

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

**FACTUM FOR A MOTION IN WRITING
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)

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

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Intervenor

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PART I - OVERVIEW

1. This is a motion for leave to intervene in the application brought by Air Passenger Rights against the Attorney General of Canada (the “Application”).
2. The National Airlines Council of Canada (NACC), Air Canada, Air Transat, Jazz Aviation LP, and WestJet (the “Moving Parties”) jointly seek leave to intervene pursuant to rules 13.01 and 13.02 of the Ontario *Rules of Civil Procedure* (the *Rules*).
3. The Moving Parties primarily seek leave to intervene as an added party under rule 13.01 so they may proffer evidence which will aid the Court in ruling on the constitutional question presented in the Application.
4. While the Moving Parties primarily seek to intervene as an added party, they respectfully acknowledge that the form and extent of any intervention is a matter within the Court’s discretion and would, in the alternative, welcome participation under rule 13.02 as a friend of the Court, should the Court consider it more appropriate.
5. The Moving Parties seek leave to intervene to make submissions on why, in the event s. 85.09(1) of the *Canada Transportation Act* (the *Act*) is found to violate section 2 (b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*), it should be saved under section 1 of the *Charter*.
6. NACC represents the interests of Canada’s largest passenger airlines. Its current membership consists of Air Canada, Air Transat, Jazz Aviation LP, and WestJet (the “Airlines”).

7. The Airlines, as airlines operating within, to, and from Canada, are subject to the *Act* and the rulings made by a Complaints Resolution Officer (CRO) under the *Act*'s Air Travel Complaint process with regard to all of its passengers. The CRO mediates and rules on Travel Complaints made by passengers against airlines operating in Canada. Accordingly, the Airlines have a direct interest in whether the documents filed in answer to an Air Travel Complaint remain confidential pursuant to s. 85.09(1) of the *Act*.

Affidavit of Jeff Morrison, supra. at paras. 4-5, Motion Record of the Moving Parties / Proposed Intervenors, Tab 2, p. 11; pdf 14

Affidavit of Sarah Joanna Haas, sworn January 8, 2026 at paras. 3-6, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 16; pdf 19

Affidavit of Todd Peterson, affirmed January 8, 2026 at paras. 2-3, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 28-29; pdf 31-32

Affidavit of Chantal Chlala, sworn January 8, 2026 at paras. 3-4, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 23; pdf 26

8. As a representative of its member airlines and their interests, NACC also has an interest in whether documents filed in answer to an Air Travel Complaint remain confidential pursuant to s. 85.09(1) of the *Act*.

Affidavit of Jeff Morrison, supra. at para 2, Motion Record of the Moving Parties / Proposed Intervenors, Tab 2, p. 10; pdf 13

9. The parties to the Application do not represent the interests of airlines. Air Passenger Rights purports to represent the interests of passengers. The Attorney General of Canada represents the interests of the Government of Canada.

10. A decision on the central issue in the Application will affect not only the Moving Parties, but all commercial passenger airlines operating within, to and from Canada. Respectfully, it is

important and necessary for the Court to consider the interests and perspectives of airlines when making its decision.

PART II - THE TEST FOR LEAVE TO INTERVENE

As an Added Party

11. The test to be granted leave to intervene as an added party is set out in rule 13.01 of the Ontario *Rules of Civil Procedure* (the *Rules*):

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

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

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

12. The factors set out in rule 13.01(1) are disjunctive.

As a Friend of the Court

13. Rule 13.02 allows parties to intervene in a proceeding as a friend of the court, with leave of a judge, for the purpose of rendering assistance to the court by way of argument.

14. Rule 1.03(1) defines “proceeding” to mean an action or application. As such, interested parties may request leave to intervene in an application.

15. The Court of Appeal has held that on both rule 13.01 and rule 13.02 motions to intervene, it is relevant to 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.) (*Peel*).

[Canada \(Attorney General\) v. M.C.](#), 2023 ONCA 124 (CanLII) at para [13](#); **Factum for a Motion in Writing, Schedule “A”, No. 1**

The *Peel* Factors

16. In *Peel*, the Court of Appeal sets out four factors to be considered when determining whether to grant leave to intervene:

- (a) The nature of the case;
- (b) The issues involved;
- (c) The likelihood that the proposed intervener can make a useful and distinct contribution to the resolution of the matter not otherwise offered by the parties; and
- (d) Whether the intervention will cause injustice to the parties or undue delay.

[Peel \(Regional Municipality\) v. Great Atlantic and Pacific Co. of Canada Ltd. \(1990\)](#), *supra* at p. [167](#); **Factum for a Motion in Writing, Schedule “A”, No. 2**

The Nature of the Case and the Issues Involved

17. When the proceeding involves public policy or public interest issues, the standard to be met by the proposed intervenor is less onerous compared to cases where the issues are of a private nature.

[2505243 Ontario Limited \(ByPeterandPaul.com\) v. Princes Gates Hotel Limited Partnership](#), 2022 ONCA 700 (CanLII) at paras. [18-19](#); Factum for a Motion in Writing, Schedule “A”, No. 3

18. When seeking leave to intervene under rule 13.02, and the proceeding is constitutional in nature, the proposed intervenor must meet one of the following criteria (known as the *Bedford* criteria):

- (a) It has a real, substantial and identifiable interest in the subject matter of the proceedings;
- (b) It has an important perspective distinct from the immediate parties; or
- (c) It is a well-recognized group with special expertise and a broadly identifiable membership base.

[Bedford v. Canada \(Attorney General\)](#), 2009 ONCA 669 (CanLII) at para. [2](#) (“*Bedford*”); Factum for a Motion in Writing, Schedule “A”, No. 4

19. The *Bedford* criteria are to be read in conjunction with those in *Peel*.

[Trinity Western University v. Law Society of Upper Canada](#), 2014 ONSC 5541 (CanLII) at paras. [6-7](#); Factum for a Motion in Writing, Schedule “A”, No. 5

Useful and Distinct Contribution

20. Those seeking leave to intervene must demonstrate that they would have a useful and distinct contribution.

21. While contributions are not meant to simply repeat the issues and arguments raised by other parties, the fact that there is some overlap between the proposed intervenors’ position and that of the parties is not a bar to finding that their position is useful and distinct.

Baldwin v. Imperial Metals Corporation, 2021 ONCA 114 (CanLII) at para. 3; Factum for a Motion in Writing, Schedule “A”, No. 6

Causing Injustice or Undue Delay

22. Whether intervention is sought under rule 13.01 or 13.02, the Court should determine if any prejudice or delay is outweighed by the useful contribution of the proposed intervenor.

Halpern v. Toronto (City) Clerk, 2000 CanLII 29029 (ON SCDC) at para. 20; Factum for a Motion in Writing, Schedule “A”, No. 7

23. While it is more common to place conditions on the participation of friends of the court, the Court retains discretion under rule 13.01(2) to impose any conditions on an added party intervenor it deems just, including limiting its participation.

Halpern v. Toronto (City) Clerk, *supra*, at paras. 40-44; Factum for a Motion in Writing, Schedule “A”, No. 7

PART III - SUBMISSIONS

24. The Moving Parties submit that they fulfill the requirements set out under rule 13.01 and should be granted leave to intervene as an added party. In the alternative, the Moving Parties submit that they fulfill the requirements set out under rule 13.02, *Peel*, and *Bedford* and should be granted leave to intervene as a friend of the court.

Intervening as an Added Party – Rule 13.01

25. The Moving Parties have an interest, an important and necessary interest, in this matter and may be adversely affected by a judgment made.

1. Interest in the Subject Matter

26. The *Act*, pursuant to ss. 85.02 to 85.16, provides for a CRO to be designated from the members and staff of the Canadian Transportation Agency (CTA) to process Air Travel Complaints made by passengers against and with respect to airlines.

[Canada Transportation Act](#), S.C. 1996, c. 10. at ss. [85.02-86.16](#); **Factum for a Motion in Writing, Schedule “B”**

27. As airlines operating within, to, and from Canada, all of the Airlines’ flights are subject to the *Act*. They are also the responding parties in voluminous Air Travel Complaints and CRO rulings. As such they have a real and important interest in the issues raised in the Application – one that is more substantial than that of an ordinary person, who is unlikely to be a party to thousands of Air Travel Complaints in a single year.

Affidavit of Sarah Joanna Haas, supra. at paras. 3-6, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 16; pdf 19

Affidavit of Todd Peterson, supra. at paras. 2-3, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 28-29; pdf 31-32

Affidavit of Chantal Chlala, supra. at paras. 3-4, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 23; pdf 26

28. NACC represents its member airlines and their interests. It therefore shares the important interest that Air Canada, Air Transat, Jazz Aviation LP, and WestJet have in the Application.

Affidavit of Jeff Morrison, supra. at para. 2, Motion Record of the Moving Parties / Proposed Intervenors, Tab 2, p. 10; pdf 13

2. Potential Adverse Effect of the Decision on the Proposed Intervenors

29. When responding to an Air Travel Complaint, it is often necessary and/or required for an airline to produce and rely upon confidential internal documents as part of its evidentiary record. Documents are considered confidential where they contain personal and financial information of passengers, sensitive employee information, proprietary operational data, designated confidential information originating with third parties, commercially sensitive information, and sensitive technical information.

Affidavit of Jeff Morrison, supra. at paras. 6-7, Motion Record of the Moving Parties / Proposed Intervenors, Tab 2, p. 11; pdf 14

Affidavit of Sarah Joanna Haas, supra. at paras. 7-8, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 16-17; pdf 19-20

Affidavit of Todd Peterson, supra. at paras. 4-7, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 29-30; pdf 32-33

Affidavit of Chantal Chlala, supra. at paras. 5-6, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 23; pdf 26

30. As a result, the Airlines risk being adversely affected by a decision of this Court on the Application finding such documents should not be held confidential but, made public. This risk is also present if CRO rulings that include the evidentiary record become publicly available without adequately protecting the confidentiality of the evidentiary record prior to publication.

Affidavit of Jeff Morrison, supra. at paras. 8-10, Motion Record of the Moving Parties / Proposed Intervenors, Tab 2, p. 11-12; pdf 14-15

Affidavit of Sarah Joanna Haas, supra. at paras. 8-14, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 17-18; pdf 20-21

Affidavit of Todd Peterson, supra. at paras. 8-12, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 30-31; pdf 33-34

Affidavit of Chantal Chlala, supra. at paras. 8-11, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 24; pdf 27

31. The Moving Parties respectfully submit that permitting the Application to move forward without the perspective of airlines would ignore their integral and important involvement as one of three participants in the Air Travel Complaint process; the passenger, the CRO and, of course, the airline. The Airlines are uniquely positioned to provide this Court with evidence which will assist it in answering the constitutional question the Application presents.

Affidavit of Sarah Joanna Haas, supra. at para. 15, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 18-19; pdf 21-22

Affidavit of Todd Peterson, supra. at paras. 13, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 31; pdf 34

Affidavit of Chantal Chlala, supra. at paras. 12, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 25; pdf 28

3. No Undue Delay or Prejudice

32. The Moving Parties aim to keep their submissions relatively narrow, as evidenced by their draft intervenor submissions, to avoid repetition of submissions by the other parties or duplication of evidence. They appreciate that their obligation as an intervenor is to add to the proceeding, not to simply repeat points already made by other parties.

Draft Submissions, Motion Record of the Moving Parties / Proposed Intervenors, Tab 6

33. The Moving Parties are willing and prepared to proceed with the hearing as currently scheduled, subject to leave being granted.

34. In the event it is not possible to proceed with the hearing as scheduled, the Moving Parties submit that their contribution to the Application will outweigh any disruption.

35. To the Moving Parties' knowledge, the Application was brought on a pure question of law and there are no extenuating circumstances mandating a hearing proceed on March 16, 2026, as presently scheduled. Time is not of the essence in the Application.

36. The Moving Parties submit that any delay of the hearing of the Application will not prejudice the parties, as the hearing can be rescheduled to provide ample time for the parties to engage with the Moving Parties' submissions and evidence.

37. The Moving Parties further submit that any such delay would not be undue, as it would, respectfully, be unjust for the Court to rule on the matters at issue without considering the perspective of all parties that would be affected by its decision; particularly one of the three parties involved in the Air Travel Complaint process, the airlines.

38. Furthermore, the Court has the power to structure this intervention so as to permit the Moving Parties to advance their perspective in a way that minimizes delays. The Moving Parties welcome the ability to participate in the Application in whatever manner this Court deems reasonable and appropriate.

39. Accordingly, any disruption this intervention may cause will be outweighed by its contribution to the Application, thereby meeting the test set out in [*Halpern v. Toronto \(City\) Clerk*](#) supra.

Intervening as a Friend of the Court – Rule 13.02

1. The Proceeding is Constitutional in Nature

40. The Application deals with a constitutional issue.

41. The core issue in the Application is whether s. 85.09(1) of the *Act* violates section 2 (b) of the *Charter*. Unlike a private dispute, which primarily deals with the determination of liability and damages, the Application is centered on questions which affect the public at large.

42. The matter's public nature supports the Moving Parties' request for leave to intervene.

2. The Moving Parties' Interest is Real, Substantial, and Identifiable and their Perspective is Distinct from the Parties (Bedford)

43. Further to our submissions at paragraphs 25-31 above, the Moving Parties have a real and substantial interest in the Application.

44. The Moving Parties' perspective is distinct from the parties' perspectives. In this proceeding, Air Passenger Rights purports to represent the interests of passengers, and the Attorney General of Canada represents the interests of the Government of Canada. The parties do not share the same perspective as an airline. Notably, there is no airline that is a party to this proceeding when the airline, the passenger and the CRO comprise the participants in every Air Travel Complaint.

45. Neither Air Passenger Rights nor the Attorney General is positioned to address the implications on airlines of reading down s. 87.09(1) to remove confidentiality, as sought by the applicant. The Moving Parties are uniquely positioned to illustrate for this Court the privacy, operational, commercial, safety and security risks associated with publishing unredacted versions of the evidentiary documents required and relied on by the CRO, as well as the manner in which the burden of redacting such documents will interfere with airlines' ability to participate fully in the Air Travel Complaint process.

Affidavit of Sarah Joanna Haas, supra. at para. 15, Motion Record of the Moving Parties / Proposed Intervenors, Tab 3, p. 18-19; pdf 21-22

Affidavit of Todd Peterson, supra. at para. 13, Motion Record of the Moving Parties / Proposed Intervenors, Tab 5, p. 31; pdf 34

Affidavit of Chantal Chlala, supra. at para. 12, Motion Record of the Moving Parties / Proposed Intervenors, Tab 4, p. 25; pdf 28

46. Given the result of the Application's potential impact on airlines operating within, to, and from Canada, as well as the fact that no airlines are represented in this proceeding, the Moving Parties submit they not only have a distinct and unique perspective, but an important and necessary one that, respectfully, is incumbent upon this Court to consider in making its decision.

3. The Moving Parties will Make a Distinct and Useful Contribution

47. As part of its motion record, the Moving Parties attach their draft intervenor submissions to allow the Court to assess the uniqueness of their submissions, as well as address any issues of redundancy which may arise.

Draft Submissions, Motion Record of the Moving Parties / Proposed Intervenors, Tab 6

48. The Moving Parties do not foresee their submissions having significant overlap with either of the parties, as they have a different and unique perspective. While there may be some overlap in issues or arguments raised, the heart of their contribution will be based on their unique perspective as airlines, indeed, Canada's largest passenger airlines.

49. In the event the Court finds that s. 85.09(1) of the *Act* violates section 2(b) of the *Charter*, part of its section 1 *Charter* analysis will be to determine if the impugned section is a "reasonable limit" that can be "demonstrably justified". To determine if the limitation is reasonable, the Court

must not only consider the impact of the law on air passengers and the government process, but also on airlines – all participants in the Air Travel Complaint process.

50. To that end, the Moving Parties submit their contribution will not only be useful and unique, but necessary.

4. This Intervention Will Not Cause Undue Delay or Prejudice to the Parties

51. Further to our submissions at paragraphs 32-39 above, this intervention will not cause undue delay or prejudice to the parties to the Application.

PART IV - RELIEF REQUESTED

52. The National Airlines Council of Canada, Air Canada, Air Transat, Jazz Aviation LP, and WestJet respectfully request:

(a) An Order granting them:

(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 them:

(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;

- (e) An Order awarding them costs only if costs are sought against them, and
- (f) Such further and other relief as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2026.



Clay S. Hunter
Paterson MacDougall LLP

Lawyers for the Moving Parties /
Proposed Intervenors

CERTIFICATE

I, Clay S. Hunter, lawyer for the Moving Parties / Proposed Intervenors, certify that I am satisfied as to the authenticity of every authority cited in the factum.

January 22, 2026



Clay S. Hunter

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Canada \(Attorney General\) v. M.C.](#), 2023 ONCA 124 (CanLII);
2. [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.);
3. [2505243 Ontario Limited \(ByPeterandPaul.com\) v. Princes Gates Hotel Limited Partnership](#), 2022 ONCA 700 (CanLII);
4. [Bedford v. Canada \(Attorney General\)](#), 2009 ONCA 669 (CanLII);
5. [Trinity Western University v. Law Society of Upper Canada](#), 2014 ONSC 5541 (CanLII);
6. [Baldwin v. Imperial Metals Corporation](#), 2021 ONCA 114 (CanLII); and
7. [Halpern v. Toronto \(City\) Clerk](#), 2000 CanLII 29029 (ON SCDC).

**SCHEDULE “B”
RELEVANT STATUTES**

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

1.03 (1) In these rules, unless the context requires otherwise,

...

“proceeding” means an action or application; (“instance”)

Leave to Intervene as Added Party

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

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Canada Transportation Act, SC 1996, c 10

Air Travel Complaints

Complaint resolution officers

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

Limits on powers and duties

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

Clarification — proceedings

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

[2023, c. 26, s. 459](#)

Non-application of certain provisions

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

[2023, c. 26, s. 459](#)

Complaints related to tariffs

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

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

Refusal to deal with complaint

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

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

[2023, c. 26, s. 459](#)

Mediation

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

Filing of mediation agreement

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

[2023, c. 26, s. 459](#)

Decision on complaint

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

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

Status of order

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

[2023, c. 26, s. 459](#)

Order related to tariffs

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

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

Onus

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

Filing of order and enforcement

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

[2023, c. 26, s. 459](#)

Prior decisions to be taken into account

85.08 In regards to the issue of whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for safety reasons or is outside a carrier's control, a complaint resolution officer who is dealing with a complaint in respect of a flight shall take into account any prior decision on that issue that is contained in an order made by a complaint resolution officer in respect of that flight.

[2023, c. 26, s. 459](#)

Confidentiality of information

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

Communication of information

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

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

[2023, c. 26, s. 459](#)

Procedure

85.1 Subject to the procedure set out in the guidelines referred to in section 85.12, a complaint resolution officer shall deal with complaints in the manner that they consider appropriate in the circumstances.

2000, c. 15, s. 7.1

2007, c. 19, s. 25

[2023, c. 26, s. 459](#)

Assistance by Agency

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

[2023, c. 26, s. 459](#)

Guidelines

85.12 (1) The Agency may issue guidelines

(a) respecting the manner of and procedures for dealing with complaints filed under subsection 85.04(1); and

(b) setting out the extent to which and the manner in which, in the Agency's opinion, any provision of the regulations applies with regard to complaints.

Guidelines binding

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

Publication

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

Statutory Instruments Act

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

[2023, c. 26, s. 459](#)

Referral to panel

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

Clarification – panels

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

[2023, c. 26, s. 459](#)

Publication — order or summary of order

85.14 (1) The Agency shall make public

- (a)** in the case of an order made by a single complaint resolution officer
 - (i)** the number of the flight to which the order relates,
 - (ii)** the date of departure of the flight that is indicated on the complainant's ticket,
 - (iii)** any decision contained in the order in regards to the issue of whether any flight delay, flight cancellation or denial of boarding was within the carrier's control, was within the carrier's control but was required for safety reasons or was outside the carrier's control, and
 - (iv)** a statement as to whether or not the complaint resolution officer ordered the carrier to provide compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred; and
- (b)** subject to subsection (2), in the case of an order made by a panel, the entire order.

Exception

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

[2023, c. 26, s. 459](#)

Part of annual report

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

[2023, c. 26, s. 459](#)

Fees and charges

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

Carrier's liability

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

Consultation

(3) Before establishing fees or charges, the Agency shall consult with any persons or organizations that the Agency considers to be interested in the matter.

Publication

(4) The Agency shall publish the fees and charges on its Internet site.

Debt due to His Majesty

(5) Fees or charges required to be paid under this section constitute a debt to His Majesty in right of Canada and may be recovered as such in a court of competent jurisdiction.

Spending authority

(6) The Agency may spend the amounts obtained under this section in the fiscal year in which they are paid or in the next fiscal year.

Service Fees Act

(7) The *Service Fees Act* does not apply to the fees and charges referred to in subsection (1).

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

**FACTUM FOR A MOTION IN WRITING 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)

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