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

REPLY FACTUM OF THE APPLICANT

March 6, 2026

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Intervenor

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REPLY

1. The Applicant[1] makes the following submissions in reply to the Factum of the Respondent, dated February 27, 2026.[2]

A. The CRO Process is Adjudicative

2. The Respondent incorrectly submits that the CRO process set out in the *CTA* is not an adjudicative one to which the open court principle applies. This submission is not supported by law, the evidence, or the way the Agency describes this process. Regardless, even if the Respondent were correct, the section 2(b) jurisprudence is clear that certain governmental records are also captured by the *Charter*'s guarantee of freedom of expression.

1. The Issues and Procedure of the CRO are Adjudicative

3. The Respondent suggests that the only issues CROs can determine are non-adjudicative because of the nature of the matters before them and the trappings of their process. This is a false and misleading over-simplification.

4. The Federal Court of Appeal has recently addressed this very issue. It found that making determinations about a flight disruption under the *APPR* calls on the decision-maker to engage in complex statutory interpretation and apply it to the specific facts established in evidence:

> [6] Applying the modern principle of statutory interpretation, a disruption is "within a carrier's control but required for safety purposes" when the carrier incurs that disruption to reduce a risk to passenger safety despite having taken reasonable measures 1) to plan and conduct its day-to-day operations in such a manner as to avoid the occurrence of situations causing that risk and 2) to follow a reasonable contingency plan developed to effectively and expeditiously reduce the risk.[3]

5. The Respondent's submissions also betray this reality. Its examples of the supposed 'limited' scope of issues the CROs are able to determine actually serve to underscore their adjudicative nature. Those 'permitted' issues consist of:

a. whether or not to deal with a complaint (in other words, to decide whether they have jurisdiction by interpreting their own statute);[4] and

b. whether an air carrier failed to apply a fare, charge, or term or condition of carriage

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[1] Unless otherwise indicated, terms used in the body or footnotes of this document have the meanings set out in the Factum of the Applicant, dated January 23, 2026.

[2] Factum of the Respondent, dated February 27, 2026 ["**Respondent's Factum**"].

[3] *Westjet v. Lareau*, 2025 FCA 149, at para. 6.

[4] *CTA* at s. 85.04.

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set out in the carrier's tariff or the *APPR*, which is deemed by statute to form part of the tariff (in other words, to adjudicate whether there was a breach of contract between the parties, as small claims court judges do on a routine basis).[5]

6. These are adjudicative undertakings. The Respondent even concedes that the CRO's duties require them to make findings of fact on *a balance of probabilities*.[6] Making findings that inherently require a weighing of evidence is necessarily adjudicative.

7. The adjudicative nature of the CRO process is also conspicuous in the procedural guide for the public, which similarly reflects a formalized, adjudicative procedure. This document:

a. describes the process as being available for all air travel complaints other than those for which "*pleadings have been opened in adjudication*" before September 30, 2023;

b. specifies that the parties are entitled to representation;

c. states that a "complaint" commenced by the passenger is to be defended by the "answer" of the respondent airline;

d. indicates that materials filed are to set out the party's "*position on each issue*";

e. sets out procedures for reply submissions (which – like a court – prohibit raising new issues or evidence);

f. states that unless the complaint is mediated (which is optional and requires the consent of both parties), a written decision and order will be made by the CRO; and

g. imposes procedural deadlines, denominated in days, for each step in the process.[7]

8. Notably, this document is released as a publication of the Agency – itself a quasi-judicial tribunal – and is titled as such: *Guidelines on the Canadian Transportation Agency's Complaint Resolution Officer air travel complaints process*.[8]

9. While the Respondent makes much of the fact that the CRO's process does not include an oral hearing, that is not determinative. Several tribunals and courts to which the open court principle applies have adopted paper-based processes where it is a reasonable and proportionate

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[5] *CTA* at s. 85.07.
[6] Respondent's Factum at paras. 40 and 43.
[7] Respondent's Factum at para. 43.
[8] *Ibid*.

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procedure to do so (including, as it happens, contested motions within this application).

10. This is likewise for the CRO's process. The CRO is tasked with applying the airline's tariff (which incorporates the *APPR*[9]) to facts that are all generally provable (or disprovable) on a documentary basis – such as the purchase of a ticket, the seat assigned to the passenger, a change in schedule or a delay, publicly-available flight tracking records, and aircraft maintenance logs. This does not negate the onus on the adversarial parties to marshal this evidence to support their claim or defence within this adjudicative framework.

2. The Respondent's Authorities Support the Applicant's Position

11. The authorities relied on by the Respondent also support the Applicant's position that the CRO's process is adjudicative.[10]

12. While it is true that in the Respondent's key authority, *CBC*, the Federal Court of Appeal questioned the utility of the "judicial/quasi-judicial" distinction, the full passage (which is parsed in the Respondent's factum) plainly depicts the role of the CRO:

> [48] With all due respect, the judicial/quasi-judicial distinction has outlived its usefulness in its application to the open court principle. The difficulty with relying on the characterization of a tribunal as quasi-judicial is that it focuses on the [Parole Board's] processes and formal characteristics rather than its function. The public interest in court proceedings does not arise from a court's procedural characteristics but from the fact that it decides questions of rights and duties as between citizens and as between citizens and the state.[11]

13. Pelletier JA goes on to state that "whatever other distinctions may exist between different kinds of administrative tribunals, the fact that a tribunal presides over adversarial proceedings as an adjudicative body is a reliable indicator that the tribunal is subject to the open court principle" and that "[i]t is the fact of adjudicating competing interests that imposes the duty of fairness and impartiality which gave rise to the description of some tribunals as quasi-judicial."[12]

14. Applying this framework to the federal parole board, the court found that its process was inquisitorial – not adjudicative – and one directed at a risk assessment process based on information from various persons. In that process, the offender is not opposed by a state representative in the same manner as at a trial or sentencing hearing.[13] While the public interest imbues the work of the parole board, the court reasoned that "the open court principle has to date

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[9] *CTA* at s. 86.11(4).

[10] *Canadian Broadcasting Corporation v. Canada (Parole Board)*, 2023 FCA 166 ["***CBC 2023***"] at para. 47, citing *R. v. Bird*, 2019 SCC 7, at para. 53. *CBC 2023*, while supportive of the Applicant's position, also parts ways with the Supreme Court of Canada decision in *Bird*, which acknowledged the federal parole board as "a court of competent jurisdiction".

[11] *CBC 2023* at para. 49 (emphasis added).

[12] *CBC 2023* at para. 53.

[13] *CBC 2023* at para. 54.

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been limited to those public bodies whose resemblance to courts invites the same degree of public oversight represented by the open court principle".[14]

15. At its core, the CRO process is set up to determine the respective *rights* of passengers and *duties* of air carriers under the contractual obligations set out in tariffs, which include the *APPR*. This is the precise adjudicative concept set out by Pelletier JA in *CBC*.

16. Even at a more granular level, it is difficult to conclude that the CRO's process is anything like that of the parole board. For instance, under the *CTA*:

a. The CRO's process is one in which adversarial parties litigate the claimant's entitlement to compensation by the defendant airline;[15]

b. The alternative forum for the same claims to be heard, between the same parties, and where the same relief can be granted, is a small claims court;[16]

c. The Agency itself, from which CROs are appointed, is an adjudicative forum, and the Agency's own jurisprudence is explicit that it is subject to the open court principle;[17]

d. The *CTA* confers measures of adjudicative independence from the Agency, reflecting their role as impartial and fair hearing officers;[18]

e. The CROs release written reasons, which apply the relevant law to the facts as disclosed by the parties' submitted materials;[19] and

f. The CRO's orders can be taken out as orders of the Agency, which can thereafter be enforced as orders of the Federal Court or of a superior court.[20]

17. The other authorities relied on by the Respondent similarly underscore the *adjudicative* nature of the CRO process. The two decisions in question – both judicial reviews of administrative action – are not cases about two parties with adverse, competing interests. For instance, *D'Arthenay* determined that a wholly informal police complaint process – which could result in

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[14] *CBC 2023* at para. 55.

[15] Lukács Reply Affidavit at Ex. "B", RAR at Tab 5-B.

[16] See, for example, *Geddes v. Air Canada*, 2021 NSSM 27.

[17] See, for example, Lukács Reply Affidavit at paras. 23-35, RAR at Tab 5.

[18] *CTA* at ss. 85.02(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."), (3) ("Proceedings before a complaint resolution officer are not proceedings before the Agency."), and 85.06(2) ("An order [under subsection 85.07(1)] is not an order or decision of the Agency.").

[19] See, for example, Pierce Affidavit at Ex. "G", AR at Tab 4-G.

[20] *CTA* at ss. 33 and 85.07(3).

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resolution without the complainant's consent – was not quasi-judicial.[21] Likewise, *Michalski* determined that a university process for granting creed-based vaccination exemption – a process not requiring the hearing of competing rights and duties by an impartial decision-maker – was not adjudicative, but administrative.[22] This is dissimilar to the adversarial nature of the CRO process.

3. The Agency Describes the CRO's Role as Adjudicative

18. The Respondent also argues that the CRO's determinations do not bear the hallmarks of an adjudicative process, alleging that the CRO does not engage in the weighing of evidence to render decisions. This submission is without merit based on the Agency's own public statements.

19. On February 9, 2026, the Agency stated that the CRO's role requires that each complaint "be analyzed in accordance with the law and regulations" and that the *APPR* are "complex" and set out abstract standards ("reasonableness", "as soon as feasible", and "required for safety"), which the Agency states "do not have set criteria, and depending heavily on the exact circumstances of each disruption, requiring analysis and interpretation." The Agency has further referred to the materials that CROs receive from the parties as "evidence", which it characterizes as "variable" and "evolving", requiring the CROs to "undertake a careful analysis of the evidence submitted on the record in each case individually".[23]

20. As such, the position of the Respondent appears to boil down to a bald assertion that because the Agency has chosen to use synonyms for conventional litigation steps in its construction of the CRO process, it suddenly made that process non-adjudicative. That is not so. Cloaking "submissions" as "information", "evidence" as "documents", or "hearing" as "decision and order" does not erase the underlying role of the CRO to carry out those adjudicative functions. Nor does it erase the historical and ongoing ties of the CRO process to the Agency's tribunal functions[24] – which remain available for some air passenger complaints, and which remain subject to the open court principle.[25]

21. As such, it is apparent from the law and evidence that the CRO process is adjudicative.

4. Even if the Process is Not Adjudicative, Section 2(b) is Violated

22. Alternatively, even if the CRO's process were determined to be one that is not adjudicative or to which the open court principle does not apply (which the Applicant disputes), binding

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[21] *D'Arthenay v. Ontario Provincial Police*, 2024 ONSC 4773 (Div. Ct.)
[22] *Michalski v. McMaster University*, 2022 ONSC 2625 (Div. Ct.).
[23] Affidavit of Amanda Buttineau, affirmed March 5, 2026, at para. 5 and Ex. "A".
[24] Lukács Reply Affidavit at paras. 23-35, RAR at Tab 5.
[25] Lukács Reply Affidavit at para. 35, RAR at Tab 5.

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appellate jurisprudence is clear that access to other types of governmental records continues to attract the protection of section 2(b) of the *Charter*.

23. In *Criminal Lawyers' Association*, the Supreme Court of Canada stated:

> [33] This leads us to more detailed comments on the scope of s. 2(b) protection where the issue is access to documents in government hands. To demonstrate that there is expressive content in accessing such documents, the claimant must establish that the denial of access effectively precludes meaningful commentary. If the claimant can show this, there is a *prima facie* case for the production of the documents in question. But even if this *prima facie* case is established, the claim may be defeated by factors that remove s. 2(b) protection, e.g. if the documents sought are protected by privilege or if production of the documents would interfere with the proper functioning of the governmental institution in question. If the claim survives this second step, then the claimant establishes that s. 2(b) is engaged. The only remaining question is whether the government action infringes that protection.
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> [34] The first inquiry into expressive content asks whether the demand for access to information furthers the purposes of s. 2(b). In the case of demands for government documents, the relevant s. 2(b) purpose is usually the furtherance of discussion on matters of public importance.[26]

24. While there is no general *Charter* right of access to information under government control, access to information will fall within the protective scope of section 2(b) where the claimant has established "that access is necessary for the meaningful exercise of free expression on matters of public or political interest".[27]

25. On this basis, the court has consistently recognized that section 2(b) protection attaches to government information arising in the judicial context, stating that "members of the public have a right to information pertaining to public institutions and particularly the courts"[28] and that "[a]ccess to documents in government hands is constitutionally protected only where it is . . . compatible with the function of the institution concerned".[29]

26. The evidence of the Applicant is that the complete bar to accessing the records of the CRO – including their decisions and orders – precludes *any* meaningful expression on the effectiveness, fairness, or desirability of the air passenger complaints process under the *CTA*. Subsection 85.09(1) entirely prevents the Applicant from engaging in public or political commentary, including to provide information about how CROs make decisions, or to advocate for improvements to the process based on the content of CRO decisions or the materials filed by parties to these proceedings. These are all issues which engage the protective scope of section 2(b) as they

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[26] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 ["***CLA***"], at paras. 33-34 (emphasis added).
[27] *CLA* at para. 35, citing *Irwin Toy* and *Thomson*.
[28] *CLA* at para. 36, citing *Edmonton*.
[29] *CLA* at para. 5.

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prevent commentary on legislation enacted by Parliament and its implementation by a statutory body.

27. Consequently, even if the court were to conclude that the CRO process is not adjudicative – which it should not – the blanket gag order reflected in subsection 85.09(1) continues to engage section 2(b). The failure of the legislation to provide any exceptions to its application remains as unjustifiable under section 1 as it would under the open court principle.

B. Standing Does Not Prevent the Application from Advancing its Claim

28. The Respondent argues that the Applicant has no standing to allege a violation of the freedom of expression of other individuals. This submission is a red herring and a distraction from the main issues. Even if there were an issue as to standing, the Applicant has requested and can be granted public interest standing to the (limited) extent it is necessary.

1. No One Disputes that the Applicant's Protected Expression is Infringed

29. To begin with, the Respondent does not challenge the Applicant's standing to make claims about its own expressive rights, which are clearly engaged.[30] The record is clear that the Applicant's expressive activities have been impacted by the operation of subsection 85.09(1) – most obviously through the Agency's policing of its Facebook page and by refusing to release decisions, orders, and other CRO documents to the Applicant when requested.[31] No one disputes that the prohibition on those expressive activities infringes section 2(b).[32]

30. The Respondent instead asserts that "the Applicant raises arguments relating to the freedom of expression of other individuals who have been parties to the CRO complaint process, including Ms. Pierce."[33] This is misleading.

31. The Applicant is not asserting a claim on behalf of any third party. Ms. Pierce's affidavit was not subject to cross-examination. It enters exhibits which show the verbiage used by the Agency to enforce subsection 85.09(1) and examples of the very limited (and inaccurate) nature of the public information that the Agency makes available about complaints. All of this is germane to the Applicant's claim as it serves as evidence of the complete bar to meaningful access to CRO decisions, orders, and adjudicative records.

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[30] For greater certainty, and as indicated in the Applicant's Factum at fn. 67, commercial expression enjoys the protection of section 2(b), which extends the right to corporations, including the press. See, for example, *Irwin Toy* at 971 (relating to advertising) and *AG Ontario* (an application brought by the Toronto Star).

[31] Lukács Affidavit at paras. 30-36, AR at Tab 3.

[32] Respondent's Factum at para. 46.

[33] Respondent's Factum at para. 23.

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32. That is what the Applicant's claim is about, and the narrative descriptions in the Applicant's factum about the impact on Ms. Pierce do not dislodge that reality. Ms. Pierce's evidence that she is also prohibited from sending or receiving information about her specific complaint proceeding parallels the evidence of the Applicant, but no *Charter* claim is advanced on her behalf.

33. Notably, the Applicant is a public interest organization. Ms. Pierce's evidence is germane to the Applicant's claim relating to how subsection 85.09(1) is operationalized. There would be no way to advance this type of evidence without having an individual air passenger complainant give evidence because the Applicant, as a corporation, cannot be an air passenger. Due to the confidentiality provisions at issue, there is no other way to demonstrate that the information on the public register is, in fact, unreliable and not useful to the Applicant (or anyone else). Only a passenger who made a complaint through the CRO process would know the truth or accuracy of the information that is published about their complaint proceeding.

2. The Applicant Can be Granted Public Interest Standing

34. Alternatively, if it is determined that the Applicant did not have standing to fully advance the issues in the application, the application already requests such an order granting public interest standing.[34] The record provides a basis to grant such standing. The court is empowered to grant this standing for the limited purpose for which it is necessary. It is noted that despite raising this standing issue, the Respondent does not argue that the Applicant would *not* be entitled to public interest standing.

35. In *Downtown Eastside*, the Supreme Court confirmed the test for public interest standing:

> In exercising the discretion to grant public interest standing, the court must consider three factors: (1) whether there is a serious justiciable issue raised; (2) whether the plaintiff has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts[.][35]

36. The first element relates to the existence of a justiciable issue. The Supreme Court has stated that this factor relates to "concern about the proper role of the courts and their constitutional relationship to the other branches of government".[36] To be a "serious issue", the question raised must be a "substantial constitutional issue" or an "important one". However, courts are not to

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[34] Notice of Application, issued May 28, 2025, at para. 3, AR at Tab 1.

[35] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 ["***Downtown Eastside***"], at para. 37.

[36] *Downtown Eastside* at para. 39.

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examine the merits of the case "other than in a preliminary manner".[37]

37. This issue which may attract the need for public interest standing is whether the Applicant is situated to raise arguments relating to the freedom of expression of other persons, namely air passenger complainants. The expressive activities of such persons – to the extent that they are relevant – are closely relate to the core issues in the Applicant's claim around the constitutionality of subsection 85.09(1). That is a sufficiently serious justiciable issue.

38. In respect of the second element, the court has stated that the nature of the applicant's interest is a gatekeeping function intended to preserve scarce judicial resources and "screen out the mere busybody."[38] The court is concerned with "whether the [applicant] has a real stake in the proceedings or is engaged with the issues they raise."[39]

39. The undisturbed record establishes that the Applicant – as a leading advocate for air passenger rights in Canada – is hampered in its ability to monitor how relevant law is being applied by CROs, to provide resources to the public, and to fulfill its advocacy mandate due to the operation of subsection 85.09(1) of the *CTA*.[40] The record also includes specific instances in which the Applicant requested access to adjudicative records and was denied on the basis of this subsection, as well as unsolicited communications from the Agency policing the sharing of CRO decisions on the Applicant's social media, which also referenced subsection 85.09(1).[41] Any part of the Applicant's claim which may, on its face, appear to be on behalf of air passenger complainants are, in fact, directly connected with the Applicant's primary claims in the litigation.

40. The third element considers whether the proceeding is a reasonable and effective means of bringing the issue before the court. The Supreme Court has stated that this factor is not to be applied rigidly: "it is one of the three factors which must be assessed and weighed in the exercise of judicial discretion" and "reflects the flexible, discretionary and purposive approach to public interest standing".[42] The test only requires that the proceeding be ***a*** reasonable means to bring the matter before the court – it need not be the *only* reasonable means to do so.[43]

41. In this case, the Applicant is a volunteer-driven, public interest, and non-profit organization. It is advancing a *Charter* claim for the benefit of air passengers at large. While an individual

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[37] *Downtown Eastside* at para. 42.
[38] *Downtown Eastside* at para. 43.
[39] *Ibid*.
[40] Lukács Affidavit at paras. 41-49, AR at Tab 3.
[41] Lukács Affidavit at paras. 30-36, AR at Tab 3.
[42] *Downtown Eastside* at paras. 44 and 47.
[43] *Downtown Eastside* at para. 52; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at para. 55.

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passenger-complainant – such as Ms. Pierce – could be situated to advance a similar application, the likelihood of them doing so is limited, given the relatively small value of the underlying claim before the CRO. The economics of *Charter* litigation in that context are perilous. *Downtown Eastside* acknowledges that the capacity of another party to bring forward a claim is relevant to granting public interest standing.[44]

42. In contrast, the Applicant's ability to advance a *Charter* claim in a public representative capacity facilitates the court's ability to hear argument on an important and far-reaching constitutional issue that would normally be out of reach or uneconomical for individuals to pursue. The Applicant's ability to advance this litigation addresses the inherent power imbalance between airlines – massive corporations – and individual travellers with *Charter*-guaranteed rights. The Supreme Court contemplates that whether the nature of the case makes it one that transcends the interests of other persons is an animating feature of public interest litigation.[45]

43. Here too, it is difficult to conceive of a more effective way to formulate a challenge to subsection 85.09(1) than in the hands of a party situated in the manner of the Applicant, which functionally stands in the shoes of the travelling public on a day-to-day basis. There is, in this context, no practical way to bring the claims of such persons before the court.

44. For these reasons, even if the court had concerns about the Applicant's personal standing to advance the full range of issues set out in the application – which it should not – the Applicant is plainly well-situated to advance the expressive rights of air passenger complainants, such as Ms. Pierce. Importantly, the public interest nature of this application has already been acknowledged by this court in a recent motion decision.[46]

C. <u>The Respondent Makes Justification Submissions with No Evidence</u>

45. The Respondent makes a number of submissions as part of its section 1 justification which are unsupported by evidence in the record. Having conceded subsection 85.09(1)'s violation of section 2(b) of the *Charter*, the absence of any foundation for these facts fatally impairs the Respondent's attempt to uphold the constitutional breach.

46. ***First***, the Respondent's argument is built upon the false notion that the CRO process is an informal mediation. This is untrue. Mediation is **not** a mandatory stage of the CRO process. As indicated in the Applicant's main factum, there are published materials about the CRO's process and evidence from the Respondent's witness that confirm that mediation is only a step in the

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[44] *Downtown Eastside* at para. 51.
[45] *Downtown Eastside* at para. 51.
[46] *Air Passenger Rights v. The Attorney General of Canada*, 2025 ONSC 7189, at para. 23.

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process where the parties explicitly agree to take part in it.[47] Consequently, the default route for all claims proceeding before the CRO is an adjudicative one – just as it would be for any claim before a court unless it was diverted to a settlement conference or mediation.

47. Regardless, there is absolutely *no evidence* before the court to support the volume of complaints before CROs that proceed (or resolve) through mediation compared to those that are adjudicated by the CRO. There is also no evidence to explain why mediation cannot be divorced from adjudication (in fact, the Respondent's witness did not know how the records were administratively organized). Even if this were a compelling statutory objective, the Respondent has not provided any evidence on its effectiveness in order to override a fundamental freedom under the *Charter*.

48. ***Second***, the Respondent states that confidentiality under subsection 85.09(1) of the *CTA* substantiates a pressing and substantial objective because it "gives effect to the consumer protection aims of the National Transportation Policy." The Respondent has led no evidence on this, and certainly no evidence explaining how confidentiality promotes consumer protection. The affidavit citation provided by the Respondent does not refer to consumer protection at all.[48]

49. ***Third***, the Respondent asserts that section 85.14 of the *CTA* absolves the violation of section 2(b) of the *Charter*.[49] Section 85.14 is the section which empowers the Agency to publish "tombstone" information about each complaint. The Respondent's own witness conceded the limitations of this public information.[50] The public database, as the Applicant's record demonstrates, provides no precedential guidance to the public nor insight into the reasoning of CROs when they make findings of fact or apply the law.[51] Ms. Pierce's evidence is that the public listing of her complaint is, in fact, misleading.[52] In contrast, the Respondent's witness also conceded that the four largest airlines have at their disposal adjudicative records from up to 80 percent of the complaints.[53]

50. ***Fourth***, the Respondent baldly argues that "[j]ustice continues to proceed in public view", despite the operation of subsection 85.09(1) of the *CTA*. This is unsupported conjecture. There is no evidence of any ability for a member of the public to determine how justice is administered by a CRO. Curiously, the Respondent's argument on this point relies on a paragraph of *Sherman*

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[47] Millette Transcript at qq. 49-50.
[48] Respondent's Factum at para. 48.
[49] *CTA* at s. 85.14.
[50] Millette Transcript at qq. 115-127.
[51] Pierce Affidavit at Ex. "H", AR at Tab 4-H.
[52] Pierce Affidavit at paras. 10-15, AR at Tab 4.
[53] Millette Transcript at qq. 40-41.

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Estate. That decision is irrelevant because it is about *discretionary* (not mandatory) limits on court openness. The passage also offers support for the Applicant's position, not the Respondent's.[54] The Respondent does not explain its bare assertion that "the hallmarks of the open court principle are maintained" despite subsection 85.09(1) of the *CTA*. Any such "hallmarks" of an open court ought to err in favour of more access, not less.

D. Conclusion

51. For these further reasons, the Applicant requests the relief sought in its main factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of March, 2026.

Douglas W. Judson
Judson Howie LLP

Lawyers for the Applicant

[54] *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 30 ("Court openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy[.] Reporting on court proceedings by a free press is often said to be inseparable from the principle of open justice. […] Limits on openness in service of other public interests have been recognized, but sparingly and always with an eye to preserving a strong presumption that justice should proceed in public view[.]" (citations omitted)).

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LAWYER'S CERTIFICATE

In accordance with rule 4.06.1 of the *Rules of Civil Procedure*, the undersigned is satisfied as to the authenticity of every authority cited herein.

DATED this 6th day of March, 2026.

Douglas W. Judson [LSO No. 70019H]
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Lawyers for the Applicant

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SCHEDULE "A" – LIST OF ADDITIONAL CITED AUTHORITIES

A. Jurisprudence

Air Passenger Rights v. The Attorney General of Canada, 2025 ONSC 7189

British Columbia (Attorney General) v. Council of Canadians with Disabilities, 2022 SCC 27

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45

Canadian Broadcasting Corporation v. Canada (Parole Board), 2023 FCA 166

D'Arthenay v. Ontario Provincial Police, 2024 ONSC 4773 (Div. Ct.)

Michalski v. McMaster University, 2022 ONSC 2625 (Div. Ct.).

Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23

R. v. Bird, 2019 SCC 7

Sherman Estate v. Donovan, 2021 SCC 25

Westjet v. Lareau, 2025 FCA 149

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AIR PASSENGER RIGHTS *Applicant*	v.	THE ATTORNEY GENERAL OF CANADA *Respondent*	Court File No. CV-25-00100065-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Ottawa

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