

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

RESPONDENT'S APPLICATION RECORD

ATTORNEY GENERAL OF CANADA

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Ottawa Courthouse
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TABLE OF CONTENTS

Tab	Document Description
1	Affidavit of Vincent Millette, affirmed August 29, 2025

Court File No. CV-25-00100065-000

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

AIR PASSENGER RIGHTS

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AFFIDAVIT OF VINCENT MILLETTE

I, **Vincent Millette**, of the Town of Sainte-Marthe, in the Province of Québec, **AFFIRM AND SAY AS FOLLOWS:**

1. I have been the Director of the National Air Services Policy at Transport Canada since April 2022, having acted in this role on a rotating basis since November 2019. I have been employed by Transport Canada in the Air Policy Group since October 2017. I have worked on the *Air Passenger Protection Regulations (APPR)* file since March 2018.
2. As Director of National Air Services Policy, I am responsible for the development and implementation of policy frameworks governing Canadian air carriers and domestic air services. More specifically, my team develops legislation, regulations and guidelines that promote a healthy and competitive air industry. We are also responsible for conducting public interest assessments of mergers, acquisitions and joint ventures involving air transportation undertakings, and for providing Ministerial/Cabinet advice and recommendations to improve the domestic air industry based on innovation and international trends, including the policy framework that led to the development of the

APPR. As such, I have personal knowledge of matters relating to Transport Canada's relationship with the Canadian Transportation Agency (Agency), the *Canada Transportation Act (CTA)* amendments adopted in 2023 and the development and application of the *APPR*. My affidavit is based on personal knowledge of the *APPR* file and information I received from Transport Canada officials directly involved in communications and decisions on the file and/or my communications with the Agency in the course of my work, all of which is information that I believe to be true.

The Agency: Purpose and Functions

3. The Agency is an independent regulator and quasi-judicial tribunal with the powers of a Superior Court. It operates within the context of the very large and complex Canadian transportation system.
4. The Agency is responsible for making decisions and determinations on a wide range of matters involving air, rail, and marine modes of transportation.
5. The Agency is made up of 5 full-time Members appointed by the Governor-in-Council (GIC), in addition to a maximum of 3 temporary Members who may also be appointed by the Minister of Transport, and is supported by approximately 400 employees.
6. In the air sector in particular, the Agency's functions include:
 - a) Providing licences (domestic and international) and charter permits needed to operate publicly available air services to transport goods and people to, from and within Canada;
 - b) Ensuring airline terms and conditions of carriage (i.e., tariffs) are reasonable and follow Canada's rules and international agreements;
 - c) Administering and enforcing the *APPR* and helping to resolve air travel complaints;
 - d) Removing undue obstacles to the mobility of persons with disabilities; and,
 - e) Implementing and enforcing Canada's international air transport agreements.

Transport Canada's relationship with the Agency

7. As an independent quasi-judicial tribunal and regulator distinct from Transport Canada, the Agency is accountable to Parliament through the Minister of Transport. The Minister is

responsible for setting policy and receives advice from Transport Canada regarding the sector. Interactions between the National Air Services Policy Group at Transport Canada and the Agency allow the Department to assess the Agency's proposals before they are considered by the Minister, as well as to share industry perspectives provided to Transport Canada, and engage in other policy and funding discussions. The National Air Services Policy Group is also responsible for providing advice to the Minister on the Agency's proposals that fall within our mandate.

The genesis of the *APPR*

8. The aviation industry is governed by both the *Aeronautics Act* and the *CTA*. Both enactments fall under the purview of the Minister of Transport.
9. Pursuant to the *National Transportation Policy*, statutory guidance to Transport Canada and the Agency set out in section 5 of the *CTA*, competition and market forces are the primary forces in achieving viable and effective transportation services. However, when competition and market forces do not achieve desired outcomes, regulation may be required to achieve economic, safety, security, environmental or social outcomes.
10. The *APPR* were introduced in part because market forces and competition were not achieving the desired effects of ensuring that air carriers were adequately compensating passengers for delayed or canceled flights.
11. The *APPR* were and are developed by the Agency. Under the *CTA*, the Agency must consult the Minister in drafting these regulations. Transport Canada does not draft or administer the *APPR*, unlike other transportation-related regulations such as those under the *Aeronautics Act*. The Minister was responsible for amending the *CTA* to provide the regulation making authority to the Agency to develop the *APPR*.
12. The *APPR* came into force in December 2019 with the objective of creating a more predictable and balanced approach in the air travel complaints process by:
 - (a) Ensuring that passengers know their rights;
 - (b) Providing effective complaint resolution and enforcement mechanisms; and

- (c) Limiting financial burdens or competitive losses for air carriers while they adhere to their obligations, as these may have potential negative impacts on ticket prices for consumers.

***APPR* dispute resolution under the 2019 framework**

13. At the inception of the *APPR* in 2019, the Agency's then existing complaints resolution process was utilized for *APPR* related complaints and was modelled on the quasi-judicial panel decision-making process similar to their process for other types of complaints.
14. This process allowed for three stages, each conducted by a different individual if the previous one did not resolve the complaint: facilitation, mediation and adjudication. Thus, if facilitation, overseen by a first Agency Member, was unsuccessful, a second Agency Member would engage the parties in mediation. If this were unsuccessful, a third Agency Member would adjudicate the complaint. Adjudication was resource-intensive, as it was conducted by GIC-appointed Agency Members with a high level of expertise in addressing complex, highly specialized and high-stakes transportation industry matters, and required full written decisions, with reasons. These decisions were published in English and French on the Agency website.
15. Taking a complaint through these three stages took 373 days on average by November 2022, and it was determined that it was a disproportionate procedure for dealing with the vast majority of *APPR* complaints, which were routine, relatively low monetary value complaints that did not require such detailed attention from expert GIC appointees. Additionally, the number of incoming air passenger complaints continued to increase beyond the ability of the Agency to resolve them in an efficient manner.

Issues exacerbated due to effects of COVID-19 pandemic

16. The COVID-19 pandemic as well as the increase in passenger demand for air travel in the spring and summer 2022 created the perfect storm and severely tested the effectiveness of the Agency's complaint resolution regime. During the COVID-19 pandemic, the shut-down of the entire aviation industry and the consequential mass cancellations of flights led to a massive influx of complaints. This increase in passenger complaints exposed the *APPR*'s

complexity and lack of clarity. As passengers were unsure or did not understand how or when to file a complaint, there was an exponential increase in complaints to the Agency.

17. In 2022, as the world started travelling again, particularly in the spring, summer and holiday season of that year, complaints increased again because the aviation industry experienced difficulties in resuming their prior level of service after several years of stagnancy.
18. During this time, the Agency experienced a high demand for its dispute resolution services and faced challenges in stabilizing operations due to increased responsibilities related to its mandate in relation to consumer protection for air passengers and the transportation of persons with disabilities.
19. Agency members quickly became bogged down by the number of *APPR*-related complaints, including those with respect to delay, cancellation or denial of boarding complaints which did not require their level of expertise. Since the complaint resolution process entailed the three separate steps as outlined above and the quasi-judicial Agency Members were required to issue lengthy decisions for each complaint, the system was untenable and consumers were deprived of the timely protection intended by the *APPR*.
20. It was determined that what air passengers with disrupted travel needed was clarity in determining whether the safety exemptions to the compensation requirement applied to their complaint, which in turn would allow them to know whether they could access compensation. Exemptions to the compensation requirement in the case of delay, cancellation or denial of boarding depended on whether the circumstances fell within a carrier's control, outside a carrier's control or within their control but were nonetheless required for safety reasons. The concepts of "control" and "required for safety reasons" in relation to the requirement to compensate were difficult to apply in practice.
21. This combination of factors led to complainants waiting for unreasonably long periods for their complaints to be resolved and a disproportionate use of Agency resources on these high volume and relatively low value issues. As the mismatch between the quasi-judicial panel decision-making process and the objective of ensuring effective and efficient recourse for air travelers became ever clearer, amendments to the process for handling *APPR*

complaints were needed.

***CTA* amendments intended to streamline complaints and make the processes more efficient**

22. Given these pressures, amendments to the *CTA* were made to streamline the way the Agency manages air passenger complaints. First, they created a new process for the resolution of air passenger complaints; second, they gave the Agency new enforcement tools; and, third, they provided additional regulation-making authorities to the Agency. The new regulation-making authorities will not come into force until the new *APPR* are made, but they will replace the need to determine whether a problem “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” with a clear list of exceptions where the carrier would not be responsible for paying compensation.
23. The 2023 amendments to the *CTA* also included a provision that clearly placed the onus on airlines to prove that compensation is not owed to a passenger. This was intended to address a perceived unfairness in the complaint resolution process, where airlines had possession of more technical information than the passenger about the cause of delay, cancellation, or other.

The Complaint Resolution Officer process

24. The new process for resolving air passenger complaints converted the old three-stage dispute resolution process to a simplified, mediation-style complaint resolution process to be completed and decided by complaint resolution officers (CROs), who are Agency employees and members of the public service. These changes were designed to reduce the number of complaints requiring substantive handling by GIC-appointed Agency Members, thereby contributing to faster processing of individual complaints and what was hoped would be a reduced complaints backlog. Both the 32,700 complaints already in queue and any new complaints received will benefit from the streamlined complaint resolution process.
25. CROs are public servants, classified as Program Manager, level 5 (PM-05). They have jurisdiction over a carrier’s “failure 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” (*CTA* s85.04) and

the *APPR*, which are deemed to form part of the tariff by CTA s86.11(4).

26. While most air passenger complaints pertain to obligations set out in the *APPR*, the CROs may address other issues that arise under carrier's tariffs are not covered by the *APPR* (eg: refusal to transport, transportation of pets, fees, schedule changes, etc.).
27. CROs process complaints in accordance with the Guideline on the Canadian Transportation Agency's Complaint Resolution Office air travel complaints process, attached here as **Exhibit A**.
28. The CRO process is entirely in writing based on information provided to them by the complainant and the airline. There is no hearing that is open to the public. While parties may have legal representation, it is not required. The CROs do not determine legal rights, but rather evaluate the appropriate level of compensation under the *APPR* in light of the facts presented to them. When they issue an order on a complaint they have no discretion on the amount of compensation any air passenger can receive.
29. The CRO does not hear evidence but proceeds on the basis of the information provided by the complainant and the airline. The CRO cannot issue a summons, examine witnesses or admit or reject evidence, and section 85.03 of the CTA provides that the procedural powers of the Agency pursuant to section 25 of the CTA do not apply in respect of any matter dealt with by a CRO. There is no equivalent of section 25 of the CTA for the CRO process.

***APPR* compensation framework**

30. Under the *APPR*, compensation is fixed and is based on the cause of the delay, cancellation or denial of boarding, the size of the carrier as well as the total time the passenger has been delayed.
31. The *APPR* provides that large air carriers ("large" is defined as a carrier that has transported over 2 million passengers per year worldwide in each of the two preceding calendar years) must provide compensation in the following amounts and circumstances:
 - (a) \$400 if the passenger's arrival at their destination is delayed by three or more hours, but less than six hours;

- (b) \$700 if the passenger's arrival at their destination is delayed by six or more hours, but less than nine hours; and
- (c) \$1,000 if the passenger's arrival at their destination is delayed by nine or more hours.

32. The *APPR* provides that small air carriers ("small" is defined as a carrier that is not a large carrier) must provide compensation in the following amounts and circumstances:

- (d) \$125 if the passenger's arrival at their destination is delayed by three or more hours, but less than six hours;
- (e) \$250 if the passenger's arrival at their destination is delayed by six or more hours, but less than nine hours; and
- (f) \$500 if the passenger's arrival at their destination is delayed by nine or more hours.

33. As such, compensation in an *APPR* complaint is fact specific and circumscribed to passenger-specific circumstances rather than generalized to all passengers on a particular flight. A delayed flight may affect two passengers differently based on their differing itineraries. For example, if a flight from Montreal to Toronto is delayed three hours:

- (g) Passenger A, whose destination is Toronto, may be entitled to compensation, as their arrival is delayed by three hours.
- (h) Passenger B, whose destination is Vancouver but whose itinerary included a four-hour layover in Toronto, may not be entitled to compensation as they may not experience a delayed arrival in Vancouver.

***APPR* dispute resolution process following the 2023 amendments to the CTA**

34. Under the current *APPR* dispute resolution process, complainants are firstly required to address their complaints with the air carrier. Air carriers are required to establish a process for dealing with passenger complaints within 30 days of receiving them. If the complainant is not satisfied with the response received from the carrier, they may file a complaint with the Agency.

35. Complaints that meet the criteria under section 85.04 of the *CTA* are assigned to a CRO who first attempts to assist parties in reaching a settlement by way of mediation in their dispute. In most cases, if no agreement is reached at mediation, the same CRO makes a final

and binding decision on the complaint within 60 days.

36. Pursuant to section 85.13 of the *CTA*, the Chairperson of the Agency or their designate may refer more factually complex or precedent setting matters to a panel of at least two GIC-appointed Agency members following unsuccessful mediation.

The new amendments needed to balance transparency and the efficient resolution of consumer complaints for better consumer protection

37. The new process was designed to provide speedier recourse for air passengers whose travel had been adversely affected through a more informal dispute resolution process than had previously been the case at the Agency. The previous formal Agency process, including the need for detailed published decisions, was not meeting the objective of proportionate access to remedies for consumers with relatively low dollar value complaints.
38. If the Agency were required to treat the CRO process as quasi-judicial, including by having to revert to publishing each decision or making file materials available to the public, attempts to achieve the objective of efficient and effective consumer protection would be rendered impossible.
39. The new process was developed for a more collaborative dispute resolution model. CROs were primarily supposed to mediate disputes where parties could not resolve them on their own, with a CRO decision coming only if the parties could not agree. Confidentiality is a crucial component of mediation processes to encourage frank, open discussion and therefore, the 2023 *CTA* amendments included a confidentiality provision that covers the mediation and decision-making process. This is similar to what the *CTA* provided for prior to the 2023 amendments, where all matters relating to the mediation were confidential. These confidentiality measures guarantee protection of information for all parties involved, unless parties mutually agree to waive confidentiality.
40. These confidentiality provisions were implemented for several reasons, the principle one being that a basic tenet of mediation is that it remains confidential. One aim was to incentivize air carriers to participate in the mediation process. In providing these protections, airlines might be expected to offer compensation to passengers during

mediation, even where they could reasonably argue the situation was outside their control or required for safety reasons. This outcome would be less likely if settlements were published publicly.

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

CROs must publish complaint summaries of their orders

42. As part of the amendments, the Agency is required to publish high-level summaries of each order made by a CRO. These summaries include:

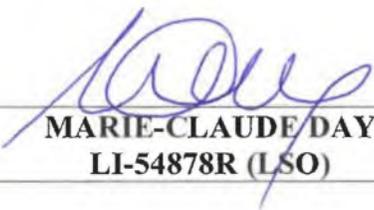
- (a) The number of the flight to which the order relates;
- (b) The date of flight that is indicated on the complainant's ticket;
- (c) Any decision contained in the order regarding whether any flight delay, flight cancellation or denial of boarding was within the carrier's control, was within the carrier's control but was required for safety reasons or was outside the carrier's control; and
- (d) A statement as to whether the CRO ordered the carrier to provide compensation, or a refund as set out in the carrier's tariffs or compensation for expenses incurred.

43. The intended purpose of publishing these summaries is to provide sufficient information to the public and other individuals on the flight so that they can understand the result of a complaint. Ultimately, the intention is to provide the other individuals on the affected flight with an indication on whether they might obtain compensation by filing their own complaint. For example, a passenger may be more likely to file a complaint about a flight delay if they know that a CRO has already determined that the delay of that specific flight was not required for safety reasons. Section 85.08 of the *CTA* requires the publicly available information from prior CRO orders to be taken into account when deciding on any subsequent complaints in relation to the same flight, which was also intended to increase efficiencies and provide more certainty to consumers.

44. Providing this level of information publicly was intended to strike the balance between providing transparency and information on the complaints to the Agency and ensuring speedier resolution of air passengers’ complaints with the overall objective of effective consumer protection. CROs would be able to deal quickly with routine, relatively low dollar-value matters, providing timely compensation to complainants. Agency Members would no longer need to write and publish, in both official languages, detailed decisions for relatively low impact issues, but instead be able to redirect their expertise towards resolving more complex transportation complaints.

Despite the amendments, the backlog remains

45. Unfortunately, despite having implemented these changes to the Agency’s resolution process under the *CTA*, the backlog continues to grow. As of July 2025, the backlog of air passenger complaints at the Agency was approximately 85,000. The Agency and Transport Canada continue to confer on additional measures that might be implemented to streamline the complaint resolution process further and achieve the objective of efficient and effective consumer protection.

Affirmed before me at) the City of Ottawa) in the Province of Ontario) on the 29th day of August,) 2025)	
 MARIE-CLAUDE DAY LI-54878R (LSO)	 Vincent Millette

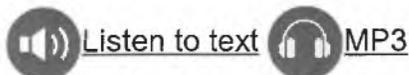
This is **Exhibit "A"** referred to in the Affidavit of

VINCENT MILLETTE

AFFIRMED before me at the City of Ottawa, in the
Province of Ontario, this 29 day of August, 2025



MARIE-CLAUDE DAY
LI-54878R (LSO)

[Home](#)

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

Table of contents

- [1. Purpose](#)
- [2. How to make a complaint on or after September 30, 2023](#)
- [3. How a complaint submitted before September 30, 2023 will be transitioned into the Complaint Resolution Office process](#)
- [4. Start Notice issued when the complaint is accepted for filing](#)
- [5. Airline's answer to the complaint](#)
- [6. Passenger's reply](#)
- [7. How to file an answer or a reply and to communicate with the Complaint Resolution Office](#)
- [8. Language of documents](#)
- [9. Confidentiality of information and documents](#)
- [10. Extensions of deadlines to file an answer or a reply](#)
- [11. Eligibility assessment](#)
- [12. Mediation](#)
- [13. Final decision and order](#)
- [14. Settlement of complaints at any time before a final decision](#)
- [Glossary](#)

1. Purpose

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

(2) It provides instructions for passengers and airlines on the steps in the process, how they can participate and the deadlines that apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A complaint is accepted for filing when:

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

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

and

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

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

5. Airline's answer to the complaint

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

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

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

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

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

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

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

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

(c) any documents in support of the airline's position, including the applicable tariff;

(d) an explanation of why each document is relevant and what that document shows. This would include an explanation of technical terminology and codes so that they can be reasonably understood by the passenger; and

(e) a confirmation of whether the airline agrees to mediate the complaint.

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

6. Passenger's reply

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

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

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

8. Language of documents

- (1) Documents can be provided in English or French. Parties are responsible for ensuring they can understand documents in the language in which they are filed.
- (2) Documents in other languages can be provided if they are accompanied by an English or French translation. If a translation is not provided, the Complaint Resolution Officer may decide that the

information contained in the document in a language other than English or French is not proven.

(3) The party providing the document in a language other than English or French is responsible for providing the translation of that document at their own cost.

(4) A Complaint Resolution Officer will not translate documents provided in English, French or any other language.

9. Confidentiality of information and documents

(1) By law, all information and documents relating to the complaint process are confidential unless both the passenger and airline agree otherwise in writing.

(2) Neither the passenger nor the airline can refuse to share information or documents with each other or the Complaint Resolution Officer on the basis that they contain confidential information. All information and documents relating to the complaint, the answer and the reply will be accessible to the other party.

(3) The passenger and airline must not use or share any information or documents relating to the complaint process for any purpose other than dealing with the complaint process, unless the passenger or airline agrees in writing that the information it provides may be used otherwise.

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

(1) A Complaint Resolution Officer may extend a deadline set out in this guideline only if there is an exceptional reason for doing so.

(2) In order to obtain an extension, the passenger or airline must make a request in writing and identify a clear and specific reason why it is impossible to meet the deadline.

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

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

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

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

11. Eligibility assessment

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

- (a)** the passenger does not allege that the airline failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs;
- (b)** the passenger is not adversely affected by the failure to apply that fare, rate, charge or term or condition of carriage;
- (c)** the passenger does not seek compensation or a refund as set out in the airline tariffs or compensation for expenses incurred as a result of that failure;
- (d)** the passenger did not make a written request to the airline to resolve the matters and the matters are still unresolved 30 days after the written request was made.
- (e)** it is clear on the face of the complaint that the airline has complied with the obligations set out in its tariffs; or
- (f)** the complaint is vexatious or made in bad faith.

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

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

(4) If the Complaint Resolution Officer finds the complaint is eligible, the complaint will proceed to either mediation or final decision-making. No reasons will be provided.

(5) If a complaint is only eligible in part, only the part that is eligible will proceed to mediation or final decision-making.

(6) Even if the Complaint Resolution Officer finds the complaint is eligible, they may still cease to deal with a complaint at any time if they determine at a later stage that the complaint is ineligible, applying the criteria set out in section 11(1). A Complaint Resolution Officer will provide brief reasons for their decision to cease to deal with a complaint.

12. Mediation

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

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

13. Final decision and order

- (1) If the passenger and airline did not agree to mediate or if they did not reach a settlement agreement, the Complaint Resolution Officer must make a final, binding and confidential decision.
- (2) A final decision and order will be issued no later than 60 calendar days after the start of mediation.
- (3) A copy of the final decision and order will be provided to the passenger and the airline.
- (4) The complaint process and the Complaint Resolution Officer's role end when the final decision and order are issued. The Complaint Resolution Officer will provide no other explanation regarding their decision or respond to any communication relating to the complaint or the final decision and order.

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

- (1) Passengers and airlines are encouraged to attempt to settle a complaint at any time before a Complaint Resolution Officer makes a final decision and order.
- (2) The passenger or the airline must inform the Complaint Resolution Office without delay if they have settled the complaint. The complaint will then be considered withdrawn. If the Complaint Resolution Office is informed of a settlement by the airline, they will communicate with the passenger to confirm the withdrawal.

Glossary

Terms used in this guideline:

Act

The *Canada Transportation Act*.

Agency

The Canadian Transportation Agency.

airline

The air carrier against whom the passenger made a complaint.

complaint

A complaint by a passenger against an airline.

complaint process

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

Complaint Resolution Office

The office that handles air travel complaints under sections 85.04 to 85.13 of the Act.

Complaint Resolution Officer

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

day

A calendar day.

document

Includes any information recorded or saved in any form.

eligible complaint

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

filed

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

passenger

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

submitted

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

tariff

The legal document that contains the terms, conditions and other rules that apply to the passenger's ticket.²¹

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AIR PASSENGER RIGHTS
Applicant

AND

ATTORNEY GENERAL OF CANADA
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at
Ottawa

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