

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

- and -

CANADIAN TRANSPORTATION AGENCY

Respondent

**MOTION RECORD OF THE PROPOSED INTERVENER,
THE NATIONAL AIRLINES COUNCIL OF CANADA,
FOR LEAVE TO INTERVENE**

(in writing)

Volume 2 of 3

**Written Representations and
Schedule "A" – Statues and Regulations**

April 27, 2020

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

Clay S. Hunter LS#: 31896M
E-mail: CHunter@pmlaw.com
Tel: (416) 643-3324
Fax: (416) 366-3743

Counsel for the Proposed Intervener,
The National Airlines Council of Canada

EX PARTE

FEDERAL COURT OF APPEAL

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

- and -

CANADIAN TRANSPORTATION AGENCY

Respondent

INDEX**Volume 1 of 3****Notice of Motion, Pleadings and Affidavits**

Tab	Description	Page No.
1.	Notice of Motion , dated April 27, 2020	1
	Pleadings:	
2.	Order, dated April 16, 2020	7
3.	Affidavit of Mike McNaney , sworn April 27, 2020	11
	Exhibit "A": Air Canada News Release, dated April 21, 2020	16
	Exhibit "B": Air Transat News Release, dated March 18, 2020	18
	Exhibit "C": WestJet Update, dated April 19, 2020	21
	Exhibit "D": News Release, dated April 9, 2020, provided by Chorus Aviation Inc. regarding its subsidiary Jazz Aviation	24
4.	Affidavit of Nicola Colville , sworn April 24, 2020	27
	Exhibit "A": IATA Updated Impact Statement, dated April 14, 2020	31
	Exhibit "B": IATA Updated Impact Statement, dated April 16, 2020	41

Exhibit “C”:	IATA COVID-19 Canada Economic Impact Analysis, dated April 22, 2020	56
Exhibit “D”:	IATA Press Release, dated April 14, 2020	63
5. Affidavit of Jiwan Son,	sworn April 27, 2020	66
Exhibit “A”:	Excerpt from Organization and mandate section of Canadian Transportation Agency website, printed April 24, 2020	71
Exhibit “B”:	Statement on Vouchers, dated March 25, 2020	74
Exhibit “C”:	Important Information for Travellers During COVID-19, March 18, 2020	76
Exhibit “D”:	FAQs: Statement on Vouchers, April 22, 2020	81
Exhibit “E”:	Determination No. A-2020-42, March 13, 2020	84
Exhibit “F”:	Determination No. A-2020-47, March 25, 2020	88
Exhibit “G”:	Order No. 2020-A-32, March 18, 2020	91
Exhibit “H”:	Order No. 2020-A-37, March 25, 2020	94
Exhibit “I”:	Repealed - Interim Order to Prevent Certain Persons from Boarding Flights to Canada due to COVID-19, undated	97
Exhibit “J”:	PC Number: 2020-0157 - Minimizing the Risk of Exposure to COVID-19 Coronavirus Disease in Canada Order (Prohibition of Entry into Canada), March 18, 2020	108
Exhibit “K”:	Repealed - Interim Order to Prevent Certain Persons from Boarding Flights to Canada due to COVID-19, No. 2, March 20, 2020	117
Exhibit “L”:	PC Number: 2020-0161 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States), March 20, 2020	128
Exhibit “M”:	PC Number: 2020-0162 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any Country other than the United States), March 22, 2020	139

Exhibit “N”:	Repealed - Interim Order to Prevent Certain Persons from Boarding Flights to Canada due to COVID-19, No. 3, March 24, 2020	150
Exhibit “O”:	PC Number: 2020-0175 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation), March 24, 2020	161
Exhibit “P”:	PC Number: 2020-0184 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any Country other than the United States), March 26, 2020	174
Exhibit “Q”:	PC Number: 2020-0185 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States), March 26, 2020	189
Exhibit “R”:	Repealed - Interim Order to Prevent Certain Persons from Boarding Flights in Canada due to COVID-19, March 27, 2020	200
Exhibit “S”:	Interim Order to Prevent Certain Persons from Boarding Flights to Canada due to COVID-19, No. 6, April 17, 2020	209
Exhibit “T”:	Interim Order to Prevent Certain Persons from Boarding Flights in Canada due to COVID-19, No. 3, April 17, 2020	223
Exhibit “U”:	“Aviation measures in response to COVID-19” posted on the Transport Canada website and modified April 2, 2020	238
Exhibit “V” :	Statement of Claim in Court file number T-428-20, Donaldson v. Swoop et al., issued March 27, 2020	252
Exhibit “W”:	Notice of Civil Claim in Court file number VLC-S-S-203759, Donaldson v. Swoop et al., issued March 27, 2020	266
Exhibit “X”:	Motion for Permission to Commence Class Action Proceedings in Court file number 500-06-001052-204, Lachaine v. Air Transat A.T. et al., issued March 23, 2020	285

Volume 2 of 3

**Written Representations and
Schedule “A” – Statutes and Regulations**

Tab	Description	Page No.
6.	Written Representations , dated April 27, 2020	303
A.	<i>Federal Court Rules</i> , S.O.R./98-106	331
B.	<i>Canada Transportation Act</i> , S.C. 1996, c. 10	340
C.	<i>Federal Courts Act</i> , R.S.C., 1985, c. F-7	350
D.	<i>Air Passenger Protection Regulations</i> , SOR/2019-150	354

Volume 3 of 3

Authorities

Tab	Description	Page No.
7.	<i>VIA Rail Canada Inc. v. Canadian Transportation Agency</i> , 2005 FCA 79 (CanLII)	360
8.	<i>Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)</i> , [1990] 1 F.C. 74 (T.D.); aff'd. [1990] 1 F.C. 90 (C.A.)	416
9.	<i>Sports Maska Inc. v. Bauer Hockey Corp.</i> , 2016 FCA 44	423
10.	<i>Canada (Attorney General) v. Pictou Landing Band Council</i> , 2014 FCA 21	452
11.	<i>Prudential Steel Ltd. v. Bell Supply Company</i> , 2015 FC 1243 (CanLII)	469
12.	<i>Prudential Steel Ltd. v. Bell Supply Company</i> , 2016 FCA 282 (CanLII), [2017] 3 FCR 165	486
13.	<i>Democracy Watch v. Conflict of Interest and Ethics Commissioner</i> , 2009 FCA 15	499
14.	<i>Pieters v. Canada (Attorney General)</i> , 2007 FC 556 (CanLII)	507
15.	Decision No. 307-C-A-2015, Canadian Transportation Agency	522

16. Decision No. 398-C-A-2014, Canadian Transportation Agency 534
17. *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) 539
18. *Unilin Beheer B.V. v. Triforest Inc.*, 2017 FC 76 (CanLII) 583
19. *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334 (CanLII) 653
20. *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196 693
21. *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 (CanLII) 715

TAB 6

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

- and -

CANADIAN TRANSPORTATION AGENCY

Respondent

**WRITTEN REPRESENTATIONS OF THE PROPOSED INTERVENER,
THE NATIONAL AIRLINES COUNCIL OF CANADA,
FOR LEAVE TO INTERVENE****I - OVERVIEW**

1. The National Airlines Council of Canada (“NACC”) hereby seeks leave to intervene in the application and motion commenced by the applicant, Air Passenger Rights, seeking, respectively, judicial review of and, an interlocutory order, *inter alia*, ordering the removal of a public statement issued and cited by the respondent, Canadian Transportation Agency on its website.
2. By Order dated April 16, 2020, in Court File No. A-102-20, the Federal Court of Appeal granted the applicant’s request that the motion for interlocutory order proceed on an expedited basis.
3. For the reasons set out below and pursuant to Rules 361 and 362(2)(b) of the *Federal Courts Rules*, the NACC’s motion for leave to intervene is brought without notice and on an urgent basis.
4. The application and motion for interlocutory order are concerned with a statement issued by the Canadian Transportation Agency (the “Agency”) on or about March 25, 2020 entitled “Statement on Vouchers” (the “Statement”) and the Statement being cited in a page of the

Agency's website entitled "Important Information for Travellers During COVID-19" (the "COVID-19 Agency Page").

5. The application and motion for interlocutory order raise the following issues:
 - (a) Whether the Statement and the COVID-19 Agency Page are "matters" within the meaning of s 18.1 (1) of the *Federal Courts Act* and therefore subject to judicial review;
 - (b) Whether the Agency erred in law in that it exceeded its mandate and power in issuing the Statement and citing it on the COVID-19 Agency Page, including, whether in the extraordinary and unprecedented circumstances of the COVID-19 pandemic, the issuing of the Statement and citing of same on the COVID-19 Agency Page was a reasonable exercise of its discretion;
 - (c) Whether the Agency breached the provisions of the Agency's Code of Conduct issuing the Statement and/or citing it on the COVID-19 Agency Page; and
 - (d) Whether the issuing of the Statement and/or citing it on the COVID-19 Agency Page, creates a reasonable apprehension of bias in the Agency and/or its members.
6. In addition, the motion for interlocutory order raises the following additional issue:
 - (a) Whether the applicant meets the tri-partite test for granting an interlocutory order as confirmed by the Supreme Court in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311, and *R. v. Canadian Broadcasting Corporation*, 2018 SCC 5, in particular, the balance of convenience, including the public interest in light of the extraordinary and unprecedented circumstances of the COVID-19 pandemic.
7. The NACC will provide this Honourable Court with submissions on behalf of its members, four of the largest Canadian airlines representing the airline industry; integral stakeholders in the national transportation network and whose participation on the application and motion for interlocutory order are necessary to provide this Honourable Court with fair and fulsome submissions on the issues.

II - FACTS

8. The NACC is a Canadian not-for-profit trade organization incorporated on September 4, 2008 and advocates on behalf of its member airlines for safe, environmentally responsible and competitive air travel by promoting the development of sound public policy. The NACC represents Canada's largest national and international passenger air carriers: Air Canada, Air Transat, Jazz Aviation LP and WestJet which, combined, carried 88.1% of all passengers carried by Canadian airlines domestically, 69.2% of all transborder passengers and 54.2% of all international passengers into and out of Canada.

Affidavit of Mike McNaney, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 3

9. Canada's airlines have been severely impacted by the extraordinary and unprecedented circumstances of the COVID-19 pandemic such that it poses an existential threat to them. Accordingly, Canadian airlines and, significantly, the largest of Canada's airlines have an integral stake in these proceedings, as do airline passengers and the regulatory body respondent. However, the interests of Canada's airlines are not presently represented in these proceedings.

10. The scope of the Agency's participation in these proceedings may be limited to an explanatory role and submissions on jurisdiction and, accordingly, may not speak to the issues as they relate to and impact upon Canadian airline stake holders.

VIA Rail Canada Inc. v. Canadian Transportation Agency, 2005 FCA 79 (CanLII) at para. 93 -94; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 7

11. The motion for interlocutory order was made in writing and without notice. By Order dated April 16, 2020, Locke J.A. granted the applicant's request that the motion for interlocutory order be dealt with on an expedited basis. Upon the Order coming to the attention of the NACC it immediately considered and took steps to seek intervener status and did not delay.

Order dated April 16, 2020, Court File: A-102-20; Motion Record of the Proposed Intervener, Volume 1, Tab 2

Affidavit of Mike McNaney, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 3

12. The NACC's submissions will address the legality, propriety and reasonableness of the impugned Statement and its citation on the COVID-19 Agency Page from the perspective of Canada's largest airlines in light of the existential threat faced by Canada's airlines in the extraordinary and unprecedented circumstances resulting from the COVID-19 pandemic.

III - LAW AND ARGUMENT

A. LEAVE TO INTERVENE

The Test for Granting Intervener Status

13. Rule 109 of the *Federal Courts Rules* affords this Honourable Court broad discretion to grant leave to intervene. In *Rothmans, Benson & Hedges*, this Court identified a number of factors that ought to be considered when disposing of a motion for leave to intervene under Rule 109 of the *Federal Courts Rules*:

- i. Is the proposed intervener directly affected by the outcome?
- ii. Does there exist a justiciable issue and a veritable public interest?
- iii. Is there a lack of any other reasonable or efficient means to submit the question to the Court?
- iv. Is the position of the proposed intervener adequately defended by one of the parties to the case?
- v. Are the interests of justice better served by the intervention of the proposed third party? and
- vi. Can the Court hear and decide the cause on its merits without the proposed intervener?

Federal Courts Rules, SOR/98-106, Rule 109; Schedule "A", Motion Record of the Proposed Intervener, Volume 2, Tab A

Rothmans, Benson & Hedges Inc. v. Canada (Attorney General), 1989 CarswellNat 594 at para. 12-13; aff'd. 1989 CarswellNat 600 at para. 3; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 8

Sports Maska Inc. v. Bauer Hockey Corp., 2016 FCA 44, para. 42; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 9

14. The NACC submits that the consideration of most, if not all, of these factors supports its intervention.

i. Is the NACC affected by the outcome?

15. The NACC's membership is comprised of Canada's four largest airlines and it advocates on behalf of its member airlines for, among other things, sound public policy. Such sound policy is, in the present extraordinary and unprecedented circumstances, now, more than ever, of the utmost importance to the entire transportation network and, significantly, Canadian airlines, including the members of the NACC.

16. The NACC is affected by the outcome in the same manner as the applicant, which is a not-for-profit organization advocating on behalf of passengers generally and not a single passenger applicant. NACC's member airlines are certainly affected by the outcome of the application as are all passengers. And not just a single or a group of passengers.

ii. Public Interest

17. There is no doubt that the issues raised in the application and motion for interlocutory order, as well as in the motion for final order and declaratory judgment, involve the public interest as they call into question two of the core mandates of the Agency:

- We help ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians: those who work and invest in it; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.

...

- We provide consumer protection for air passengers.

Excerpt from Organization and mandate section of the Canadian Transportation Agency website, Affidavit of Jiwon Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5A

And, indeed, the fundamental tenets of the National Transportation Policy:

National Transportation Policy

Declaration

5 It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when

(a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;

(b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;

(c) rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada;

(d) the transportation system is accessible without undue obstacle to the mobility of all persons;

(d.1) the transportation system is accessible without barriers to persons with disabilities; and

(e) governments and the private sector work together for an integrated transportation system.

Canada Transportation Act, S.C. 1996, c. 10, s.5; Schedule "A", Motion Record of the Proposed Intervener, Volume 2, Tab B

iv. Is the position of the proposed intervener adequately defended by one of the parties to the case?

18. In keeping with the statement of the Supreme Court of Canada on this issue, the scope of the Agency's participation in these proceedings may be limited to an explanatory role and submissions on jurisdiction. Accordingly, the Agency may not speak to the issues as they relate

to and impact upon Canadian airline stake holders and will certainly not advocate for their and, therefore, the NACC's position.

VIA Rail Canada Inc. v. Canadian Transportation Agency, supra.; Authorities; Motion Record of the Proposed Intervener, Volume 3, Tab 7

v. Are the interests of justice better served by the intervention of the proposed third party?

19. The declared objectives of the National Transportation Policy are furthered by the mandate of the Agency, which is to ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians. "All Canadians" includes Canadian airlines, the airline industry at large, and their passengers.

Canada Transportation Act, s. 5, supra.; Schedule "A", Motion Record of the Proposed Intervener, Volume 2, Tab B

Excerpt from Organization and mandate section of Canadian Transportation Agency website, supra., Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5A

20. As the Agency cannot advocate, let alone speak for Canadian airlines, in this proceeding, the intervention of the NACC permits the necessary and balanced participation of these stakeholders in the matters at issue. The NACC's submissions will be relevant and useful to this Honourable Court and made from a perspective distinct from that of either the applicant or the Agency. Accordingly, the NACC submits that its intervention will serve the interests of justice in this proceeding, whereas its exclusion would have the opposite result.

Canada (Attorney General) v. Pictou Landing Band Council, 2014 FCA 21; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 10

vi. Can the Court hear and decide the cause on its merits without the proposed intervenor

21. Put another way, the key question is "whether the intervenor will bring further, different and valuable insights that will assist the Court in determining the matter?" Further to our

submissions above, the information, perspective and insight of the Canadian airlines is absent from these proceedings without the intervention of the NACC.

***Canada (Attorney General) v. Pictou Landing Band Council*, *ibid.*; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 10**

***Sports Maska Inc. v. Bauer Hockey Corp.*, *supra.*; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 9**

22. To the above submissions, we add that granting the NACC intervener status is consistent with the principles reflected in Rule 3 of the *Federal Courts Rules*. The motion for interlocutory order was brought in writing and without notice before Locke, J.A., who ordered on April 16, 2020 that the application proceed on an expedited basis. The NACC has responded quickly by bringing this motion in these circumstances and in the greater circumstances of the COVID-19 pandemic.

***Federal Courts Rules*, *supra.* Rule 3; Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab A**

Order dated April 16, 2020, Court File: A-102-20; Motion Record of the Proposed Intervener, Volume 1, Tab 2

Affidavit of Mike McNaney sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 3

23. Further, given these circumstances and the Order’s April 29, 2020 deadline for service and filing of the respondent’s motion record, if this Honourable Court decides to grant the NACC leave to intervene, but is not inclined to grant its request to file its motion record no later than May 6, 2020, the NACC is prepared to rely on its summary submissions below with respect to the motion for interlocutory order.

Order dated April 16, 2020, Court File: A-102-20; Motion Record of the Proposed Intervener, Volume 1, Tab 2

24. For the reasons set out above, the NACC submits that it has satisfied the criteria required for this Honourable Court to grant it leave to intervene in these proceedings, including the application and the motion for interlocutory order.

B. PROPOSED SUBMISSIONS ON THE MOTION FOR INTERLOCUTORY ORDER

i. The Statement and COVID-19 Agency Page are not subject to Judicial Review

25. The applicant admits that the Statement and the COVID-19 Agency Page are not legally binding rulings or decisions of the Agency. In addition, the Agency has subsequently confirmed that the Statement is not a binding decision.

Memorandum of Fact and Law of the Applicant at paras. 3, 32, 62 and 63

FAQ: Statement on Vouchers, published on Canadian Transportation Agency website April 22, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5D

26. While the scope of matters subject to judicial review under s. 18.1(1) of the *Federal Courts Act* is broader than decisions, orders or “rulings”, it does not extend to those matters that do not “determine a party’s rights”. impose legal obligations or carry legal consequences.

***Federal Courts Act*, R.S.C., 1985, c. F-7, S. 18.1(1); Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab C**

***Prudential Steel Ltd. v. Bell Supply Company*, 2015 FC 1243 (CanLII) at paras 32-38; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 11**

***Prudential Steel Ltd. v. Bell Supply Company*, 2016 FCA 282 (CanLII), [2017] 3 FCR 165 at paras 15 and 25; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 12**

***Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15 at paras 10 -12; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 13**

***Pieters v. Canada (Attorney General)*, 2007 FC 556 (CanLII) at paras 64-66; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 14**

27. There is nothing in the Statement or the COVID-19 Agency Page that determines the substantive rights of or that carries legal consequences on the airlines and their passengers.

28. On this basis alone, it is submitted the motion and application should be dismissed.

ii. **Statement Issued in the Context of the COVID-19 Pandemic**

a. Travel Restrictions Imposed

29. While the outbreak of COVID-19 had its genesis months earlier, the World Health Organization (WHO) declared the outbreak a pandemic on March 11, 2020. This has been followed by the Canadian Government issuing numerous travel advisories, Orders in Council and Interim Orders responding or reacting to the escalating pandemic, directed at and impacting, in the span of 5 weeks to date, the international, transborder and domestic carriage of passengers by air.

World Health Organization press release, Exhibit E to the Affidavit of Gabor Lukacs, affirmed April 7, 2020 at p. 59 of the Applicant's Motion Record

"Aviation measures in response to COVID-19", Government of Canada website; <https://www.tc.gc.ca/en/initiatives/covid-19-measures-updates-guidance-tc/aviation-measures.html>; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5U

Government of Canada Orders in Council and Interim Orders; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5I-5T

b. The Existential Threat to Canada's Airlines

30. For the members of the NACC, Canada's four largest airlines, and indeed the entire aviation industry, the immediate impact of the travel restrictions caused by the COVID-19 pandemic over the span of 5 weeks and counting, has been severe and unprecedented.

Affidavit of Mike McNaney, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 3

31. With the dramatic and sudden closure of domestic and international borders and the consequent reduction in the number of passengers travelling, the NACC's member airlines have had to correspondingly dramatically reduce their capacity, the number and frequency of flights and the number of airports serviced, specifically:

- Air Transat: has grounded 100% of its fleet of aircraft and suspended all of its service/flights;

- Air Canada and Jazz Aviation are experiencing a reduction in their capacity between 85% and 90% from their 2019 service, suspended most of their international and all transborder (US) passenger service and reduced their domestic passenger service;
- Jazz Aviation has grounded approximately 70% of its fleet of aircraft; and
- WestJet has suspended all its international and transborder passenger service and reduced its domestic service by approximately 88% - suspending some 600 flights a day.

Affidavit of Mike McNaney, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 3

32. The International Air Transportation Agency (IATA) released its worldwide COVID-19 Updated Impact Assessment on April 14, 2020 and its further update April 16, 2020. IATA stated that it showed “that the COVID-19 crisis will see airline passenger revenues drop by \$314 billion in 2020, a 55% decline compared to 2019.” According to Alexandre de Juniac, Director General and CEO of IATA:

“The industry’s outlook grows darker by the day. The scale of the crisis makes a sharp V-shaped recovery unlikely. Realistically, it will be a U-shaped recovery with domestic travel coming back faster than the international market. We could see more than half of passenger revenues disappear. That would be a \$314 billion hit. Several governments have stepped up with new or expanded financial relief measures but the situation remains critical. Airlines could burn through \$61 billion of cash reserves in the second quarter alone. That puts at risk 25 million jobs dependent on aviation. And without urgent relief, many airlines will not survive to lead the economic recovery.”

COVID-19 Updated Impact Assessments, April 14, 2020 and April 16, 2020; Affidavit of Nicola Colville, sworn April 24, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 4A-4B

IATA Press Release, dated April 14, 2020; Affidavit of Nicola Colville, sworn April 24, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 4D

33. IATA provided its most recent data for the impact of the COVID-19 pandemic on the Canadian airline sector April 22, 2020 which reports a massive reduction of well over 100% in domestic and international flight bookings (including US) as of April 1, 2020 compared to 2019. IATA projects that these numbers will not significantly change over the next 8 months through the end of the year.

IATA Canadian Economics Impact Analysis, dated April 22, 2020 at pp. 1 to 4; Affidavit of Nicola Colville, sworn April 24, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 4C

34. IATA estimates that the disruptions caused by the COVID-19 pandemic could result in a 39.8 million reduction in passengers carried with a corresponding USD\$10.5 billion (or approx. CAD\$14.8 billion) loss in airline revenue in Canada compared to 2019.

Affidavit of Nicola Colville, sworn April 24, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 4

35. There is no doubt that the NACC members, and Canadian airlines generally, face an existing and growing existential threat the longer the airlines are prevented from carrying passengers as before, and generating revenue as a result of, the ongoing COVID-19 pandemic; the end of which is unknown.

36. There is also no doubt, and if need be, it is submitted this Honourable Court should take judicial notice of, the fact that the circumstances the COVID-19 pandemic present to the aviation industry, the travelling public and generally are extraordinary and unprecedented.

c. Mandate and Powers of the Agency

37. The *Canada Transportation Act* does not specifically provide that the Agency shall take measures to inform the public in respect of the provisions of its Part II – Air Transportation. However, pursuant to the Act, the Agency’s mandate is to advance the National Transportation Policy and, in that regard, the making and publishing of the impugned Statement and COVID-19 Agency Page were within and pursuant to the mandate and powers of the Agency; and, it is submitted, reasonable in the context of the extraordinary and unprecedented circumstances of the COVID-19 pandemic.

Canada Transportation Act, S.C. 1996, c. 10, s. 5; Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab B

Excerpt from Organization and mandate section of Canadian Transportation Agency website; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5A

d. The Air Passenger Protection Regulations

38. On May 23, 2018, Parliament adopted the *Transportation Modernization Act*, S.C. 2018, c. 10, and amended the *Canada Transportation Act*, S.C. 1996, c. 10 by the addition of a Section 86.11. This new provision empowers the Agency to make regulations imposing certain obligations on air carriers, notably in respect of flight delay, flight cancellation and denial of boarding.

Canada Transportation Act, S.C. supra., s. 86.11; Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab B

39. The Agency subsequently adopted the *Air Passenger Protection Regulations*, SOR/2019-150 which came into force on July 15 and December 15, 2020 (the “Regulations”). The *Regulations* do not impose any obligation on air carriers to provide a refund in the event the cause of any delay or cancellation of a flight or denial of boarding is due to situations outside of the control of the air carrier.

Air Passenger Protection Regulations, SOR/2019-150, ss. 10 and 18; Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab D

e. The Impugned Statement

40. The Statement accurately addresses not only the unprecedented circumstances presented by the mass cancellations of flights caused by the COVID-19 pandemic but also the relevant issues that arise in the normal course of a flight cancellation; i.e. where a passenger is unable to complete their itinerary. The Statement speaks for itself, but we submit that:

- it is merely a statement offering guidance and makes no reference to it being anything more;

- it does not derogate from or purport to change the obligations of airlines set out in the *Regulations* or the *Regulations* themselves;
- it simply points out that in the normal course and depending on the particular circumstances, including the wording of the applicable tariff, an appropriate approach by an airline may be to provide vouchers or credits for future travel, rather than a refund;
- it does not say whether such a position, if taken, is correct or will be upheld; only that each complaint is determined on its merits;
- that the Agency, upon resuming its regular operations (having suspended its dispute resolution process until June 1, 2020), will continue to examine each complaint on its individual merits;
- that the legislation, regulations, and tariffs as they apply to carriage by air, were developed with respect to relatively localized and short-term disruptions and not worldwide mass cancellations, such as have occurred in the wake of the extraordinary and unprecedented circumstances of the COVID-19 pandemic;
- that these extraordinary and unprecedented circumstances include a threat to the economic viability of Canadian airlines which must be considered against the out of pocket short-term expense of individual affected passengers; and
- it suggests that in these extraordinary and unprecedented circumstances, where the time within which an itinerary can be completed, let alone started, is unknown, that an appropriate approach for airlines could be to provide affected passengers with a voucher or credit for future travel.

Statement on Vouchers, published on the Canadian Transportation Agency website, March 25, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5B

41. To reiterate, there is nothing in the Statement that relieves an airline of any of its obligations to provide a refund pursuant to the terms of its tariff or as required under the

Regulations; which, and as submitted above, do not require the air carrier to provide a refund for cancellations due to situations outside its control.

42. On April 22, 2020 the Agency published on its website “FAQs: Statement on Vouchers” confirming our above submissions. It provides clarification with respect to the Statement and, it is submitted, renders moot most, if not all, of the issues raised in the application and motion for interlocutory order:

FAQs: Statement on Vouchers

The CTA has been asked a number of questions about its Statement on Vouchers. Below are answers to the most frequently-posed questions.

What is the purpose of the Statement on Vouchers?

The Statement on Vouchers, although not a binding decision, offers suggestions to airlines and passengers in the context of a once-in-a-century pandemic, global collapse of air travel, and mass cancellation of flights for reasons outside the control of airlines.

This unprecedented situation created a serious risk that passengers would simply end up out-of-pocket for the cost of cancelled flights. That risk was exacerbated by the liquidity challenges faced by airlines as passenger and flight volumes plummeted.

For flights cancelled for reasons beyond airlines' control, the Air Passenger Protection Regulations, which are based on legislative authorities, require that airlines ensure passengers can complete their itineraries but do not obligate airlines to include refund provisions in their tariffs.

The statement indicated that the use of vouchers could be a reasonable approach in the extraordinary circumstances resulting from the COVID-19 pandemic, when flights are cancelled for reasons outside airlines' control and passengers have no prospect of completing their itineraries. Vouchers for future travel can help protect passengers from losing the full value of their flights, and improve the odds that over the longer term, consumer choice and diverse service offerings -- including from small and medium-sized airlines -- will remain in Canada's air transportation sector. Of course, as noted in the statement, passengers can still file a complaint with the CTA and each case will be decided on its merits.

Why did the CTA talk about vouchers when US and EU regulators have said that airlines should give refunds?

The American and European legislative frameworks set a minimum obligation for airlines to issue refunds when flights are cancelled for reasons outside their control. Canada's doesn't. That's the reason for the difference in the statements.

Some jurisdictions have relaxed the application or enforcement of requirements related to refunds in light of the impacts of the COVID-19 pandemic, including European countries that have approved the issuance of vouchers instead of refunds.

Do I have to accept a voucher if I think I'm owed a refund?

The Statement on Vouchers suggests what could be an appropriate approach in extraordinary circumstances, but doesn't affect airlines' obligations or passengers' rights.

Some airline tariffs might not provide for a refund and others might include force majeure exceptions to refund provisions.

If you think that you're entitled to a refund for a flight that was cancelled for reasons related to the COVID-19 pandemic and you don't want to accept a voucher, you can ask the airline for a refund.

Sometimes, the airline may offer a voucher that can be converted to a refund if the voucher hasn't been used by the end of its validity period. This practice reflects the liquidity challenges airlines are facing as a result of the collapse of air travel while giving passengers added protection in the event that they ultimately can't take advantage of the voucher.

If you think you are entitled to a refund and the airline refuses to provide one or offers a voucher with conditions you don't want to accept, you can file a complaint with the CTA, which will determine if the airline complied with the terms of its tariff. Each case will be decided on its merits.

FAQ: Statement on Vouchers, published on the Canadian Transportation Agency website April 22, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5D

f. Reasonableness

43. A critical component to the entirety of these proceedings is that the resolution of any individual passenger complaint must be reasonable in light of the extraordinary and

unprecedented circumstances of the COVID-19 pandemic. Reasonableness is a factor in the mandate and decision making process of the Agency.

44. It is submitted that the applicant's reliance on the Agency's body of decisions to support its assertion that an air carrier is obligated to provide a refund in the event a passenger cannot complete his or her itinerary, regardless of whether the cause was within the control of the carrier, is misguided; particularly, since they were made prior to the coming into force of the *Regulations*, at a time where there were no regulations in place addressing the issue. Now that the *Regulations* are in place, the Agency must apply them.

Memorandum of Fact and Law of the Applicant

45. The Agency is tasked, on a case by case basis, with determining whether an air carrier's tariff/conditions of carriage, which vary by carrier and may change over time, are reasonable and/or it has reasonably applied its tariff/conditions of carriage. This is reflected in the Statement and should not be in dispute.

Statement on Vouchers, published on the Canadian Transportation Agency website, March 25, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5B

46. It is important to note that the Agency, in rendering its decisions on complaints, is not bound by either the principles of stare decisis or judicial comity. As an administrative tribunal it is not bound by its own prior decisions. Rather, the Agency's complaint determination process requires a case by case analysis with any result determined by the circumstances of the case before it. In the decisions cited and relied upon by the applicant, the Agency has determined whether, in the particular circumstances, the airline's tariff/conditions of carriage are reasonable and whether it reasonably applied its tariff/conditions of carriage.

Decision No. 307-C-A-2015 at para. 24; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 15

Decision No. 398-C-A-2014 at para. 11-12; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 16

47. Further, and importantly, all of the decisions cited and relied upon by the applicant were rendered and involved circumstances that pre-dated the coming into force of the *Regulations*. Accordingly, decisions with respect to the reasonableness of the airline's tariff or with respect to whether it reasonably applied its tariff, which were rendered prior to the coming into force of the *Regulations* and the present extraordinary and unprecedented circumstances of the COVID-19 pandemic, are of little assistance and the Agency is certainly not bound by them.

48. It remains to be seen what response the Agency will have to any complaint that arises from the extraordinary and unprecedented circumstances of the COVID-19 pandemic but it must apply the *Regulations* and it should be expected that, in doing so, these circumstances will be included in any consideration of the reasonableness of the airline's tariff or its application of that tariff; which is what the Statement provides.

iii. **The Test for Granting an Interlocutory Order**

49. There is no dispute the applicant's motion for an interlocutory order must meet the tripartite test established in *RJR-MacDonald Inc. v. Canada (Attorney General)*.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC);
Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 17**

50. The test, as set out by the Supreme Court in *RJR-MacDonald Inc. v. Canada (Attorney General)* is comprised of three elements:

- i. a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried;
- ii. it must be determined whether the applicant seeking the stay would suffer irreparable harm if the application were refused; and
- iii. an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, supra., at p. 334; Motion Record of the Proposed Intervener, Volume 3, Tab 17**

51. With respect to the second element, irreparable harm, the Supreme Court in *RJR-Macdonald* held “We are of the opinion that this is more appropriately dealt with in the third part of the analysis”; i.e., the balance of convenience/inconvenience. The three elements of the test are interrelated and should not be assessed in total isolation from one another.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, supra., at pp. 340-341; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 17**

***Unilin Beheer B.V. v. Triforest Inc.*, 2017 FC 76 (CanLII) at para. 101-102; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 18**

***Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334 (CanLII) at para. 98; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 19**

a. “Serious Question”

52. An applicant for interlocutory relief must show that its claim raises a serious question and “is not frivolous or vexatious”. This threshold has also been referred to as requiring “an arguable case.”

***RJR-MacDonald Inc. v. Canada (Attorney General)*, supra., at p. 335 and 337; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 17**

***R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196 at para. 13-15; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 20**

***Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 (CanLII) para. 26; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 21**

53. Further to our submissions with respect to s.18.1 of the *Federal Courts Act* and in light of the FAQ: Statement on Vouchers published April 22, 2020, we submit the applicant fails to meet this threshold.

FAQ: Statement on Vouchers, published on Canadian Transportation Agency website April 22, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5D

54. The applicant admits the impugned Statement and COVID-19 Agency Page are not legally binding rulings or decisions of the Agency. It is submitted that they are in fact merely a statement(s) of guidance that do not “determine a party’s rights” and have no legal consequences. Further, and in any event, any uncertainty in their meaning, as alleged or at all, has been removed with the Agency publishing its FAQ: Statement on Vouchers, April 22, 2020.

FAQ: Statement on Vouchers, published on Canadian Transportation Agency website April 22, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5D

b. Irreparable Harm

55. Certainly, the applicant has suffered no harm from the Agency’s making and publishing of the Statement and COVID-19 Agency Page. With respect to the travelling public, any conceivable harm as alleged has yet to crystallize and the application and motion for interlocutory order are premature in this regard. The only change to the pre-COVID-19 pandemic rights and obligations of air carriers and passengers, and remedies available in Canada from an airline’s tariff and/or conditions of carriage, arises from the Agency’s Determination Nos. A-2020-42 and -47 and Order Nos. 2020-A-32 and -37; which the president of the applicant has admitted were lawful and are not the subject of these proceedings.

Determination No. A-2020-42, published on Canadian Transportation Agency website March 13, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5E

Determination No. A-2020-47, published on Canadian Transportation Agency website March 25, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5F

Order No. 2020-A -32, published on Canadian Transportation Agency website March 18, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5G

Order No. 2020-A-37, published on Canadian Transportation Agency website March 18, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5H

Affidavit of Dr. Gabor Lukacs, affirmed April 7, 2020 at para. 37-41, Motion Record of the Applicant, p. 21-22

56. The Agency’s suspension of its dispute proceedings involving air carriers does not preclude passengers from filing complaints with the Agency and the Agency processing those complaints. Accordingly, passengers continue to be at liberty to file complaints including with respect to whether an airline has not reasonably provided a refund; whether or not the passenger has accepted a voucher. Of course, this assumes that the voucher is unused; a safe assumption in the short term given that airlines, for the most part, are not flying because of the COVID-19 pandemic. Even if the voucher was used, a passenger is not prevented from making a complaint to the Agency; which, pursuant to its mandate, is tasked with applying the *Regulations* and determining whether providing a voucher resulted from a reasonable application of the carrier’s tariff/conditions of carriage. Once the suspension is lifted, the Agency’s dispute proceedings will continue.

Important Information for Travellers During COVID-19, published on the Canadian Transportation Agency website March 18, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5C

57. Further, and with respect to any alleged harm arising from unavailable remedies, proposed class actions have been commenced in Canada in both the Federal Court and in the Supreme Court of British Columbia against five Canadian airlines, including WestJet, Air Canada and Air Transat, by counsel for the applicant on behalf of a putative class comprised of:

“All persons, residing anywhere in the world, who before March 11, 2020 entered into a Contract of Carriage (defined below) with any of the Defendants for travel on a flight operated by a Defendant on a trip that was scheduled to commence between March 13, 2020 until the date the Government of Canada withdraws travel advisories for COVID-19, and have not received a refund in the original form of payment:

A further subclass of Class Members whose flights from March 13, 2020 until the dates listed below were cancelled and/or suspended by the Defendant in response to the COVID-19 situation (hereafter the Cancellation Sub-Class).

- May 31, 2020 (for Westjet (sic) and Swoop);
- April 30, 2020 (for Sunwing, Air Transat, and Air Canada); or
- Any other date to be determined by the Court”

Donaldson v. Swoop Inc et al., Court File No.: T-428-20, Statement of Claim, issued March 27, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5V

Donaldson v. Swoop Inc et al., Court File No.: VLC-S-S-203759, Notice of Civil Claim, issued March 27, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5W

58. A Motion for Permission to Commence Class Action Proceedings was also filed, against, *inter alia*, three of the NACC members, before the Superior Court of the Province of Quebec by a different group.

Lachaine v. Air Transat A.T. et al., Court File No.: 500-06-001052-204, Motion for Permission to Commence Class Action Proceedings, issued March 23, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5X

59. What is left is any “harm” to the passenger resulting from being “out of pocket” the expense of his or her airfare pending the lifting of the stay of the Agency’s dispute proceedings. In keeping with the Supreme Court’s opinion in *RJR-Macdonald* this interrelates with the analysis of the balance of convenience and public interest.

RJR-MacDonald Inc. v. Canada (Attorney General), supra. at pp. 340-341; Authorities, Motion Record of the Proposed Intervener, Volume 3, Tab 17

c. The Balance of Convenience and the Public Interest

60. Interestingly, the balance of convenience analysis closely mirrors the approach discussed by the Agency in its Statement, the Agency’s mandate and the tenets of the National Transportation Policy.

61. The National Transportation Policy declares:

It is declared that **a competitive, economic and efficient national transportation system** that meets the highest practicable safety and security standards and contributes to a sustainable environment **and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth** in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when:

...

Canada Transportation Act, S.C. 1996, c. 10, s. 5; Schedule “A”, Motion Record of the Proposed Intervener, Volume 2, Tab B

62. The core mandates of the Agency include:

- We help ensure that the national transportation system runs efficiently and smoothly **in the interests of all Canadians: those who work and invest in it**; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.

...

- We provide consumer protection for **air passengers**.

Excerpt from Organization and mandate section of the Canadian Transportation Agency website, Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5A

63. The Statement:

“It’s important to consider how to strike a fair and sensible balance between passenger protection and airlines’ operational realities in these extraordinary and unprecedented circumstances.

On the one hand, passengers who have no prospect of completing their planned itineraries with an airline’s assistance should not simply be out-of-pocket for the cost of cancelled flights. On the other hand, airlines facing huge drops in passenger volumes and revenue should not be expected to take steps that could threaten their economic viability...”

Statement on Vouchers, published on the Canadian Transportation Agency website, March 25, 2020; Affidavit of Jiwan Son, sworn April 27, 2020; Motion Record of the Proposed Intervener, Volume 1, Tab 5B

64. The FAQ: Statement on Vouchers:

“...This unprecedented situation created a serious risk that passengers would simply end up out-of-pocket for the cost of cancelled flights. That risk was exacerbated by the liquidity challenges faced by airlines as passenger and flight volumes plummeted...”

FAQ: Statement on Vouchers, published on Canadian Transportation Agency website April 22, 2020; Affidavit of Jiwan Son, sworn April 27, 2020, Motion Record of the Proposed Intervener, Volume 1, Tab 5D

65. There can be no dispute that Canadian airlines, and the airline industry in general, are facing an existential threat in the extraordinary and unprecedented circumstances of the COVID-19 pandemic. There can also be no dispute that the airline sector is a major and critical pillar of the Canadian national transportation network. It follows that if any number of airlines do not survive the COVID-19 pandemic, the result will be something far short of “a competitive, economic and efficient national transportation system” and the greatest loss will be to the Canadian public, in no small part comprised of those who fly as passengers.

66. To borrow the words of the applicant, the Agency’s Statement is “consistent with common sense”. It is submitted that the applicant’s approach is misguided in the sense that it focuses primarily if not exclusively on the harm to the individual passenger but ignores the critical issue of scale. In these extraordinary and unprecedented times, causing mass cancellation of flights for an indeterminate time, the question is who suffers the least harm – the individual passenger or, an entire industry and ultimately the Canadian public?

67. The impugned Statement and COVID-19 Agency Page were made and published within the reasonable discretion of the Agency and in furtherance of the National Transportation Policy. They are not contrary and conform with the *Regulations* and demonstrated common sense with a view to avoiding the greater harm to the public interest. In light of all of this, the NACC submits that balance of convenience favours dismissing the applicant’s motion for interlocutory order.

iv. Apprehension of Bias

68. We leave our submissions on this issue for the application in the event this Honourable Court grants the NACC leave to intervene.

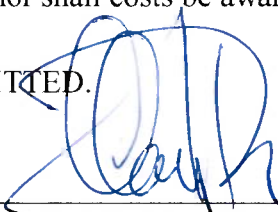
IV - REMEDY SOUGHT

69. The NACC requests an Order granting it leave to intervene in these proceedings, subject to the following terms:

- (a) The NACC may serve and file a memorandum of fact and law not exceeding 20 pages with respect to the interlocutory motion by May 6, 2020;
- (b) In the alternative, if this Honourable Court decides to grant the NACC leave to intervene, but is not inclined to grant its request to file its motion record no later than May 6, 2020, the NACC may serve and file a memorandum of fact and law not exceeding 20 pages within 2 days of receipt of the Order granting leave to intervene;
- (c) In the further alternative, the NACC may rely on its written submissions herein and above in lieu of serving and filing a memorandum of fact and law with respect to the interlocutory motion;
- (d) The NACC may serve and file a memorandum of fact and law not exceeding 20 pages with respect to the application within the timeline provided by this Honourable Court;
- (e) The NACC shall have the right to make oral submissions at the hearing of the application for no more than 30 minutes; and
- (f) The NACC shall not seek costs, nor shall costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

April 27, 2020



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

Clay S. Hunter LS#: 31896M
E-mail: CHunter@pmlaw.com
Tel: (416) 643-3324
Fax: (416) 366-3743

Counsel for the Proposed Intervener,
The National Airlines Council of Canada

V - LIST OF AUTHORITIES

1. *VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2005 FCA 79 (CanLII);
2. *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 74 (T.D.);
aff'd. [1990] 1 F.C. 90 (C.A.);
3. *Sports Maska Inc. v. Bauer Hockey Corp.*, 2016 FCA 44;
4. *Canada (Attorney General) v. Pictou Landing Band Council*, 2014 FCA 21;
5. *Prudential Steel Ltd. v. Bell Supply Company*, 2015 FC 1243 (CanLII);
6. *Prudential Steel Ltd. v. Bell Supply Company*, 2016 FCA 282 (CanLII), [2017] 3 FCR 165;
7. *Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15;
8. *Pieters v. Canada (Attorney General)*, 2007 FC 556 (CanLII);
9. Decision No. 307-C-A-2015, Canadian Transportation Agency;
10. Decision No. 398-C-A-2014, Canadian Transportation Agency;
11. *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC);
12. *Unilin Beheer B.V. v. Triforest Inc.*, 2017 FC 76 (CanLII);
13. *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334 (CanLII);
14. *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196; and
15. *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 (CanLII).

SCHEDULE "A"

RELEVANT STATUTES

1. *Federal Courts Rules*, SOR/98-106;
2. *Canada Transportation Act*, S.C. 1996, c. 10;
3. *Federal Courts Act*, R.S.C., 1985, c. F-7; and
4. *Air Passenger Protection Regulations*, SOR/2019-150.

Air Passenger Rights
Applicant

Canadian Transportation Agency
and
Respondent

Court File No.: A-102-20

FEDERAL COURT OF APPEAL

Proceeding commenced at VANCOUVER

**WRITTEN REPRESENTATIONS OF THE
PROPOSED INTERVENER, NATIONAL
AIRLINES COUNCIL OF CANADA,
FOR LEAVE TO INTERVENE**

PATERSON MacDOUGALL LLP

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

Clay S. Hunter LS#: 31896M
E-mail: CHunter@pmlaw.com
Tel: (416) 643-3324
Fax: (416) 366-3743

Counsel for the Proposed Intervener,
The National Airlines Council of Canada

TAB A



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Rules**Règles des Cours fédérales**

SOR/98-106

DORS/98-106

Current to April 2, 2020

À jour au 2 avril 2020

Last amended on June 17, 2019

Dernière modification le 17 juin 2019

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to April 2, 2020. The last amendments came into force on June 17, 2019. Any amendments that were not in force as of April 2, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 2 avril 2020. Les dernières modifications sont entrées en vigueur le 17 juin 2019. Toutes modifications qui n'étaient pas en vigueur au 2 avril 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Registration
SOR/98-106 February 5, 1998

FEDERAL COURTS ACT

Federal Courts Rules

P.C. 1998-125 February 5, 1998

Whereas, pursuant to subsection 46(4)^a of the *Federal Court Act*, a copy of the proposed *Federal Court Rules, 1998* was published in the *Canada Gazette Part I* on September 20, 1997 and interested persons were invited to make representations with respect to the proposed Rules;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to subsection 46(1)^b of the *Federal Court Act*, hereby approves the annexed *Federal Court Rules, 1998*, made by the rules committee of the Federal Court of Canada on January 26, 1998.

Enregistrement
DORS/98-106 Le 5 février 1998

LOI SUR LES COURS FÉDÉRALES

Règles des Cours fédérales

C.P. 1998-125 Le 5 février 1998

Attendu que, conformément au paragraphe 46(4)^a de la *Loi sur la Cour fédérale*, le projet de règles intitulé *Règles de la Cour fédérale (1998)*, conforme en substance au texte ci-après, a été publié dans la *Gazette du Canada Partie I* le 20 septembre 1997 et que les intéressés ont ainsi eu l'occasion de présenter leurs observations à ce sujet,

À ces causes, sur recommandation de la ministre de la Justice et en vertu du paragraphe 46(1)^b de la *Loi sur la Cour fédérale*, Son Excellence le Gouverneur général en conseil approuve les *Règles de la Cour fédérale (1998)*, ci-après, établies le 26 janvier 1998 par le comité des règles de la Cour fédérale du Canada.

^a S.C. 1990, c. 8, s. 14(4)

^b S.C. 1990, c. 8, s. 14(1)

^a L.C. 1990, ch. 8, par. 14(4)

^b L.C. 1990, ch. 8, par. 14(1)

writ of execution includes a writ of seizure and sale, a writ of possession, a writ of delivery and a writ of sequestration, and any further writ in aid thereof. (*bref d'exécution*)

2002, c. B, s. 182; SOR/2002-417, s. 1; SOR/2004-283, s. 3; SOR/2007-301, s. 1; SOR/2015-21, s. 1.

General principle

3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

Matters not provided for

4 On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject-matter of the proceeding most closely relates.

Forms

5 Where these Rules require that a form be used, the form may incorporate any variations that the circumstances require.

Computation, Extension and Abridgement of Time

Interpretation Act

6 (1) Subject to subsections (2) and (3), the computation of time under these Rules, or under an order of the Court, is governed by sections 26 to 30 of the *Interpretation Act*.

Period of less than seven days

(2) Where a period of less than seven days is provided for in these Rules or fixed by an order of the Court, a day that is a holiday shall not be included in computing the period.

Christmas recess

(3) Unless otherwise directed by the Court, a day that falls within the Christmas recess shall not be included in the computation of time under these Rules for filing, amending or serving a document.

Extension by consent

7 (1) Subject to subsections (2) and (3), a period provided by these Rules may be extended once by filing the consent in writing of all parties.

Principe général

3 Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

Cas non prévus

4 En cas de silence des présentes règles ou des lois fédérales, la Cour peut, sur requête, déterminer la procédure applicable par analogie avec les présentes règles ou par renvoi à la pratique de la cour supérieure de la province qui est la plus pertinente en l'espèce.

Formules

5 Les formules prévues par les présentes règles peuvent être adaptées selon les circonstances.

Calcul et modification des délais

Application de la *Loi d'interprétation*

6 (1) Sous réserve des paragraphes (2) et (3), le calcul des délais prévus par les présentes règles ou fixés par une ordonnance de la Cour est régi par les articles 26 à 30 de la *Loi d'interprétation*.

Délai de moins de sept jours

(2) Lorsque le délai prévu par les présentes règles ou fixé par une ordonnance de la Cour est de moins de sept jours, les jours fériés n'entrent pas dans le calcul du délai.

Vacances judiciaires de Noël

(3) Sauf directives contraires de la Cour, les vacances judiciaires de Noël n'entrent pas dans le calcul des délais applicables selon les présentes règles au dépôt, à la modification ou à la signification d'un document.

Délai prorogé par consentement écrit

7 (1) Sous réserve des paragraphes (2) et (3), tout délai prévu par les présentes règles peut être prorogé une seule fois par le dépôt du consentement écrit de toutes les parties.

Separate determination of issues

107 (1) The Court may, at any time, order the trial of an issue or that issues in a proceeding be determined separately.

Court may stipulate procedure

(2) In an order under subsection (1), the Court may give directions regarding the procedures to be followed, including those applicable to examinations for discovery and the discovery of documents.

Interpleader

Interpleader

108 (1) Where two or more persons make conflicting claims against another person in respect of property in the possession of that person and that person

- (a)** claims no interest in the property, and
- (b)** is willing to deposit the property with the Court or dispose of it as the Court directs,

that person may bring an *ex parte* motion for directions as to how the claims are to be decided.

Directions

(2) On a motion under subsection (1), the Court shall give directions regarding

- (a)** notice to be given to possible claimants and advertising for claimants;
- (b)** the time within which claimants shall be required to file their claims; and
- (c)** the procedure to be followed in determining the rights of the claimants.

Intervention

Leave to intervene

109 (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

Contents of notice of motion

(2) Notice of a motion under subsection (1) shall

- (a)** set out the full name and address of the proposed intervenor and of any solicitor acting for the proposed intervenor; and

Instruction distincte des questions en litige

107 (1) La Cour peut, à tout moment, ordonner l’instruction d’une question soulevée ou ordonner que les questions en litige dans une instance soient jugées séparément.

Ordonnance de la Cour

(2) La Cour peut assortir l’ordonnance visée au paragraphe (1) de directives concernant les procédures à suivre, notamment pour la tenue d’un interrogatoire préalable et la communication de documents.

Interplaidoirie

Interplaidoirie

108 (1) Lorsque deux ou plusieurs personnes font valoir des réclamations contradictoires contre une autre personne à l’égard de biens qui sont en la possession de celle-ci, cette dernière peut, par voie de requête *ex parte*, demander des directives sur la façon de trancher ces réclamations, si :

- a)** d’une part, elle ne revendique aucun droit sur ces biens;
- b)** d’autre part, elle accepte de remettre les biens à la Cour ou d’en disposer selon les directives de celle-ci.

Directives

(2) Sur réception de la requête visée au paragraphe (1), la Cour donne des directives concernant :

- a)** l’avis à donner aux réclamants éventuels et la publicité pertinente;
- b)** le délai de dépôt des réclamations;
- c)** la procédure à suivre pour décider des droits des réclamants.

Interventions

Autorisation d’intervenir

109 (1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.

Avis de requête

(2) L’avis d’une requête présentée pour obtenir l’autorisation d’intervenir :

- a)** précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;

(b) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

Directions

(3) In granting a motion under subsection (1), the Court shall give directions regarding

- (a) the service of documents; and
- (b) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.

Questions of General Importance

Notice to Attorney General

110 Where a question of general importance is raised in a proceeding, other than a question referred to in section 57 of the Act,

- (a) any party may serve notice of the question on the Attorney General of Canada and any attorney general of a province who may be interested;
- (b) the Court may direct the Administrator to bring the proceeding to the attention of the Attorney General of Canada and any attorney general of a province who may be interested; and
- (c) the Attorney General of Canada and the attorney general of a province may apply for leave to intervene.

Parties

Unincorporated associations

111 A proceeding may be brought by or against an unincorporated association in the name of the association.

Partnerships

111.1 A proceeding by or against two or more persons as partners may be brought in the name of the partnership.

SOR/2002-417, s. 11.

Sole proprietorships

111.2 A proceeding by or against a person carrying on business as a sole proprietor may be brought in the name of the sole proprietorship.

SOR/2002-417, s. 11.

b) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.

Directives de la Cour

(3) La Cour assortit l'autorisation d'intervenir de directives concernant :

- a) la signification de documents;
- b) le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

Question d'importance générale

Signification au procureur général

110 Lorsqu'une question d'importance générale, autre qu'une question visée à l'article 57 de la Loi, est soulevée dans une instance :

- a) toute partie peut signifier un avis de la question au procureur général du Canada et au procureur général de toute province qui peut être intéressé;
- b) la Cour peut ordonner à l'administrateur de porter l'instance à l'attention du procureur général du Canada et du procureur général de toute province qui peut être intéressé;
- c) le procureur général du Canada et le procureur général de toute province peuvent demander l'autorisation d'intervenir.

Parties

Associations sans personnalité morale

111 Une instance peut être introduite par ou contre une association sans personnalité morale, en son nom.

Société de personnes

111.1 Une instance introduite par ou contre deux ou plusieurs personnes en qualité d'associées peut l'être au nom de la société de personnes.

DORS/2002-417, art. 11.

Entreprise non dotée de la personnalité morale

111.2 Une instance introduite par ou contre une personne qui exploite une entreprise à propriétaire unique non dotée de la personnalité morale peut l'être au nom de l'entreprise.

DORS/2002-417, art. 11.

Notice of motion

359 Except with leave of the Court, a motion shall be initiated by a notice of motion, in Form 359, setting out

- (a) in respect of a motion other than one made under rule 369, the time, place and estimated duration of the hearing of the motion;
- (b) the relief sought;
- (c) the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and
- (d) a list of the documents or other material to be used at the hearing of the motion.

Hearing date for motions

360 No notice of motion may be filed unless it is expressly made returnable

- (a) at sittings fixed under rule 34;
- (b) at a time and place appointed under subsection 35(2); or
- (c) in writing, under rule 369.

Service on *ex parte* motion

361 Notwithstanding rules 362, 364, 367 and 370, a party bringing an *ex parte* motion need not comply with the service requirements set out in those rules.

Service and filing of notice

362 (1) Subject to subsection (2), on a motion other than a motion under rule 369, a notice of motion and any affidavit required under rule 363 shall be served and filed at least three days before the day set out in the notice for the hearing of the motion.

Motion on less than three days notice

(2) The Court may hear the motion on less than three days' notice

- (a) where the motion is made on notice, if all parties consent; or
- (b) in any case, if the moving party satisfies the Court of the urgency of the motion.

SOR/2013-18, s. 11.

Avis de requête

359 Sauf avec l'autorisation de la Cour, toute requête est présentée au moyen d'un avis de requête établi selon la formule 359 et précise :

- a) sauf s'il s'agit d'une requête présentée selon la règle 369, la date, l'heure, le lieu et la durée prévue de l'audition de la requête;
- b) la réparation recherchée;
- c) les motifs qui seront invoqués, avec mention de toute disposition législative ou règle applicable;
- d) la liste des documents et éléments matériels qui seront utilisés à l'audition de la requête.

Date d'audition de la requête

360 L'avis de requête ne peut être déposé que s'il indique précisément que la requête sera présentée :

- a) soit à une séance prévue en vertu de la règle 34;
- b) soit aux date, heure et lieu fixés en vertu du paragraphe 35(2);
- c) soit par écrit, selon la règle 369.

Requête *ex parte*

361 Malgré les règles 362, 364, 367 et 370, les exigences relatives à la signification prévues par ces règles ne s'appliquent pas dans le cas des requêtes *ex parte*.

Délais de signification et de dépôt

362 (1) Sous réserve du paragraphe (2) et sauf s'il s'agit d'une requête présentée selon la règle 369, l'avis de requête, accompagné de l'affidavit exigé par la règle 363, est signifié et déposé au moins trois jours avant la date d'audition de la requête indiquée dans l'avis.

Préavis de moins de trois jours

(2) La Cour peut entendre la requête sur préavis de moins de trois jours :

- a) lorsqu'il ne s'agit pas d'une requête *ex parte*, si toutes les parties y consentent;
- b) dans tous les cas, si le requérant la convainc qu'il s'agit d'un cas d'urgence.

DORS/2013-18, art. 11.

- (b) all affidavits and other material to be used by the respondent on the motion that is not included in the moving party's motion record;
- (c) subject to rule 368, the portions of any transcripts on which the respondent intends to rely;
- (d) subject to rule 366, written representations; and
- (e) any other filed material not contained in the moving party's motion record that is necessary for the hearing of the motion.

SOR/2009-331, s. 6; SOR/2013-18, s. 13; SOR/2015-21, s. 28.

Memorandum of fact and law required

366 On a motion for summary judgment or summary trial, for an interlocutory injunction, for the determination of a question of law or for the certification of a proceeding as a class proceeding, or if the Court so orders, a motion record shall contain a memorandum of fact and law instead of written representations.

SOR/2002-417, s. 22; SOR/2007-301, s. 8; SOR/2009-331, s. 7.

Documents filed as part of motion record

367 A notice of motion or any affidavit required to be filed by a party to a motion may be served and filed as part of the party's motion record and need not be served and filed separately.

Transcripts of cross-examinations

368 Transcripts of all cross-examinations on affidavits on a motion shall be filed before the hearing of the motion.

Motions in writing

369 (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

Request for oral hearing

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.

(b) les affidavits et autres documents et éléments matériels dont l'intimé entend se servir relativement à la requête et qui ne figurent pas dans le dossier de requête;

(c) sous réserve de la règle 368, les extraits de toute transcription dont l'intimé entend se servir et qui ne figurent pas dans le dossier de requête;

(d) sous réserve de la règle 366, les prétentions écrites de l'intimé;

(e) les autres documents et éléments matériels déposés qui sont nécessaires à l'audition de la requête et qui ne figurent pas dans le dossier de requête.

DORS/2009-331, art. 6; DORS/2013-18, art. 13; DORS/2015-21, art. 28.

Mémoire requis

366 Dans le cas d'une requête en jugement sommaire ou en procès sommaire, d'une requête pour obtenir une injonction interlocutoire, d'une requête soulevant un point de droit ou d'une requête en autorisation d'une instance comme recours collectif, ou lorsque la Cour l'ordonne, le dossier de requête contient un mémoire des faits et du droit au lieu de prétentions écrites.

DORS/2002-417, art. 22; DORS/2007-301, art. 8; DORS/2009-331, art. 7.

Dossier de requête

367 L'avis de requête ou les affidavits qu'une partie doit déposer peuvent être signifiés et déposés à titre d'éléments de son dossier de requête ou de réponse, selon le cas. Ils n'ont pas à être signifiés et déposés séparément.

Transcriptions des contre-interrogatoires

368 Les transcriptions des contre-interrogatoires des auteurs des affidavits sont déposés avant l'audition de la requête.

Procédure de requête écrite

369 (1) Le requérant peut, dans l'avis de requête, demander que la décision à l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites.

Demande d'audience

(2) L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il demande l'audition de la requête, inclut une mention à cet effet, accompagnée des raisons justifiant l'audition, dans ses prétentions écrites ou son mémoire des faits et du droit.

Reply

(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).

Disposition of motion

(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.

Abandonment of motion

370 (1) A party who brings a motion may abandon it by serving and filing a notice of abandonment in Form 370.

Deemed abandonment

(2) Where a moving party fails to appear at the hearing of a motion without serving and filing a notice of abandonment, it is deemed to have abandoned the motion.

Testimony regarding issue of fact

371 On motion, the Court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised on a motion.

PART 8

Preservation of Rights in Proceedings

General

Motion before proceeding commenced

372 (1) A motion under this Part may not be brought before the commencement of a proceeding except in a case of urgency.

Undertaking to commence proceeding

(2) A party bringing a motion before the commencement of a proceeding shall undertake to commence the proceeding within the time fixed by the Court.

Interim and Interlocutory Injunctions

Availability

373 (1) On motion, a judge may grant an interlocutory injunction.

Réponse du requérant

(3) Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.

Décision

(4) Dès le dépôt de la réponse visée au paragraphe (3) ou dès l'expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l'audition de la requête.

Désistement

370 (1) La partie qui a présenté une requête peut s'en désister en signifiant et en déposant un avis de désistement, établi selon la formule 370.

Désistement présumé

(2) La partie qui ne se présente pas à l'audition de la requête et qui n'a ni signifié ni déposé un avis de désistement est réputée s'être désistée de sa requête.

Témoignage sur des questions de fait

371 Dans des circonstances particulières, la Cour peut, sur requête, autoriser un témoin à témoigner à l'audience quant à une question de fait soulevée dans une requête.

PARTIE 8

Sauvegarde des droits

Dispositions générales

Requête antérieure à l'instance

372 (1) Une requête ne peut être présentée en vertu de la présente partie avant l'introduction de l'instance, sauf en cas d'urgence.

Engagement

(2) La personne qui présente une requête visée au paragraphe (1) s'engage à introduire l'instance dans le délai fixé par la Cour.

Injonctions interlocutoires et provisoires

Injonction interlocutoire

373 (1) Un juge peut accorder une injonction interlocutoire sur requête.

TAB B



CANADA

CONSOLIDATION

CODIFICATION

Canada Transportation Act

Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to April 2, 2020

À jour au 2 avril 2020

Last amended on July 11, 2019

Dernière modification le 11 juillet 2019

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to April 2, 2020. The last amendments came into force on July 11, 2019. Any amendments that were not in force as of April 2, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 2 avril 2020. Les dernières modifications sont entrées en vigueur le 11 juillet 2019. Toutes modifications qui n'étaient pas en vigueur au 2 avril 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Parliament in respect of that particular mode of transportation, the order or regulation made under this Act prevails.

Competition Act

(2) Subject to subsection (3), nothing in or done under the authority of this Act, other than Division IV of Part III, affects the operation of the *Competition Act*.

International agreements respecting air services

(3) In the event of any inconsistency or conflict between an international agreement or convention respecting air services to which Canada is a party and the *Competition Act*, the provisions of the agreement or convention prevail to the extent of the inconsistency or conflict.

1996, c. 10, s. 4; 2007, c. 19, s. 1.

National Transportation Policy

Declaration

5 It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when

- (a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;
- (b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;
- (c) rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada;
- (d) the transportation system is accessible without undue obstacle to the mobility of all persons;

Loi sur la concurrence

(2) Sous réserve du paragraphe (3), les dispositions de la présente loi — sauf celles de la section IV de la partie III — et les actes accomplis sous leur régime ne portent pas atteinte à l'application de la *Loi sur la concurrence*.

Conventions ou accords internationaux sur les services aériens

(3) En cas d'incompatibilité ou de conflit entre une convention internationale ou un accord international sur les services aériens dont le Canada est signataire et les dispositions de la *Loi sur la concurrence*, la convention ou l'accord l'emporte dans la mesure de l'incompatibilité ou du conflit.

1996, ch. 10, art. 4; 2007, ch. 19, art. 1.

Politique nationale des transports

Déclaration

5 Il est déclaré qu'un système de transport national compétitif et rentable qui respecte les plus hautes normes possibles de sûreté et de sécurité, qui favorise un environnement durable et qui utilise tous les modes de transport au mieux et au coût le plus bas possible est essentiel à la satisfaction des besoins de ses usagers et au bien-être des Canadiens et favorise la compétitivité et la croissance économique dans les régions rurales et urbaines partout au Canada. Ces objectifs sont plus susceptibles d'être atteints si :

- a) la concurrence et les forces du marché, au sein des divers modes de transport et entre eux, sont les principaux facteurs en jeu dans la prestation de services de transport viables et efficaces;
- b) la réglementation et les mesures publiques stratégiques sont utilisées pour l'obtention de résultats de nature économique, environnementale ou sociale ou de résultats dans le domaine de la sûreté et de la sécurité que la concurrence et les forces du marché ne permettent pas d'atteindre de manière satisfaisante, sans pour autant favoriser indûment un mode de transport donné ou en réduire les avantages inhérents;
- c) les prix et modalités ne constituent pas un obstacle abusif au trafic à l'intérieur du Canada ou à l'exportation des marchandises du Canada;

(d.1) the transportation system is accessible without barriers to persons with disabilities; and

(e) governments and the private sector work together for an integrated transportation system.

1996, c. 10, s. 5; 2007, c. 19, s. 2; 2019, c. 10, s. 166.

Interpretation

Definitions

6 In this Act,

Agency means the Canadian Transportation Agency continued by subsection 7(1); (*Office*)

carrier means a person who is engaged in the transport of goods or passengers by any means of transport under the legislative authority of Parliament; (*transporteur*)

Chairperson means the Chairperson of the Agency; (*président*)

class 1 rail carrier means

- (a) the Canadian National Railway Company,
- (b) the Canadian Pacific Railway Company,
- (c) BNSF Railway Company,
- (d) CSX Transportation, Inc.,
- (e) Norfolk Southern Railway Company,
- (f) Union Pacific Railroad Company, and
- (g) any *railway company*, as defined in section 87, that is specified in the regulations; (*transporteur ferroviaire de catégorie 1*)

goods includes rolling stock and mail; (*marchandises*)

member means a member of the Agency appointed under subsection 7(2) and includes a temporary member; (*membre*)

Minister means the Minister of Transport; (*ministre*)

radioactive material has the same meaning as in subsection 1(1) of the *Packaging and Transport of Nuclear Substances Regulations, 2015*. It includes a dangerous good with any of UN numbers 2908 to 2913, 2915 to 2917, 2919, 2977, 2978, 3321 to 3333 and 3507 that are set out in

d) le système de transport est accessible sans obstacle abusif à la circulation de tous;

d.1) le système de transport est accessible sans obstacle aux personnes handicapées;

e) les secteurs public et privé travaillent ensemble pour le maintien d'un système de transport intégré.

1996, ch. 10, art. 5; 2007, ch. 19, art. 2; 2019, ch. 10, art. 166.

Définitions

Définitions

6 Les définitions qui suivent s'appliquent à la présente loi.

cour supérieure

- a) La Cour supérieure de justice de l'Ontario;
- b) la Cour supérieure du Québec;
- c) la Cour du Banc de la Reine du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou de l'Alberta;
- d) la Cour suprême de la Nouvelle-Écosse, de la Colombie-Britannique, de l'Île-du-Prince-Édouard, du Yukon ou des Territoires du Nord-Ouest;
- e) la Section de première instance de la Cour suprême de Terre-Neuve-et-Labrador;
- f) la Cour de justice du Nunavut. (*superior court*)

expéditeur Personne qui expédie des marchandises par transporteur, ou en reçoit de celui-ci, ou qui a l'intention de le faire. (*shipper*)

jour de séance Tout jour où l'une ou l'autre chambre du Parlement siège. (*sitting day of Parliament*)

marchandises Y sont assimilés le matériel roulant et le courrier. (*goods*)

matériel roulant Toute sorte de voitures et de matériel muni de roues destinés à servir sur les rails d'un chemin de fer, y compris les locomotives, machines actionnées par quelque force motrice, voitures automotrices, tenders, chasse-neige et *flangers*. (*rolling stock*)

matière radioactive S'entend au sens du paragraphe 1(1) du *Règlement sur l'emballage et le transport des substances nucléaires (2015)*. Sont notamment visées par la présente définition les marchandises dangereuses dont le numéro ONU — indiqué à la colonne 1 de la Liste des

Regulations may prescribe

(3) Without limiting the generality of subsection (1), the regulations may prescribe what are costs, fees, charges and taxes for the purposes of subsection (2).

2007, c. 19, s. 27.

Regulations — carrier's obligations towards passengers

86.11 (1) The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights,

(a) respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise;

(b) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including

(i) the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control,

(ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions,

(iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and

(iv) the carrier's obligation to provide timely information and assistance to passengers;

(c) prescribing the minimum compensation for lost or damaged baggage that the carrier is required to pay;

(d) respecting the carrier's obligation to facilitate the assignment of seats to children under the age of 14 years in close proximity to a parent, guardian or tutor at no additional cost and to make the carrier's terms and conditions and practices in this respect readily available to passengers;

Précisions

(3) Les règlements peuvent également préciser, pour l'application du paragraphe (2), les types de coûts, frais, droits et taxes visés à ce paragraphe.

2007, ch. 19, art. 27.

Règlements — obligations des transporteurs aériens envers les passagers

86.11 (1) L'Office prend, après consultation du ministre, des règlements relatifs aux vols à destination, en provenance et à l'intérieur du Canada, y compris les vols de correspondance, pour :

a) régir l'obligation, pour le transporteur, de rendre facilement accessibles aux passagers en langage simple, clair et concis les conditions de transport — et les renseignements sur les recours possibles contre le transporteur — qui sont précisés par règlements;

b) régir les obligations du transporteur dans les cas de retard et d'annulation de vols et de refus d'embarquement, notamment :

(i) les normes minimales à respecter quant au traitement des passagers et les indemnités minimales qu'il doit verser aux passagers pour les inconvénients qu'ils ont subis, lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable,

(ii) les normes minimales relatives au traitement des passagers que doit respecter le transporteur lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable, mais est nécessaire par souci de sécurité, notamment en cas de défaillance mécanique,

(iii) l'obligation, pour le transporteur, de faire en sorte que les passagers puissent effectuer l'itinéraire prévu lorsque le retard, l'annulation ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment un phénomène naturel ou un événement lié à la sécurité,

(iv) l'obligation, pour le transporteur, de fournir des renseignements et de l'assistance en temps opportun aux passagers;

c) prévoir les indemnités minimales à verser par le transporteur aux passagers en cas de perte ou d'endommagement de bagage;

d) régir l'obligation, pour le transporteur, de faciliter l'attribution, aux enfants de moins de quatorze ans, de sièges à proximité d'un parent ou d'un tuteur sans

(e) requiring the carrier to establish terms and conditions of carriage with regard to the transportation of musical instruments;

(f) respecting the carrier's obligations in the case of tarmac delays over three hours, including the obligation to provide timely information and assistance to passengers, as well as the minimum standards of treatment of passengers that the carrier is required to meet; and

(g) respecting any of the carrier's other obligations that the Minister may issue directions on under subsection (2).

Ministerial directions

(2) The Minister may issue directions to the Agency to make a regulation under paragraph (1)(g) respecting any of the carrier's other obligations towards passengers. The Agency shall comply with these directions.

Restriction

(3) A person shall not receive compensation from a carrier under regulations made under subsection (1) if that person has already received compensation for the same event under a different passenger rights regime than the one provided for under this Act.

Obligations deemed to be in tariffs

(4) The carrier's obligations established by a regulation made under subsection (1) are deemed to form part of the terms and conditions set out in the carrier's tariffs in so far as the carrier's tariffs do not provide more advantageous terms and conditions of carriage than those obligations.

2018, c. 10, s. 19.

Regulations and orders

86.2 A regulation or order made under this Part may be conditional or unconditional or qualified or unqualified and may be general or restricted to a specific area, person or thing or group or class of persons or things.

2007, c. 19, s. 27.

frais supplémentaires et de rendre facilement accessibles aux passagers ses conditions de transport et pratiques à cet égard;

e) exiger du transporteur qu'il élabore des conditions de transport applicables au transport d'instruments de musique;

f) régir les obligations du transporteur en cas de retard de plus de trois heures sur l'aire de trafic, notamment celle de fournir des renseignements et de l'assistance en temps opportun aux passagers et les normes minimales à respecter quant au traitement des passagers;

g) régir toute autre obligation du transporteur sur directives du ministre données en vertu du paragraphe (2).

Directives ministérielles

(2) Le ministre peut donner des directives à l'Office lui demandant de régir par un règlement pris en vertu de l'alinéa (1)g) toute autre obligation du transporteur envers les passagers. L'Office est tenu de se conformer à ces directives.

Restriction

(3) Nul ne peut obtenir du transporteur une indemnité au titre d'un règlement pris en vertu du paragraphe (1) dans le cas où il a déjà été indemnisé pour le même événement dans le cadre d'un autre régime de droits des passagers que celui prévu par la présente loi.

Obligations réputées figurer au tarif

(4) Les obligations du transporteur prévues par un règlement pris en vertu du paragraphe (1) sont réputées figurer au tarif du transporteur dans la mesure où le tarif ne prévoit pas des conditions de transport plus avantageuses que ces obligations.

2018, ch. 10, art. 19.

Textes d'application

86.2 Les textes d'application de la présente partie peuvent être conditionnels ou absolus, assortis ou non de réserves, et de portée générale ou limitée quant aux zones, personnes, objets ou catégories de personnes ou d'objets visés.

2007, ch. 19, art. 27.

TAB C



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Act

Loi sur les Cours fédérales

R.S.C., 1985, c. F-7

L.R.C. (1985), ch. F-7

Current to April 2, 2020

À jour au 2 avril 2020

Last amended on August 28, 2019

Dernière modification le 28 août 2019

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to April 2, 2020. The last amendments came into force on August 28, 2019. Any amendments that were not in force as of April 2, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 2 avril 2020. Les dernières modifications sont entrées en vigueur le 28 août 2019. Toutes modifications qui n'étaient pas en vigueur au 2 avril 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Extraordinary remedies, members of Canadian Forces

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

Remedies to be obtained on application

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

R.S., 1985, c. F-7, s. 18; 1990, c. 8, s. 4; 2002, c. 8, s. 26.

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Powers of Federal Court

(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l’alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d’obtenir réparation de la part d’un office fédéral.

Recours extraordinaires : Forces canadiennes

(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l’étranger : bref d’*habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*.

Exercice des recours

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d’une demande de contrôle judiciaire.

L.R. (1985), ch. F-7, art. 18; 1990, ch. 8, art. 4; 2002, ch. 8, art. 26.

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l’objet de la demande.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l’office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu’un juge de la Cour fédérale peut, avant ou après l’expiration de ces trente jours, fixer ou accorder.

Pouvoirs de la Cour fédérale

(3) Sur présentation d’une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l’office fédéral en cause d’accomplir tout acte qu’il a illégalement omis ou refusé d’accomplir ou dont il a retardé l’exécution de manière déraisonnable;

proceeding of a federal board, commission or other tribunal.

Grounds of review

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

- (a)** acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b)** failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c)** erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d)** based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e)** acted, or failed to act, by reason of fraud or perjured evidence; or
- (f)** acted in any other way that was contrary to law.

Defect in form or technical irregularity

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

- (a)** refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and
- (b)** in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

1990, c. 8, s. 5; 2002, c. 8, s. 27.

Interim orders

18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

1990, c. 8, s. 5; 2002, c. 8, s. 28.

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Motifs

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

- a)** a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;
- b)** n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;
- c)** a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
- d)** a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
- e)** a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
- f)** a agi de toute autre façon contraire à la loi.

Vice de forme

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

1990, ch. 8, art. 5; 2002, ch. 8, art. 27.

Mesures provisoires

18.2 La Cour fédérale peut, lorsqu'elle est saisie d'une demande de contrôle judiciaire, prendre les mesures provisoires qu'elle estime indiquées avant de rendre sa décision définitive.

1990, ch. 8, art. 5; 2002, ch. 8, art. 28.

TAB D



CANADA

CONSOLIDATION

CODIFICATION

Air Passenger Protection Regulations

Règlement sur la protection des passagers aériens

SOR/2019-150

DORS/2019-150

Current to April 2, 2020

À jour au 2 avril 2020

Last amended on December 15, 2019

Dernière modification le 15 décembre 2019

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to April 2, 2020. The last amendments came into force on December 15, 2019. Any amendments that were not in force as of April 2, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité – règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 2 avril 2020. Les dernières modifications sont entrées en vigueur le 15 décembre 2019. Toutes modifications qui n'étaient pas en vigueur au 2 avril 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

- (a) three hours after the aircraft doors have been closed for take-off; and
- (b) three hours after the flight has landed, or at any earlier time if it is feasible.

Take-off imminent

(2) However, a carrier is not required to provide an opportunity for passengers to disembark if it is likely that take-off will occur less than three hours and 45 minutes after the doors of the aircraft are closed for take-off or after the flight has landed and the carrier is able to continue to provide the standard of treatment referred to in section 8.

Priority disembarkation

(3) A carrier that allows passengers to disembark must, if it is feasible, give passengers with disabilities and their support person, service animal or emotional support animal, if any, the opportunity to disembark first.

Exceptions

(4) This section does not apply if providing an opportunity for passengers to disembark is not possible, including if it is not possible for reasons related to safety and security or to air traffic or customs control.

Obligations — situations outside carrier’s control

10 (1) This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier’s control, including but not limited to the following:

- (a) war or political instability;
- (b) illegal acts or sabotage;
- (c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
- (d) instructions from air traffic control;
- (e) a *NOTAM*, as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;
- (f) a security threat;
- (g) airport operation issues;
- (h) a medical emergency;
- (i) a collision with wildlife;

- a) trois heures après la fermeture des portes en prévision du décollage;
- b) trois heures après l’atterrissage ou plus tôt si cela est possible.

Décollage imminent

(2) Le transporteur n’est toutefois pas tenu de permettre aux passagers de débarquer de l’aéronef s’il est probable que le décollage aura lieu dans moins de trois heures et quarante-cinq minutes après la fermeture des portes en prévision du décollage ou après l’atterrissage et que le transporteur peut continuer à appliquer les normes de traitement prévues à l’article 8.

Priorité de débarquement

(3) Le transporteur qui permet aux passagers de débarquer de l’aéronef offre, si possible, la priorité de débarquement aux personnes handicapées et, le cas échéant, à leur personne de soutien, à leur animal d’assistance ou à leur animal de soutien émotionnel.

Exceptions

(4) Le présent article ne s’applique pas au transporteur qui n’est pas en mesure de permettre aux passagers de débarquer de l’aéronef notamment pour des raisons de sécurité, de sûreté, de contrôle de la circulation aérienne ou de contrôle douanier.

Obligations — situations indépendantes de la volonté du transporteur

10 (1) Le présent article s’applique au transporteur lorsque le retard ou l’annulation de vol ou le refus d’embarquement est attribuable à une situation indépendante de sa volonté, notamment :

- a) une guerre ou une situation d’instabilité politique;
- b) un acte illégal ou un acte de sabotage;
- c) des conditions météorologiques ou une catastrophe naturelle qui rendent impossible l’exploitation sécuritaire de l’aéronef;
- d) des instructions du contrôle de la circulation aérienne;
- e) un *NOTAM* au sens du paragraphe 101.01(1) du *Règlement de l’aviation canadien*;
- f) une menace à la sûreté;
- g) des problèmes liés à l’exploitation de l’aéroport;
- h) une urgence médicale;

(j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;

(k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and

(l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

Earlier flight disruption

(2) A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

Obligations

(3) When there is delay, cancellation or denial of boarding due to situations outside the carrier's control, it must

(a) provide passengers with the information set out in section 13;

(b) in the case of a delay of three hours or more, provide alternate travel arrangements, in the manner set out in section 18, to a passenger who desires such arrangements; and

(c) in the case of a cancellation or a denial of boarding, provide alternate travel arrangements in the manner set out in section 18.

Obligations when required for safety purposes

11 (1) Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's control but is required for safety purposes.

Earlier flight disruption

(2) A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

i) une collision avec un animal sauvage;

j) un conflit de travail chez le transporteur, un fournisseur de services essentiels comme un aéroport ou un fournisseur de services de navigation aérienne;

k) un défaut de fabrication de l'aéronef, qui réduit la sécurité des passagers, découvert par le fabricant de l'aéronef ou par une autorité compétente;

l) une instruction ou un ordre de tout représentant d'un État ou d'un organisme chargé de l'application de la loi ou d'un responsable de la sûreté d'un aéroport.

Perturbation de vols précédents

(2) Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable à une situation indépendante de la volonté du transporteur est également considéré comme attribuable à une situation indépendante de la volonté du transporteur si ce dernier a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou de l'annulation précédent.

Obligations

(3) Lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de la volonté du transporteur, ce dernier :

a) fournit aux passagers les renseignements prévus à l'article 13;

b) dans le cas d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs aux termes de l'article 18;

c) dans le cas d'une annulation ou d'un refus d'embarquement, fournit des arrangements de voyage alternatifs aux termes de l'article 18.

Obligations — nécessaires par souci de sécurité

11 (1) Sous réserve du paragraphe 10(2), cet article s'applique au transporteur dans le cas du retard ou de l'annulation de vol ou du refus d'embarquement qui lui est attribuable, mais qui est nécessaire par souci de sécurité.

Retard, annulation et refus d'embarquement subséquents

(2) Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable au transporteur, mais nécessaire par souci de sécurité, est également considéré comme attribuable au transporteur mais nécessaire par souci de sécurité si le transporteur a pris

Refund of additional services

(4) A carrier must refund the cost of any additional services purchased by a passenger in connection with their original ticket if

- (a)** the passenger did not receive those services on the alternate flight; or
- (b)** the passenger paid for those services a second time.

Higher class of service

(5) If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

Lower class of service

(6) If the alternate travel arrangements provide for a lower class of service than the original ticket, the carrier must refund the difference in the cost of the applicable portion of the ticket.

Method used for refund

(7) Refunds under this section must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.

Alternate arrangements — outside carrier's control

18 (1) If paragraph 10(3)(b) or (c) applies to a carrier, it must provide the following alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

- (a)** in the case of a large carrier,
 - (i)** a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the end of the event that caused the delay, cancellation or denial of boarding,
 - (ii)** if the carrier cannot provide a confirmed reservation that complies with subparagraph (i),
 - (A)** a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which

Remboursement d'un service additionnel

(4) Le transporteur rembourse le passager de tout service additionnel acheté en lien avec son titre de transport initial dans les cas suivants :

- a)** le passager n'a pas reçu ce service lors du vol alternatif;
- b)** le passager a payé de nouveau pour ce service.

Classe de service supérieure

(5) Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service supérieure à celle prévue dans le titre de transport initial, le transporteur ne peut exiger le versement d'un supplément.

Classe de service inférieure

(6) Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service inférieure à celle prévue dans le titre de transport initial, le transporteur rembourse la portion applicable du titre de transport.

Moyen utilisé pour le remboursement

(7) Les remboursements prévus au présent article sont versés, selon le mode de paiement initial à la personne qui a acheté le titre de transport ou le service additionnel.

Arrangements alternatifs — situation indépendante de la volonté du transporteur

18 (1) Si les alinéas 10(3)b) ou c) s'appliquent au transporteur, celui-ci fournit aux passagers, sans frais supplémentaires, les arrangements de voyage alternatifs ci-après pour que les passagers puissent compléter l'itinéraire prévu dès que possible :

- a)** dans le cas d'un gros transporteur :
 - (i)** une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, suivant toute route aérienne raisonnable à partir de l'aéroport où se trouve le passager vers la destination indiquée sur le titre de transport initial du passager et dont le départ aura lieu dans les quarante-huit heures suivant la fin de l'évènement ayant causé le retard ou l'annulation de vol ou le refus d'embarquement,
 - (ii)** s'il ne peut fournir une réservation confirmée visée au sous-alinéa (i) :

the passenger is located, or another airport that is within a reasonable distance of that airport, to the destination that is indicated on the passenger's original ticket, and

(B) if the new departure is from an airport other than the one at which the passenger is located, transportation to that other airport; and

(b) in the case of a small carrier, a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the same airport to the destination that is indicated on the passenger's original ticket.

Comparable services

(2) To the extent possible, the alternate travel arrangements must provide services that are comparable to those of the original ticket.

Higher class of service

(3) If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

Compensation for delay or cancellation

19 (1) If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:

- (a)** in the case of a large carrier,
 - (i)** \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
 - (ii)** \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - (iii)** \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and

(b) in the case of a small carrier,

(A) une réservation confirmée pour un vol exploité par tout transporteur, suivant toute route aérienne raisonnable à partir de l'aéroport où se situe le passager, ou d'un aéroport se trouvant à une distance raisonnable de celui-ci, vers la destination indiquée sur le titre de transport initial du passager,

(B) si le départ s'effectue dans un aéroport autre que celui où se trouve le passager, le transport entre les aéroports;

b) dans le cas d'un petit transporteur, une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, pour toute route aérienne raisonnable à partir de l'aéroport où se trouve le passager, vers la destination indiquée sur le titre de transport initial du passager.

Services comparables

(2) Dans la mesure du possible, les vols faisant partie des arrangements de voyage alternatifs offrent des services comparables à ceux prévus dans le titre de transport initial.

Classe de service supérieure

(3) Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service supérieure à celle prévue dans le titre de transport initial, le transporteur ne peut exiger le versement d'un supplément.

Indemnité pour retard ou annulation de vol

19 (1) Si les alinéas 12(2)d) ou (3)d) s'appliquent au transporteur, celui-ci verse l'indemnité minimale suivante :

- a)** dans le cas d'un gros transporteur :
 - (i)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de trois heures ou plus, mais de moins de six heures, 400 \$,
 - (ii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport est retardée de six heures ou plus, mais de moins de neuf heures, 700 \$,
 - (iii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de neuf heures ou plus, 1000 \$;

b) dans le cas d'un petit transporteur :

Air Passenger Rights
Applicant

Canadian Transportation Agency
Respondent

Court File No.: A-102-20

FEDERAL COURT OF APPEAL

Proceeding commenced at VANCOUVER

**MOTION RECORD OF THE PROPOSED
INTERVENER, THE NATIONAL AIRLINES
COUNCIL OF CANADA, FOR LEAVE TO
INTERVENE**

Volume 2 of 3

PATERSON MacDOUGALL LLP

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

Clay S. Hunter LS#: 31896M
E-mail: CHunter@pmlaw.com
Tel: (416) 643-3324
Fax: (416) 366-3743

Counsel for the Proposed Intervener, The
National Airlines Council of Canada