

CITATION: Air Passenger Rights v. The Attorney General of Canada, 2025 ONSC 7189
COURT FILE NO.: CV-25-00100065
DATE: 2025/12/22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Air Passenger Rights, Applicant

-and-

Attorney General of Canada, Respondent

BEFORE: Justice A. Doyle

COUNSEL: D. Judson for the Applicant
A. Delcourt for the Respondent
H. Kheir for the proposed intervenor

HEARD: December 18, 2025 at Ottawa

REASONS FOR DECISION

[1] Charter Advocates Canada (CAC) seeks leave to intervene as friends of the court in this application pursuant to r. 13.02. 14.05 of the Rules of Civil Procedure R.R.O. 1990, Reg. 194.

[2] For the reasons that follow, the court dismisses the motion.

Background

[3] The Applicant is a not-for-profit corporation that advocates for the rights of Canadian air passengers and provides information and resources to the public regarding air passenger rights issues, rules and processes.

[4] In May 2025, the Applicant commenced an application against the Attorney General of Canada (AG) seeking a declaration reading down the confidentiality clause in s. 85.09 (1) of the *Canada Transportation Act*, SC. 1996, c.10 (CTA).

[5] In 2024, the Applicant had been denied access to decisions and reasons by the Complaint Resolution Officers (CRO) in five complaint clauses and the documents relied on by the CROs pursuant to s. 85.09(1) of the CTA.

[6] The Applicant argues that the under the open courts principle they should have access to the documents relied on by the CROs. In addition, this confidentiality clause violates s. 2(b) of the *Charter of Rights and Freedom (Charter)* and could not be saved by section 1.

[7] The Applicant has filed affidavits, and the AG has filed an affidavit of the Director of National Air Services Policy at Transport Canada who has worked with the Air Passenger Protection Regulations (APPR) file since March 2018.

[8] The parties have consented to the Canadian Broadcasting Corporation (CBC) as an intervenor as a national public broadcaster.

[9] The CBC has a distinct perspective from the parties as their mandate is to “inform Canadians on matters of public interest, including the proper functioning of the APPR complaints process”.

[10] I find that CBC’s intervention will be unique and useful as it will discuss the impacts of the confidentiality provision in s. 85.09(1) of the *CTA* on CBC’s ability to discharge its mandate to Canadians.

[11] The Court grants intervenor status to the CBC and permits it to file written argument limited to 10 pages and oral argument limited to 10 minutes.

[12] With respect to the CAC’s motion, the applicant does not oppose this motion. The AG opposes the motion on the basis that the CAC has not met the criteria required to obtain leave to intervene as friends of the court.

Legal Framework

[13] Rule 13.02 of the *Rules of Civil Procedure* RRO 1990, Reg 194, permits the court to grant leave to an intervenor.

[14] The court should consider (a) the nature of the case; (b) the issues and (c) the likelihood that the proposed intervenor is able to make a useful contribution to the resolution of the case without causing injustice to the parties. See *Foster v. West* 2021 ONCA 263 at para. 10, *Peel*

(Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (1990), [1990 CanLII 6886 \(ON CA\)](#), 74 O.R. (2d) 164, at p. 167; *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#), at para. [8](#); and *Caruso v. Law Society of Ontario*, [2025 ONCA 270](#), at para. [6](#).

[15] The test for granting leave to intervene is more relaxed in constitutional cases: *Animal Justice v. Ontario (Attorney General)*, [2024 ONCA 941](#), at para [12](#). Constitutional cases may have a wide impact on the rights of others who are not parties to the litigation. Interventions provide affected individuals and groups with an opportunity to be heard and give the court perspectives on the historical and sociological context of the issues raised.

[16] A proposed intervener in constitutional litigation must meet at least one of the following criteria: (1) the applicant has a real, substantial and identifiable interest in the subject matter of the proceedings; (2) the applicant has an important perspective distinct from the immediate parties; or (3) the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base: *Reference re Greenhouse Gas Pollution Pricing Act*, at para. [8](#).

[17] The overarching consideration is whether a proposed intervenor can be of assistance to the court in providing a different perspective that is not already addressed by the parties: *Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#), at para. [11](#); *Solmar Inc. v. Hall*, [2025 ONCA 570](#), at para. [11](#).

[18] Leave to intervene may be denied where the submissions of the proposed intervener are merely duplicative of the submissions of others: *Fair Voting BC*, at para. [13](#).

The CAC position

[19] The CAC argues that the applicant is focussed on the conflict resolution procedure whereas the CAC is focused on the broader impact on the Canadian public as a whole.

[20] The CAC is relying on the ground that it can provide a unique perspective.

[21] The draft factum focuses on the need for the government to be transparent and accountable.

[22] Unlike the *Christian Heritage Party of Canada v. Hamilton (City)* 2025 ONCA 700 (CHPC), there is only one other intervenor in this case. There is no duplication.

[23] Since this involves a matter of public interest rather than a private dispute, the standard to be met is not as onerous or stringently applied. *Jones v. Tsige* 2011 CanLII 99894 (ON CA).

[24] This case implicates the Charter and engages issues of constitutional interpretation and justification for the impugned statute.

[25] The dispute in this application transcends the dispute between the parties and has broader application. The results will affect the public at large as the court will be required to determine whether the impugned provision violates s. 2(b) of the *Charter* and if so, whether it is justified under s. 1.

[26] The CAC would be of assistance to the court given the experience and expertise of the proposed intervenor. CAC exists for the purpose of providing *pro bono* legal services on cases involving constitutional issues and *Charter* issues. It has decades of lawyer-years of experience in constitutional law between its 9 lawyers. Although CAC has not acted as an intervenor, it has represented intervenors.

Analysis

[27] CAC's cases seek to uphold the rule of law and the principles underlying Canada's free and democratic society and they involve challenging government infringements of the Charter. It also facilitates legal advice and representation before government, administrative tribunals and the courts.

[28] CAC has not previously been granted intervenor status. Its lawyers have acted for other intervenors.

[29] Its eight lawyers and staff provide *pro bono* legal services to clients advocating for *Charter* rights, including freedom of belief and expression under s. 2(b).

[30] CAC has filed a draft factum with proposed submissions as an intervener, discussing the impact of s. 85.09(1) on the freedoms of thought, belief, opinion, and expression of Canadians who desire to obtain decisions from CSO for the purpose of disseminating them, discussing them and potentially criticizing them as a way to hold government decision makers accountable to the public.

[31] Secondly, in the proposed factum CAC makes submissions with respect the effect of s. 85.09(1) on transparency and accountability on the proportionality analysis. The CAC will argue that limits that undermine government transparency and accountability are contrary to free and democratic government, and this should be weighed in the final step of the Oakes proportionality analysis.

[32] The applicant has pleaded that s. 85.09(1) of the *CTA* infringes s. 2(b) of the *Charter* and is not saved by s. 1.

[33] CAC emphasizes that it will focus on the importance of transparency and accountability when dealing with the impact of s.85.09.

[34] Essentially, in its draft factum, the CAC will provide submissions on s. 85.09(1) on government transparency, public criticism of government institutions and democratic accountability and how these values affect an analysis of s. 1 and 2(b).

[35] I find that CAC does not meet the criteria for interveners set out in *Reference re Greenhouse Gas Pollution Pricing Act*. It has not shown that it has a real, substantial and identifiable interest in the subject matter of the proceedings. A proposed intervener's desire to shape the law, standing alone, does not constitute an interest sufficient to ground leave to intervene. CAC does not identify a distinct perspective, distinct from that of the immediate parties, that could assist the court or put the issues in dispute in historical or sociological context. Its supporting affidavit does not describe a membership or particular constituency that could be impacted by the court's determination of the issues.

[36] Although it has laudable objectives, I find that the CAC does not add a unique perspective to this case. Its desire to shape the law does not demonstrate a distinct perspective from that of the

immediate parties that would provide assistance or provide historical or sociological context to the issues in dispute.

[37] The CAC has not laid out why it believes it understands Canadians' perspective other than through *pro bono* legal advice to clients. I do not see how their involvement in constitutional litigation provides them with a unique perspective.

[38] Marty Moore's affidavit dated September 26, 2025, states that the desire of CAC to intervene is noted in a desire to impact the jurisprudence on the analysis of s. 1 and 2(b) of the Charter.

[39] The CAC has not identified any other interest that would demonstrate a real, substantial and identifiable interest in the proceeding.

[40] Regarding costs, the AG has requested \$2000 in costs. I decline to order costs against CAC which is a non-profit entity. This case is one of public interest and CAC's motion for intervention was grounded to shape *Charter law* and assist the court and not by self-interest.

[41] Accordingly, the motion is dismissed without costs.

A. Boyle J.

Justice A. Doyle

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A. DOYLE J.

Released: December 22, 2025