

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

**MOTION RECORD
OF THE MOVING PARTIES / PROPOSED INTERVENORS
THE NATIONAL AIRLINES COUNCIL OF CANADA,
AIR CANADA, AIR TRANSAT, JAZZ AVIATION LP, and WESTJET**

(Motion for Leave to Intervene on Application)

(returnable in writing)

**Application Under Rule 14.05(3)(d), (g), (g.1),
and (h) of the *Rules of Civil Procedure***

January 21, 2026

PATERSON MacDOUGALL LLP

Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M

Email: chunter@pmlaw.com

Tel: (416) 643-3324

Alison Dudu LSO#: 92413E

Email: adudu@pmlaw.com

Tel: (416) 643-3303

Lawyers for the Moving Parties /
Proposed Intervenors

TO: **JUDSON HOWIE LLP**
600 Reid Avenue
Fort Frances, Ontario
P9A 2P3

Douglas W. Judson LSO#: 70019H
Email: doug@judsonhowie.ca
Tel: (807) 797-2023

Lawyers for the Applicant

AND TO: **ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8

Alex Dalcourt
Email: alex.dalcourt@justice.gc.ca
Tel: (343) 572-7783

Helene Robertson LSO#: 54992T
Email: helene.robertson@justice.gc.ca
Tel: (613) 793-4302

Lawyers for the Respondent

AND TO : **CANADIAN BROADCASTING CORPORATION**
6C411-205 Wellington St.
Toronto, Ontario
M5V 3G7

Sean Moreman LSO#: 48812W
Email: sean.moreman@cbc.ca

Tel: (416) 205 6494

Intervenor

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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Tab 1

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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AIR CANADA, AIR TRANSAT, JAZZ AVIATION LP, and WESTJET**

(Motion for Leave to Intervene on Application)

(returnable in writing)

**Application Under Rule 14.05(3)(d), (g), (g.1),
and (h) of the *Rules of Civil Procedure***

The proposed intervenors, the National Airlines Council of Canada, Air Canada, WestJet, Air Transat, and Jazz Aviation LP will make a motion to the court at the courthouse located in Ottawa at 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1(1) because it is on consent/unopposed/made without notice;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

THE MOTION IS FOR:

- (a) An order granting the National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet:
 - (i) leave to intervene as an added party in this proceeding pursuant to rule 13.01 of the *Rules of Civil Procedure*;
- (b) In the alternative, an order granting the National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet:
 - (i) leave to intervene as a friend of the Court in this proceeding on a without costs basis pursuant to rule 13.02 of the *Rules of Civil Procedure*;
- (c) Leave to serve and file a factum not exceeding 15 pages in length;
- (d) Leave to make oral submissions not exceeding 20 minutes in length; and
- (e) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) Rule 13 of the Ontario *Rules of Civil Procedure* (the *Rules*) establishes the grounds for intervening in a proceeding. Rule 13.01 governs interventions as an added party and rule 13.02 governs interventions as a friend of the court;
- (b) When determining whether to grant leave to intervene, the Ontario Court of Appeal has held that the court will consider the additional factors set out in *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.* (1990), [1990 CanLII 6886 \(ON CA\)](#), 74 O.R. (2d) 164 (C.A.), which are as follows:
 - (i) The nature of the case;
 - (ii) The issues involved;

- (iii) The likelihood that the proposed intervenor can make a useful and distinct contribution to the resolution of the appeal not otherwise offered by the parties; and
 - (iv) Whether the intervention will cause injustice to the parties or undue delay.
- (c) Further, if the nature of the proceeding is a constitutional one and a party is seeking leave to intervene under rule 13.02, it must also meet one of the following criteria set out in *Bedford v. Canada (Attorney General)*, 2009 ONCA 669:
- (i) It has a real, substantial and identifiable interest in the subject matter of the proceedings;
 - (ii) It has an important perspective distinct from the immediate parties; or
 - (iii) It is a well-recognized group with special expertise and a broadly identifiable membership base.
- (d) This application is constitutional in nature, as it addresses the constitutionality of section 85.09(1) of the *Canada Transportation Act* (the *Act*);
- (e) The National Airlines Council of Canada (NACC) represents the interests of Canada's largest passenger airlines. Its current membership consists of Air Canada, Air Transat, Jazz Aviation LP, and WestJet;
- (f) NACC's members are subject to the rules, regulations, and decisions made under and pursuant to the *Act*, including the rulings made by a Complaints Resolution Officer (CRO) under the *Act's* Air Travel Complaint process;
- (g) As such, NACC and its member airlines (the Moving Parties) have a real and substantial interest in the subject matter of this proceeding that is greater than that of the average person;

- (h) The Moving Parties also have an important perspective that is distinct from the immediate parties, who purports to represent the interests of air passengers and that of a neutral, government-agency decision maker (the CRO);
- (i) If granted leave to intervene, the Moving Parties intend to develop submissions along the following lines:
 - (i) the importance of confidentiality in the Air Travel Complaint process;
 - (ii) the disproportionate burden on airlines to ensure that, in the event confidentiality is removed, their documents are properly redacted not to disclose personal information and commercially sensitive documents/contents, including those that are subject to proprietary rights and interests of third parties;
 - (iii) the undermining of the important purpose of the Air Travel Complaint process, which is not an exclusive recourse, but a means of alternate dispute resolution, that includes an economical and efficient determination of passenger complaints; and
 - (iv) that public disclosure risks undermining aviation safety culture. Canada's aviation safety management system depends on a "just culture" in which flight, maintenance, and dispatch personnel can report safety concerns candidly and without fear of external scrutiny or misinterpretation. If internal safety communications or operational assessments are made public, employees may hesitate to report issues, weakening the proactive reporting environment that aviation safety requires.
- (j) These submissions will be useful as they will provide the Court with a more complete picture as to the implementation and effect of s. 85.09(1) of the *Act*; it will provide the perspective of the airlines and add to the existing perspectives brought forward by the parties;

- (k) While there is a hearing scheduled in this matter, any delay that may be caused by this intervention is outweighed by the useful and necessary contribution that these submissions will make;
- (l) The Moving Parties will not seek costs unless costs are sought against them; and
- (m) Such further and other grounds as counsel may submit and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Motion Record, Factum and authorities of the Moving Parties;
- (b) The Affidavit of Jeff Morrison, sworn January 8, 2026;
- (c) The Affidavit of Sarah Joanna Haas, sworn January 8, 2026;
- (d) The Affidavit of Chantal Chlala, sworn January 8, 2026;
- (e) The Affidavit of Todd Peterson, affirmed January 8, 2026; and
- (f) Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 21, 2026

PATERSON MacDOUGALL LLP
Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Moving Parties /
Proposed Intervenors

TO: **JUDSON HOWIE LLP**

600 Reid Avenue
Fort Frances, Ontario
P9A 2P3

Douglas W. Judson LSO#: 70019H
Email: doug@judsonhowie.ca
Tel: (807) 797-2023

Lawyers for the Applicant

AND TO: **ATTORNEY GENERAL OF CANADA**

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8

Alex Dalcourt
Email: alex.dalcourt@justice.gc.ca
Tel: (343) 572-7783

Helene Robertson LSO#: 54992T
Email: helene.robertson@justice.gc.ca
Tel: (613) 793-4302

Lawyers for the Respondent

AND TO : **CANADIAN BROADCASTING CORPORATION**

6C411-205 Wellington St.
Toronto, Ontario
M5V 3G7

Sean Moreman LSO#: 48812W
Email: sean.moreman@cbc.ca

Tel: (416) 205 6494

Intervenor

Air Passenger Rights
Applicant

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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Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Moving Parties /
Proposed Intervenor

Tab 2

Court File No.: CV-25-00100065-0000

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Respondent

**Application under rule 14.05(3)(d), (g), (g.1),
and (h) of the *Rules of Civil Procedure***

**AFFIDAVIT OF JEFF MORRISON
(sworn January 8, 2026)**

I, Jeff Morrison, of the City of Ottawa, in the Province of Ontario, President and CEO of the proposed intervenor, the National Airlines Council of Canada, MAKE OATH AND SAY (or AFFIRM):

1. I am in the employ of the National Airlines Council of Canada (NACC) as President and CEO, and as such have knowledge of the matters hereinafter deposed. Wherein this Affidavit I rely on the information of others, I verily believe that information to be true.

2. NACC is a trade association intended for all large Canadian passenger airlines. It represents the interests of its members and advocates on behalf of them for safe, accessible, environmentally responsible and competitive passenger air travel. Many of NACC's activities are undertaken by its committees, which are comprised of and represent the combined expertise and experience of its member airlines.

3. NACC's current members are Air Canada, Air Transat, Jazz Aviation LP, and WestJet. Together, in 2025 these members represented 72% of Canadian domestic aviation seat capacity, and 61% of international aviation seat capacity.

4. NACC's members are regulated by the Canadian Transportation Agency and are subject to the *Canada Transportation Act* and regulations thereto, including its Air Travel Complaints process.

5. NACC's members repeatedly participate as respondents in the Air Travel Complaint process. In 2024, NACC's members responded to numerous Air Travel Complaints.

6. As part of their participation in these Air Travel Complaints, NACC's members routinely are required to and produce internal operational records, employee information, passenger information, and technical documentation.

7. These documents often contain confidential commercial information, sensitive personal and financial information, proprietary operational data, and internal employee information. The production and disclosure of such documents outside of a regulated and confidential process risks commercial, operational, security, safety and privacy harm to NACC's members, their employees, the relationships with their suppliers and, the passengers they serve.

8. Public disclosure of an Air Travel Complaint's evidentiary record would require NACC's members to dedicate resources to redact, including manually, the relevant documents to not only abide by their privacy and data-protection obligations, but also to mitigate safety, security, operational and/ or commercial risks arising from such disclosure. This would materially affect their ability to participate fully and efficiently in the Air Travel Complaint process.

9. Similarly, public disclosure of a CRO's ruling that attaches, cites or otherwise includes a supporting evidentiary record, or parts thereof, without redacting of confidential commercial information, sensitive personal and financial information, proprietary operational data, and internal employee information, would risk commercial, operational, safety, security, and privacy harm to NACC's members, their employees and the relationships with their suppliers and, the passengers they serve.

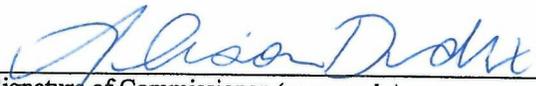
10. Mandating public disclosure also raises aviation safety-culture concerns for NACC's members. If safety-related communications or internal operational documents filed in Air Travel Complaints lose their confidentiality, employees may become reluctant to report issues fully and promptly, undermining the proactive "just culture" reporting environment required for safe and compliant operations.

11. This Affidavit is sworn in support of Moving Parties' motion seeking leave to intervene and for no other purpose.

SWORN (or AFFIRMED) BEFORE ME: in person by video conference

by Jeff Morrison of the City of Ottawa, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 8, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits *(or as may be)*



 Signature of Commissioner *(or as may be)*
 Alison Duda LSO#: 92413E



 Signature of Deponent

Air Passenger Rights
Applicant

The Attorney General of Canada
and Respondent

Court File No.: CV-25-00100065-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

AFFIDAVIT OF JEFF MORRISON
(sworn January 8, 2026)

PATERSON MacDOUGALL LLP

Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M)

E-mail: chunter@pmlaw.com

Tel: (416) 643-3324

Alison Dudu LSO#: 92413E

E-mail: adudu@pmlaw.com

Tel: (416) 643-3303

Lawyers for the Proposed Intervenor NACC

Tab 3

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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Respondent

**Application under rule 14.05(3)(d), (g), (g.1),
and (h) of the *Rules of Civil Procedure***

**AFFIDAVIT OF SARAH JOANNA HAAS
(sworn January 08, 2026)**

I, Sarah Joanna Haas, of the City of Montreal, in the Province of Quebec, Counsel (DE, AT), Customer Regulatory & Resolution of the proposed intervenor, Air Canada, MAKE OATH AND SAY (or AFFIRM):

1. I am in the employ of Air Canada, as Counsel (DE, AT), Customer Regulatory & Resolution, and as such have knowledge of the matters hereinafter deposed. Where in this Affidavit I rely on the information of others, I verily believe that information to be true.
2. As part of my responsibilities, I oversee the participation of Air Canada and Jazz Aviation LP (Jazz Aviation) in Air Travel Complaint proceedings before a Complaints Resolution Officer (CRO) of the Canadian Transportation Agency (the "Agency"). In that capacity, I routinely review, coordinate, and submit materials that Air Canada and Jazz Aviation are required to provide to the CRO in answer to a passenger's Air Travel Complaint.

3. Air Canada is Canada's largest airline and provides scheduled passenger service to more than 180 destinations worldwide. In 2024, Air Canada and its affiliates, including Jazz Aviation, carried approximately forty-seven million passengers.
4. Jazz Aviation is Canada's largest regional airline and is the primary operator of Air Canada Express flights. In 2024, Jazz Aviation carried over eight million passengers.
5. Air Canada is the responding party in a significant number of Air Travel Complaints every year. In 2024 alone, Air Canada filed answers to approximately 7,444 Air Travel Complaints.
6. Many of these Complaints related to flights operated by Jazz Aviation under the Air Canada Express Banner. In such cases, Air Canada is the responding party. Jazz Aviation does not respond to complaints in its own name; rather, it provides Air Canada with operational information and evidentiary support relevant to the operation of Air Canada Express flights, which Air Canada relies upon in preparing and filing its answers.
7. In my experience, when Air Canada files an answer in Air Travel Complaint proceedings, it must provide copies of internal records to explain what occurred and what accommodation was offered or provided to the passenger(s). Where a Complaint relates to an Air Canada Express flight operated by Jazz Aviation, Air Canada relies on internal records provided by Jazz Aviation in order to prepare its answer. The documents Air Canada provides to the CRO include but are not limited to Aircraft-on-Ground (AOG) reports, Defect Detail Reports, Flight-Load data, Crew Reserve reports, Passenger Name Records (PNRs), and Proof-of-Payment and Refund records. These records are provided on a recurring basis, as each Air Travel Complaint is unique and requires Air Canada to produce multiple documents in order to meet its burden of proof under the Air Passenger Protection Regulations (SOR/2019-150).

8. The documents that Air Canada relies upon in filing answers to Air Travel Complaints contain confidential commercial information; proprietary operational data, manuals and service bulletins; sensitive employee information; and, sensitive personal and financial information of passengers. Public disclosure of this information can create privacy, operational, commercial, safety and security risks.
9. Further, as federally regulated air carriers subject to Canada's aviation safety management system, Air Canada and Jazz Aviation depend on candid internal reports and operation assessments by flight, maintenance, and dispatch personnel. If safety-related communications or internal operational documents filed in answer to Air Travel Complaints are made public without careful redaction, employees may become reluctant to report issues fully and promptly, undermining the proactive "just culture" safety reporting environment required for safe and compliant operations.
10. The confidential, proprietary and sensitive information described above is not isolated to specific fields or headings in these records. Instead, it is embedded throughout the text, within narrative remarks, operational codes, time stamps, metadata, linked records, and references to other passengers or employees. As a result, redaction cannot be reliably automated; proper redaction would require a manual, line-by-line review by trained personnel. Based on Air Canada's experience, this type of manual redaction can take up to 2.5 hours for a single record.
11. Accordingly, and in my experience, Air Canada and Jazz Aviation will be negatively affected if this Court reads down, invalidates, or otherwise alters the operation of subsection 85.09(1) of the *Act* in a manner where documents relied upon by a CRO in making rulings no longer benefit from the protection of confidentiality.

12. In that event, Air Canada would have to alter its processes in answering Air Travel Complaints, as each document relied upon would require resource-intensive and time-consuming redactions to prepare them for public access. Given that Air Canada often relies upon numerous and different documents in a single Air Travel Complaint, and the fact that it is the responding party to voluminous Air Travel Complaints on behalf of itself and Jazz Aviation, both Air Canada and Jazz Aviation would need to dedicate significant ongoing operational resources to redaction work on a continuous basis.

13. The additional redaction work described above would have practical consequences on the ability of Air Canada to respond efficiently and effectively within the statutory and procedural timelines applicable to Air Travel Complaints. These steps will increase administrative burden and costs for Air Canada and Jazz Aviation and risk delays in answering Air Travel Complaints.

14. Similarly, public disclosure of a CRO's ruling that attaches, cites or otherwise includes a supporting evidentiary record, or parts thereof, without redacting of confidential commercial information, sensitive personal and financial information, proprietary operational data, and internal employee information, would risk commercial, operational, safety, security, and privacy harm to Air Canada, Jazz Aviation, their employees and the relationships with their suppliers and, the passengers they serve.

15. As airlines that routinely participate in Air Travel Complaints, Air Canada and Jazz Aviation compile, hold, and file the underlying operational documents and internal communications necessary to answer these complaints and to permit adjudication on the merits. Therefore, Air Canada and Jazz Aviation can provide the Court with concrete evidence about how changes to the interpretation or application of section 85.09(1) of the *Act* would affect the

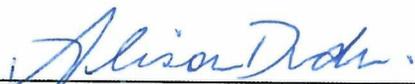
compilation, filing, and reliance on records in the Air Travel Complaint process, including the adverse consequences.

16. This Affidavit is sworn in support of the Moving Parties' motion for leave to intervene and for no other purpose.

SWORN (or AFFIRMED) BEFORE in person by video conference
ME:

by Sarah Joanna Haas of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on January 08, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits *(or as may be)*



Signature of Commissioner *(or as may be)*
Alison Duda LSO#: 92413E



Signature of Deponent

Air Passenger Rights
Applicant

The Attorney General of Canada
and Respondent

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

AFFIDAVIT OF SARAH JOANNA HAAS
(sworn January 8, 2026)

PATERSON MacDOUGALL LLP
Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M)
E-mail: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
E-mail: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Proposed Intervenor
Air Canada

Tab 4

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

**Application under rule 14.05(3)(d), (g), (g.1),
and (h) of the *Rules of Civil Procedure***

**AFFIDAVIT OF CHANTAL CHLALA
(sworn January 8, 2026)**

I, Chantal Chlala, of the City of Montreal, in the Province of Quebec, Customer Relations Director of the proposed intervenor, Air Transat, MAKE OATH AND SAY (or AFFIRM):

1. I am in the employ of Transat Tours Canada Inc., as Customer Relations Director, and as such have knowledge of the matters hereinafter deposed. Where in this Affidavit I rely on the information of others, I verily believe that information to be true.

2. In my role as Customer Relations Director, I oversee Air Transat's participation in Air Travel Complaint proceedings before a Complaints Resolution Officer (CRO) of the Canadian Transportation Agency (the "Agency"). In the course of which, I routinely review, coordinate, and submit materials that Air Transat is required to provide the CRO in answer to a passenger Air Travel Complaint.

3. Air Transat is the airline subsidiary of Transat A.T. Inc., a Canadian company that specializes in leisure travel. It provides scheduled passenger service to destinations in the Americas, Europe and Africa, and offers domestic and connecting flights within Canada through its Joint Venture with Porter Airlines. Air Transat carries approximately 5 million passengers every year.
4. Air Transat is the responding party in a number of Air Travel Complaints every year. In 2024 alone, Air Transat filed an answer to approximately 360 Air Travel Complaints.
5. In my experience, when Air Transat files an answer to an Air Travel Complaint, it must provide its internal records to explain what occurred and what accommodation was offered or provided to the passenger(s). These documents include but are not limited to maintenance records, flight load data, passenger reservation records, and passenger payment and refund information. These records are provided on a recurring basis, as each Air Travel Complaint requires Air Transat to disclose multiple documents in order to meet its burden of proof under the Air Passenger Protection Regulations (SOR/2019-150).
6. The documents that Air Transat relies upon when filing an answer to an Air Travel Complaint contain confidential commercial and proprietary information involving third parties, sensitive employee information, and sensitive personal and financial information of passengers. Public disclosure of this information can create privacy, operational, commercial, safety and security risks.
7. This confidential and sensitive information is not isolated to specific fields or headings in these records. It is embedded throughout the text, within narrative remarks, operational codes, time stamps, metadata, linked records, and references to other passengers or employees. As a result,

redaction cannot be reliably automated. Proper redaction requires manual, line-by-line review by trained personnel. All of which takes time.

8. Accordingly, and in my experience, Air Transat will be adversely affected in the event this Court reads down, invalidates, or otherwise alters the operation of subsection 85.09(1) of the *Act* in a manner where documents relied upon by the CROs in making their rulings no longer benefit from the protection of confidentiality.
9. In that event, Air Transat would have to alter its processes in filing answers to Air Travel Complaints, as each document that must be produced and relied upon would require resource-intensive and time-consuming redactions to prepare them for public access. Given that Air Transat often relies upon several different documents in answer to a single Air Travel Complaint, it would need to dedicate significant additional and ongoing operational resources to redaction work on a continuous basis and at significant additional expense.
10. This additional work would have practical consequences to Air Transat's ability to respond efficiently and effectively within the statutory and procedural timelines applicable to Air Travel Complaint proceedings. In addition to increasing the administrative burden and expense on Air Transat, it risks delays in responding to Air Travel Complaints.
11. Similarly, public disclosure of a CRO's ruling that attaches, cites or otherwise includes a supporting evidentiary record, or parts thereof, without redacting of confidential commercial information, sensitive personal and financial information, proprietary operational data, and internal employee information, would risk commercial, operational, security, safety and privacy harm to Air Transat, its employees, the relationships with its suppliers and, the passengers it serves.

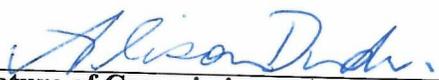
12. As an airline that routinely participates in Air Travel Complaints, Air Transat compiles, holds, and files the underlying operational documents and internal communications necessary to respond to these complaints and to permit adjudication on the merits. Accordingly, it can provide the Court with concrete evidence about how changes to the interpretation or application of section 85.09(1) of the *Act* would affect the compilation, filing, and reliance on records in the Air Travel Complaint process, and the consequences to the airline and process.

13. This Affidavit is sworn in support of the Moving Parties' motion for leave to intervene and for no other purpose.

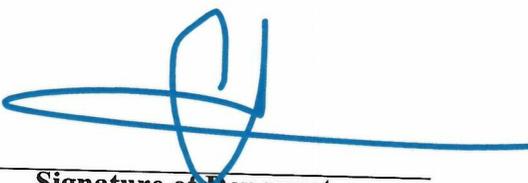
SWORN (or AFFIRMED) BEFORE ME: in person by video conference

by Chantal Chlala of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on January 8, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



Signature of Commissioner (*or as may be*)
 Alison Dudu LSO#: 92413E



Signature of Deponent

Air Passenger Rights
Applicant

The Attorney General of Canada
and Respondent

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

AFFIDAVIT OF CHANTAL CHLALA
(sworn January 8, 2026)

PATERSON MacDOUGALL LLP
Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M)
E-mail: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
E-mail: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Proposed Intervenor.
Air Transat

Tab 5

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF TODD PETERSON

I, Todd Peterson, of the City of Calgary, in the Province of Alberta, AFFIRM AND SAY AS FOLLOWS:

1. I am employed by WestJet as the Director of Regulatory Affairs and Accessibility. In that capacity, I am familiar with WestJet's operations and with WestJet's participation in proceedings under the *Canada Transportation Act* (the "*Act*"), including Air Travel Complaints proceedings administered by a Conflict Resolution Officer (a "**CRO**") under the *Act*.

2. WestJet is an Alberta partnership that conducts its air transportation business through WestJet and related entities, including WestJet Encore Ltd. WestJet is also responsible for air transportation services that were provided by former carriers affiliated with WestJet, including Sunwing Airlines Inc. and Swoop Inc. (collectively, the "**WestJet Group Affiliates**"). In the context of Air Travel Complaint proceedings under the *Act*, such proceedings may relate to flights that were marketed, sold, or operated by WestJet or by one or more of the WestJet Group Affiliates.

3. In the ordinary course of business, WestJet is a frequent participant in the *Act's* Air Travel Complaint process. WestJet is routinely required to gather, review, and file materials and submissions in answer to such complaints. Based on the data available in the Canada Transportation Agency's portal as of January 8, 2026, the WestJet Group Affiliates had 25,774 Air Travel Complaint cases pending. Attached hereto and marked as **Exhibit "A"** to my Affidavit is a copy of the Canada Transportation Agency's portal data.

4. Based on my experience with Air Travel Complaint proceedings, CRO determinations commonly turn on airline records, which are relied upon to explain what occurred and what accommodations were offered or provided. These records may include, among others, service recovery notes, internal station communications, accessibility service requests and confirmations, passenger itinerary or eReceipt information, communications with passengers by email and SMS, information relating to third-party contractors providing services at airports, internal training materials, procedures, and policies, and technical maintenance documents.

5. The operational records and internal documents described above frequently contain information that is sensitive in nature. For example, these records commonly contain personal information relating to identifiable individuals, including passengers and, in some instances, WestJet personnel or service-provider staff. This information may include names, gender, age, contact details, passport details, credit card information, booking and reservation information, and more. In accessibility-related matters, these records may further include information relating to a passenger's accessibility needs and services requested or provided, including mobility-aid assistance, wheelchair services, escort or boarding assistance, and medical information. In some cases, the records also include communications exchanged by phone, email or text message with passengers or their representatives in relation to these matters.

6. In addition to personal information, the records may also include commercially sensitive information belonging to WestJet. This can include information concerning the details of contractual arrangements with third-party vendors and contractors. The records

may also reflect internal operational processes, cost structures, resource allocation decisions, and performance metrics used to manage service delivery. In addition, the records may contain sensitive technical information, which is not only commercially sensitive but also poses a security risk if improperly disclosed.

7. Also, the records may contain confidential information originating with third parties that are not parties to the particular Air Travel Complaint proceeding. This can include information provided by airports, ground-handling companies, security contractors, accessibility service providers, or codeshare and interline partners in connection with a specific flight or service event. In many cases, this information is shared with WestJet on a confidential basis for operational or regulatory purposes and is not information over which WestJet has unilateral control or authority to disclose publicly.

8. As a result of the security, privacy, operational, and commercial considerations associated with the above-listed documents, which are recurrently used in Air Travel Complaint proceedings, I believe WestJet will be negatively affected if subsection 85.09(1) of the *Act* is read down, invalidated, or its operation is otherwise altered by the Court in a manner where all matters related to the process of dealing with an Air Travel Complaint no longer benefit from the protection of confidentiality.

9. Such a judgment would affect how WestJet prepares, files, manages, and seeks to protect records and submissions in Air Travel Complaint proceedings. Based on my experience, WestJet would need to alter its evidence-gathering, record-keeping, and CRO-response practices to account for potential public dissemination of materials filed or relied upon in those proceedings. It would also require WestJet to implement or expand its document-by-document review processes, including redaction workflows, privacy and confidentiality assessments, and internal protocols to address sensitive commercial and third-party information for each file.

10. The additional work created by the steps described above would have practical consequences for WestJet's ability to respond efficiently and effectively within applicable

statutory and procedural timelines in Air Travel Complaint proceedings. These steps will increase administrative burden and costs for WestJet, and may result in delays when responding to Air Travel Complaints.

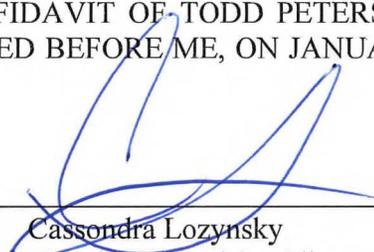
11. Furthermore, if those who provide these primary records anticipate that they will become publicly accessible, they may become more reluctant to file complete records, may over-redact to manage risk, or may shift toward summaries rather than producing primary documentation. This may adversely affect the fact-finding process in Air Travel Complaint proceedings.

12. Lastly, in many cases, WestJet relies on the ability to engage in candid, good-faith negotiations during mediation on the understanding that those discussions, positions, and materials are treated as confidential. A decision which reads down or alters s. 85.09(1) of the *Act* will impact the manner in which WestJet's representatives approach negotiations; they may be less willing to explore compromise, make concessions, or share information necessary to facilitate resolution. This, in turn, may reduce the likelihood of settlements being reached through mediation and result in a greater number of Air Travel Complaints proceeding to adjudication.

13. As an airline that routinely participates in Air Travel Complaints, WestJet compiles, holds, and files the underlying operational documents, internal communications, and third-party materials necessary to respond to complaints and to permit adjudication on the merits. Therefore, it can provide the Court with concrete evidence about how changes to the interpretation or application of section 85.09(1) would affect the compilation, filing, and reliance on records in the Air Travel Complaint process, including the resulting impacts outlined above.

14. This Affidavit is sworn in support of the Moving Parties' motion for leave to intervene and for no other purpose.

THIS IS **EXHIBIT "A"** REFERRED TO IN
THE AFFIDAVIT OF TODD PETERSON
AFFIRMED BEFORE ME, ON JANUARY
8, 2026



Cassandra Lozynsky
A Notary Public in and for Alberta

Cassandra Lozynsky
Barrister & Solicitor



Dashboard (WestJet)

26 Waiting for airline answer Click for more info	477 Active cases Click for more info	728 Cases waiting for Start notice Click for more info	21,989 Cases in queue Click for more info	772 Cases received last 30 days Click for more info	572 Cases closed last 30 days Click for more info
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Dashboard (Swoop)

30 Waiting for airline answer Click for more info	135 Active cases Click for more info	105 Cases waiting for Start notice Click for more info	253 Cases in queue Click for more info	2 Cases received last 30 days Click for more info	102 Cases closed last 30 days Click for more info
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Dashboard (Sunwing Airlines)

31 Waiting for airline answer Click for more info	432 Active cases Click for more info	0 Cases waiting for Start notice Click for more info	3,532 Cases in queue Click for more info	28 Cases received last 30 days Click for more info	220 Cases closed last 30 days Click for more info
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

AFFIDAVIT OF TODD PETERSON

PATERSON MACDOUGALL LLP
Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario M5C 2W5

Clay S. Hunter (LSO#: 31896M)
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu (LSO#: 92413E)
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Intervenor

Tab 6

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

**DRAFT SUBMISSIONS OF THE NATIONAL AIRLINES COUNCIL OF
CANADA, AIR CANADA, AIR TRANSAT, JAZZ AVIATION LP, and
WESTJET**

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PART I - OVERVIEW

1. The application brought by Air Passenger Rights (the “Application”) addresses whether a decision made under s. 85.07 of the *Canada Transportation Act* (the *Act*) is subject to the open courts principle, thus making the confidentiality provision in s. 85.09(1) a violation of Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) that cannot be saved under Section 1 of the *Charter*.

2. The National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet (the “Intervenors”) submit that if s. 85.09(1) of the *Act* is found to be in violation of Section 2(b) of the *Charter*, it should be saved under its Section 1 on the grounds that the documents submitted to the CRO are kept confidential for a pressing and substantial goal, and keeping these documents confidential is a proportionate means to achieve this objective, which is rationally connected and minimally impairing, thus fulfilling the test set out in *R. v. Oakes*, 1986 CanLII 46 (SCC) (*Oakes*).

PART II - THE *OAKES* TEST

3. Section 1 of the *Charter* guarantees the rights and freedoms set out within, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Essentially, this section balances the rights of the individual and the interests of society by permitting limits to be placed on guaranteed rights and freedoms.

4. The test for determining if a provision is saved under Section 1 of the *Charter* requires that two central criteria be satisfied:

- (i) Is the legislative goal pressing and substantial?

- (ii) Is there proportionality between the objective and the means used to achieve it?

R. v. Oakes, 1986 CanLII 46 (SCC) at paras 69-71

Carter v. Canada (Attorney General), 2015 SCC 5 (CanLII) at para 94

5. The second branch of the test has three elements for it to be established. In order for the impugned provision to be considered proportionate, it must be:

- (i) Rationally connected to the pressing and substantial goal;
- (ii) Minimally impairing; and
- (iii) On a final balancing analysis, the overall salutatory effects of the provision must outweigh the deleterious effects.

R. v. Oakes, *ibid*

Carter v. Canada (Attorney General), *supra* at paras 99 and 102

PART III - SUBMISSIONS

6. The Intervenors respectfully submit that s. 85.09(1) of the *Act* complies with Section 1 of the *Charter* and meets the test set out in *Oakes*.

The Confidentiality Provision is “Prescribed by Law”

7. The question of whether the limit imposed by s. 85.09(1) of the *Act* is “prescribed by law” is not contentious in that it is a duly enacted legislative provision.

The Legislative Goal is “Pressing and Substantial”

8. The proper question when determining if a law has a pressing and substantial objective is whether the party making the argument the limits of a law are demonstrably justified under Section 1 of the Charter (the “Section 1 argument”), has asserted a pressing and substantial objective. Whether that objective is furthered is only considered at the proportionality step of the analysis under *Oakes* (the “Section 1 analysis”).

9. At this stage, what is relevant to the Section 1 analysis is the objective of the infringing measure, not the whole legislative scheme.

10. Parliament’s legislative goal in creating the Air Travel Complaints process was to provide a streamlined process by which to resolve Air Travel Complaints; it is meant to be less onerous on the parties, so that decisions can occur more rapidly and efficiently. This same legislative goal drives the inclusion of s. 85.09(1) of the *Act*.

11. This goal is both pressing and substantial because outside of the Air Travel Complaints process, passengers and airlines suffer complex and lengthy proceedings at the Canada Transportation Agency (the “Agency”) and in the civil courts system. These lengthy proceedings have resulted in significant backlogs both at the Agency and in the civil courts system, delaying access to justice for all involved. Providing a rapid, simpler and more efficient alternative for resolution of air passenger complaints benefits the parties and indeed the Canadian public, and alleviates the burden on both the Agency and the civil courts system in having to deal with these voluminous complaints.

The Objective is Proportional to the Means Used to Achieve it

12. Turning to the next step in the Section 1 analysis, s. 85.09(1) of the *Act* meets the three elements required to establish proportionality: it is rationally connected to the goal, minimally impairing, and on a final balancing analysis, its benefits outweigh any detriments.

Rationally Connected

13. When determining if a legislative measure is rationally connected to its goals, it is not necessary to establish that the measure will inevitably achieve the objective. It is only necessary to establish, on a balance of probabilities, a causal link between the impugned measure and the pressing and substantial objective.

14. Additionally, where scientific or empirical evidence is not available to establish a rational connection, the court may accept conclusions based on logic and reason.

15. The objective of s. 85.09(1) of the *Act*, as submitted above, is to make the Air Travel Complaint process less onerous so that such complaints can be dealt with more rapidly and efficiently. Keeping the documents submitted in the Air Travel Complaint process and relied upon by the CRO confidential is rationally connected to the goal of providing a less onerous, more rapid and efficient process for the resolution of Air Travel Complaints.

16. Air Canada, Air Transat, Jazz Aviation LP, and WestJet (the “Airlines”) are regular participants in Air Travel Complaints. They bear the burden of proof under the Air Passenger Protection Regulations and are required to submit documents in support of their positions for the CRO to review and consider.

17. The documents required to be submitted by airlines contain information that is sensitive in nature, such as confidential commercial or proprietary information, sensitive personal and financial information, proprietary operational data, internal employee information, and confidential third-party information.

18. The disclosure of this information will materially risk prejudicing airlines' commercial interests, undermine their competitive positions, and expose internal operational practices that are not publicly available in the aviation industry. It would also create privacy, safety, and security risks for passengers, employees, airlines and other stake holders in the commercial aviation industry.

19. Furthermore, public disclosure of this information risks undermining aviation safety culture. Canada's aviation safety management system depends on a "just culture" in which flight, maintenance, and dispatch personnel can report safety concerns candidly and without fear of external scrutiny or misinterpretation. If internal safety communications or operational assessments are made public, employees may hesitate to report issues, weakening the proactive reporting environment that aviation safety requires, resulting in a chilling effect.

20. As a result, in the event documents submitted to and relied on by the CRO are no longer confidential, airlines would be required to carefully redact each document before submission.

21. It is onerous for airlines to adequately redact all of these documents. A single document submitted to the CRO can take up to two hours to properly redact. Considering that an airline can be a party to thousands of Air Travel Complaints in a single year, and each such complaint requires the submission/production of internal records which can reference multiple flights, multiple passengers, and extensive documentation, making these documents public would require airlines

to dedicate significant ongoing and disproportionate operational resources to redaction work on a continuous basis.

22. Even with increased operational resources to complete this redaction work, airlines would require more time in order to adequately prepare their answers to Air Travel Complaints. Airlines would no longer be able to meet the timeline created by Parliament and the Agency, and in the result the entire Air Travel Complaints process would slow.

23. It follows that maintaining the confidentiality of the documents required to be submitted in the Air Travel Complaint process is rationally connected to the goal of making the Air Travel Complaint process faster, less onerous and more efficient than existing avenues of recourse. Maintaining the confidentiality of such documents removes the airlines' burden of redacting the information and allows them to answer Air Travel Complaints in a timely and efficient manner.

Minimally Impairing

24. When determining if a law is minimally impairing, Parliament is not required to pursue the least drastic means of achieving its objectives, but it must adopt a measure that falls within a range of reasonable alternatives.

25. The Intervenors suggest that only the documents required to be submitted in answer to an Air Travel Complaint should be kept entirely confidential. They do not oppose the publication of a CRO ruling, subject to the redaction of any confidential or sensitive information included or cited therein prior to release of the ruling to the public.

26. Only imposing confidentiality on the documents required to be submitted in answer to an Air Travel Complaint is minimally impairing. Should this Court decide that CRO rulings should

be publicized, with the redaction of confidential information/documents, then the public will be able to see the reasons for the conclusions and remedies provided in each complaint, without prejudicing airlines by releasing sensitive information. This is a reasonable alternative to keeping everything about the Air Travel Complaint process confidential.

Final Balancing Component

27. While it may be in violation of section 2(b) of the *Charter* to keep all parts of the Air Travel Complaint process confidential, the salutary effects of keeping the documents required to be submitted confidential outweighs any deleterious effects.

28. The Intervenors acknowledge that the open courts principle is an important democratic value in our society as it instills public confidence in the justice system. It may be that keeping the documents required to be submitted in answer to an Air Travel Complaint confidential somewhat interferes with this principle; however, Parliament must balance the benefit of public access to information and the risk created by open access to certain types of information.

29. We already have examples of the ways in which this balance manifests itself. Government information that compromises privacy and security is kept confidential, subject to an Access to Information Request. Companies have trade secrets, including proprietary information and operational processes. These are cases in which it is acceptable to limit public access to information because it serves an important purpose, much like the case at bar.

30. As submitted above, choosing not to read down or alter s. 85.09(1) of the *Act* will maintain the confidentiality of the documents required to be submitted in answer to an Air Travel Complaint, furthering Parliament's purpose.

31. In addition, maintaining such confidentiality protects passengers, airlines and their employees and other stakeholders. As submitted above, the documents airlines are required to submit in answering Air Travel Complaints contain sensitive information which, if publicized, creates the serious risk of infringing privacy, safety, commercial, operational, and security concerns. Maintaining the confidentiality of such documents in their entirety negates any risk associated with their required submission by airlines when answering Air Travel Complaints.

32. Furthermore, airlines rely on the ability to engage in candid, good-faith negotiations during mediation on the understanding that those discussions, positions, and materials are treated as confidential. Choosing to alter or read down s. 85.09(1) of the *Act* will impact the manner in which their representatives will approach negotiations; they may be less willing to explore compromise, make concessions, or share information necessary to facilitate resolution. This, in turn, may reduce the likelihood of achieving settlement through mediation and result in a greater number of Air Travel Complaints proceeding to adjudication.

Conclusion

33. The Intervenors therefore respectfully submit that s. 85.09(1) of the *Act* should be saved under Section 1 of the *Charter*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this ____ day of January, 2026

Clay S. Hunter
Paterson MacDougall LLP

Lawyers for the Intervenors

Air Passenger Rights
Applicant

The Attorney General of Canada
Respondent

Court File No: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**DRAFT SUBMISSIONS OF THE NATIONAL
AIRLINES COUNCIL OF CANADA, AIR
CANADA, AIR TRANSAT, JAZZ AVIATION LP,
and WESTJET**

PATERSON MacDOUGALL LLP

Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Interveners

Tab 7

Court File No.: CV-25-00100065-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) _____, THE ____
)
 JUSTICE _____) DAY OF _____, 2026
)

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

THIS MOTION, made by the National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet for leave to intervene on Application, at 161 Elgin Street, Ottawa, Ontario, seeks leave for the Moving Parties to intervene as added parties, or, in the alternative, as friends of the Court.

ON READING the Motion Record and Factum for a Motion in Writing and on hearing the submissions of the lawyer(s) for the parties (if any),

THIS COURT ORDERS THAT:

1. the National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet are granted leave to intervene as added parties in this proceeding pursuant to rule 13.01 of the *Rules of Civil Procedure*.
2. the Intervenors shall be entitled to:

- a) serve and file a single factum not exceeding 15 pages in length;
- b) make oral submissions not exceeding, in total, 20 minutes in length;
- c) adduce evidence; and
- d) seek costs on the motion and the proceeding, if costs are sought against them.

Date of issuance _____

Air Passenger Rights
Applicant

The Attorney General of Canada
Respondent

and

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

ORDER

PATERSON MacDOUGALL LLP
Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

Clay S. Hunter LSO#: 31896M
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Moving Parties /
Proposed Intervenor

Air Passenger Rights
Applicant

The Attorney General of Canada
Respondent

Court File No.: CV-25-00100065-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**MOTION RECORD OF THE MOVING
PARTIES / PROPOSED INTERVENORS
THE NATIONAL AIRLINES COUNCIL OF
CANADA, AIR CANADA, AIR TRANSAT,
JAZZ AVIATION LP, and WESTJET**

(Motion for Leave to Intervene on Application)

PATERSON MacDOUGALL LLP

Barristers, Solicitors
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario M5C 2W5

Clay S. Hunter LSO#: 31896M
Email: chunter@pmlaw.com
Tel: (416) 643-3324

Alison Dudu LSO#: 92413E
Email: adudu@pmlaw.com
Tel: (416) 643-3303

Lawyers for the Moving Parties /
Proposed Intervenor