Please note that
> mediation is another dispute resolution process offered by the Agency
> that is free of charge.
>
> If you are interested in attempting to resolve your complaint with Air
> Canada through mediation, please send me a quick email before Wednesday,
> May 14th advising me of your interest.
>
> Alternatively, should you wish to pursue your complaint further, you
> may consider advising the Agency that your complaint about Air Canada
> (Case No. 13-03817) was not resolved to your satisfaction through its
> informal process and requesting the Agency deal with the matter through
> its formal process. As a quasi-judicial tribunal, the Agency, through
> formal adjudication, resolves a range of transportation-related disputes
> including those related to air travel. The Agency operates like a court
> when adjudicating disputes. Information about adjudication of disputes
> is available on the Agency's web site at the following link:
> <https://www.otc-cta.gc.ca/eng/decision-making-process>.
>
> To have your complaint addressed through the Agency's formal process,
> you will need to file a written submission with the Agency to set out
> your complaint against the air carrier.
>
> In your submission, you should request that the Agency investigate your
> complaint:
>
> a) if you believe that the air carrier has not applied the fares,
> rates, charges or terms and conditions of carriage set out in its
> tariff; or
> b) if you believe that the carrier's terms and conditions of carriage
> are unclear, unreasonable or unduly discriminatory.
>
> To ensure that your submission to the Agency is complete, you will need
> to outline the reasons why you find that the carrier has acted in a
> manner that is inconsistent with the provisions of its tariff or why you
> find that the terms and conditions of carriage in the carrier's tariff
> are unclear, unreasonable or unduly discriminatory.
>

> Upon the Agency's receipt of your complete submission, the Chair will
> appoint a minimum of one Member to consider it. The Member(s) will
> consider all of the evidence in each case and reach a decision. Agency
> complaints are treated on a case-by-case basis. Each decision is based
> solely on the individual merits of the case. In the course of the
> process, the Agency assesses relevant facts and circumstances, by way of
> written submissions, weighs the various factors and makes these
> decisions based on law, rules of natural justice and evidence presented
> by the parties involved in the cases.
>
> Agency decisions are provided in writing and posted on the web site at:
> <https://www.otc-cta.gc.ca/eng/rulings-lists-and-search>. An Agency
> decision is binding on all parties to the decision.
>
> If the Agency agrees that the carrier failed to apply the provisions of
> its tariff, it can order the carrier to do so. The Agency can also order
> the carrier to compensate you for out-of-pocket expenses incurred as a
> result of the incident and take any other corrective actions it
> considers appropriate. However, the Agency cannot order the carrier to
> compensate you for things such as pain, suffering or loss of enjoyment
> or loss of income.
>
> If the Agency agrees that the carrier's terms and conditions of
> carriage are unclear, unreasonable or unduly discriminatory, it can
> suspend or disallow those terms or conditions and substitute other terms
> or conditions in their place. The Agency cannot, however, order a
> carrier to compensate you in such instances.
>
> Additional information about the Agency's formal process for
> resolving air travel complaints and information about filing a complaint
> via the formal process is available on the web site at:
> <https://www.otc-cta.gc.ca/eng/air-travel-complaints-1>.
>
> I also recommend that you review the information linked to the Agency's
> March 14, 2014 news release
> <https://www.otc-cta.gc.ca/eng/air-passenger-rights-and-recourse-at-a-glance>
> to determine your next course of action.
>
> I trust that you find the above to be helpful.
>
> Feel free to contact me should you require additional information about
> any of the above.
>
> Have a great day,
> Yinka
>
> >>> anna bartell <ambartell@hotmail.com> May 7, 2014 10:37 PM >>>
>
> Dear Yinka ,
> It was so nice chatting to you. I am a little confused though because
> you said something about a letter from someone at the agency called I
> think Susan? concerning ,the decision of the CTA,I cant find that could
> you resend it please.thanks anna
>
> > Date: Wed, 7 May 2014 13:52:01 -0400
> > From: Yinka.Aiyede@otc-cta.gc.ca
> > To: ambartell@hotmail.com
> > Subject: Fwd: Correspondence # 14-02429
> >
> > Dear Ms. Bartell:
> >
> > Further to the request you made to the call centre for the Canadian

> > Transportation Agency for a call back (see below), I just left you a
> > voice mail message to clarify what you are seeking.
> >
> > If you could please let me know when, between 8 am and 4:30 pm this
> > week, you are available for a telephone conversation, I will contact
> you
> > directly.
> >
> > I look forward to hearing from you.
> >
> > Yours truly,
> >
> > Ms. Yinka A. Aiyede
> > Directrice, Direction des plaintes, transport aérien | Director, Air
> > Travel Complaints
> > Direction générale du règlement des différends | Dispute Resolution
> > Branch
> > Office des transports du Canada | Canadian Transportation Agency
> > 15, rue Eddy, Gatineau QC K1A 0N9 | 15 Eddy Street, Gatineau QC
> K1A
> > 0N9
> > Yinka.Aiyede@cta-otc.gc.ca
> > Téléphone | Telephone 819-953-9936
> > Télécopieur | Facsimile 819-953-5686
> > Télécopieur | Teletypewriter 800-669-5575
> > Gouvernement du Canada | Government of Canada
> >
> > >>> Info May 7, 2014 1:21 PM >>>
> >
> > Time of Call / Heure de l'appel
> > 07 May 2014 8:38 AM / 07 mai 2014 08:38
> >
> > Client / Client
> > Name / Nom: ANNA BARTELL
> > Organization / Organisme: N/A
> > Language / Langue: ENGLISH
> >
> > Address / Adresse
> > N/A
> >
> > Contact Information / Coordonnées
> > Telephone (1st) / Téléphone (1e): (416) 709-8691
> > (tel:4167098691)
> > Telephone (2nd) / Téléphone (2e): N/A
> > Email / Courriel: N/A
> >
> > Preferred Callback Time / Heure propice pour le rappel
> > N/A
> >
> > Comments / Commentaires
> > The caller filled an informal complaint with the CTA and was not
> > satisfied with how her case was handled. Consequently, she would now
> > like to file a formal complaint. The caller terminated the call
> without
> > providing a case number and indicated that she would have that
> > information for the representative who would contact her. The issue
> is
> > in regards to a refusal to transport from Air Canada who claimed she
> was
> > late to check-in. A callback would be appreciated.
>
>

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Robert Armitage <Robert.Armitage@otc-cta.gc.ca>
Date: May 13, 2016 at 9:56:43 AM CDT
To: TONY MARIANI <tonymariani@shaw.ca>
Subject: RE: Canadian Transportation Agency-Case No.:15-61084

Dear Mr. Tony Mariani:

This is a follow-up to the closing letter sent to you on April 1, 2016 and our phone conversation today May 4, 2016 regarding case no.:15-61084 you had filed with the Canadian Transportation Agency (Agency) regarding the difficulties you experienced with Air Canada on September 8, 2015.

We had previously discussed the Agency's role and mandate. The law in Canada requires that air carriers operating air services to and from Canada file a tariff with the Agency clearly outlining their terms and conditions of carriage. These terms and conditions of carriage cover a number of topics including the carrier's procedures with respect to, among others, flight cancellations and delays, refunds, check-in time limits, etc.. While air carriers are free to set their own terms and conditions of carriage as they see fit, the law requires that each carrier file a tariff and apply it at all times. Part of our mandate is to ensure that each carrier does so.

When reviewing a consumer travel complaint, the Agency's role is neutral and an assessment on whether or not a carrier has properly applied its tariff is based on the information provided by both parties and the carrier's provision as outlined in its tariff with the Agency.

Regarding your case, your flight AC8406 from Kelowna to Calgary was scheduled to leave at 9:30 on September 8 and was delayed, due to late arrival of equipment caused by a systems issue, until 11:40 and as a result you would have missed your connecting flight in Calgary to Winnipeg. Air Canada re-protected you and your wife to fly out the following morning September 9 at 7:30 AC 8128 to Calgary connecting with AC8334 Calgary to Winnipeg. Per the airline's domestic tariff related to flight delays, flight times and schedules are not guaranteed, their obligation is to fly the passenger from point A to point B. For flight delays lasting longer than 4 hours, the airline will provide food vouchers for use, where available, in the airport. Air Canada did provide you and your wife food vouchers, and as you overnights in Kelowna, Air Canada offered as well to review for re-imbursment any receipts you had for out of pocket expenses related to the delay and the over- night stay in Kelowna. You have advised that you did not incur additional expenses. You and your wife were flown to your final destination, albeit later than originally scheduled. As such, it would appear that the airline has respected the provisions of its tariff regarding schedule irregularities and flight delays. By Air Canada's goodwill offer to you of Air Canada gift cards or non-status Aeroplan points they appear to have exceeded their responsibilities.

You have indicated in your complaint your discontent related to the way your situation was handled by the Air Canada employees in Kelowna. This would be considered a quality service issue which falls strictly under the purview of the airline's management as it does not form any part of the airline tariff.

In light of the above, it would appear that the airline has acted in a manner that is consistent with the provisions and regulations which the Agency has the authority to enforce. Because the Agency's role in the review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions

in its tariff, the complaint you filed with the Agency has been closed.

Sincerely,

Robert Armitage

Agent principal aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : [\(819\) 953-9905](tel:(819)953-9905)

Robert.Armitage@otc-cta.gc.ca

From: Robert Armitage

Sent: May-13-16 10:33 AM

To: 'TONY MARIANI'

Subject: RE: Canadian Transportation Agency-Case No.:-15-61084

Hello Mr. Mariani, I will send you the explanation you requested in an e-mail to follow and therefore do not require an additional conversation with you.

Thank you,

Robert

From: Robert Armitage
Sent: May-13-16 8:02 AM
To: 'TONY MARIANI'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Thank you for your e-mail, I will certainly send this out but as indicated last week I would like to speak with you again first. Please let me know if today will work for you. I am in the office until about 15:00EST.

Best regards,

Robert

From: TONY MARIANI [<mailto:tonymariani@shaw.ca>]
Sent: May-12-16 6:02 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

Robert

I am still waiting for that further explanation.

Sent from my iPhone

Tony Mariani

On May 5, 2016, at 12:14 PM, Robert Armitage <Robert.Armitage@otc-cta.gc.ca> wrote:

Hello Mr. Mariani,

I have left you a message a few minutes ago and would like to speak with you briefly if possible. I am scheduled for a meeting from 1:30pm your time to the end of the day today but if you were available earlier or perhaps tomorrow, if that works better for you, that would be great.

Thank you in advance

Robert

From: Robert Armitage
Sent: May-04-16 2:33 PM
To: 'TONY MARIANI'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Thank you, I will call you.

Robert

From: TONY MARIANI [<mailto:tonymariani@shaw.ca>]
Sent: May-04-16 2:31 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

I have a 10 minute window now.

Sent from my iPhone

Tony Mariani

On May 4, 2016, at 9:05 AM, Robert Armitage <Robert.Armitage@otc-cta.gc.ca> wrote:

Mr. Mariani,

Please let me know the best time to call you.

Thanks very much,

Robert

From: Robert Armitage
Sent: May-04-16 9:47 AM
To: 'tonymariani@shaw.ca'
Subject: RE: Canadian Transportation Agency-Case No.: -15-61084

Dear Mr. Mariani,

Thank you for your e-mail. I will give you a call before sending you the explanation by e-mail.

Best regards,

Robert

From: tonymariani@shaw.ca [<mailto:tonymariani@shaw.ca>]
Sent: May-03-16 6:12 PM
To: Robert Armitage
Subject: Re: Canadian Transportation Agency-Case No.: -15-61084

Dear Mr. Armitage,

I remained puzzled about the reasons that you believe that "Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce."

Kindly please provide further explanation by email, so that I will have an opportunity to study your reasons.

Sincerely yours,
Tony Mariani

From: [Robert Armitage](#)

Sent: Friday, April 1, 2016 12:53 PM

To: tonymariani@shaw.ca

Subject: Canadian Transportation Agency-Case No.:-15-61084

Dear Mr. Tony Mariani:

This is with reference to our telephone conversation of today, April 1, 2016, regarding the complaint you filed with the Canadian Transportation Agency (Agency) about the difficulties you encountered with Air Canada on September 8, 2015

For the reasons discussed, it would appear that Air Canada has acted in a manner that is consistent with the provisions of the legislation and regulations which the Agency has the authority to enforce. As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its domestic tariff, the complaint you filed with the Agency will be closed.

Thank you for bringing your concerns to the Agency's attention.

Sincerely,

Robert Armitage

Robert Armitage

Agent responsable du cas, Direction générale du règlement des différends

Office des transports du Canada / Gouvernement du Canada
robert.armitage@otc-cta.gc.ca / Tél. : 819-953-9905 / ATS :
1-800-669-5575

Case Officer, Dispute Resolution Branch
Canadian Transportation Agency / Government of Canada
robert.armitage@otc-cta.gc.ca / Tel: 819-953-9905 / TTY:
1-800-669-5575

c.c.'d: Air Canada Customer Relations- Reference no:
ABDA-15YB9LH

(under separate cover)

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Debra Orr <Debra.Orr@otc-cta.gc.ca>
Date: July 29, 2016 at 1:39:46 PM EDT
To: "f.morris@eastlink.ca" <f.morris@eastlink.ca>
Subject: Canadian Transportation Agency / Case # 16-61579

Dear Mr. Morris,

This is further to the complaint you filed with the Canadian Transportation Agency (Agency) concerning the difficulties you encountered with Westjet Airlines Ltd. (Westjet) in March of this year. While I was unable to reach you by telephone on July 27, I have completed my review and am providing the outcome to you by email. If you have any questions, I can be reached either by email or telephone.

With respect to your request for denied boarding compensation, allow me to explain that part of the Agency's mandate when reviewing a consumer air travel complaint is to ensure that the air carrier resolves the passengers concerns in a manner consistent with the carriers terms and conditions of carriage outlined in its tariff. The tariff is the contract of carriage between the passenger and their carrier – it covers the rights and responsibilities of an airline passenger and the air carrier's rights and obligations to the passenger. The terms and conditions of carriage outlined include matters such as schedule irregularities, refusal to transport, denied boarding, and baggage claims.

On that note, Westjet's tariff defines denied boarding as a flight that is overbooked with the result that a ticketed passenger is not transported on a flight for which he held confirmed space. In this instance Westjet has confirmed that flight WS2651 from Puerto Vallarta to Toronto on March 2, 2016 was not oversold and further that due to a booking error, you and Mrs. Morris were never confirmed on the flight in question.

While we understand you are of a different opinion, as it would appear that this was not a case of denied boarding, we have no basis on which to request that Westjet consider your request for compensation. We note, however that Westjet in recognizing this error has offered each of you \$350.00 Westjet dollars.

As the Agency's role in its review of an air travel complaint is to ensure that your air carrier has applied the terms and conditions of carriage in its international tariff, the complaint you filed with the Agency will be closed.

Thank you for bringing your concerns to the Agency's attention.

Kind regards,

Debra Orr

Agente principale aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : [\(819\) 934-2774](tel:(819)934-2774)

c.c.: Westjet Airlines Customer Relations (under separate email)

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

From: Robert Armitage <Robert.Armitage@otc-cta.gc.ca>
Subject: Canadian Transportation Agency Case No.:-16-62696
Date: October 6, 2016 at 5:54:43 AM PDT
To: "jonathan.hislop@gmail.com" <jonathan.hislop@gmail.com>

Dear Dr. Jonathan Hislop:

Subject: Your complaint about Air Transat-Case No.:-16-62696

This is further to your air travel complaint filed with the Canadian Transportation Agency (Agency) regarding your travel booked with Air Transat for travel November 5, 2016, concerning the schedule and routing changes the carrier applied to your itinerary .

Despite our efforts to resolve your complaint with Air Transat, we were unable to facilitate a resolution to your full satisfaction. In light of this outcome, we are closing your facilitation complaint file.

Having said this, should you wish to pursue your complaint further, you may consider requesting the Agency deal with the matter through mediation.

Mediation is a collaborative process that enables parties, with the aid of an Agency mediator, to come to a mutually agreeable solution. Both parties to a dispute must agree to mediation before the Agency initiates the mediation process. If one party is agreeable to try mediation and sends in a mediation request, the Agency will contact the other party to gain its consent. The outcome of mediation must be kept strictly confidential.

Information about the mediation process is available on the Agency's web site at: <https://services.otc-cta.gc.ca/eng/mediation>.

I hope you will find this information useful.

Please advise by October 14, 2016 whether you are interested in attempting to resolve your complaint through the Agency's mediation process.

Yours truly,

Robert Armitage

Agent principal aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —
Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : (819) 953-9905

Robert.Armitage@otc-cta.gc.ca

This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

CTA Officer Complaint

Gerard Cooke <gerardcooke@hotmail.com>

Mon, Jan 2, 2017 at 1:42 PM

To: "Douglas.Smith@otc-cta.gc.ca" <Douglas.Smith@otc-cta.gc.ca>

Cc: "Marc.Garneau@parl.gc.ca" <Marc.Garneau@parl.gc.ca>, "lukacs@airpassengerrights.ca" <lukacs@airpassengerrights.ca>

Dear Mr Smith,

I am writing to complaint about the conduct of Angela Gaetano who was assigned to my complaint case No. 15-50516 against Air Canada, dated May 5, 2015.

First, Gaetano created the false impression that she was a decision-maker at the Canadian Transportation Agency and that my complaint has been dismissed by the Agency.

I have recently found out that this was clearly not the case. Gaetano is not a Member of the Agency within the meaning of s. 7(2) of the *Canada Transportation Act*, and as such she has no authority to rule on my complaint.

Second, Gaetano misrepresented to me the obligations of Air Canada under its Tariff. She neither considered nor informed me about the liability of Air Canada under Article 19 of the *Montreal Convention*, which is incorporated in Air Canada's International Tariff Rule 105(B)(5).

In these circumstances, I am requesting that:

(a) you investigate why I was misled by Gaetano about my rights;

(b) take steps to ensure that complainants, such as myself, are not misled as to our rights and the Agency's procedures; and

(c) you assign another officer to conduct facilitation of my complaint properly.

Sincerely yours,

Gerard Cooke

This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on June 25, 2017

Signature

Angela Gaetano

From: Services ministériels - Corporate services <TrackIt-autorep@otc-cta.gc.ca>
Sent: February-06-17 3:22 PM
To: Angela Gaetano
Subject: Mise à jour / Update - Reopen - [[WO#48937]]

***** Vous pouvez répondre à ce courriel pour rajouter de l'information au billet # [[WO#48937]]. Ceci avisera le technicien qu'une mise à jour est disponible. Prière de toujours utiliser la fonction "Répondre" et non "Transférer".

You can reply to this email to add information to work order # [[WO#48937]]. This will also advise the technician that an update is available. Please always use the "Reply" function rather the "Forward" function.

Hi Angela,

It's closed now! :)

Regards,
Isabelle

TECHNICIEN / TECHNICIAN

Isabelle Lacroix

COURRIELS ÉCHANGÉS PRÉCÉDEMMENT / PREVIOUSLY EXCHANGED EMAILS

Monday, February 06, 2017 1:58:32 PM by MailMonitor-VW-APPS-02
Additional information submitted 06/02/2017 1:58:25 PM by Angela Gaetano < Angela.Gaetano@otc-cta.gc.ca >:

This can now be closed. Thank you.

From: Services ministériels - Corporate services [mailto:TrackIt-autorep@otc-cta.gc.ca]
Sent: February-03-17 9:10 AM
To: Angela Gaetano
Subject: Fermé/Closed - Reopen - [[WO#48937]]

TECHNICIEN / TECHNICIAN

Isabelle Lacroix

COURRIELS ÉCHANGÉS PRÉCÉDEMMENT / PREVIOUSLY EXCHANGED EMAILS

Friday, February 03, 2017 9:06:45 AM by ILacroix 76
Hi Angela,

It's now re-open. :)

Cheers,
Isabelle L.

DESCRIPTION INITIALE / INITIAL DESCRIPTION

Wednesday, February 01, 2017 9:46:03 AM by EmailRequestManagement
Work Order created via E-mail Monitor Policy: Services-GI-IM

From: Angela.Gaetano@otc-cta.gc.ca
To: Services-GI-IM@otc-cta.gc.ca <+Services-GI-IM>
CC:
Subject: Reopen

Information submitted 01/02/2017 9:45:09 AM by Angela Gaetano <Angela.Gaetano@otc-cta.gc.ca>:

Hello,

Are you able to open my case (15-50516-Cooke) that has already been certified, so that I can save some more documents into it.

Thank you,

Angela Gaetano

Agente principale aux plaintes - Senior Complaints Officer

Direction des MARC relatifs au transport aérien et aux transports accessibles —

Air & Accessibility ADR Directorate

Office des transports du Canada — Canadian Transportation Agency

Gouvernement du Canada — Government of Canada

T. : (819) 994-7687/ Télécopieur/facsimile:(819) 997-6727/ATS/TTY 800-669-5575

courriel/e-mail: angela.gaetano@otc-cta.gc.ca

WITHOUT PREJUDICE

E-mail received with no Attachments

(Edited Monday, February 06, 2017 3:20:23 PM by ILacroix)

Friday, February 03, 2017 9:06:45 AM by ILacroix
Hi Angela,

It's now re-open. :)

Cheers,
Isabelle L.

DESCRIPTION INITIALE / INITIAL DESCRIPTION

Wednesday, February 01, 2017 9:46:03 AM by EmailRequestManagement
Work Order created via E-mail Monitor Policy: Services-GI-IM

From: Angela.Gaetano@otc-cta.gc.ca
To: Services-GI-IM@otc-cta.gc.ca <+Services-GI-IM>
CC:
Subject: Reopen

Information submitted 01/02/2017 9:45:09 AM by Angela Gaetano <Angela.Gaetano@otc-cta.gc.ca>:

Hello,

Are you able to open my case (15-50516-Cooke) that has already been certified, so that I can save some more documents into it.

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Angela Gaetano
Agente principale aux plaintes - Senior Complaints Officer
Direction des MARC relatifs au transport aérien et aux transports accessibles —
Air & Accessibility ADR Directorate
Office des transports du Canada — Canadian Transportation Agency
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courriel/e-mail: angela.gaetano@otc-cta.gc.ca

WITHOUT PREJUDICE

This is

Exhibit “B”

to the Affidavit of Dr. Gábor Lukács,
affirmed September 11, 2025

A handwritten signature in blue ink, reading "Douglas W. Judson". The signature is fluid and cursive, with the first name "Douglas" being the most prominent part.

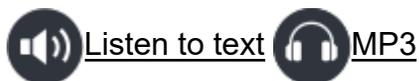
COMMISSIONER FOR TAKING AFFIDAVITS

Douglas W. Judson
Barrister & Solicitor (LSO No. 70019H)
Phone: 807-208-0351 | Email: doug@judsonhowie.ca

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Guideline on the Canadian Transportation Agency's Complaint Resolution Office air travel complaints process

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1. Purpose

(1) This guideline sets out the Complaint Resolution Office process for dealing with air travel complaints.

(2) It provides instructions for passengers and airlines on the steps in the process, how they can

participate and the deadlines that apply.

(3) This guideline applies to all air travel complaints, except complaints for which pleadings have been opened in adjudication before September 30, 2023.

(4) This guideline is intended to ensure complaints are conducted in a manner that is proportionate to the importance and complexity of the matter and dealt with efficiently and fairly within the deadlines set out in the *Canada Transportation Act*.

2. How to make a complaint on or after September 30, 2023

(1) A passenger can make a complaint against an airline by completing and submitting the Complaint form published on the Agency's Website.

(2) At the time they submit their complaint, the passenger must provide all the information and documents requested in the Complaint form.

(3) The passenger cannot add more information or documents to complete their complaint after it has been submitted.

(4) A passenger may submit a complaint on behalf of other passengers who travelled with them or were supposed to travel with them.

(5) A passenger may be represented by another person in the complaint process only if that person is identified as their representative in the Complaint form.

(6) At any time, a Complaint Resolution Officer may verify whether a person claiming to act as a representative of one or more passengers is duly authorized to do so.

3. How a complaint submitted before September 30, 2023 will be transitioned into the Complaint Resolution Office process

(1) Air travel complaints that were submitted to the Agency before September 30, 2023 and for which pleadings have not opened in adjudication will be handled under the process set out in this guideline.

(2) The Complaint Resolution Office will communicate with each passenger, or their representative if the passenger's complaint was filed on their behalf by a representative, to provide an opportunity and instructions on how to submit any additional information or documents to include in their complaint.

(3) Once the period for providing additional information or documents has expired, the complaint will be transitioned to the new process and the passenger cannot add more information or

documents to complete their complaint.

4. Start Notice issued when the complaint is accepted for filing

(1) The passenger and airline will receive a Start Notice when the complaint has been accepted for filing. The Start Notice will describe the next steps and their deadlines.

(2) The time for next steps will begin to run as of the date the Start Notice was issued.

(3) A complaint is accepted for filing when:

(a.1) For a new complaint, the complaint is duly submitted using the Complaint form on the Agency's Website;

(a.2) For a complaint submitted before September 30, 2023, the passenger was given an opportunity to provide further information and documents, and the period to do so has expired;

and

(b) The Complaint Resolution Office has issued a Start Notice to the passenger and airline.

(4) For the purpose of issuing the Start Notice, the Complaint Resolution Office may perform an administrative review of the complaint after it is submitted, as necessary.

5. Airline's answer to the complaint

(1) An airline may file an answer to the complaint.

(2) The deadline to file an answer is 14 calendar days after the day on which the Start Notice was issued.

(3) The answer must be filed by 11:59 p.m. Eastern Standard Time on the day it is due, even if that day falls on a Saturday, a Sunday or a holiday. If it is sent after that time, the answer will be considered late and will not be accepted.

(4) The airline cannot add or change information or documents to complete its answer after it has been submitted.

(5) The answer must not be longer than 2500 words, excluding supporting documents.

(6) The answer must contain, in clear and plain language:

(a) a description of the airline's position on each issue in the complaint;

(b) the conclusion that the airline wishes the Complaint Resolution Officer to reach;

- (c) any documents in support of the airline's position, including the applicable tariff;
- (d) an explanation of why each document is relevant and what that document shows. This would include an explanation of technical terminology and codes so that they can be reasonably understood by the passenger; and
- (e) a confirmation of whether the airline agrees to mediate the complaint.

(7) When an airline files an answer, the passenger will be notified by the Complaint Resolution Office.

6. Passenger's reply

- (1) A passenger may file a reply to the answer.
- (2) The reply must be filed within four (4) calendar days after the day on which the passenger was notified that the airline's answer has been filed.
- (3) The passenger's reply must be filed by 11:59 p.m. Eastern Standard Time on the day it is due even if that day falls on a Saturday, a Sunday or a holiday. If it is sent after that time, the reply will be considered late and will not be accepted.
- (4) The reply must not be more than 750 words in length, excluding any supporting documents.
- (5) A reply must contain, in clear and plain language:
 - (a) an explanation of why the passenger agrees or disagrees with anything included in the airline's answer;
 - (b) any supporting document that responds to an issue raised in the airline's answer; and
 - (c) a confirmation of whether the passenger agrees to mediate the complaint.
- (6) The passenger cannot add or change information or documents to complete their reply after it has been submitted.
- (7) A reply cannot raise any new facts, arguments or issues or contain supporting documents that could have been provided at the time the complaint was submitted. If the reply contains such facts, arguments, issues or supporting documents, the Complaint Resolution Officer will not consider them when making a final decision on the complaint.
- (8) When a passenger files a reply, the airline will be notified by the Complaint Resolution Office.

7. How to file an answer or a reply and to communicate with the Complaint Resolution Office

The passenger and the airline must file the answer or the reply, and communicate with the Complaint Resolution Office, using the method indicated by the Complaint Resolution Office in the Start Notice.

8. Language of documents

- (1) Documents can be provided in English or French. Parties are responsible for ensuring they can understand documents in the language in which they are filed.
- (2) Documents in other languages can be provided if they are accompanied by an English or French translation. If a translation is not provided, the Complaint Resolution Officer may decide that the information contained in the document in a language other than English or French is not proven.
- (3) The party providing the document in a language other than English or French is responsible for providing the translation of that document at their own cost.
- (4) A Complaint Resolution Officer will not translate documents provided in English, French or any other language.

9. Confidentiality of information and documents

- (1) By law, all information and documents relating to the complaint process are confidential unless both the passenger and airline agree otherwise in writing.
- (2) Neither the passenger nor the airline can refuse to share information or documents with each other or the Complaint Resolution Officer on the basis that they contain confidential information. All information and documents relating to the complaint, the answer and the reply will be accessible to the other party.
- (3) The passenger and airline must not use or share any information or documents relating to the complaint process for any purpose other than dealing with the complaint process, unless the passenger or airline agrees in writing that the information it provides may be used otherwise.

10. Extensions of deadlines to file an answer or a reply

- (1) A Complaint Resolution Officer may extend a deadline set out in this guideline only if there is an exceptional reason for doing so.
- (2) In order to obtain an extension, the passenger or airline must make a request in writing and identify a clear and specific reason why it is impossible to meet the deadline.

(3) The request for extension must be made at the earliest opportunity after the passenger or airline becomes aware of the reasons for which they will not be able to meet the deadline for the answer or the reply.

(4) A Complaint Resolution Officer cannot grant an extension if the request is made after the deadline for filing an answer or reply has expired. If requesting an extension, the airline must do so before its deadline to file an answer has expired and the passenger must do so before their deadline to file a reply has expired.

(5) A Complaint Resolution Officer may decide the request immediately upon receipt or as quickly as possible thereafter, without waiting for a response from the other party.

(6) The Complaint Resolution Officer cannot grant an airline more than 4 additional calendar days to file an answer or the passenger more than 1 additional calendar day to file a reply.

11. Eligibility assessment

(1) Before proceeding to mediation and final decision-making, a Complaint Resolution Officer must first decide if a complaint is ineligible. A complaint is ineligible in the following cases:

(a) the passenger does not allege that the airline 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 passenger is not adversely affected by the failure to apply that fare, rate, charge or term or condition of carriage;

(c) the passenger does not seek compensation or a refund as set out in the airline tariffs or compensation for expenses incurred as a result of that failure;

(d) the passenger did not make a written request to the airline to resolve the matters and the matters are still unresolved 30 days after the written request was made.

(e) it is clear on the face of the complaint that the airline has complied with the obligations set out in its tariffs; or

(f) the complaint is vexatious or made in bad faith.

(2) The Complaint Resolution Officer must make a decision on the eligibility criteria, and notify the parties of that decision, no later than 30 calendar days after the day on which the Start Notice was issued.

(3) If the Complaint Resolution Officer refuses to deal with the complaint because it is ineligible, they will provide brief reasons for their decision. This ends the complaint process for the passenger and the airline and the complaint will not proceed to mediation or final decision-making.

- (4)** If the Complaint Resolution Officer finds the complaint is eligible, the complaint will proceed to either mediation or final decision-making. No reasons will be provided.
- (5)** If a complaint is only eligible in part, only the part that is eligible will proceed to mediation or final decision-making.
- (6)** Even if the Complaint Resolution Officer finds the complaint is eligible, they may still cease to deal with a complaint at any time if they determine at a later stage that the complaint is ineligible, applying the criteria set out in section 11(1). A Complaint Resolution Officer will provide brief reasons for their decision to cease to deal with a complaint.

12. Mediation

- (1)** If a complaint is eligible, the Complaint Resolution Officer will perform a check to determine whether the passenger and airline have agreed to mediate the complaint.
- (2)** The Complaint Resolution Officer will send an acknowledgment to the passenger and airline indicating whether the parties agreed to mediate after the receipt of the reply, but no later than 30 calendar days after the day on which the Start Notice was issued.
- (3)** If in their acknowledgment the Complaint Resolution Officer indicates that the passenger or the airline have refused mediation, the mediation ends and the complaint will proceed to final decision-making.
- (4)** If both parties have agreed to mediate, the Complaint Resolution Officer will provide the passenger and the airline with information about:
 - (a)** the mediation process;
 - (b)** how to engage in settlement discussions;
 - (c)** the issues that arise from the passenger's complaint and that would need to be decided by the Complaint Resolution Officer; and
 - (d)** any statutory or tariff obligations that apply to the complaint.
- (5)** The passenger and airline will be given 20 calendar days to attempt to reach a settlement agreement.

13. Final decision and order

- (1)** If the passenger and airline did not agree to mediate or if they did not reach a settlement agreement, the Complaint Resolution Officer must make a final, binding and confidential decision.

(2) A final decision and order will be issued no later than 60 calendar days after the start of mediation.

(3) A copy of the final decision and order will be provided to the passenger and the airline.

(4) The complaint process and the Complaint Resolution Officer's role end when the final decision and order are issued. The Complaint Resolution Officer will provide no other explanation regarding their decision or respond to any communication relating to the complaint or the final decision and order.

14. Settlement of complaints at any time before a final decision

(1) Passengers and airlines are encouraged to attempt to settle a complaint at any time before a Complaint Resolution Officer makes a final decision and order.

(2) The passenger or the airline must inform the Complaint Resolution Office without delay if they have settled the complaint. The complaint will then be considered withdrawn. If the Complaint Resolution Office is informed of a settlement by the airline, they will communicate with the passenger to confirm the withdrawal.

Glossary

Terms used in this guideline:

Act

The *Canada Transportation Act*.

Agency

The Canadian Transportation Agency.

airline

The air carrier against whom the passenger made a complaint.

complaint

A complaint by a passenger against an airline.

complaint process

The steps in dealing with a complaint under sections 85.04 to 85.13 of the Act.

Complaint Resolution Office

The office that handles air travel complaints under sections 85.04 to 08.13 of the Act.

Complaint Resolution Officer

A person designated under section 85.02 of the Act to mediate and decide air travel complaints.

day

A calendar day.

document

Includes any information recorded or saved in any form.

eligible complaint

A complaint that a resolution officer has not refused or ceased to deal with under section 85.04(2) of the Act.

filed

A document or submission that has been submitted is accepted for filing by the Complaint Resolution Office and forms part of the record of the complaint file.

passenger

The person who had a ticket and claims to have been adversely affected by the airline's failure to apply their tariff.

submitted

A document or submission has been sent to the Complaint Resolution Office.

tariff

The legal document that contains the terms, conditions and other rules that apply to the passenger's ticket.

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Date modified:

2023-09-30

This is

Exhibit “C”

to the Affidavit of Dr. Gábor Lukács,
affirmed September 11, 2025



COMMISSIONER FOR TAKING AFFIDAVITS

Douglas W. Judson
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Letter Decision No. LET-P-A-67-2011

June 20, 2011

Complaint concerning fares offered by Jazz Aviation LP between Toronto, Ontario and Timmins, Ontario

File No.: M4120-3/10-50314

Introduction

On December 16, 2010, Deryk Jackson filed a complaint with the Canadian Transportation Agency (Agency) regarding the alleged unreasonableness of the fares offered by Jazz Aviation LP, as represented by its general partner, Aviation General Partner Inc., carrying on as Air Canada Jazz (Air Canada Jazz) in respect of its services between Toronto, Ontario and Timmins, Ontario.

In its Decision No. LET-P-A-24-2011, the Agency provided a copy of the complaint to Air Canada Jazz and opened pleadings. On March 24, 2011, Air Canada filed submissions on behalf of Air Canada Jazz. As part of the submissions, Air Canada filed a statement by Professor Baumol that it claimed to be confidential. Air Canada also submitted a letter by regular mail claiming that Professor Baumol's statement, as well as his *curriculum vitae*, had been previously filed with the Agency and had been treated as confidential.

On March 31, 2011, in Decision No. LET-P-A-44-2011, the Agency reminded Air Canada that it could not rely on material previously filed on unrelated cases or on rulings made in those cases with respect to confidentiality. The Agency indicated that Air Canada must file an appropriate request for confidentiality and reasons to justify its position and to specify under which section of the *Canada Transportation Act*, S.C. 1996, c.10, as amended (CTA (Canada Transportation Act)) or the *Canadian Transportation Agency General Rules*, SOR/2005-35 ("General Rules (Canadian Transportation Agency General Rules)"), it is making the request. On April 4, 2011, Air Canada filed its request for confidentiality.

Issues

1. Are Professor Baumol's *curriculum vitae* and statement relevant to the proceeding pursuant to subsection 24(2) of the General Rules?

2. Is there any specific harm which would likely result from the *curriculum vitae* and statement's disclosure, pursuant to paragraphs 66(8)(b) and (c) of the CTA and subsection 24(2) of the General Rules?

Relevant Provisions

CTA

66. (8) The Agency may take any measures or make any order that it considers necessary to protect the confidentiality of any of the following information that it is considering in the course of any proceedings under this section:

(a) information that constitutes a trade secret;

(b) information the disclosure of which would likely cause material financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided; and

(c) information the disclosure of which would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided.

Access to Information Act (R.S.C., 1985, c. A-1) (ATIA)

20. (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(...)

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

General Rules

24. (2) 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 result from its disclosure or any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed.

Analysis and Determination

1) Professor Baumol's *Curriculum vitae*

Submissions

Air Canada submits that Professor Baumol's *curriculum vitae* constitutes confidential personal information according to section 3 of the *Privacy Act*, R.S.C., 1985, c. P-21. In particular, it contains information about an identifiable individual including information relating to the education and employment history of the individual. According to Air Canada, section 8 of the *Privacy Act* and subsection 19(1) of the ATIA both prohibit the disclosure of the *curriculum vitae*.

Mr. Jackson submits that Professor Baumol's *curriculum vitae* is accessible online through New York University's web site and, thus, is already in the public domain. Therefore, Mr. Jackson argues that it would be illogical to grant the request for the *curriculum vitae* to remain confidential.

In its reply, Air Canada submits that Mr. Jackson did not establish the relevance of Professor Baumol's *curriculum vitae*. Moreover, Mr. Jackson did not raise any question as to Professor Baumol's qualifications or expertise.

Air Canada argues that Professor Baumol did not consent to the *curriculum vitae* being filed in this proceeding and, therefore, Air Canada has no authority to consent to such disclosure. Finally, Mr. Jackson failed to illustrate any prejudice that he would suffer from the document being treated as confidential.

Analysis

Air Canada submitted that Mr. Jackson did not establish the relevance of Professor Baumol's *curriculum vitae*. The Agency has reviewed the *curriculum vitae* for which Air Canada has made a claim for confidentiality and finds, pursuant to subsection 24(2) of the General Rules, that it is relevant to the proceeding. Air Canada submitted Professor Baumol's statement to support the establishment of its pricing decisions. To give credibility to this statement, Air Canada has filed Professor Baumol's *curriculum vitae*. In the Agency's opinion, the *curriculum vitae* demonstrates Professor Baumol's qualifications and area of expertise.

Air Canada raised that Professor Baumol's *curriculum vitae* includes confidential personal information such as education and employment history as defined in section 3 of the *Privacy Act*, and that it

should not be disclosed pursuant to section 8 of the *Privacy Act* and subsection 19(1) of the ATIA.

However, 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 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.

Furthermore, Professor Baumol's *curriculum vitae* is already on the public record as it is accessible online through New York University's web site. The Agency has reviewed the *curriculum vitae* provided by Air Canada and the *curriculum vitae* appearing in the hyperlink provided by Mr. Jackson and finds that Professor Baumol's education and employment history clearly appear in the hyperlink making the *curriculum vitae* publicly available. Although there are minor differences between both versions, the *curriculum vitae* posted in the hyperlink provided by Mr. Jackson has actually more details and is updated as opposed to the one provided by Air Canada.

Finally, the attachments to Professor Baumol's *curriculum vitae* are related to his testimonies before boards, commissions, tribunals and courts as well as the titles of numerous books and articles he has published. Testimonies and publications are not personal information.

Therefore, the Agency finds that Air Canada has not demonstrated the specific direct harm that it alleges. There is no evidence that the disclosure of Professor Baumol's *curriculum vitae* would likely cause specific direct harm to Air Canada.

2) Statement by Professor Baumol

Submissions

Air Canada filed a statement by Professor Baumol that it claimed to be confidential as it contained confidential commercial information which is consistently treated as confidential by Air Canada. It also contains specific information regarding other routes, as well as information about considerations taken by Air Canada in making its pricing decisions.

Air Canada also submitted that Professor Baumol's statement constitutes confidential commercial information: its disclosure will result in material financial loss, prejudice to the competitive position of Air Canada and interference with its contractual relations and negotiations with third parties.

Mr. Jackson contends that it is impossible for him to comment on the confidentiality request as he has

no knowledge of what is contained in the statement. He adds that he cannot judge the statement from the paraphrasing by Air Canada. Mr. Jackson also asserts that Professor Baumol is the author of numerous papers and textbooks in the field of economics and, for example, made another statement about the Canadian transportation system, specifically rail, that is publicly available. Mr. Jackson concludes that it appears that Professor Baumol is an academic who is more than willing to make his arguments in the public sphere.

Air Canada asserted that Mr. Jackson has failed to establish the relevance and public interest in the disclosure of Professor Baumol's statement.

Finally, Air Canada argues that the ATIA recognizes that information of the nature of that contained in Professor Baumol's statement may not be disclosed to the public. There is no discretion awarded to the head of a government institution in deciding whether information of this nature should be disclosed, as paragraph 20(1)(b) of the ATIA uses the wording "shall refuse to disclose" rather than "may refuse to disclose". According to Air Canada, the statement would automatically be protected from disclosure pursuant to paragraph 20(1)(b) of the ATIA in the context of an access to information request.

Analysis

Air Canada claimed that Mr. Jackson has failed to establish the relevance and public interest in the disclosure of Professor Baumol's statement. The Agency has reviewed the statement for which Air Canada has made a claim for confidentiality and finds, pursuant to subsection 24(2) of the General Rules, that it is relevant to the proceeding. Air Canada relied on this statement to explain its pricing decisions.

The burden of proving the specific harm exception falls on Air Canada and, if it 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 statement. Air Canada has not explained the nature and extent of the harm that could result if the statement was disclosed for the reasons that follow.

Past Practice

Air Canada submitted that Professor Baumol's statement has been previously treated by the Agency as confidential pursuant to paragraphs 66(8)(b) and (c) of the CTA. The Agency made this determination in its cases in 2001-2002.

The Federal Court and Federal Court of Appeal have provided guidance on the concepts under paragraphs 20(1)(c) and (d) of the ATIA. The Agency notes that paragraphs 20(1)(c) and (d) of the ATIA refer to the same concepts as the ones indicated in paragraphs 66(8)(b) and (c) of the CTA (material financial loss, prejudice to the competitive position and interference in contractual relations and negotiations).

There are similarities between subsection 24(2) of the General Rules and paragraphs 20(1)(c) and (d) of the ATIA. Subsection 24(2) refers to "specific direct harm would likely result from its disclosure" and

paragraphs 20(1)(c) and (d) of the ATIA refer to "disclosure of which could reasonably be expected to [result/prejudice/interfere]". However, the language used in subsection 24(2) is stronger by the use of the term "likely" as opposed to "reasonably." Nevertheless, the Agency is of the opinion that the case law developed under paragraphs 20(1)(c) and (d) of the ATIA may be relevant and applicable in some respects. Therefore, the Agency is of the opinion that it should review its past practice of treating Professor Baumol's statement as confidential.

Information for which the disclosure would likely cause material financial loss and prejudice to the competitive position of Air Canada

Air Canada submitted that disclosure will result in material financial loss and prejudice to its competitive position pursuant to paragraph 66(8)(b) of the CTA.

Pursuant to subsection 24(2) of the General Rules, the Agency must weigh the facts in order to determine whether Air Canada has established specific harm that would likely result from the disclosure. The evidence of harm must not be speculative. The Federal Court of Appeal came to this conclusion in *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (Fed. C.A.). In *SNC Lavalin Inc. v. Canada (Minister for International Co-operation)*, [2003] F.C.J. No. 870 (QL), the Federal Court stated that it is not sufficient for an applicant to establish that harm might result from disclosure. It stated that speculation, no matter how well informed, did not meet the standard of reasonable expectation of material financial loss or prejudice to competitive position.

In *Canadian Pacific Hotels Corp. v. Canada (Attorney General)*, 2004 FC 444 (F.C.), the Federal Court found that the evidence brought forward by the applicant remained in the realm of speculation. The applicant's argument was essentially that disclosure of the key terms of the Crown Leases could subject the applicant to a much more competitive environment concerning the Jasper Park Lodge that it had to contend with in the past. In the Federal Court's view, however, a more competitive environment did not give rise to a reasonable expectation of a material financial loss or a prejudice to the applicant's competitive position. The connection was too tenuous and not sufficiently proven.

The Federal Court and Federal Court of Appeal have been requiring specific evidence; general statements of the nature presented by Air Canada do not suffice. In *Brookfield LePage Johnson Controls Facility Management Services v. Canada (Minister of Public Works & Government Services)*, 2003 FCT 254 (Fed. T.D.), affirmed 2004 FCA 214 (F.C.A.) (leave to appeal refused 2005 SCC), the Federal Court reviewed the evidence, including the supplementary affidavit, and concluded that, aside from general statements of possible harm, the applicant had failed to provide insight as to how the competitors might use the record so that the applicant would sustain a reasonable expectation of probable harm if the records in question were released. There existed insufficient evidence to conclude that there was a basis to establish financial loss or prejudice to the applicant, or financial gain to a competitor. In the present case, there is no evidence filed by Air Canada supporting a finding that a competitor could use the statement to its advantage and to Air Canada's detriment.

In contrast, the Federal Court found that the Canada Post Corporation (CPC) had a reasonable expectation of probable harm if some information was disclosed to Canada Customs Revenue Agency

(CCRA). In *Dussault v. Canada (Customs & Revenue Agency)*, 2003 FC 973 (F.C.), the Federal Court reached that conclusion for the following reasons. First, the Director's evidence established that the information not now disclosed would provide an astute analyst with a fairly accurate picture of the structure and the nature of the compensation that CPC negotiated under an agreement. This information could be used by competitors of CPC to bid against CPC for the provision to the CCRA of the services covered by the agreement. Second, the Director swore that if the information was disclosed it was highly probable that this information would be used by competitors of CPC to bid against CPC for the provision to the CCRA of the service covered by the agreement. Third, the applicant was employed by a public relations and media firm representing UPS, a CPC competitor. In the present case, the Agency has no such evidence as submitted in *Dussault v. Canada* demonstrating that the statement would provide a fairly accurate picture of Air Canada's structure for pricing decisions. The statement fails to demonstrate any link between the routes involved in the present case as it involves other routes altogether. The Agency fails to see how the statement could be used by competitors against Air Canada.

Air Canada has made general statements that the disclosure of Professor Baumol's statement will result in material financial loss and prejudice to Air Canada's competitive position. However, Air Canada did not bring forward any evidence supporting its general statements. There is no detailed evidence to convince the Agency to refuse the disclosure of the statement.

Air Canada is merely providing grounds for speculation as to possible harm. Speculation is an insufficient ground to protect the statement from disclosure. As indicated by the case law, the threshold is probability, not possibility or speculation. There must exist, in the evidence, an explanation establishing that those outcomes are a likely result.

Aside from general statements of possible harm, Air Canada failed to provide insight as to how its competitors might use Professor Baumol's statement so that it will likely sustain specific direct harm once the statement in question is released. Air Canada states that Professor Baumol's statement contains specific information regarding other routes, as well as information about considerations taken by Air Canada in making its pricing decisions. However, Air Canada does not explain how this information is linked to the likelihood of material financial loss or prejudice to its competitive position.

Therefore, the Agency finds that Air Canada has not demonstrated the specific direct harm that it alleges. There is no evidence that the disclosure of Professor Baumol's statement would likely cause material financial loss and prejudice to the competitive position of Air Canada.

Information for which the disclosure would likely cause interference with Air Canada's contractual relations and negotiations with third parties

Air Canada submitted that disclosure will result in interference with its contractual relations and negotiations with third parties, pursuant to paragraph 66(8)(c) of the CTA. Air Canada bears the burden of demonstrating, on a balance of probabilities, that specific harm would likely result from the disclosure of the statement.

In *Saint John Shipbuilding Ltd. v. Canada (Minister of Supply & Services)*, (1990) 107 N.R. (Fed. C.A.), the Federal Court of Appeal stated that the applicant had to show an obstruction in the actual contractual negotiations. The threshold must be that of probability and not a mere possibility or speculation. The Federal Court of Appeal concluded that the evidence presented by the applicant was lacking in this regard and was insufficient to support a finding.

In *St. Joseph Corp. v. Canada (Public Works and Government Services)*, [2002] FCJ No. 361 (FC), the Federal Court stated that the applicant must show an obstruction in the actual contractual negotiations but the evidence was lacking. The affidavit only speculated as to probable harm. The statements were very general and did not support the contention that disclosure of the requested records would result in a reasonable expectation of probable harm. This was also the case in *131 Queen Street Ltd. v. Canada (Attorney General)*, [2007] F.C.J. No. 510, where the Federal Court held that the affidavit filed as evidence did not provide sufficient probative evidence. Unsupported assertions or speculative evidence that disclosure would give rise to a reasonable expectation of probable harm was not enough. (See also *Canadian Broadcasting Corporation v. National Capital Commission*, (1998) 147 F.T.R. 264 and *Société Gamma Inc. v. Canada (Department of Secretary of State)*, (1994), 79 F.T.R. 42).

The Agency is not satisfied that Air Canada has met its burden. Air Canada has made general statements that the disclosure of Professor Baumol's statement will result in interference with its contractual relations and negotiations with third parties. However, Air Canada did not bring forward any evidence supporting its general statements. As indicated by the case law, Air Canada must show an obstruction in actual contractual relations and negotiations. However, there is no evidence that Air Canada is presently involved in contractual negotiations with third parties or that its contractual relations may be impacted. The mere heightening of competition is not sufficient to refuse to disclose the statement. Hypothetical problems are insufficient. Air Canada's general statements amount merely to bald assertions unsupported by any evidence as to the likelihood of interference with its contractual relations and negotiations with third parties.

Aside from general statements of possible harm, Air Canada failed to provide insight as to how its competitors might use Professor Baumol's statement so that it will likely sustain specific direct harm once the statement in question is released. Air Canada stated that Professor Baumol's statement contains specific information regarding other routes, as well as information about considerations taken by Air Canada in making its pricing decisions. However, Air Canada did not explain how this information is linked to the likelihood of interfering with its contractual relations and negotiations with third parties.

Therefore, the Agency finds that Air Canada has not demonstrated the specific direct harm that it alleges. There is no evidence that the disclosure of Professor Baumol's statement would likely cause interference with Air Canada's contractual relations and negotiations with third parties.

Statement and ATIA in the context of an access to information request

Based on paragraph 20(1)(b) of the ATIA, Air Canada submitted that information of the nature of that

contained in Professor Baumol's statement may not be disclosed to the public. According to Air Canada, there is no discretion awarded to the head of a government institution in deciding whether information of this nature should be disclosed. Paragraph 20(1)(b) of the ATIA uses the wording "shall refuse to disclose" rather than "may refuse to disclose". According to Air Canada, the statement would automatically be protected from disclosure pursuant to paragraph 20(1)(b) of the ATIA in the context of an access to information request.

The argument presented by Air Canada is based on the ATIA. The test outlined in the Federal Courts case law for paragraph 20(1)(b) is not one to be found in the CTA or General Rules. The Agency must assess a claim for confidentiality according to its legislative and regulatory frameworks as it has done above by finding that Air Canada has not demonstrated any specific direct harm that it alleges, pursuant to subsection 24(2) of the General Rules.

The Agency is not dealing with an access to information request in this instance. It cannot be presumed that Professor Baumol's statement would automatically be protected from disclosure in the context of an access to information request. As Air Canada submitted a hypothetical argument, the Agency will not make a finding on it.

Conclusion

For these reasons, the Agency finds the *curriculum vitae* and statement relevant to the proceeding and no specific direct harm will likely result from their disclosure. The Agency hereby denies Air Canada's claims for confidentiality. Pursuant to paragraph 24(2) of the General Rules, the Agency places Professor Baumol's *curriculum vitae* and statement on the public record.

Timelines

Considering that the disclosure of these documents may have an impact on Mr. Jackson's application before the Agency, the Agency provides Mr. Jackson with an opportunity to comment, pursuant to section 3 of the General Rules.

To enable the Agency to consider the matter in a timely fashion, Mr. Jackson is hereby provided with **seven (7) calendar days** from the date of this letter to review the attached *curriculum vitae* and statement and file with the Agency and serve on Air Canada his comments. Air Canada will then be provided with **three (3) calendar days** from the date of the receipt of Mr. Jackson's reply to file with the Agency, and to concurrently serve on Mr. Jackson its comments.

It is the parties' responsibility to ensure that their submissions are filed within the stated time frames.

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2011-06-20

This is

Exhibit “D”

to the Affidavit of Dr. Gábor Lukács,
affirmed September 11, 2025



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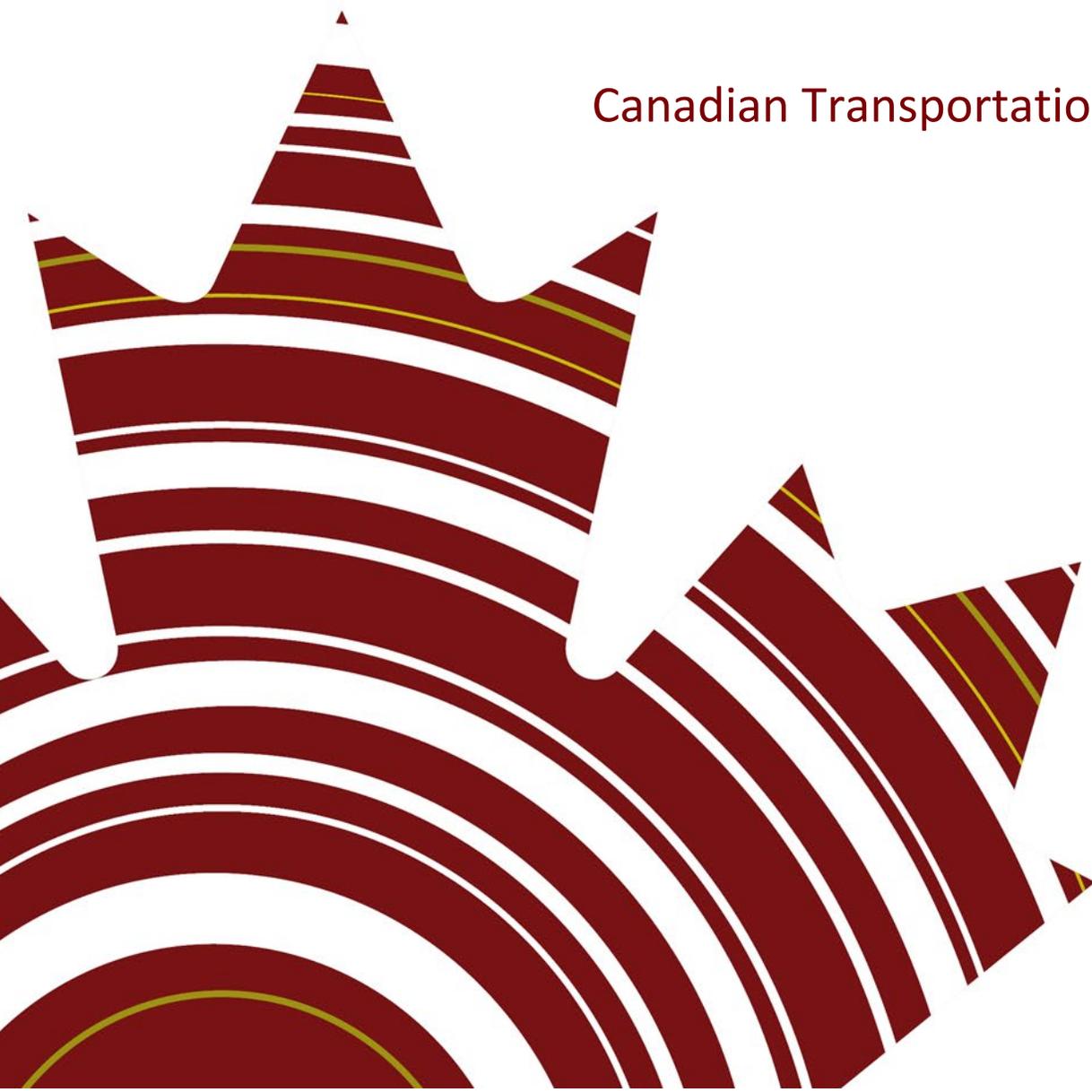


Canadian
Transportation
Agency

Office
des transports
du Canada

Protecting your personal information during adjudication: A guide for air passengers

Canadian Transportation Agency



Canada

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Catalogue No. TT4-75/2022E-PDF

ISBN 978-0-660-42914-4

[Alternate formats](#) are available. Une [version française](#) est aussi disponible

Summary

- Air passengers whose complaint against an airline is moving to adjudication are responsible for protecting their personal information. If you don't take steps to do this, **your personal details could become public information.**
- You should always **remove unneeded personal information** from your complaint documents. It's personal if it identifies you as an individual.
- **Leave in** your name, address, phone number, and email. **Take out** any other personal details, unless they are important to your complaint. **Always** take out credit card and bank account numbers!
- You can use editing tools to hide details in electronic documents. First, make a copy of them to work with. For paper documents, cover the details, for example with paper or sticky notes, and make a copy. Never alter your originals.
- If a personal detail is important to your complaint, leave it in, but ask us permission to keep it confidential.
- If the airline sends documents about your complaint, check them for your personal details. If you see any, highlight them for us and ask us to remove them.

Disclaimer

This is not a legal document. The explanations and definitions in this guide are for general guidance purposes only. Legal requirements and protections concerning personal information are set out in the [Privacy Act](#) and [Access to Information Act](#).

In case of differences between this guide and legislation or regulations, the legislation or regulations prevail.

Introduction

This is a guide for people who have complained about an airline, and now the complaint is moving to the adjudication stage. The guide explains how to protect your personal information as you move to, and go through, adjudication.

Going to adjudication is like going to court, except usually you don't appear in person. You give your side of the complaint, and the airline gives its side, in emails and other documents. Anyone can ask to see these emails and documents, just like they could ask to see items from a court case.

This is one way that adjudication is different from other complaint stages. In the other stages, information you give us stays private. But once you move to adjudication, other people could ask to see it -- even if it includes things like your credit card or passport details.

To protect yourself, you should remove personal details from any documents you send us. Or, if you must leave them in, you can ask us to keep them confidential. This guide explains how. It covers:

- What personal information is;
- When and how to remove personal information (with step-by-step examples);
- How to request confidentiality for information you must leave in; and
- Checking documents the airline sends us for **your** personal information.

Is your complaint about accessibility?

If your complaint is about air travel accessibility for persons with disabilities, we have specific guides and help on our [Accessible Transportation](#) page.

What is personal information?

Information is personal if it can identify you as an individual.

Basic personal information includes your name, address, phone number, and email.

Other personal information includes your banking details, government identification (ID) numbers, and details about your background. Examples include:

Banking and government ID:

- Credit card or bank account number
- Passport number/Permanent resident card number
- Driver's license number
- Health card number
- Social insurance number

Background details:

- Age or date of birth
- Medical history or information about your health
- Race or colour
- National or ethnic origin
- Religion
- Marital status
- Education or employment history
- Criminal history

What personal information should I remove? What should I leave in?

In order to process your complaint, we require your name, address, phone number, and email. We keep this basic information in our files and share it with the airline. We do not offer it to anyone else, but it is available to the public if someone asks for it.

Other than the basic information, you can (and should!) remove most personal information from your documents. Only leave it in if it's important to your case. You could **ask yourself**:

- Does this information help explain my complaint?
- Would someone need this information to make a decision in my case?

If the answer is no, remove the information from your documents before you send it to us. Don't mark or cut your originals – as needed, make a copy and work from that.

For electronic copies, digital photos, and scans, you can use photo editing software or a redaction app to black out or remove the information. There may be free tools online.

For paper documents, you can completely cover the words you want to hide using paper or sticky notes (or, on copies only, a black marker or black tape). Then scan or take a picture of the document.

You can send us the electronic copies, scans, screenshots, or photos of your document in many formats. We accept pdf, doc, docx, xls, xlsx, jpg, jpeg, png, gif, and txt. Include the most recent case number we gave you each time you contact us with or about your documents.

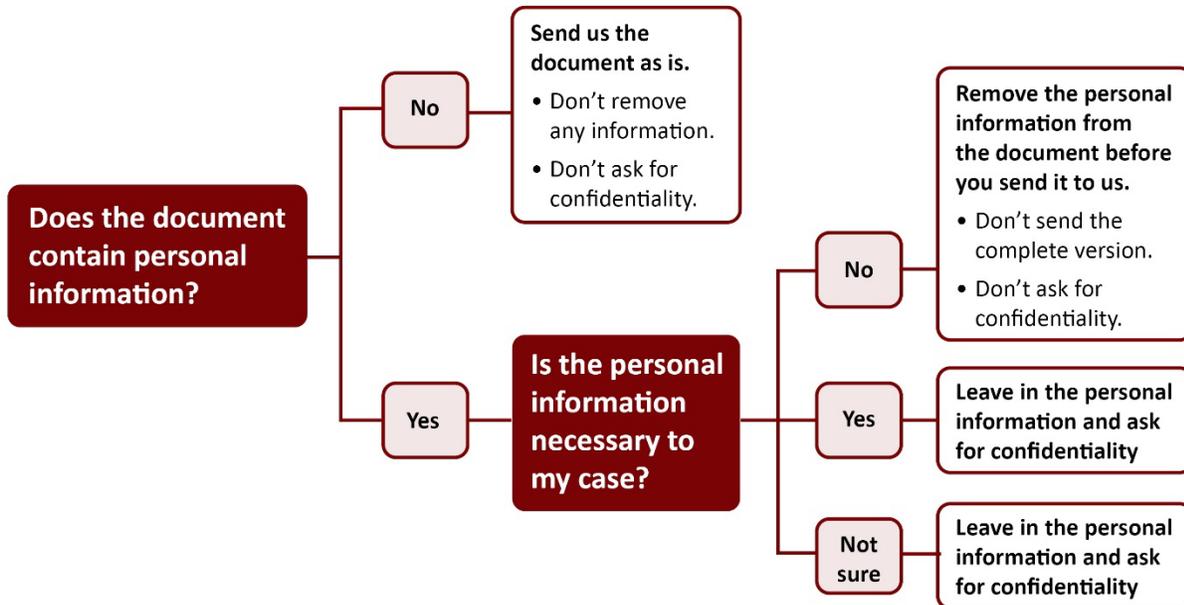
Keep the original versions

Keep original paper documents (like passports) safe. For electronic documents (like e-tickets, booking confirmations, and invoices), save a copy before removing or hiding any information.

If the answer is yes, you should leave the information in. However, you can ask us to keep it confidential. Annex A explains how to request confidentiality.

If you're not sure whether the personal information is important to your case, it's best to leave it in and ask for confidentiality.

Here is another view of the questions to ask yourself:



Remember: if you don't take these steps to protect your personal information, it may become public information.

Step-by-step examples of removing information from documents

Below are two examples of removing personal information from documents. In each example, a passenger has a complaint about an airline and the complaint is moving to the adjudication stage.

Example 1 – Passport

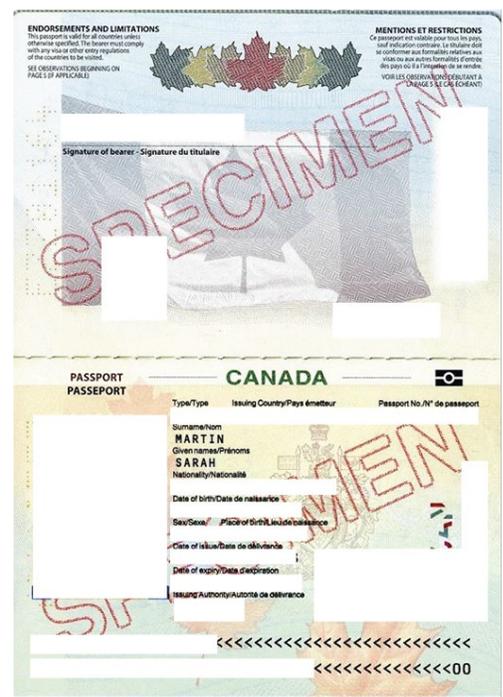
The passenger claims the airline didn't let them on the flight because their name was misspelled on the ticket. The passenger wants to send us a copy of their main passport pages to support their complaint.

The passport pages show a lot of personal information. They show the passenger's name, picture, nationality, date of birth, place of birth, sex, and passport number.

The passenger looks at the passport pages to decide what to leave in and what to remove. They decide:

- Their name is basic information. Also, their complaint is about the spelling of the name, which is **important** to the case. They leave the name in.
- Their picture, nationality, date of birth, place of birth, sex, and passport number are **not important** to the case. The passenger removes these parts by covering them with paper and taking a photograph.

The passenger sends us the photo of the passport pages. It shows their name, but not the other personal information.



Example 2 – Credit Card Statement

The passenger claims the airline charged them to check a bag that was supposed to be free. The passenger wants to send us a copy of their credit card statement to support their complaint. The statement shows the checked bag payment.

The statement also shows other information. It shows the passenger's name, credit card number, and various things they've bought. It shows their credit limit, how much they paid on their credit card last month, and how much they owe this month.

The passenger looks at the credit card statement to decide what to leave in and what to remove. They decide:

- Their name is basic information. They leave their name in.
- The part of the statement that shows the checked bag payment is **important** to the case. The passenger leaves that part in.
- The passenger's credit card number, past purchases and payments, credit limit, and the total amount they owe this month are **not important** to the case. The passenger removes this information using black marker on a copy of the statement.

The passenger sends us a scan of the credit card statement. It only shows their name and the checked bag payment.

(Photo of a credit card statement – TO BE ADDED LATER)

We never need your credit card or bank account numbers. You should always remove these from documents you send us about your complaint.

Checking documents the airline sends for your personal information

Once you request to move to adjudication and send us the documents that support your complaint, we assess whether to accept your case. If it is accepted, the adjudication begins.

We email you and the airline a letter to let you know the process has started and explain the next steps. The letter also gives you a new case number and explains how to contact us during the adjudication, if you need to. Whenever you contact us, you should include your case number.

At this point, the airline may send us comments and documents about your complaint. This is called their "answer to the complaint", where they give their side of the story. Any time the airline sends a document to us, they must also send it to you. You will have copies of all the information they provide and they will have copies of all the information you provide.

- You should always check documents the airline sends for your personal information.
- If the documents contain your passport number, date of birth, or other personal information that is not important to your case, let us know. You can send us a copy with the personal information highlighted. We will remove it from the documents.

You should not remove information from the airline's documents yourself. Just highlight it on a copy for us, and we will remove it.

We're here to help

If you've read this guide but still have questions, we can help! Contact the person at our agency who has been helping you with your complaint. Include your case number.

To learn about protecting your personal information in other situations, visit this [page of tips](#).

Annex A: How to ask for confidentiality

If you must leave personal information in documents you send us for your complaint, you can ask us not to make it public. This is called asking for confidentiality.

This annex explains:

- what it means for information to be "confidential"
- how to ask for confidentiality
- the different decisions that could be made when you ask us for confidentiality.

Always ask for confidentiality for personal information that you must leave in documents. Otherwise, your personal details will be publicly available.

What "confidential" means

For air passengers, keeping your information confidential means we see it and the airline sees it, but no one else. (Usually, the airline already has the information, because you provided it when you bought your ticket.)

How to ask for confidentiality

To ask for confidentiality as your complaint moves to adjudication, take Steps 1 and 2, below. If you ask for confidentiality after your adjudication starts, you must also take Step 3.

Steps 1 and 2

1. Fill out the [form for asking for confidentiality](#) (also called Form 17).

- Clearly say why making the information public would harm you or someone else. Be as specific as you can about why it would be harmful.

2. Send us the completed Form 17 and these **two** copies of the document:

- One copy in which the personal information is **highlighted**. Each page should say "CONTAINS CONFIDENTIAL INFORMATION" at the top, in capital letters.
- One copy in which the personal information is **blacked out**.

Step 3

If you ask for confidentiality at any time **after** your adjudication starts, you must take steps 1 and 2 above and step 3 below. You'll know when your adjudication starts, because we send you a letter about it.

3. Send a copy of Form 17 and the two copies of your document to the airline.

- Send them to the airline the same day you send them to us, before 5 PM Eastern Time.
- Copy us on your email to the airline. Use our contact information from the letter we send you when your adjudication starts. Include the case number from that letter.

The decision

When you ask for confidentiality, our decision-makers do not automatically agree. They think carefully about your request. They look at how important the personal information is to your case, and if they decide it is important, they look at how harmful it would be to share it. Here's what they could decide:

Not important to the case: Decision-makers could find that the information you want to keep confidential is not important to your case. If so, they won't accept your confidentiality request, but they only use the blacked-out version of your document. The public will not have access to the blacked-out information.

Harmful: The decision-makers could find that the information is important and that sharing it will harm you or someone else. If so, the airline would have access to the blacked-out information in your document, but the public would not. The decision-makers could also take other steps related to your document, which they would explain.

Not harmful: The decision-makers could find that the information is important, but that sharing it with the public (if someone asks for it) won't harm you or anyone else. Or, they could find that the benefits of sharing outweigh the harm. In this situation, your information would be available to the public on request.

Note

If the airline has any concerns about your confidentiality request, they could object to it. If that happens, you have a chance to reply to their objection.

This is

Exhibit “E”

to the Affidavit of Dr. Gábor Lukács,
affirmed September 11, 2025

A handwritten signature in blue ink, reading "Douglas W. Judson". The signature is fluid and cursive, with a long horizontal stroke at the end.

COMMISSIONER FOR TAKING AFFIDAVITS

Douglas W. Judson
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Decision No. 149-C-A-2022

December 22, 2022

Application by Cara Garlow and Casey Garlow (applicants) against WestJet (respondent), regarding cancelled reservations

Case number: 21-50129

[1] The applicants purchased two separate tickets to travel with the respondent:

- from Houston, Texas, to Paris, France, via Calgary, Alberta, on June 5, 2020; and
- from Paris to Houston via Calgary on June 18, 2020.

[2] The applicants purchased the Econo fare tickets on February 15, 2020, and February 20, 2020. They then decided to cancel the tickets on April 22, 2020, in light of the COVID-19 pandemic. The respondent provided them with the value of their tickets in the form of a travel bank flight credit.

[3] The applicants seek a refund of the tickets.

[4] In this decision, the role of the Canadian Transportation Agency (Agency) is to decide whether the respondent properly applied the terms and conditions that were applicable to the tickets that the applicants purchased, as set out in its Tariff.

[5] If the Agency finds that the respondent failed to properly apply its Tariff, the Agency can direct it to take the corrective measures that the Agency considers appropriate or to pay compensation for any expense incurred by the applicants as a result of the respondent's failure.

Preliminary matter

[6] The applicants request confidentiality under section 31 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (Rules) with respect to "any passport numbers, credit card numbers or address, phone numbers or emails" disclosed by either party during the pleadings process.

[7] The open court principle applies to the Agency when it undertakes dispute adjudication proceedings like this one. This principle requires that, with limited exceptions, proceedings and their associated records be made public. To obtain a confidentiality order over information that is relevant to a proceeding, the person

must establish that the order meets the three-part test articulated in *Sherman Estate v Donovan (Sherman)*:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[8] The Agency varies section 31 to conform with the approach to court openness articulated in *Sherman Estate*, pursuant to subsection 5(2) and section 6 of the Rules. Accordingly, a person seeking confidentiality over information that is relevant to the dispute proceeding must establish all of the three prerequisites outlined above for the threshold to be met under section 31 of the Rules.

[9] As the test applies only to information that is relevant to a case, sensitive personal information, such as full passport numbers and credit card numbers, would not be subject to the test; however, the Agency notes that no such information was disclosed in this case. The other personal identifying information in question—including addresses, phone numbers and email addresses—is not highly sensitive such that disclosure of the information would be an affront to the applicants' dignity. This alone is sufficient to conclude that there is no serious risk to the important public interest in privacy defined in *Sherman*. Accordingly, the Agency denies the request.

Cancelled reservations

[10] The applicants claim that they requested a refund for the tickets online and were informed that they were not eligible to receive a refund. The applicants argue that they should be refunded because the respondent eventually cancelled the flights they were scheduled to travel on.

[11] The respondent submits that the applicants' flights were cancelled on May 11, 2020, after the applicants cancelled their reservations. Accordingly, the respondent argues that the applicants' cancellation is considered voluntary and falls under the fare rules applicable to the non-refundable Econo fares that they purchased. This fare provides that the tickets are only refundable to the applicants' travel bank. The respondent therefore submits that the applicants are not entitled to any refund to the original form of payment, except for a refund of their pre-reserved seat fees.

[12] The Tariff provides that when a passenger decides to not use their ticket and cancels the reservation, the passenger may not be entitled to a refund, depending on any refund condition attached to the particular fare.

[13] With respect to non-refundable, non-Basic tickets cancelled more than 24 hours after purchase, the Tariff provides that travel bank flight credit provided for these tickets shall include all amounts paid by the passenger in association with the fare. It shall also include all refundable fees for unused services, such as advanced seat selection.

[14] The respondent provided copies of the applicants' electronic ticket history and travel bank record, which indicate that the fares and seat selection fees that the applicants paid on both reservations have been provided to them as flight credit.

[15] In light of the above, the Agency finds that the applicants are not entitled to a refund of their tickets to the original form of payment. However, the Tariff provides that passenger-initiated cancellations of a reservation where a seat selection fee has been collected will result in the seat selection fee being refundable. The Agency, therefore, finds that the applicants are entitled to a refund of the seat selection fees paid for both reservations.

Order

[16] The Agency orders the respondent to refund the applicants in the amount of USD 483 as soon as possible and no later than February 7, 2023.

Legislation or Tariff referenced	Numeric identifier (section, subsection, rule, etc.)
<u><i>Air Transportation Regulations, SOR/88-58</i></u>	110(4); 113.1(1)
International Passenger Rules and Fares Tariff WS1 containing Local Rules, Fares and Charges on behalf of WestJet Applicable to the Transportation of Passengers and Baggage between points in United States/Canada And points in Area 1/2/3 and between the US and points in Canada, CTA 518	15(C); 15(C)(1)(A); 15(C)(1)(c); 70(C)(4); 105(A)

Member(s)

Mary Tobin Oates

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Date modified:

2022-12-22

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Exhibit “F”

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Decision No. 19-AT-A-2024

September 26, 2024

Application for review and request for confidentiality by SC

Case number: 24-07622

Summary

- [1] On February 1, 2024, SC filed with the Canadian Transportation Agency (Agency) an application for review under section 32 (Review Application) of the *Canada Transportation Act* (CTA).
- [2] On February 8, 2024, SC filed a request under the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* [Rules] for confidentiality over their identifying information and the nature of their disability.
- [3] For the reasons set out below, the Agency:
1. dismisses SC's Review Application because it contains fundamental defects; and
 2. grants SC's request for confidentiality in part.

Background

- [4] On January 16, 2024, SC filed another application against Air Canada with the Agency regarding an accessibility matter (Accessibility Application). The Agency communicated with SC by email on April 11, 2024, to inform them that it would address the Accessibility Application after it addressed their Review Application.
- [5] In its email, the Agency also provided SC with an opportunity to confirm which documents they intended to form the record for each case. SC responded by emails received on April 15, 16, 22 and 25, 2024.
- [6] On May 31, 2024, the Agency issued Decision LET-AT-A-27-2024 (Preliminary Decision), in which it made a preliminary finding that SC's Review Application contained fundamental defects. The Agency notified SC that it intended to dismiss their application unless SC could demonstrate why the Agency should not do so.

[7] The Agency also stated in the Preliminary Decision that it would address SC's request for confidentiality in its next decision.

[8] SC filed a response to the Preliminary Decision on June 5, 2024.

Application

Fundamental defects

[9] In the Preliminary Decision, the Agency found, on a preliminary basis, that SC's Review Application contained fundamental defects because it did not identify a decision or order for the Agency to review.

[10] Section 32 of the CTA specifically refers to an Agency decision or order. As a result, any application made under section 32 must identify which decision or order the applicant is requesting that the Agency review.

[11] SC's response to the Preliminary Decision still did not identify a specific decision or order for the Agency to review. The Agency therefore confirms its preliminary finding that SC's Review Application contains fundamental defects and dismisses it.

[12] However, as the Agency's role under Part V of the CTA is to identify, remove and prevent barriers in the federal transportation network to persons with disabilities, the Agency will best be able to address SC's concerns by hearing their Accessibility Application against Air Canada. If warranted, the Agency may order corrective measures or other remedies as part of that process.

[13] A decision in which the Agency opens pleadings on the Accessibility Application will follow.

Request for confidentiality granted in part

The request

[14] SC requests anonymity in the proceeding — that is, confidentiality over all identifying information on the record, including their full name, address, phone number, email address, date of birth, and the name of their doctor, and the use of their initials in place of their name on any document available to the public. SC also requests confidentiality over information about their disability.

The law

[15] The open court principle applies to the Agency in its capacity as a quasi-judicial tribunal. This principle requires that, with limited exceptions, proceedings and their associated records be made public unless the Agency grants a request for confidentiality under the Rules. In *Sherman Estate v Donovan* (*Sherman Estate*), the Supreme Court of Canada (SCC) acknowledged court openness as a constitutionally protected right because it helps keep the justice system fair and accountable. The

SCC explained that, because of this importance to liberal democracy, the bar for overturning the open court principle and granting confidentiality in court proceedings is high, even when disclosure may result in inconvenience or embarrassment for participants. The SCC further explained that, as a result, confidentiality orders limiting court openness can only be made in rare circumstances. This principle not only applies to the courts but also applies to the Agency when it acts in its capacity as a quasi-judicial decision-maker.

[16] In assessing requests for confidentiality under the Rules, the Agency first decides whether the information for which confidentiality is requested is relevant to the proceeding. If the Agency finds that the information is irrelevant to the proceeding, it may choose to not place the information on the Agency's record.

[17] If, however, the Agency finds that the information for which confidentiality is requested is relevant to the proceeding, the Agency must then apply the test for limits on court openness set out by the Supreme Court of Canada in *Sherman Estate*. To grant confidentiality, the Agency must be satisfied that the request meets the three criteria of the *Sherman Estate* test, which are that:

1. court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. as a matter of proportionality, the benefits of the order outweigh its negative effects.

Analysis and determination

[18] In this decision, the Agency will address SC's confidentiality request with respect to the documents submitted in connection with this proceeding. These include SC's application, confidentiality request, communications with the Agency and answer to Decision LET-AT-A-27-2024, as well as a letter from SC's doctor, SC's application with the Canadian Human Rights Commission and SC's application as it relates to their Accessibility Application.

[19] With respect to SC's Accessibility Application for which the confidentiality request also applies, the Agency will issue a separate decision when it opens pleadings on that case.

Is the information for which SC requests confidentiality relevant?

[20] The Agency finds that only SC's application, confidentiality request, communications with the Agency and answer to Decision LET-AT-A-27-2024 are relevant to this proceeding.

[21] In the context of open courts, an applicant's identity is always central to their case. The Rules require applicants to include their name, address, telephone number, and email address when filing an application with the Agency because the information is, at the very least, necessary for the Agency's administration of their case. Accordingly, the Agency finds that SC's full name, address, phone number and email address are relevant to the proceeding as identifying information.

[22] The Agency finds, however, that SC's date of birth is not necessary for identification of administrative purposes and is not relevant to the proceeding. The Agency therefore strikes all mentions of SC's date of birth from the record.

[23] With respect to the information about SC's disability, the Agency finds that any information supporting SC's application is relevant to the proceeding. Therefore, the Agency finds that the information SC provides about their disability is relevant to the proceeding insofar as it serves to demonstrate their interest in the outcome of their application.

[24] The Agency finds that the remainder of the documents filed by the applicant are not relevant to the Review Application. The documents fail to identify a decision to be reviewed, do not provide new facts on safety measures surrounding allergies, nor do they demonstrate a further interest in the outcome of the Review Application. The Agency therefore removes these documents from the record.

Does court openness pose a serious risk to an important public interest?

[25] Of the information found to be relevant, the documents remaining on the record for SC's Review Application — namely, SC's application, confidentiality request, communications with the Agency and answer to Decision LET-AT-A-27-2024 — contain only SC's name, email address, phone number and a reference to her address (identifying information) and information about their disability. The Agency will, therefore, turn to the *Sherman Estate* test to evaluate whether to grant SC's confidentiality request concerning that information.

[26] The Agency finds that disclosing SC's identifying information in connection with the information about their disability poses a serious risk to SC's health and safety. The SCC has recognized that there is an important public interest in protecting individuals from physical harm. In considering whether a person's safety is at risk, the Agency assesses the probability of the feared harm in addition to the gravity of the harm itself. As stated in *Sherman Estate*, "the test requires the serious risk asserted to be well grounded in the record or the circumstances of the particular case. This contributes to maintaining the strong presumption of openness."

[27] As evidence of the risk to their safety, SC describes being the victim in a serious incident of stalking that resulted in criminal charges. SC also describes threats at work from the public due to their position and role as well as incidents of workplace harassment related to their allergy. The Agency finds, therefore, that combined, the concerns raised by SC show that the harm alleged is serious and that the risk is grounded in past experiences relevant to the disclosure of their identity together with information on their medical condition.

Are there reasonable alternative measures that will prevent this risk?

[28] The Agency finds that no alternative to a confidentiality order of SC's name, phone number, email

and home address (identifying information) is available to prevent a serious risk to SC's safety.

[29] However, the Agency finds that granting anonymity is a reasonable alternative to granting confidentiality over information about SC's disability. In assessing previous requests for confidentiality of a similar nature, the Agency has stated that the advantage of granting anonymity in a proceeding is that it prevents any serious risk to important public interests because it detaches sensitive information, such as the nature of an applicant's disability, from the applicant's identity. Anonymity therefore reduces the risk to SC's safety that would result from the public disclosure of the nature of their disability in association with their identity.

[30] The Agency thus places the information about SC's disability on the public record of this proceeding.

Do the benefits of the order outweigh its negative effects?

[31] Although SC's identity is central to the case, protecting their identity allows the Agency to place the information about their disability on the public record. The combination of protection and disclosure prevents any serious impact to the important public interest identified above and maintains the public's access to the full range of evidence and reasoning underpinning the Agency's decision.

[32] Accordingly, the Agency finds that the benefits of the confidentiality order over SC's identifying information outweigh its impact on court openness and grants anonymity to SC in this proceeding.

[33] The Agency will place on the public record copies of their application, confidentiality request, communications with the Agency and answer to Decision LET-AT-A-27-2024 with their name anonymized, and their address, email address and phone number redacted. The Agency will maintain all mentions of SC's name, email address, home address and phone number only on the confidential record of this proceeding.

Conclusion

[34] The Agency dismisses SC's Review Application because it contains fundamental defects.

[35] The Agency grants anonymity to SC and redacts SC's identifying information from the public record of this proceeding.

Legislation or Tariff referenced	Numeric identifier (section, subsection, rule, etc.)
<u>Canada Transportation Act, SC 1996, c 10</u>	32; 170(1); 172(1); 172.1(1)
<u>Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings), SOR/2014-104</u>	18(1); 31(1); 31(5)(a); 31(5)(b); 31(5)(c)(ii); 42(1)(c); 42(2); Schedule 5(1)

Legislation or Tariff referenced	Numeric identifier (section, subsection, rule, etc.)
<u><i>Sherman Estate v Donovan</i>, 2021 SCC 25</u>	1; 2; 32; 38; 98; 102

Member(s)

France Pégeot

Marisa Victor

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Date modified:

2024-09-26

AIR PASSENGER RIGHTS
Applicant

v.

THE ATTORNEY GENERAL OF CANADA
Respondent

Court File No. CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Ottawa

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