Court File No.: A-357-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

(Application under section 28 of the *Federal Courts Act*, R.S.C. 1985, c. F-7)

APPELLANT / RESPONDING PARTY
MOTION RECORD
(Agency's motion to determine contents of appeal book and/or to adduce fresh evidence)

Dated: September 29, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Appellant

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Barbara Cuber

Tel: 819-994-2226
Fax: 819-953-9269

Solicitor for the Respondent,
Canadian Transportation Agency

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DR. GÁBOR LUKÁCS

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Respondent

AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: September 24, 2014)

I, Dr. Gábor Lukács, of the City of Halifax in the Regional Municipality of Halifax, in the Province of Nova Scotia, AFFIRM THAT:

1. I am a Canadian citizen, a frequent traveller, and an air passenger rights advocate. My activities in the latter capacity include:

   (a) filing approximately two dozen successful complaints with the Canadian Transportation Agency (the "Agency"), resulting in airlines being ordered to implement policies that reflect the legal principles of the *Montreal Convention* or otherwise offer better protection to passengers;

   (b) promoting air passenger rights through the mass media, including newspapers, radio, television, and the Internet; and

   (c) referring passengers mistreated by airlines to legal information and resources.

2. On May 21, 2014, the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 ("New Rules") were published in the *Canada Gazette*.

3. On July 16, 2014, the Federal Court of Appeal granted me leave to appeal the New Rules. A copy of the Order granting leave to appeal is attached and marked as Exhibit "A".

4. On August 1, 2014, I filed a notice of appeal with the Federal Court of Appeal, a copy of which is attached and marked as Exhibit "B".

5. In June 2014, a page entitled "Annotated Dispute Adjudication Rules" appeared on the Agency's website. A snapshot of this webpage, taken on August 14, 2014 and showing the content of the webpage on that date, is attached and marked as Exhibit "C". The webpage (Exhibit "C") contains the following disclaimer:

> **Disclaimer:** This document is not the official version of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (Dispute Adjudication Rules). This document is a reference tool only. It is not a substitute for legal advice and has no official sanction.
>
> [Emphasis added.]

6. On August 14, 2014, I had a Skype conference with Ms. Barbara Cuber, counsel for the Agency, concerning the contents of the appeal book in the present proceeding. Ms. Cuber advised me that the "Annotated Dispute Adjudication Rules" webpage of the Agency would be amended, and the Agency may want to rely on the amended version as evidence in the present appeal.

7. On August 22, 2014, Ms. Cuber advised me by email that “the Annotation has been amended to reflect concerns that you raised about the Agency’s procedures.” Ms. Cuber also provided in her email highlights of the amendments. A copy of Ms. Cuber’s email is attached and marked as Exhibit “D”.

8. On August 22, 2014, I advised Ms. Cuber that it was inappropriate to include any version of the “Annotated Dispute Adjudication Rules” in the appeal book for a number of reasons, including lack of official status of the document, lack of legal authority to make the document, and concerns related to authorship and multiplicity of versions. A copy of my email to Ms. Cuber is attached and marked as Exhibit “E”.

AFFIRMED before me at the City of Halifax
in the Regional Municipality of Halifax
on September 24, 2014.

_____

_____
Dr. Gábor Lukács

Halifax, NS
Tel:
lukacs@AirPassengerRights.ca

This is **Exhibit "A"** to the Affidavit of Dr. Gábor Lukacs affirmed before me on September 24, 2014

_____

Signature

Federal Court of Appeal | Cour d'appel fédérale

Date: 20140716

Docket: 14-A-36

Ottawa, Ontario, July 16, 2014

CORAM: **NADON J.A.**
STRATAS J.A.
BOIVIN J.A.

BETWEEN:

DR. GABOR LUKACS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

UPON Notice of motion by Dr. Gabor Lukacs for an Order granting leave to appeal a decision of the *Canadian Transportation Agency Rules* S.O.R./2014-104 (the "New Rules") made by the Canadian Transportation Agency and published in the *Canada Gazette* on May 21, 2014;

UPON the affidavit of Ms. Karen Kipper sworn June 17, 2014;

UPON the Memorandum of Fact and Law filed by Dr. Lukacs;

UPON a letter dated July 10, 2014 by the Canadian Transportation Agency informing the Court that it would not be filing written representations in response to Dr. Lukacs' Notice of motion for leave to appeal;

THE COURT ORDERS:

Leave is granted to Dr. Lukacs to appeal the New Rules;

Costs on the Motion shall be in the cause.

"M. Nadon"

J.A.

"DS"

"RB"

This is **Exhibit "B"** to the Affidavit of Dr. Gábor Lukacs affirmed before me on September 24, 2014

_____

Signature

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: August 1, 2014

Issued by: _____

Address of
local office: Federal Court of Appeal
1801 Hollis Street, Suite 1720
Halifax, Nova Scotia, B3J 3N4

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 (the "New Rules") made by the Canadian Transportation Agency (the "Agency") and published in the *Canada Gazette* on May 21, 2014.

THE APPELLANT ASKS that:

(i) this Honourable Court quash subsections 41(2)(b), 41(2)(c), and 41(2)(d) of the New Rules and declare these provisions to be *ultra vires* the powers of the Agency and/or invalid and/or of no force or effect;

(ii) this Honourable Court declare that the New Rules are invalid because they are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament in establishing the Agency;

(iii) this Honourable Court refer the New Rules back to the Agency with directions to revise them within 60 days by establishing rules that:

  (a) provide parties a reasonable opportunity to respond and object to requests of non-parties to intervene;

  (b) require the Agency to provide reasons in support of any of its orders and decisions that do not allow the relief requested, or if opposition has been expressed; and

  (c) govern examinations of deponents and affiants, oral hearings, and in particular, requests for oral hearings.

(iv) the Appellant be awarded costs and/or reasonable out-of-pocket expenses incurred in relation to the appeal; and

(v) this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. Section 44 of the New Rules repeals the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the "Old Rules").

***Ultra vires* provisions**

2. Subsections 41(2)(b), 41(2)(c), and 41(2)(d) of the New Rules are *ultra vires* and/or invalid, because:

   (a) they purport to grant the Agency powers that Parliament never conferred upon the Agency; and

   (b) they are inconsistent with the doctrine of *functus officio*.

Denial of natural justice and access to justice

3. A significant portion of the dispute proceedings before the Agency involve unrepresented individuals with no legal knowledge or experience as applicants, and airlines represented by counsel as respondents.

4. The Agency's longstanding position has been that its rules provide a complete code of procedure that unrepresented parties can read and understand.

5. The New Rules are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament in establishing the Agency, because:

   (a) section 29 of the New Rules deprives parties of any opportunity to respond and object to requests of non-parties to intervene;

   (b) the New Rules abolish the requirement that the Agency provide reasons in support of any of its orders and decisions that do not

allow the relief requested, or if opposition has been expressed (section 36 of the Old Rules); and

(c) the New Rules abolish all provisions about examinations of deponents or affiants (section 34 of the Old Rules) and about oral hearings (sections 48-66 of the Old Rules).

Statutes and regulations relied on

6. Sections 17, 25, 29, 32, and 41 of the *Canada Transportation Act*, S.C. 1996, c. 10.

7. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

August 1, 2014

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Appellant

This is **Exhibit "C"** to the Affidavit of Dr. Gábor Lukacs affirmed before me on September 24, 2014

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Signature

Annotated Dispute Adjudication Rules

Disclaimer: This document is not the official version of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (Dispute Adjudication Rules). This document is a reference tool only. It is not a substitute for legal advice and has no official sanction.

About the Annotated Dispute Adjudication Rules

This is a companion document to the Dispute Adjudication Rules.

The Agency's Dispute Adjudication Rules set out the process that is followed during adjudication. They also provide information on how to make a variety of procedural requests to the Agency on matters that commonly arise in dispute proceedings, including requests to keep information confidential.

The annotation provides explanations and clarifications of the Rules which will be useful to those unfamiliar with the Agency and its processes. It is organized by section number to make accessing the information easier, but it also contains hyperlinks that allow easy navigation to related sections and further explanatory text that the reader will find useful.

Interpretation

1. Definitions

The following definitions apply in these Rules.

Act	means the Canada Transportation Act.
affidavit	means a written statement confirmed by oath or a solemn declaration. Annotation: Definitions (Affidavit) An affidavit is a written statement that contains important facts that a person wants the Agency to know about. It is sworn by the person making the affidavit in the presence of someone authorized to administer an oath, such as a

commissioner for taking oaths, a notary public, a notary (province of Quebec) or a lawyer. The person swearing the affidavit should have direct knowledge of the events or facts set out in the statement. "To swear" means you promise that the information contained in the affidavit is true. Note that there are potential legal sanctions to swearing an affidavit if you know that the content of the affidavit is not true, accurate or complete.

The affidavit is used by the Agency to verify the truthfulness, including both the accuracy and completeness, of some or all of the information in a document.

For more information, refer to section 15: Verification by Affidavit or Witnessed Statement

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applicant

means a person that files an application with the Agency.

Annotation: Definitions (Applicant)

An applicant is a person who comes before the Agency seeking a decision on a particular matter within the jurisdiction of the Agency.

The applicant files an application with the Agency which sets out the information that the applicant wants the Agency to take into account when making a decision. Schedule 5 of the Dispute Adjudication Rules sets out the information that must be included in an application such as the issues that the applicant wants the Agency to consider, the facts, the relief/remedies being asked for) and arguments in support of the application.

An applicant includes a complainant under section 52 or 94 of the *Canada Marine Act* or section 13 of the *Shipping Conferences Exemption Act, 1987*; an appellant under subsection 42(1) of the *Civil Air Navigation Services Commercialization Act*; or an objector under subsection 34(2) of the *Pilotage Act*.

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application

means a document that is filed to commence a proceeding before the Agency under any legislation or regulations that are administered in whole or in part by the Agency.

Annotation: Definitions (Application)

The term "application" is defined broadly to mean a document that commences any proceeding before the Agency, including both dispute proceedings and uncontested economic regulatory proceedings. However, with the exception of sections 3 and 4, the Dispute Adjudication Rules apply only to dispute proceedings.

For example, an application for a dispute proceeding includes:

- A complaint under section 52 or 94 of the *Canada Marine Act*;

- A complaint under section 13 of the *Shipping Conferences Exemption Act, 1987*;
- An appeal under subsection 42(1) of the *Civil Air Navigation Services Commercialization Act*;
- An application under section 3 of the *Railway Relocation and Crossing Act*;
- A reference under sections 16 and 26 of the *Railway Safety Act*; or
- A notice of objection under subsection 34(2) of the *Pilotage Act*.

This means that the application must contain the information that the respondent will need to know about the case being made against them and that the Agency must have to make its decision on the matter. In some cases, in addition to the information contained in the application, additional information will be gathered through the asking of questions or the filing of further documents.

In some instances, the Agency has provided further guidance on what is required to be filed to complete various specific types of dispute proceeding applications, including:

- Accessible Transportation Complaints: A Resource Tool for Persons with Disabilities
- Guidelines on the Resolution of Complaints Over Railway Noise and Vibration

For more information, refer to section 18: Application

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business day

means a day that the Agency is ordinarily open for business.

Annotation: Definitions (Business day)

The Agency's headquarters is located in the province of Quebec, where the statutory holidays recognized by the federal public service are:

- New Year's Day (January 1)
- Good Friday
- Easter Monday
- Victoria Day Monday
- La Fête nationale du Québec (June 24)
- Canada Day (July 1)
- Labour Day Monday
- Thanksgiving Monday
- Remembrance Day (November 11)
- Christmas Day (December 25)
- Boxing Day (December 26)

If a holiday with a specified date falls on a Saturday or Sunday, the statutory holiday will fall on the next business day.

For example, if a person has five business days from Friday, May 16 to file a document, it will be required to be filed on Monday, May 26 because Monday, May 19 would be a statutory holiday for Victoria Day and would not be considered a business day.

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dispute proceeding means any contested matter that is commenced by application to the Agency.

Annotation: Definitions (Dispute proceeding)

A dispute proceeding involves two or more parties and is started when an applicant files an application against a respondent or respondents and the application is accepted as complete.

Triage

After an application is filed, Agency staff will review it to make sure that it is complete as the application must be complete before the dispute proceeding can formally begin. Applicants will be notified as to whether their application is complete or incomplete. In some cases, Agency staff may suggest other dispute resolution options, like facilitation or mediation, as an alternative to adjudication.

For more information on complete and incomplete applications, refer to section 18: Application

There are two stages in any dispute proceeding before the Agency:

1. **Pleadings**
   Pleadings start when notification is sent to the parties that the application is accepted as complete. This is the evidence and information gathering stage of the dispute proceeding where the parties are given the opportunity to provide the Agency with information in support of their positions on the issues raised in the application and to file information that might be requested by the Agency or the other parties.
2. **Deliberations**
   Deliberations start once the pleadings process has ended and pleadings are closed. The Agency Panel assigned to the case (composed of one or more Agency Members) deliberates on the evidence and information. This stage ends with the issuance of a decision and/or order.

At any stage before a decision or order is issued, an applicant may make a request to withdraw an application (for example, if the matter is resolved between the parties).

For more information, refer to section 36: request to withdraw application

Compliance

When the Agency has made a decision and has ordered a party to do something, like put into effect a particular policy that will address an issue raised in the application, the Agency ensures compliance with its order. For example, Agency staff will follow up with the transportation service provider to ensure that the policy is implemented and meets any conditions imposed by the Agency in the final decision.

If Agency staff is unable to get the party to comply, a new Agency Panel may be assigned to handle this issue directly with the respondent. these issues are typically resolved between the respondent and the agency. in exceptional circumstances, the agency may decide to consult with the applicant.

Alternatively, some Agency decisions are subject to administrative monetary penalties (amps), meaning that a fine can be imposed against a respondent that fails to comply with certain types of Agency decisions. To determine if an order is subject to amps, check the *Canadian Transportation Agency Designated Provision Regulations* (DPR).

If a respondent fails to comply with an Agency order that is identified as subject to amps in the DPR, the matter may be referred to the Agency's Enforcement Division for further action. If a Designated Enforcement Officer finds that the respondent has failed to comply with an Agency order that is subject to amps, a Notice of Violation can be issued against the respondent setting an AMP payable by the respondent in an amount of up to $5,000 for individuals and $25,000 for corporate respondents.

In addition, Agency decisions can be enforced against respondents by making the decision an order of the Federal Court or another superior court and then bringing quasi-criminal proceedings in that court to have the respondent found to be in contempt of Court.

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document

includes any information that is recorded in any form.

Annotation: Definitions (Document)

A document includes any pleading (a document that contains arguments that advance a position) as well as any information or evidence filed or otherwise placed on the record during proceedings before the Agency. This includes any correspondence, affidavit, witnessed statement, memorandum, medical note/report, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, video or sound recording, machine readable record and any other recorded material, and any copy of it.

More specific examples of a document include contracts, flight tickets and tariff pages.

intervener	means a person whose request to intervene filed under section 29 has been granted.
party	means an applicant, a respondent or a person that is named by the Agency as a party. Annotation: Definitions (Party) Applicants and respondents are always parties to a dispute proceeding before the Agency. This means that, subject to any confidentiality determinations, they are sent all documents that are placed on the Agency's record. Interested persons who file position statements in a dispute proceeding with the Agency under section 23 are not parties to the dispute proceeding and will not be provided with the documents that are placed on the Agency's record. They will, however, be provided with a copy of the Agency's final decision in the dispute proceeding. Persons who have been granted intervener status by the Agency under section 29 are also not automatically a party to the dispute proceeding (unless so named by the Agency) and are only provided with the documents that they require in order to participate as an intervener to the extent determined by the Agency. They will, however, be provided with a copy of the Agency's final decision in the dispute proceeding. If a person believes that they have a "substantial and direct interest" in a proceeding and wish to be named as a party to the proceeding, they should request authority from the Agency to intervene under section 29. In their request to intervene, the person should clearly identify that they wish to be named a party to the proceeding and set out the participation rights that they are seeking. For more information, refer to section 29: Request to Intervene.
person	includes a partnership and an unincorporated association.
proceeding	means any matter that is commenced by application to the Agency, whether contested or not. Annotation: Definitions (Proceeding) The Agency performs two key functions within the federal transportation system: • Informally and through formal adjudication (where the Agency reviews an application and makes a decision), the Agency resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.

- As an economic regulator, the Agency makes decisions and issues authorities, licences and permits to transportation service providers under federal jurisdiction.

These two key functions mean that the Agency will have some proceedings that only involve one party (for example an air carrier applying for a licence) and others that are dispute proceedings that involve two or more parties, such as a dispute between a railway company and a group of homeowners about noise coming from a rail yard. ().

With the exception of sections 3 and 4, the Dispute Adjudication Rules apply only to dispute proceedings.

Some types of economic regulatory proceedings may have specific procedural guidelines or resource tools that explain the Agency's processes and how to prepare a particular type of application. For example:

Guidelines:

- Coasting Trade Licence Applications
- Extra-bilateral Air Service Applications to the Canadian Transportation Agency
- Net Salvage Value Determination Applications

Resource tools:

- Apportionment of Costs of Grade Separations
- Crossings

These guidelines generally cover the following topics:

- The structure of the proceeding (e.g. what documents need to be filed, deadlines for filing documents).
- The content of submissions made by the parties. For example, the Agency has tests that it applies for certain types of issues. The guidelines provide information on the tests and what type of information might be filed by a party when making submissions on the test. The guidelines may also set out factors or criteria that the Agency looks at when making a decision on a matter.

Parties should always refer to the relevant publication for more information.

For certain economic regulatory determinations, the guidelines may state that some or all of the provisions in the Dispute Adjudication Rules are applicable. The Agency may also decide that it is appropriate to apply any or all of the provisions of the Dispute Adjudication Rules in a particular case.

respondent	means a person that is named as a respondent in an application and any person that is named by the Agency as a respondent.

Annotation: Definitions (Respondent)

In a dispute proceeding there are at least two parties: the applicant and the respondent.

The applicant files an application with the Agency against a respondent (or respondents). In the application, the applicant sets out details of the dispute with the respondent and the issues that it wants the Agency to address. The respondent then has an opportunity to file an answer to the issues raised in the application.

In exceptional circumstances, the Agency may name other respondents to the application where their involvement in the travel situation is not apparent to the applicant.

It is important, for the efficiency of case processing and to be fair to the applicant, that answers be complete when they are filed with the Agency. This means that the answer should address the issues raised by the applicant in their application and that positions should be substantiated.

Annotation: Additional definitions

Adverse in interest	A person is adverse in interest to you if they hold a position that is contrary to or different from that of yourself.
Jurisdiction	The Agency only has the authority to make a decision on a matter that falls within the mandate given to it by the *Canada Transportation Act*. The Agency cannot make decisions on matters that do not fall within its mandate/jurisdiction.
Economic regulatory proceedings	As an economic regulator, the Agency makes decisions and issues authorities, licences and permits to federal transportation carriers. For example, an applicant may be granted a licence if it meets the legislative requirements. These matters are largely uncontested.
Pleadings process	The period of time within a dispute proceeding when parties may file their pleadings (such as answers, replies and requests) with the Agency.
Panel	The Chair of the Agency may assign one or more Members to hear a case. The assigned Member(s) are referred to as the Panel. One Member, the Panel Chair, may be assigned at the outset to make decisions on procedure and the processing of the case.
Procedural matters	A step that is taken in a dispute proceeding in order to assist in the processing of the case. An example is whether expert opinions should be filed in a

	dispute proceeding and the time lines for such a filing.
Record	All the documents and information gathered during the dispute proceeding that have been accepted by the Agency and which will be considered by it in making its decision. The Agency's record can consist of a public and a confidential record.
Relief/remedies	Generally refers to the solution that a person is seeking to address the issues raised in an application. Examples include covering expenses incurred as a result of the issue or changing a transportation carrier's policy concerning the issue.
Representative	A person who acts for another person. For the purposes of these Rules a representative is anyone who is not a lawyer.
Stay	When the Agency stays a proceeding it means that the proceeding is stopped for a period of time and may be restarted at a later date.
Witnesses	A witness is a person who knows something about an issue in a dispute proceeding and is asked to answer questions under oath at an oral hearing or by means of an affidavit.

Application

2. Dispute Proceedings

Subject to sections 3 and 4, these Rules apply to dispute proceedings other than a matter that is the subject of mediation.

Annotation: Dispute proceedings

General

The Agency performs two key functions within the federal transportation system:

- Informally and through formal adjudication (where the Agency reviews an application and makes a decision), the Agency resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an economic regulator, the Agency makes decisions and issues authorities, licences and permits to transportation service providers under federal jurisdiction.

Sections 3 and 4 of the Rules apply to all matters that come before the Agency

Section 3 (the one-Member quorum provision) and section 4 (principle of proportionality) apply to all proceedings before the Agency, which include both:

- Dispute proceedings (e.g. a noise complaint where a group of homeowners or a person acting on behalf of another person or a group of persons files a complaint against a railway company concerning noise produced by railway operations in a rail yard adjacent to their homes); and
- economic regulatory proceedings (e.g. an application by an air carrier for a licence to operate an air service between Canada and another country).

The Rules do not apply to mediation and arbitration

The Dispute Adjudication Rules do **not** apply to dispute proceedings or any part of a dispute proceeding that is referred for mediation or submitted to arbitration. In each of these cases, there are specific guidelines or resource tools that will apply to that proceeding:

- Resolution of Disputes through Mediation
- Final Offer Arbitration
- Selecting an Arbitrator
- Rules of Procedure for Rail Level of Service Arbitration, Annotation and Resource Tool (in development)

Rules apply to contested matters

As stated above, except for mediations and arbitrations, the Dispute Adjudication Rules apply to all contested dispute proceedings before the Agency.

In the vast majority of cases that come before the Agency, the parties present their positions in writing without having to appear before the Agency at an oral hearing and the Agency makes its decision based on the documents on the file. If the proceeding is to be dealt with orally (for example, if the parties are going to appear before the Agency and make submissions in person) then at the time that an oral hearing is called, a pre-hearing conference will typically be held to work out the details of the procedures to be used in that case. These procedures will then be contained in a Procedural Direction specific to that case.

All Proceedings

3. Quorum

In all proceedings, one member constitutes a quorum.

Annotation: Quorum

Although only one Member is required to make a decision, the Chair of the Agency may appoint more than one Member to hear a case. The Member or Members assigned to a case are referred to as the Agency Panel.

Even in situations where two or more Members may be assigned to deliberate and issue the final decision, one Member may be assigned at the outset to provide decisions on the processing of the case and to make procedural decisions. This Member is referred to as the Panel Chair.

Note that even when Agency staff communicates decisions of the Agency to the parties, they are doing so on behalf of and with the instructions of the Agency Panel assigned to the case.

4. Principle of Proportionality

The Agency is to conduct all proceedings in a manner that is proportionate to the importance and complexity of the issues at stake and the relief claimed.

Annotation: Principle of proportionality

The principle of proportionality guides the Agency's decisions on matters that arise in proceedings. The objective is to achieve just, expeditious and resource effective proceedings which sometimes means that a request made by a person must be denied where the anticipated outcome does not justify the means.

For example, Party A asks that Party B produce what would amount to 100 pages of documents. Party B refuses to produce the requested documents and the matter comes before the Agency to make a decision as to whether the documents should be produced by Party B. The Agency may decide that the documents are relevant in that they relate to the matter before the Agency but that the value of the documents to the proceeding is minimal. In that case, having Party B produce 100 pages of documents would not be proportionate to the benefit that the Agency would gain by having those 100 pages on the record.

Dispute Proceedings: General

5. Interpretation of Rules and Agency's Initiative

(1) These Rules are to be interpreted in a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice.

(2) Anything that may be done on request under these Rules may also be done by the Agency of its own initiative.

Annotation: Interpretation of Rules

This means that when the Agency conducts dispute proceedings, it will strive to achieve efficiencies so that cases are resolved in a timely way, there is minimal cost or other imposition on the parties and the Agency, all while ensuring that the process is fair to the parties. This often involves a balancing of rights and

interests. For example, the Agency deals with a wide range of disputes, including both highly complex cases worth millions of dollars to the parties and less complex cases involving, for example, loss of personal goods by air carriers worth less than $500. Different, proportionate approaches are required for these different types of cases to ensure efficient and effective use of resources for dispute resolution.

Annotation: Agency's initiative

The Agency may do anything under these Dispute Adjudication Rules that a person may do by making a request.

6. Dispensing with Compliance and Varying Rule

The Agency may, at the request of a person, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will allow for the just determination of the issues.

Annotation: Dispensing with compliance and varying rule

The Agency has the power to vary the Dispute Adjudication Rules to help ensure fair decision-making on the issues in a dispute proceeding. Each case before the Agency is different and sometimes a strict application of the Dispute Adjudication Rules is not the best way to deal with a case. For example, the Agency may vary a rule that applies to a party in order to extend it to a person.

To make a request to the Agency under this section, refer to section 27 of the Dispute Adjudication Rules, which sets out what needs to be filed to make a general request to the Agency.

For more information, refer to section 27: Requests – General Request

7. Filing and Agency's public record

(1) Any document filed under these Rules must be filed with the Secretary of the Agency.

(2) All filed documents are placed on the Agency's public record unless the person filing the document files, at the same time, a request for confidentiality under section 31 in respect of the document.

Annotation: Filing of documents and Agency's Public Record

Documents must be sent to the Secretary of the Canadian Transportation Agency.

By courier or hand delivery

Secretary
Canadian Transportation Agency
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Due to the timeframes involved and the widespread availability of technology, filings by ordinary mail will no longer be accepted by the Agency unless, in exceptional circumstances, a person has requested and received approval from the Agency to use ordinary mail. In those instances, longer timelines will have to be established for the exchange of pleadings and the processing of the case will be delayed.

The Agency's record

The Agency's record is made up of all the documents and information gathered during the dispute proceeding that have been accepted by the Agency. This record will be considered by the Agency when making its decision.

The Agency's record can consist of two parts: the public record and the confidential record.

Public record

Generally, all documents filed with and accepted by the Agency during the dispute proceeding, including the names of parties and witnesses, form part of the public record.

Parties filing documents with the Agency should not assume that a document that they believe is confidential will be kept confidential by the Agency. A request to have a document kept confidential may be made pursuant to section 31 of the Dispute Adjudication Rules.

Documents on the public record will be:

- Provided to the other parties involved;
- Considered by the Agency in making its decision; and
- Made available to members of the public, upon request, with limited exceptions.

Decisions and applications are posted on the Agency's website and include the names of the parties involved, as well as witnesses. Medical conditions which relate to an issue raised in the application will also be disclosed. The decision will also be distributed by e-mail to anyone who has subscribed through the Agency's website to receive Agency decisions.

Confidential record

The confidential record contains all the documents from the dispute proceeding that the Agency has determined to be confidential.

If there are no confidential documents, then there is only a public record.

No person can refuse to file a document with the Agency or provide it to a party because they believe that it is confidential. If a person is of the view that a document is confidential, they must file it with the Agency along with a request for confidentiality under section 31 of the Dispute Adjudication Rules. This will trigger a process where the Agency will determine whether the document is confidential. During this process, the

document is not placed on the public record.

Decisions that contain confidential information that is essential to understanding the Agency's reasons will be treated as confidential as well and will not be placed on the Agency's website. However, a public version of the decision will be issued and placed on the website.

8. Copy to parties

A person that files a document must, on the same day, send a copy of the document to each party or, if a party is represented, to the party's representative, except if the document is

(1) a confidential version of a document in respect of which a request for confidentiality is filed under section 31;

(2) an application; or

(3) a position statement.

Annotation: Copy to parties

With three exceptions all documents to be filed with the Agency must be sent to the other parties (or their representatives) on the same day that they are filed with the Agency. Failure to comply with this requirement, which is the responsibility of the person filing the document, will result in the document not being considered to be filed with the Agency. If a dispute arises about whether a document was sent to the other parties, the sender may be required to provide proof that the document was sent. As such, the sender should keep proof that the document was sent.

The most efficient means of sending documents to the Agency and to the other parties is by e-mail as by sending the document electronically to the Agency and copying the other parties in the same transmission, it is easy to confirm that this requirement has been met. It is up to the person filing documents to determine the most appropriate means of transmission, particularly in situations where confidential information or documents are being filed with the Agency, where concerns may exist about ensuring the safe transmission of confidential information.

Exceptions to sending a copy to other parties

There are three exceptions to the requirement that all documents filed with the Agency must also be sent to the other parties.

1. A person who makes a request for confidentiality under section 31.

In these circumstances the confidential version of the document must be filed with the Agency, but does not need to be sent to the parties. A public version of the document must also be filed with the Agency and this document must be sent to the other parties pending the Agency's decision on confidentiality.

For more information, refer to section 31: Request for Confidentiality

2. The filing of applications under section 18.

The application will be sent to the other parties by the Agency once it has been accepted as complete.

3. The filing of position statements under section 23.

A position statement will be sent to the other parties by the Agency once it has been filed with the Agency.

For more information refer to:

- Section 18: Application
- Section 23: Position Statement

9. Means of Transmission

Documents may be filed with the Agency and copies may be sent to the other parties by courier, personal delivery, email, facsimile or other electronic means specified by the Agency.

Annotation: Means of transmission

Electronic means of filing

The Agency encourages people to use e-mail to file documents with the Agency and provide them to the other parties. As instantaneous communication, it is the most efficient way to file and exchange information and it will also show that the document has been provided to the other parties on the same day as it has been filed with the Agency, which is a requirement of section 8. In some circumstances, the Agency may require the parties to use e-mail, for example, in the case of expedited proceedings under section 25

In exceptional circumstances, where a person does not have access to an electronic means of transmission, a request can be made to the Agency under section 27 of these Dispute Adjudication Rules to use ordinary mail to file documents with the Agency and provide them to other parties. This means that longer timelines will have to be established for the exchange of pleadings and the processing of the case will be delayed.

In some cases, such as the filing of affidavits or witnessed statements, although the person may file the document electronically, the Agency will require the person to follow up by providing an original copy of the document to the Agency by ordinary mail.

It is up to the person filing documents to determine the most appropriate means of transmission, particularly in situations where confidential information or documents are being filed with the Agency.

10. Facsimile—Cover Page

A person that files or sends a document by facsimile must include a cover page indicating the total number of pages transmitted, including the cover page, and the name and telephone number of a contact person if problems occur in the transmission of the document.

11. Electronic Transmission

(1) A document that is sent by email, facsimile or other electronic means is considered to be filed with the Agency and received by the other parties on the date of its transmission if it is sent at or before 5:00 p.m. Gatineau local time on a business day. A document that is sent after 5:00 p.m. Gatineau local time or on a day that is not a business day is considered to be filed with the Agency and received by the other parties on the next business day.

(2) A document that is sent by courier or personal delivery is filed with the Agency and received by the other parties on the date of its delivery if it is delivered to the Agency and the other parties at or before 5:00 p.m. Gatineau local time on a business day. A document that is delivered after 5:00 p.m. Gatineau local time or on a day that is not a business day is considered to be filed with the Agency and received by the other parties on the next business day.

Annotation: Date of filing and receipt (Electronic transmission and courier or personal delivery)

Filing deadlines

Documents sent by e-mail, facsimile or other electronic means must be both filed with the Agency and sent to the other parties before 5:00 p.m. Gatineau local time to be considered as having been sent that day. Documents sent by courier, or that are delivered in person, must be both filed with the Agency and received by the other parties before 5:00 p.m. Gatineau local time to be considered as having been filed that day.

For example, if a party e-mailed a document to the Agency at 4:30 p.m on the date of the filing deadline, but didn't copy the other parties with the e-mail and waited until 5:30 p.m. before e-mailing it to the other parties, the document will not be considered as received by the parties that day and will not be placed on the Agency's record unless a request is made under section 30 for an extension of the filing deadline.

When a person is required to file a document within a number of business days under the Dispute Adjudication Rules or by order of the Agency, the time limit for filing is counted from the day after the person is notified of the requirement and includes the last day.

Most time limits in a dispute proceeding will have the specific deadline date for filing set out in a procedural decision or letter(e.g. June 10, 2013). This date will generally be based on the time limits set out in the Dispute Adjudication Rules.

Statutory holidays are not considered business days.

Example of counting business days

An applicant has been given five business days to file a reply to an answer.

If the answer was filed on Monday, day one would be Tuesday. The reply must be filed by the end of day five, which is 5:00 p.m. Gatineau local time the following Monday. If Monday is a statutory holiday, the reply would be due by 5:00 p.m. Gatineau local time on Tuesday, the next business day.

Filing of documents with forms

Parties are encouraged to use the Agency's forms, especially when filing documents where specific

information is required as set out in the Schedules to the Dispute Adjudication Rules. The forms link to a secure file transfer system to allow for attachments to be filed with the Agency and copied to the parties.

12. Filing after Time Limit

(1) A person must not file a document after the end of the applicable time limit for filing the document unless a request has been filed under subsection 30(1) and the request has been granted by the Agency.

(2) A person must not file a document whose filing is not provided for in these Rules unless a request has been filed under subsection 34(1) and the request has been granted by the Agency.

(3) A document that is filed in contravention of subsection (1) or (2) will not be placed on the Agency's record.

Annotation: Consequences of missing a deadline

Filing deadlines that are set by the Agency, as set out in the Dispute Adjudication Rules or by decision or order of the Agency, must be met.

The Agency will not accept a document that has been filed late unless a request is made under section 30 of the Dispute Adjudication Rules for an extension of time and the Agency has approved the request.

In addition, a person must not file a document which is not required to be filed under these Dispute Adjudication Rules or by the Agency. For example, a person cannot file a response to a reply without Agency approval.

Without these approvals, the document will not form part of the record and will not be considered by the Agency when making its final decision.

For more information, refer to:

- Section 30 Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is not Otherwise Provided For in Rules

13. Language of Documents

(1) Every document filed with the Agency must be in either English or French.

(2) If a person files a document that is in a language other than English or French, they must at the same time file an English or French translation of the document and the information referred to in Schedule 1.

(3) The translation is treated as the original for the purposes of the dispute proceeding.

Annotation: Language of documents

Documents to be filed in one of the official languages

A person filing a document is entitled to submit the document in the official language of their choice (English or French).

If documents are submitted by persons in different official languages, the Agency is not required to translate the documents. Where translation is required by a person to understand the document, that person will be responsible for obtaining and paying for the translation.

In such situations, the person does not have to file the translation with the Agency or any other party.

Procedure to be followed for documents that are not in one of the official languages

A person submitting a document in a language other than English or French is responsible for ensuring that the document is accompanied by:

- A translation to English or French; and
- A properly completed and sworn affidavit from the translator (Schedule 1).

Note: the translated document and affidavit must be filed with the Agency and provided to the other parties at the same time as the document filed in the other language. The English or French translation will be considered the official document on the record.

Any document in a language other than English or French that is not accompanied by a translation and affidavit will not form part of the record and therefore will not be considered by the Agency when making a decision. The party is free to submit a proper document; however, if the time limit for the filing of the document has passed, the party will also have to obtain approval to do so by filing a request to extend the time line for the filing of the document.

Note that all Agency decisions are posted on the website in English and French.

Also, in exceptional cases and on request, the Agency may accept a witnessed statement in place of an affidavit, for example, when the person lives in a remote community with no access to a lawyer or other person who can swear the affidavit

Translator

Unless specified otherwise by the Agency, the person who translated the document does not need to be a certified translator.

Agency form: Form 1: –Translation – Required Information

14. Amended Documents

(1) If a person proposes to make a substantive amendment to a previously filed document, they must file a request under subsection 33(1).

(2) A person that files a document that amends a previously filed document, whether the amendment is substantive or not, must ensure that the amendment is clearly identified in the

document and that the word "AMENDED" appears in capital letters in the top right corner of the first page.

Annotation: Filing of amended document

There are two types of amendments or changes that can be made to a document: substantive and non-substantive.

Substantive amendments: Any substantive amendment to a document needs to be approved by the Agency.

The person must file a new copy of the document which clearly identifies the amendment being made by:

- Underlining any new text and striking out (or drawing a line through) any deleted text; and
- Adding "AMENDED" at the top right hand corner of the first page of the document.

In addition, the person must make a request to file the amended document.

For more information and instructions on how to make a request for a substantive amendment, refer to section 33: Request to Amend Document.

Where appropriate, the Agency may provide parties adverse in interest with an opportunity to respond to the amended document. The Agency will establish the process to be followed and the time limits to be met in a procedural direction.

Non-substantive amendments: A request to the Agency is not required to make a minor amendment to a document.

Some examples of non-substantive amendments that can be made without the approval of the Agency are:

- Correction in spelling of names and places; and
- Dates (if they have no substantive implications).

The person must file a new copy of the document which clearly identifies the amendment being made by:

- Underlining any new text and striking out (or drawing a line through) any deleted text; and
- Adding "AMENDED" at the top right hand corner of the first page of the document.

The other parties must be provided with a copy of the amended document on the same day that it is filed with the Agency.

Where a person submits a non-substantive amendment, but the Agency considers it to be a substantive amendment, the person will be notified of the requirement to follow the procedure for substantive amendments in subsection 33(1) of the Dispute Adjudication Rules.

15. Verification by Affidavit or by Witnessed Statement

(1) If the Agency considers it just and reasonable, the Agency may, by notice, require that a person provide verification of the contents of all or any part of a document by affidavit or by

witnessed statement.

(2) The verification by affidavit or by witnessed statement must be filed within five business days after the date of the notice referred to in subsection (1) and must include the information referred to in Schedule 2 or Schedule 3, respectively.

(3) The Agency may strike the document or the part of the document in question from the Agency's record if the person fails to file the verification.

Annotation: Verification by affidavit or by witnessed statement

The Agency may require an affidavit or a witnessed statement to be filed if evidence is contested or if the accounts or positions of the parties conflict.

Affidavit

An affidavit is a written statement that contains important facts that a person wants the Agency to know about. It is sworn by the person making the affidavit in the presence of someone authorized to administer an oath, such as a commissioner for taking oaths, a notary public, a notary (province of Quebec) or a lawyer. The person swearing the affidavit should have direct knowledge of the events or facts set out in the statement. "To swear" means that you promise that the information contained in the affidavit is true. Note that there are potential legal sanctions to swearing an affidavit if you know that the affidavit is not true, accurate or complete.

The affidavit is used by the Agency to verify the truthfulness, including both the accuracy and completeness, of some or all of the information in a document.

Agency form: Form 2 – Verification by Affidavit

Witnessed Statements

Witnessed statements are written and signed statements that the person signing the statement believes to be true. Unlike affidavits, they are not signed and sworn in the presence of an authorized individual, like a lawyer, but are signed in the presence of a witness who also signs the document.

Agency form: Form 3 – Verification by Witnessed Statement

Timelines for the filing of an affidavit or a witnessed statement

The affidavit or witnessed statement must be filed within five business days after the date of receipt of the notice by the Agency requiring the filing of verification by affidavit or witnessed statement. The Agency will provide notice as to which means of verification is to be filed.

If it would be impossible or impracticable to obtain an affidavit, a person may submit a witnessed statement along with a request under section 27 that the Agency accept the witnessed statement instead of an affidavit. The request must include:

- A clear and concise description of the reasons supporting the request, including why it would be impossible or impracticable to obtain an affidavit;
- All information or documents that are relevant in explaining or supporting the request; and

- Confirmation that copies of the witnessed statement and the request have been provided to the other parties in the proceeding

For more information refer to: Section 27 Requests – General Request

Consequences of not providing the required verification

If the Agency has required verification of a document or part of a document, but the verification by affidavit or a witnessed statement is not provided, the document will either:

1. Form part of the record, but will be given limited or no weight by the Agency when making its final decision; or
2. Not form part of the record and not be considered by the Agency when making its final decision (that is the document will be struck from the record).

16. Representative Not a Member of the Bar

A person that is represented in a dispute proceeding by a person that is not a member of the bar of a province must authorize that person to act on their behalf by filing the information referred to in Schedule 4.

Annotation: Authorization for representative

Persons involved in a dispute proceeding are not required to be represented by a lawyer, although a lawyer can be consulted, if desired. They can also choose to be represented by another person, including a family member or friend.

If a person would like to have a representative (other than a lawyer or an officer or employee of the company, for example in the case of a corporate respondent) act on their behalf, written authorization must be filed with the Agency. The authorization only needs to be filed once during the dispute proceeding. This authorization is not necessary if the person is represented by a lawyer.

Power of attorney: persons acting under a power of attorney must file a copy of the power of attorney in place of the written authorization.

Parents/Legal Guardians acting on behalf of minor children: parents/legal guardians do not require authorization to act on behalf of their minor children.

Agency form: Form 4 – Authorization of Representative

17. Change of Contact Information

A person must, if the contact information they provided to the Agency changes during the course of a dispute proceeding, provide their new contact information to the Agency and the parties without delay.

Dispute Proceedings: Pleadings

(1) Any application filed with the Agency must include the information referred to in Schedule 5.

(2) If the application is complete, the parties are notified in writing that the application has been accepted.

(3) If the application is incomplete, the applicant is notified in writing and the applicant must provide the missing information within 20 business days after the date of the notice.

(4) If the applicant fails to provide the missing information within the time limit, the file is closed.

(5) An applicant whose file is closed may file a new application in respect of the same matter.

Annotation: Application

Who is an applicant?

The applicant is the person who files an application with the Agency.

Complete applications

A dispute proceeding does not formally start until the application is accepted as complete. Although an applicant might fill out Form 5 or file its application in another format this does not necessarily mean that the application is complete.

Parties will be notified in an opening pleadings letter when the application has been accepted as complete and the date on which the pleadings process has begun.

Contents of an application

An application must include the information set out in Schedule 5. It should clearly and concisely:

- Set out the relevant facts;
- Identify the issues;
- Identify the relevant provisions of the legislation or regulations that are administered by the Agency and that relate to the application;
- Set out the arguments in support of the application;
- Set out any relief/remedies sought (e.g. The solution to the issues that were raised); and
- Set out any other information and arguments that help to explain or support the position set out in the application.

The Agency encourages the use of Form 5 to file an application. The Form provides guidance on the information that is required for the application to be considered complete. The application should be as detailed as possible and include all relevant information. This will make the dispute proceeding more efficient.

Agency form: Form 5 – Application

In addition to the general application form, Form 5, the Agency has separate application forms for two specific types of dispute proceeding. These forms are accessible through the Agency's complaint wizard: 36

- Accessible transportation – Form 5a
- Rail noise and vibration – Form 5b

Guidance for completing specific types of applications

In some instances, the Agency has provided further guidance, in guidelines and resource tools, on what is required to be filed to complete various specific types of dispute proceeding applications, including:

- Accessible Transportation Complaints: A Resource Tool for Persons with Disabilities
- Guidelines on the Resolution of Complaints Over Railway Noise and Vibration

Time limit for filing an application

Applicants should first try to resolve their issue with the other party before initiating a dispute resolution process with the Agency. In some instances, the Agency cannot accept an application until this has been done, for example, in rail noise and vibration disputes.

If this fails, an application should be filed with the Agency as soon as possible, in order to:

- Minimize the challenge of substantiating allegations or obtaining records after significant time has passed;
- Ensure the availability of any witnesses;
- Maximize the possibility that all potential relief/remedies will be available by, for example, meeting statutory deadlines for obtaining relief/remedies from the Agency (e.g. The solution to the issues that were raised). As an example, while there is no statutory time limit for the filing of an application under the *Canada Transportation Act*, in the case of air disputes, the Montreal Convention and the *Carriage by Air Act* provide a statutory time limit of two years to obtain relief for certain air disputes.

Filing an application

The filing of an application is done by instantaneous means of communication unless it is made by personal delivery or courier. This assists in the timely processing of applications.

Note that ordinary mail cannot be used as a means of filing unless there are exceptional circumstances where electronic, personal delivery or courier as a means of communication are not available or practicable. In these situations, a request must be made to the Agency under section 27 and approval must be granted by the Agency to use ordinary mail. This will require a change in the filing deadlines.

For more information, refer to:

- Section 27: Requests - General Request
- Section 9: Means of Transmission

Application goes on the public record

An application filed with the Agency is placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the application, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

Having a representative represent you

If a person filing an application would like to have a representative (other than a lawyer) act on their behalf, a written authorization must be filed with the Agency at the same time that the application is filed. An authorization is not required if the person is represented by a lawyer.

Note that where the representative did not witness the incident described in the application, the applicant will have to sign the account of the events in the application.

For more information, refer to section 16: Representative Not a Member of the Bar

Agency form: Form 4 – Authorization of Representative

Pleadings process

The party (or parties) against whom the application has been filed (also known as the respondent[s]) will have the opportunity to file an answer. The applicant will then have the opportunity to file a reply to the respondent(s)' answer.

For more information, refer to:

- Section 19: Answer
- Section 20: Reply

Incomplete application

A dispute proceeding does not formally start until the application is accepted as complete. If the application is not complete, the person attempting to file the application will be notified and will have 20 business days to provide the missing information.

If the missing information is not provided within 20 business days, the file will be closed.

Consequences of the Agency closing a file

Even if a file has been closed due to an incomplete application, the application can be filed again at a later date.

However, the application should be filed with the Agency as soon as possible, in order to:

- Minimize the challenge of backing up allegations or getting records after significant time has passed;
- Ensure the availability of any witnesses;
- Maximize the possibility that all potential relief/remedies will be available by, for example, meeting statutory deadlines for obtaining relief/remedies from the Agency. As an example, while there is no statutory time limit for the filing of an application under the *Canada Transportation Act*, in the case of air disputes, the Montreal Convention and the *Carriage by Air Act* provide a statutory time limit of two years to obtain relief for certain air disputes.

19. Answer

A respondent may file an answer to the application. The answer must be filed within 15 business days after the date of the notice indicating that the application has been accepted and must include the information referred to in Schedule 6.

Annotation: Answer

Who is a respondent?

In a dispute proceeding there are at least two parties: the applicant and the respondent.

The applicant files an application with the Agency against a respondent. In the application, the applicant sets out the details of the dispute with the respondent and the issues that the applicant wishes the Agency to address. In some cases, there may be a number of respondents involved.

Although the applicant must clearly identify the respondent in the application, in exceptional circumstances, the Agency may identify the respondent or other respondents where it is not evident to the applicant who is responsible for the situation that is the subject of their application.

The purpose of filing an answer

The purpose of filing an answer is to respond to the arguments and issues raised in the application.

If the respondent does not file an answer, the Agency will make its decision based on the information provided by the applicant. This could result in the Agency making a decision in favour of the applicant and might result in the Agency finding that the respondent must provide relief/remedies to the applicant. In some instances, the relief may relate to expenses that were incurred by the applicant. For example, in the situation of a flight delay where the Agency finds in favour of the applicant, the respondent may be directed to reimburse the applicant for related expenses, such as for lunch and a hotel room, which had been paid for by the applicant.

Contents of an answer

The answer must include the information set out in Schedule 6 and should clearly and concisely:

- Indicate which parts of the application the respondent agrees with or disagrees with; and
- Set out the arguments in support of the respondent's position.

Any documents that support the position set out in the answer should be filed with the Agency by the respondent and provided to the other parties on the same day. A person filing an answer may either use form 6 or another document.

Agency form: Form 6 – Answer to Application

Answer goes on the public record

An answer filed with the Agency is placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the answer, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

Time limit for filing an answer

The answer must be filed within 15 business days after the respondent receives notice that the application has been accepted as complete.

There are exceptions to this time limit. In particular, if the parties receive notice from the Agency that an expedited process will be used, then the respondent will have five business days to file an answer.

For more information, refer to:

- Section 25: Expedited Process
- Section 28: Request for Expedited Process

The Agency has the power to extend time limits where a party has good reason for not being able to meet a time limit. In this situation, a party must make a request under section 30 for an extension of the time limit for filing an answer.

For more information, refer to section 30: Request to Extend or Shorten Time Limit

Having a representative represent you

If a person filing an answer would like to have a representative (other than a lawyer or an officer or employee of the company in the case of a corporate respondent) act on their behalf, a written authorization must be filed with the Agency.

For more information, refer to section 16: Representative Not a Member of the Bar

Agency form: Form 4 – Authorization of Representative

(1) An applicant may file a reply to the answer. The reply must be filed within five business days after the day on which they receive a copy of the answer and must include the information referred to in Schedule 7.

(2) The reply must not raise issues or arguments that are not addressed in the answer or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Annotation: Reply to the answer

Once the respondent has filed an answer to the application, the applicant is then given an opportunity to reply to the answer.

Contents of a reply to the answer

The reply must include the information set out in Schedule 7.

An applicant filing a reply may either use Form 7 or another document and the other parties must be provided with a copy of the reply on the same day as it is filed with the Agency.

A reply can only address issues raised in the answer. It must not repeat arguments already made in the application, or raise new issues, arguments or evidence not related to the answer.

A reply that raises new issues, arguments or evidence that were not addressed in the response will require the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided For in Rules

Agency form: Form 7 – Reply to Answer

Reply to the answer goes on the public record

A reply to an answer filed with the Agency is placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the answer, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing

- Section 31: Request for Confidentiality

Time limit for filing the reply to the answer

The reply to an answer must be filed within five business days after the applicant receives the answer.

There are exceptions to this time limit. In particular, if the parties receive notice from the Agency that an expedited process will be used, then the applicant has three business days to file a reply to an answer.

For more information, refer to:

- Section 25: Expedited Process
- Section 28: request for expedited process

The Agency has the power to extend time limits where a party has good reason for not being able to meet a time limit. In this situation, a party must make a request under section 30 for an extension of the time limit for filing an answer.

For more information, refer to: Section 30: Request to Extend or Shorten Time Limit

21. Intervention

(1) An intervener may file an intervention. The intervention must be filed within five business days after the day on which their request to intervene is granted by the Agency and must include the information referred to in Schedule 8.

(2) An intervener's participation is limited to the participation rights granted by the Agency.

Annotation: Intervention

Section 29 sets out how a person applies to become an intervener in a dispute proceeding while section 21 sets out the process to be followed *after* the Agency has accepted a person as an intervener.

For more information on how to become an intervener, refer to section 29: Request to Intervene

Who is an intervener?

An intervener is a person with a "substantial and direct interest" in a dispute proceeding before the Agency. A person must make a request to the Agency and be accepted as an intervener before they can participate as an intervener in a dispute proceeding.

An intervener is not a party to the dispute proceeding unless they are named as a party by the Agency. However, interveners may be required to respond to questions or information requests from the Agency or from any party to the proceeding that is adverse in interest to them.

Extent of participation in the dispute proceeding

The Agency will determine the extent of an intervener's participation in the proceeding, including limitations

on the issues that can be addressed in the intervention, and will inform the intervener and the parties. This decision is based on the participation rights requested by the person and an assessment of what would be useful and necessary to the Agency's consideration of the issues in dispute.

The Agency may require that an intervener file information or documents, respond to questions from the Agency or respond to questions or document requests from a party that is adverse in interest.

Content of an intervention

An intervention must include the information set out in Schedule 8.

Agency form: Form 8 – Intervention

Time limit for filing an intervention

An intervention must be filed within five business days of the intervener being notified by the Agency that their request to intervene has been accepted. Note that the Agency can specify a shorter time limit. A person filing an intervention may either use Form 8 or another document and the other parties must be provided with a copy of the intervention on the same day that it is filed with the Agency.

Failure to meet this deadline means that the Agency will proceed with the dispute proceeding without the intervener's position being taken into account unless a request to extend the time limit for filing the intervention is filed and is accepted by the Agency.

For more information, refer to section 30: Request to Extend or Shorten Time Limit

Intervention goes on the public record

All interventions filed with the Agency are placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the intervention, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

22. Response to Intervention

An applicant or a respondent that is adverse in interest to an intervener may file a response to the intervention. The response must be filed within five business days after the day on which they receive a copy of the intervention and must include the information referred to in Schedule 9.

Annotation: Response to Intervention

Who can file a response to an intervention

You have the option of filing a response to an intervention if you are:

- An applicant or a respondent; and
- adverse in interest to the intervener

Content of a response to an intervention

The response to the intervention must include the information set out in Schedule 9.

The response can only address the issues raised in the intervention.

An applicant or a respondent filing a response may either use Form 9 or another document and the other parties must be provided with a copy of the response on the same day that it is filed with the Agency.

Agency form: Form 9 – Response to Intervention

Time limit for filing a response to an intervention

A response must be filed within five business days after the party adverse in interest receives the intervention. Note that the Agency can specify a shorter time limit.

Response to an intervention goes on the public record

All responses to interventions filed with the Agency are placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the response to the intervention, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

23. Position Statement

(1) An interested person may file a position statement. The position statement must be filed before the close of pleadings and must include the information referred to in Schedule 10.

(2) A person that files a position statement has no participation rights and is not entitled to receive any notice in the dispute proceeding.

Annotation: Position statement

A person may become aware of a dispute proceeding that is before the Agency that they have an interest in and would like their views to be considered in the Agency's decision-making process. However, they might not want to apply to become an intervener or their interest might not be sufficient to permit them to

participate as an intervener.

For more information, refer to:

- Section 21: Intervention
- Section 29: Request to Intervene

Position statements are automatically accepted

There is no requirement to demonstrate a "substantial and direct interest" in the dispute proceeding before filing a position statement, unlike a request to intervene. An interest in the dispute proceeding is sufficient to file a position statement.

The Agency will automatically accept a position statement and will consider it in its decision- making process, unless it has no relevance to the dispute proceeding.

Contents of the position statement

The position statement must include the information set out in Schedule 10. A person filing a position statement may either use Form 10 or another document to set out their interest in the dispute proceeding.

It is important to clearly set out whether the position statement is in support of or in opposition to the application and to provide a clear and concise description of your interest. You should also include any documents that are relevant in support of your position.

Agency form: Form 10 – Position Statement

Extent of participation in the dispute proceeding

Filing a position statement allows a person to have their views placed on the Agency's record without having to actively participate in the dispute proceeding (unless required to do so by the Agency). However, the Agency may require that a person who files a position statement file information or documents, respond to questions from the Agency or respond to questions or document requests from a party that is adverse in interest.

After a person files a position statement, their participation ends as they are not a party to the dispute proceeding. This means that they will not:

- Be copied on any documents filed;
- Receive updates on the proceeding; or
- Be provided with the opportunity to comment on subsequent correspondence.

A person who files a position statement will, however, receive a copy of the Agency's final decision in the matter.

Time limit for filing of a position statement

A position statement must be filed before the close of pleadings.

Section 26 of the Dispute Adjudication Rules sets out when the pleadings in a proceeding are closed. Parties will be notified once pleadings have closed. In addition, this information will be reflected in the status of cases on the Agency's website.

For more information, refer to

- Section 26: Close of Pleadings
- Appendix A: Agency Contact Information

Position statement goes on the public record

All position statements filed with the Agency are placed on the public record unless:

(1) A claim for confidentiality is made at the same time that it is filed; and
(2) The Agency determines that the position statement, or parts of it, are confidential.

Although parties do not normally respond to position statements any party that believes that it should respond to a position statement may make a request to file a response to a position statement under section 34.

For more information, refer to:

- Section 7: Filing
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided For in Rules
- Section 31: Request for Confidentiality

24. Written Questions and Production of Documents

(1) A party may, by notice, request that any party that is adverse in interest respond to written questions that relate to the matter in dispute or produce documents that are in their possession or control and that relate to the matter in dispute. The notice must include the information referred to in Schedule 11 and must be filed

(a) in the case of written questions, before the close of pleadings; and

(b) in the case of the production of documents, within five business days after the day on which the party becomes aware of the documents or before the close of pleadings, whichever is earlier.

(2) The party to which a notice has been given must, within five business days after the day on which they receive a copy of the notice, file a complete response to each question or the requested documents, as the case may be, accompanied by the information referred to in Schedule 12.

(3) If a party wishes to object to a question or to producing a document, that party must, within the time limit set out in subsection (2), file an objection that includes

(a) a clear and concise explanation of the reasons for the objection including, as applicable, the relevance of the information or document requested and their

availability for production;

(b) any document that is relevant in explaining or supporting the objection; and

(c) any other information or document that is in the party's possession or control and that would be of assistance to the party making the request.

Annotation: Asking questions or requesting documents of another party

Limitations on asking questions and requesting documents

To help respond to an application, answer, intervention or request, a party that is adverse in interest to another party can ask that party to respond to questions or produce documents. This request is made by sending a notice to the other party. A party may also request approval under section 27 to ask questions or request document production from persons who are not parties to the proceeding (for example, persons who file position statements and interveners who are not granted full party status in the proceeding by the Agency). If the Agency approves such a request, this rule applies to the person in the same way as it would to a party.

Questions and requests for documents must be relevant and designed to clarify matters so that the party can clearly and accurately state its position in the matter that is before the Agency. There must be a link between the answers and documents requested and the matter in dispute.

A notice to produce documents must be for existing documents that the other party possesses or has access to or control of. The document must be referred to or relied on in a submission to the Agency, or related to a matter in the dispute. A party cannot request that a new document be created.

Content of a notice to respond to written questions or produce documents

The notice must include the information set out in Schedule 11.

A party filing a notice may either use form 11 or another document and the other parties must be provided with a copy of the notice on the same day as it is filed with the Agency.

Agency form: Form 11 – Written Questions or Request for Documents

Time limit for the notice for asking questions or requesting documents

Questions: any time before the close of pleadings.

Production of documents: within five business days of the party becoming aware of the document or before the close of pleadings, whichever is earlier.

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

For more information, refer to:

- Section 26: Close of Pleadings

- Appendix A: Agency Contact Information

Annotation: Response to a notice to respond to questions or produce documents

Time for responding to a notice

A party has five business days to respond after receiving a copy of the notice.

Responding to the notice

A party that has received a notice to respond to questions or produce documents must:

1. Provide a complete response to each question and/or produce copies of documents requested; and/or
2. Object to responding to any question or producing any document on the basis, among other matters, that it is not relevant to the issue before the Agency or that the information is not available.

Any questions that the party is responding to or any documents produced must be accompanied by the information contained in Schedule 12.

A party filing a response to the notice may either use Form 12 or another document and the other parties must be provided with a copy of the response to the notice on the same day as it is filed with the Agency.

Agency form: Form 12 – Response to Written Questions or Request for Documents

If a party objects to responding to any questions or producing any of the requested documents, it must provide the information set out in subsection 24(3). It is very important that the reasons for the objection be clearly set out. For example, if a party is of the view that the requested documents or questions asked are not relevant to the matter, then the reasons supporting this position must be stated.

Annotation: Party satisfied or not satisfied with the response

If the party asking questions or requesting documents is satisfied with the response, then this part of the dispute proceeding concludes. The information that was gathered goes on the public record or the confidential record if a claim for confidentiality is made by the party filing the documents and the Agency determines that the information is confidential. However, the party asking questions or requesting documents may not be satisfied that the response is complete or agree with the objections raised by the other parties. They then must make a request under subsection 32(1) for the Agency to require the other party to respond. .

Responses and documents go on the public record

Any information or documents gathered under section 24 of the Rules are placed on the public record unless:

1. A claim for confidentiality is made at the same time that they are filed or gathered; and
2. The Agency determines that the response, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

Annotation: Documents and information required by the Agency

Although this provision only provides for the parties to ask questions and request documents from other parties, the Agency also has the power to require parties and other persons involved in a dispute proceeding to answer questions and provide further documents.

Agency gathering of additional information/documents

In addition to any documents filed, the Agency may require additional information from the parties and other persons (such as interveners) to assist in its decision making.

The Agency may gather additional information/documents in two ways:

1. By directing a person to produce information/documents and/or posing specific questions; or
2. By the Agency or staff performing a site inspection to collect information and data.

Documents and information required by the Agency go on the public record

All information/documents gathered by the Agency are placed on the public record unless:

1. A claim for confidentiality is made at the same time that they are filed or gathered; and
2. The Agency determines that the information/documents, or parts of them, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

Documents filed with the Agency are provided to the parties in the dispute proceeding

Documents must be provided to the other parties on the same day that they are filed with the Agency, unless a request for confidentiality is made under section 31.

With respect to confidential information, if the Agency determines that the information is confidential, the Agency may limit the distribution of the information, permit a person to only make the documents available for review by other parties under limited circumstances, such as at a specified location or during certain hours, and require any person who is to receive access to the information to sign a confidentiality undertaking.

For more information, refer to section 31: Request for Confidentiality

Consequences of not providing documents or complying with the information gathering process

If a person does not comply with the process established by the Agency to gather more documents/information, the Agency may stay the dispute proceeding until the person complies.

If a dispute proceeding is stayed, a matter will not progress until the Agency determines that the process can continue. While the proceeding is stayed, the Agency will not accept or consider any documents. This will delay the issuance of the decision.

For more information, refer to section 41: Stay of Proceeding, Order or Decision

25. Expedited Process

(1) The Agency may, at the request of a party under section 28, decide that an expedited process applies to an answer under section 19 and a reply under section 20 or to any request filed under these Rules.

(2) If an expedited process applies to an answer under section 19 and a reply under section 20, the following time limits apply:

(a) the answer must be filed within five business days after the date of the notice indicating that the application has been accepted; and

(b) the reply must be filed within three business days after the day on which the applicant receives a copy of the answer.

(3) If an expedited process applies to a request filed under these Rules, the following time limits apply:

(a) any response to a request must be filed within two business days after the day on which the person who is responding to the request receives a copy of the request; and

(b) any reply to a response must be filed within one business day after the day on which the person who is replying to the response receives a copy of the response.

Annotation: Expedited Process

The expedited process can apply to:

- An answer under section 19 and a reply under section 20; or
- A request made under these Dispute Adjudication Rules

The expedited process has shorter time limits for filing documents in a dispute proceeding.

The Agency may on its own initiative apply an expedited process or a party can make a request for an expedited process. The expedited process is used if it is clearly demonstrated that following the time limits

set out in the Dispute Adjudication Rules would cause a party financial or other prejudice. For example, a decision by the Agency is needed as soon as possible because a shipper has filed a level of service complaint against a railway company where perishable cargo is at risk.

Section 28 sets out how a party files a request for an expedited process.

Section 25 sets out the time limits for filing an answer and a reply and a request made under these Dispute Adjudication Rules in an expedited process, once the Agency has decided that such a process is appropriate.

For more information, refer to section 28: Request for Expedited Process

Time limit for an expedited process

The time limits depend upon whether they apply to a respondent's answer and the applicant's reply, or a request under these Dispute Adjudication Rules.

Answer/Reply: the answer must be filed within five business days and the reply must be filed in three business days.

A request made under these Dispute Adjudication Rules: a response to a request must be filed within two business days and a reply must be filed within one business day.

For information about the time limits for the close of pleadings in an expedited pleadings process, refer to section 26: Close of Pleadings

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

26. Close of Pleadings

(1) Subject to subsection (2), pleadings are closed

(a) if no answer is filed, 20 business days after the date of the notice indicating that the application has been accepted;

(b) if an answer is filed and no additional documents are filed after that answer, 25 business days after the date of the notice indicating that the application has been accepted; or

(c) if additional documents are filed after an answer is filed, the day on which the last document is to be filed under these Rules.

(2) Under the expedited process, pleadings are closed

(a) if no answer is filed, seven business days after the date of the notice indicating that the application has been accepted;

(b) if an answer is filed and no additional documents are filed after that answer, 10 business days after the date of the notice indicating that the application has been accepted; or

(c) if additional documents are filed after an answer is filed, the day on which the last document is to be filed under these Rules.

Annotation: Close of pleadings

The importance of knowing when pleadings are closed

It is important to know when pleadings are closed. The Agency will not accept documents filed after the close of pleadings unless a request is made under sections 30 or 34 and the Agency has approved the request. Without this approval, the document will not form part of the record and it will not be considered by the Agency when making its final decision.

Parties are responsible for making any requests before the close of pleadings. In particular, requests where information will be placed on the record (e.g. questions between parties) must be made before the close of pleadings.

Expedited process: pleadings will close earlier than they would in a regular dispute proceeding.

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

For more information, refer to:

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided for in Rules
- Appendix A: Agency Contact Information

Dispute Proceedings: Requests

Annotation: Requests

In any dispute proceeding, procedural issues can arise that need to be decided by the Agency in the course of the proceeding. Sections 27 to 36 of the Dispute Adjudication Rules deal with the process by which people can bring these procedural issues forward for decision. The request mechanism replaces what used to be known as "motions".

Depending on the section, parties and in some instances persons can make a request to have a procedural issue determined by the Agency. Agency decisions on requests are sometimes referred to as "interlocutory decisions" meaning that they are a procedural decision that is made during a proceeding before the final substantive decision is made on the merits of the application.

27. General Request

(1) A person may file a request for a decision on any issue that arises within a dispute

proceeding and for which a specific request is not provided for under these Rules. The request must be filed as soon as feasible but, at the latest, before the close of pleadings and must include the information referred to in Schedule 13.

(2) Any party may file a response to the request. The response must be filed within five business days after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

(3) The person that filed the request may file a reply to the response. The reply must be filed within two business days after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Annotation: General requests

When to use section 27

If a person wants the Agency to address a procedural matter that is not covered in the specific requests found in sections 28 to 36, they must make a request under the general request provision, section 27, and obtain the Agency's approval.

The Dispute Adjudication Rules set out the process to be followed for specific types of procedural requests:

- Section 28 – Request for Expedited Process
- Section 29 – Request to Intervene
- Section 30 – Request to Extend or Shorten Time Limit
- Section 31 – Request for Confidentiality
- Section 32 – Request to Require Party to Provide Complete Response
- Section 33 – Request to Amend Document
- Section 34 – Request to File Document Whose Filing is not Otherwise Provided For in Rules
- Section 35 – Request to Withdraw Document
- Section 36 – Request to Withdraw Application

Content of a request

It is the responsibility of the person making the request to demonstrate to the satisfaction of the Agency that the request should be granted.

The person must provide details as to why the request should be granted by the Agency. It is not sufficient to merely make a request.

The request must include the information set out in Schedule 13. A person filing a request may either use form 13 or another document and the other parties must be provided with a copy of the request on the same day that it is filed with the Agency.

Agency form: Form 13 – Request

Time limit for filing a request under section 27

A request must be filed as soon as possible after the issue arises and before the close of pleadings.

If the need to file a request arises after pleadings close, the request should be accompanied by a request under section 30 for an extension of time. For more information, refer to:

- Section 26: Close of Pleadings
- Section 30: Request to Extend or Shorten Time Limit

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

Annotation: Responding to a request

Contents of a response to a request

Any party to the proceeding can file a detailed response to the request with the Agency and the other parties.

For example, a party may choose to respond if it may be affected by the request. A party may be affected by a request if the request:

- Would require the party to do something; or
- Has an impact on the party, for example, it might delay the proceedings. The party must clearly indicate whether they support or oppose the request. If opposed, the party must state why it does not want the Agency to grant the request, including the impact this would have on it or on the proceeding.

The response must include the information set out in Schedule 14. A party filing a response may either use Form 14 or another document and the other parties must be provided with a copy of the response to the request on the same day that it is filed with the Agency.

Agency form: Form 14 – Response to Request

Time limit for filing of a response to a request

A response to a request must be filed within five business days after the party receives the request.

Annotation: Replying to a response to a request

Contents of a reply to a response to a request

Once a party has responded to a request, the person who filed the request can file a written reply.

The purpose of the reply is to respond only to the issues raised in the response to the request. It must not raise new issues, arguments or evidence and should not repeat what is already in the request.

A reply that raises new issues, arguments or evidence that were not addressed in the response will require

the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is not Otherwise Provided For in Rules

Agency form: Form 15 –Reply to Response to Request

Time limit for filing a reply to a response to a request

Any reply to the response must be filed within two business days after the person receives the response, unless otherwise directed by the Agency.

28. Request for Expedited Process

(1) A party may file a request to have an expedited process applied to an answer under section 19 and a reply under section 20 or to another request filed under these Rules. The request must include the information referred to in Schedule 13.

(2) The party filing the request must demonstrate to the satisfaction of the Agency that adherence to the time limits set out in these Rules would cause them financial or other prejudice.

(3) The request must be filed

(a) if the request is to have an expedited process apply to an answer and a reply,

(i) in the case of an applicant, at the time that the application is filed, or

(ii) in the case of a respondent, within one business day after the date of the notice indicating that the application has been accepted; or

(b) if the request is to have an expedited process apply to another request,

(i) in the case of a person filing the other request, at the time that that request is filed, or

(ii) in the case of a person responding to the other request, within one business day after the day on which they receive a copy of that request.

(4) Any party may file a response to the request. The response must be filed within one

business day after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

(5) The party that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(6) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Annotation: Request for expedited process

Sections related to shortened time limits

Section 28 sets out how a party can file a request for an expedited process and some of the factors that the Agency might consider.

Section 25 sets out shorter time limits for filing pleadings in a dispute proceeding where the Agency has approved an expedited process. Section 30 should be used to shorten an individual time line.

For more information, refer to:

- Section 25: Expedited Process
- Section 30: Request to Extend or Shorten Time Limit

What is an expedited process?

The expedited process allows for shorter time limits for filing pleadings in a dispute proceeding. The Agency, either on its own initiative or at the request of a party, determines whether it is appropriate to apply the expedited process to the dispute proceeding.

This is an exceptional process and it is very important that the party making the request set out all relevant factors. The Agency will consider the impact of an expedited process on the other party or parties. Note that given the shortened time limits, the expedited process will only be considered where the parties can use an electronic instantaneous means of communication.

There are two situations where pleadings may be expedited:

The dispute proceeding: In an expedited proceeding, the time limits for the answer and reply are shortened.

A request under Sections 27 to 36: If a request is expedited, the time limits for the response and reply to the request are shortened. For example, if it is necessary for the parties to file additional information/documents or respond to questions of the other parties as part of the dispute proceeding, the time limits provided in the Dispute Adjudication Rules for responding can be expedited upon request.

Factors that the Agency may consider

Requests to expedite pleadings should refer to the factors that the Agency may take into account when

considering a request:

- The complexity of the matter;
- The reasons for the request, including any financial or other prejudice that may be caused by following the time limits set out in the Dispute Adjudication Rules;
- The financial or other prejudice, if any, to the other parties if the request is granted; and
- Any other factors that may be relevant.

Contents of a request for an expedited process

It is the responsibility of the party making the request to demonstrate to the satisfaction of the Agency that the request should be granted. Reasons must be provided for expediting a pleadings process.

The request must include the information set out in Schedule 13 and reference should be made to the factors that the Agency looks at which are set out above. A party filing a request may either use Form 13 or another document. The other parties must be provided with a copy of the request on the same day that it is filed with the Agency.

Agency form: Form 13 – Request

Time limit for requesting an expedited process

The time limit depends on whether it applies to a dispute proceeding (the filing of an answer and reply) or a request under sections 27 to 36.

Dispute proceeding: the request must be filed at the same time that the application is filed with the Agency or, in the case of a respondent within one business day after the date of the notice that the application is complete.

Request under Sections 27 to 36: the person must file the request at the same time that the other request is filed with the Agency or, in the case of a person responding to the other request, within one business day after the day on which they receive a copy of the request.

Annotation: Responding to a request

Contents of a response to a request for an expedited process

Any party to the dispute proceeding may file a detailed response to the request with the Agency and, on the same day, with the other parties.

The party must clearly indicate whether it supports or opposes the request. If the request is opposed, the party must state why it does not want the Agency to grant the request, including the impact this would have on it or on the proceeding.

A person filing a response to a request may either use Form 14 or another document.

Agency form: Form 14 – Response to Request

Time limit for responding to a request for an expedited process

All other parties to the proceeding will have one business day to file a response to a request for an expedited process.

Annotation: Replying to a response to a request

Contents of a reply to a response to a request

A reply to the response may be filed.

A reply can only address issues raised in the response to the request. It must not repeat arguments already made in the request, or raise new issues, arguments or evidence not related to the response to the request.

A reply that raises new issues, arguments or evidence that were not addressed in the response will require the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided For in Rules

Time limit for filing a reply to a response to a request

Any reply to the response must be filed within one business day after the person receives the response, unless otherwise directed by the Agency.

29. Request to Intervene

(1) A person that has a substantial and direct interest in a dispute proceeding may file a request to intervene. The request must be filed within 10 business days after the day on which the person becomes aware of the application or before the close of pleadings, whichever is earlier, and must include the information referred to in Schedule 16.

(2) If the Agency grants the request, it may set limits and conditions on the intervener's participation in the dispute proceeding.

Annotation: Request to intervene

Section 29 sets out how a person applies to become an intervener in a dispute proceeding.

Section 21 sets out the process to be followed after the Agency has accepted a person as an intervener.

For more information, refer to section 21: Intervention

Who is an intervener?

An intervener is a person who has a "substantial and direct interest" in a dispute proceeding, either supports or opposes the application filed by the applicant and has been granted intervener status by the Agency. An intervener may be considered a party to the proceeding if the person asks for this status and it is granted by the Agency.

In a dispute proceeding, an applicant files an application against a specific party – the respondent. However, there may be other persons who have an interest in the application. Intervener status allows those persons to participate in the proceeding and have the Agency consider their views when making its decision.

Contents of the request to intervene in a dispute proceeding

A person requesting to be an intervener in a dispute proceeding before the Agency must demonstrate a "substantial and direct interest" in the application. The request must include the information set out in Schedule 16. A person filing a request may either use Form 16 or another document.

It is the Agency that determines the extent of your participation in the proceeding, based on your stated needs and an assessment of what will be helpful to the Agency in its decision-making process. As such, you should also indicate how you wish to participate in the proceeding. Do you want to fully participate and respond to other parties' pleadings or do you want to participate in a more limited way (e.g. by only filing a written submission)? Do you want to be a party to the proceeding?

If the Agency grants your request to intervene in the proceeding, it will inform you of the extent of your participation.

Agency form: Form 16 – Request to Intervene

Time limit for filing a request to intervene

A request to intervene must be filed within 10 business days after the person becomes aware of the dispute proceeding and, in any event, before the close of pleadings. The parties must be provided with a copy of the request on the same day that it is filed with the Agency. The Agency's website contains information about all dispute applications before the Agency for adjudication. This information will help you decide whether you want to intervene and it will provide information about the status of the file, including when pleadings are expected to close or if they are closed already.

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

If a person just becomes aware of an application and wishes to intervene but pleadings have already closed, the person may make a request under section 30 of the Dispute Adjudication Rules to permit the late filing. In exceptional circumstances, where the relevance and importance of the person's evidence to the Agency outweighs the prejudice or harm in delaying the proceeding, the Agency may reopen the

pleadings to permit a late intervention.

For more information, refer to:

- Section 26: Close of Pleadings
- Section 30: Request to Extend or Shorten Time Limit
- Appendix A: Agency Contact Information

Intervention goes on the public record

Interventions filed with the Agency are placed on the public record unless:

1. A claim for confidentiality is made at the same time that it is filed; and
2. The Agency determines that the intervention, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

In considering a claim for confidentiality of a document the Agency may reject the claim and place the document on the public record or determine that the information is in whole or in part confidential and grant access only to specific persons/parties on the filing of written undertakings to maintain the confidentiality of the information. In exceptional circumstances the Agency might determine that the document is confidential and cannot be viewed by other parties although it will be taken into consideration by the Agency when making a decision.

An intervener is not automatically a party to the dispute proceedings

Even if a request to intervene is granted by the Agency, the intervener does not become a party to the proceeding unless the Agency names the intervener as a party. This means that an intervener will not be copied on documents filed between the parties unless the Agency accepts them as a party or unless their participation rights include being provided with copies of documents. They will, however, be provided with a copy of the Agency's final decision in the dispute proceeding.

An intervener may be asked to respond to questions or document requests from either the Agency or the parties, regardless of whether or not they are a party.

Having a representative represent you

If a person filing a request to intervene would like to have a representative (other than a lawyer) act on their behalf, a written authorization must be filed with the Agency.

For more information, refer to section 16: Representative Not a Member of the Bar

Agency form: Form 4 – Authorization of Representative

Position statement as an alternative to becoming an intervener

Sometimes a person may have an interest in a dispute proceeding and want their views to be taken into consideration by the Agency. However, they may not have a "substantial and direct interest" in the proceeding and/or may want to limit their participation in the proceeding to simply filing a statement.

A position statement can be filed with the Agency as an alternative to being an intervener. Agency approval is not required to file a position statement.

For more information, refer to section 23: Position Statement

30. Request to Extend or Shorten Time Limit

(1) A person may file a request to extend or shorten a time limit that applies in respect of a dispute proceeding. The request may be filed before or after the end of the time limit and must include the information referred to in Schedule 13.

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Annotation: Request to extend or shorten time limit

Section 30 is used when a person wishes to extend or shorten a time limit in a dispute proceeding that has been established either in the Dispute Adjudication Rules or by the Agency.

For example, a person may have five business days to file a document with the Agency, but if there are factors that they believe would make it impossible to meet the deadline, they may apply to the Agency under this section to extend the time limit.

Contents of the request to extend or shorten time limit

It is the responsibility of the person making the request to demonstrate to the satisfaction of the Agency that the request should be granted. Reasons must be provided for extending or shortening time limits. Reference should be made to the factors that the Agency considers, which are set out below.

The request must include the information set out in Schedule 13. A person filing a request may either use Form 13 or another document.

Agency form: Form 13 – Request

Factors that the Agency may consider

Requests to extend or shorten time limits should refer to the factors appropriate to your request. The following are factors that the Agency may take into account when considering a request:

- The complexity of the matter;
- The impact of the request on other parties;
- The time required to compile the necessary information;
- The difficulty in obtaining the necessary information;
- Whether the party made a serious effort to meet the deadline;
- The period of time since the party first became aware of the matter;
- When the party requested the extension of time;
- The number of extensions already granted;
- The availability of key personnel of parties;
- A reasonable opportunity for parties to comment; and
- Any other factors that may be relevant.

Time limit for filing a request under section 30

Requests to extend a time limit should be made in enough time to permit the party to meet the original deadline if the request to extend the time limit is denied by the Agency. Under exceptional circumstances, the Agency may consider a request filed after the expiry of a time limit provided that the person demonstrates why the request could not have been made before the expiry of the time limit.

Responding to a request to extend or shorten time limit

The response to a request should reference the factors that the Agency may consider (set out above) and must be filed within three business days of the party receiving the request. It must include the information set out in Schedule 14.

A party filing a response to a request may either use Form 14 or another document and the other parties must be provided with a copy of the response to the request on the same day that it is filed with the Agency.

Agency form: Form 14 –Response to Request

Replying to the response to a request to extend or shorten time limit

A reply to the response, if any, must be filed within one business day of the party receiving the response. It should clearly address the issues raised in the response and must not raise any new issues.

A person filing a reply may either use form 15 or another document and the other parties must be provided with a copy of the reply on the same day that it is filed with the Agency.

Agency form: Form 15 – Reply to Response to Request

A reply that raises new issues, arguments or evidence that were not addressed in the response will require the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication

Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to.extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided For in Rules

31. Request for Confidentiality

(1) A person may file a request for confidentiality in respect of a document that they are filing. The request must include the information referred to in Schedule 17 and must be accompanied by, for each document identified as containing confidential information,

(a) one public version of the document from which the confidential information has been redacted; and

(b) one confidential version of the document that identifies the confidential information that has been redacted from the public version of the document and that includes, at the top of each page, the words: "CONTAINS CONFIDENTIAL INFORMATION" in capital letters.

(2) The request for confidentiality and the public version of the document from which the confidential information has been redacted are placed on the Agency's public record. The confidential version of the document is placed on the Agency's confidential record pending a decision of the Agency on the request for confidentiality.

(3) Any party may oppose a request for confidentiality by filing a request for disclosure. The request must be filed within five business days after the day on which they receive a copy of the request for confidentiality and must include the information referred to in Schedule 18.

(4) The person that filed the request for confidentiality may file a response to a request for disclosure. The response must be filed within three business days after the day on which they receive a copy of the request for disclosure and must include the information referred to in Schedule 14.

(5) The Agency may

(a) if the Agency determines that the document is not relevant to the dispute proceeding, decide to not place the document on the Agency's record;

(b) if the Agency determines that the document is relevant to the dispute proceeding and that no specific direct harm would likely result from its disclosure or that any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed, decide to place the document on the Agency's public record; or

(c) if the Agency determines that the document is relevant to the dispute proceeding and that the specific direct harm likely to result from its disclosure justifies confidentiality,

(i) decide to confirm the confidentiality of the document or any part of it and keep the document or part of the document on the Agency's confidential record,

(ii) decide to place a version of the document or any part of it from which the confidential information has been redacted on the Agency's public record,

(iii) decide to keep the document or any part of it on the Agency's confidential record but require that the person requesting confidentiality provide a copy of the document or part of the document in confidence to any party to the dispute proceeding, or to certain of their advisors, experts and representatives, as specified by the Agency, after the person requesting confidentiality has received a signed undertaking of confidentiality from the person to which the copy is to be provided, or

(iv) make any other decision that it considers just and reasonable.

(6) The original copy of the undertaking of confidentiality must be filed with the Agency.

Annotation: Request for confidentiality

The Agency is a quasi-judicial tribunal that follows the "open court principle." This principle guarantees the public's right to know how justice is administered and to have access to decisions rendered by courts and tribunals, except in exceptional cases. That is, the other parties in a dispute proceeding have a fundamental right to know the case being made against them and the documents that the decision-maker will review when making its decision which must be balanced against any specific direct harm the person filing the document alleges will occur if it is disclosed. This means that, upon request, and with limited exceptions, all information filed in a dispute proceeding can be viewed by the public.

In general, all documents filed with or gathered by the Agency in a dispute proceeding, including the names of parties and witnesses, form part of the public record. Parties filing documents with the Agency must also provide the documents to the other parties involved in the dispute proceeding under section 8 of the Dispute Adjudication Rules.

No person may refuse to file a document with the Agency because they believe that it is confidential. If a person believes that a document is confidential, they must make a request for confidentiality under section 31 and the Agency will decide whether the document is confidential. During this process, the document is not placed on the public record.

The Agency may also, without a request for disclosure being made, decide whether a document should be confidential after it provides the parties with a chance to comment on the issue.

Where the Agency finds that the document is not relevant to the dispute proceeding, the document will not form part of the record and will not be taken into consideration by the Agency when making its decision.

Where the Agency finds that the document is relevant to the dispute proceeding, the document will be put

on the public record if the Agency finds that its disclosure will likely cause no specific direct harm, or that any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed.

It should be noted that in some situations documents that have been determined to be confidential by the Agency may have to be disclosed in whole or in part to some or all of the other parties if the Agency determines that not disclosing them to the other parties would be unfair. In this regard, safeguards are put in place to ensure that documents remain confidential, including ensuring that people who will have access to the documents sign confidentiality undertakings in which they promise to maintain the confidentiality of the information that they will have access to in the dispute proceeding.

For more information, refer to:

- Section 7: Filing
- Section 8: Copy to Parties

Contents of a request for confidentiality

The person making a request for confidentiality must file:

1. One **public version** of the document for the public record with the confidential information redacted (or blacked out). This version will go on the Agency's public record.
2. One **confidential version** of the document that contains and identifies the confidential information that has been redacted, or blacked out from the public version, by underlining with a single line the confidential text. The document must be marked "CONTAINS CONFIDENTIAL INFORMATION" on the top of each page. This version will go on the Agency's confidential record pending a final determination by the Agency on its confidentiality.
3. A **request for confidentiality** containing the information contained in Schedule 17, which will be placed on the public record. The request for confidentiality must address the relevance of the documents to the issue(s) before the Agency, as well as whether the disclosure would cause specific direct harm sufficient enough to outweigh the public interest in having it disclosed. A person filing a request may either use Form 17 or another document.

The request for confidentiality and the public version of the document must also be provided to the parties at the same time that they are filed with the Agency. A person filing a request for confidentiality may either use Form 17 or another document.

In the past, the Agency has indicated that vague claims of unspecified harm are not sufficient when making a request.

Related decision: Decision No. LET-P-A-67-2011

Agency form: Form 17– Request for Confidentiality

Party opposing a request for confidentiality

A party may oppose a request for confidentiality of a document by filing a written request for disclosure within five business days after receiving the request for confidentiality.

The request for disclosure should address the relevance of the document to the issue(s) before the Agency, as well as why the document is required to be disclosed or must be seen by the party, including

the public interest in its disclosure. The request for disclosure must include the information set out in Schedule 18. . A party filing a request for disclosure may either use Form 18 or another document and the other parties must be provided with a copy of the request for disclosure on the same day that it is filed with the Agency.

Agency form: Form 18 – Request for Disclosure

Person making the request for confidentiality may respond

The person making the request for confidentiality may respond to the request for disclosure. The response must include the information set out in Schedule 14. A person filing the response may either use Form 14 or another document and the other parties must be provided with a copy of the request for disclosure on the same day that it is filed with the Agency.

The response must be filed within three business days after receiving the request for disclosure.

The response can only address the issues raised in the request for disclosure.

Agency form: Form 14 –Response to Request

If the document is determined to be not relevant

If the Agency determines that a document is not relevant to a dispute proceeding it will not be placed on the record and will not be taken into consideration by the Agency when making its decision on the matter before it.

If the document is relevant but the Agency determines that it is not confidential

If the Agency determines that a document is relevant and not confidential then it is put on the Agency's public record and will be taken into consideration by the Agency when making its decision on the matter before it.

If the document is determined to be confidential

If the Agency determines that the document is relevant and confidential, the Agency may :

- Order that the document be kept in confidence and not be placed on the public record;
- Order that a version or part of the document be placed on the public record from which the confidential information has been redacted (or blacked out);
- Order that the document (or any part of it) not be placed on the public record, but that it be provided in confidence to any of the other parties to the proceeding upon receipt of a signed confidentiality undertaking; or
- Make any other decision that it considers just and reasonable.

When a person makes a claim for confidentiality for a document and the Agency has ruled that it is confidential, the confidential document:

- Will be placed on a confidential record;
- Will be considered by the Agency in its decision-making process;
- Will not be made available to the public; and
- May be provided to the other parties or to some of them if the Agency finds that they require access to the document to make their case. Usually the person to receive the document must file a signed confidentiality undertaking before receiving the document.

The original copy of the undertaking must be filed with the Agency.

32. Request for Agency to Require Party to Respond

(1) A party that has given notice under subsection 24(1) may, if they are not satisfied with the response to the notice or if they wish to contest an objection to their request, file a request to require the party to which the notice was directed to provide a complete response. The request must be filed within two business days after the day on which they receive a copy of the response to the notice or the objection, as the case may be, and must include the information referred to in Schedule 13.

(2) The Agency may do any of the following:

(a) require that a question be answered in full or in part;

(b) require that a document be provided;

(c) require that a party submit secondary evidence of the contents of a document;

(d) require that a party produce a document for inspection only;

(e) deny the request in whole or in part.

Annotation: Request for Agency to require a party to provide a complete response

Request

Under section 24 of the Dispute Adjudication Rules, a party can give notice to another party to answer questions or produce documents.

If the party asking questions or requesting documents is satisfied with the response received, then this part of the dispute proceeding concludes. The information that was gathered goes on the public record or the confidential record (if the Agency determines that the information is confidential) and the dispute proceeding continues.

However, if a party is not satisfied with the response to its document request or to the answers provided to its questions, or if it opposes an objection to producing the documents or answering the questions, it may file a request under section 32 of the Dispute Adjudication Rules for an Agency decision on the matter. For example, the party who gave notice may oppose the objection(s) made to respond to questions or produce documents.

Time limit

The request must be made within two business days after receiving the response to the document request or questions.

Content of the request

Justification must be provided for each question or document request where the party is not satisfied with the completeness of the answer or where an objection was made. The request must include the information set out in Schedule 13. A person filing a request may either use Form 13 or another document and the other parties must be provided with a copy of the request on the same day that it is filed with the Agency.

Agency form: Form 13 – Request

Relief

The Agency may

a. Require answering of a question in whole or in part
b. Require production of a document
c. Require production of secondary evidence of the content of a document
d. Require that a document be provided for inspection only
e. Deny the request in whole or in part

Responses and documents go on the public record

Any information or documents gathered under section 32 of the Dispute Adjudication Rules are placed on the public record unless:

- A claim for confidentiality is made at the same time that they are filed or gathered; and
- The Agency determines that the response, or parts of it, are confidential.

For more information, refer to:

- Section 7: Filing
- Section 31: Request for Confidentiality

33. Request to Amend Documents

(1) A person may, before the close of pleadings, file a request to make a substantive amendment to a previously filed document. The request must include the information referred to in Schedule 13 and a copy of the amended document that the person proposes to file.

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include

(a) the information referred to in Schedule 14; and

(b) a description of any prejudice that would be caused to the party if the request were granted including, if applicable, an explanation of how the proposed amendments would hinder or delay the fair conduct of the dispute proceeding.

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

(5) The Agency may

(a) deny the request; or

(b) approve the request in whole or in part and, if the Agency considers it just and reasonable to do so, provide parties that are adverse in interest with an opportunity to respond to the amended document.

Annotation: Request to amend document

Types of amendments

There are two types of amendments or changes that can be made to documents: substantive and non-substantive.

Substantive amendments: A substantive amendment would have a direct impact on the matter in dispute. Examples include an amendment to the names of the persons involved in the dispute proceeding or information being added or taken out of a document such as an expert's report.

Any substantive amendment to a document will need to be approved by the Agency.

Non-substantive amendments:

Some examples of non-substantive amendments are:

- Correction of spelling of names and places; and
- Dates (if they have no substantive implications).

A request under the Dispute Adjudication Rules is not required to make a non-substantive amendment to a document.

The person must file a new copy of the document which clearly identifies the amendment being made by:

- Underlining any new text and striking out (or drawing a line through) any deleted text; and
- Adding "AMENDED" at the top right hand corner of the first page of the document.

Where a person submits a non-substantive amendment, but the Agency considers it to be a substantive amendment, the person will be notified of the requirement to follow the procedure for substantive

amendments in subsection 33(1).

For more information, refer to section 14: Amended Documents

Time Limit for making a substantive amendment to a document

The request should be made as soon as the person learns of the change and in any event it must be made before pleadings close. Any delay in making the amendment may result in the request being denied, particularly if prejudice or harm will be caused to the other parties.

Contents of a request to make a substantive amendment

A party that wants to make a substantive amendment to a document must file a request with the Agency to explain the change and why it needs to be made. The request must include the information set out in Schedule 13. A person filing a request may either use Form 13 or another document and the other parties must be provided with a copy of the request on the same day that it is filed with the Agency.

The person must file a new copy of the document that clearly identifies the amendment being made by:

- Underlining any new text and striking out (or drawing a line through) any deleted text; and
- Adding "AMENDED" at the top right hand corner of the first page of the document.

For more information, refer to section 14: Amended Documents

Agency form: Form 13 – Request

Response to a request to make a substantive amendment

A party may respond to a request to amend a document.

Any party opposing the request must include a description of any prejudice or harm that would be caused to the party if the request were granted, and, if applicable, whether permitting the amendment will hinder or delay the fair conduct of the proceeding. The response must include the information set out in Schedule 14. A person filing a response to a request may either use Form 14 or another document and the other parties must be provided with a copy of the response to the request on the same day that it is filed with the Agency.

The response must be filed within three business days after the party receives a copy of the request.

Agency form: Form 14 – Response to Request

Replying to the response to a request to amend a document

A reply to the response to a request to amend a document, if any, must be filed within one business day of the party receiving the response. It should clearly address the issues raised in the response and must not raise any new issues.

A person filing a reply may either use form 15 or another document and the other parties must be provided with a copy of the reply on the same day that it is filed with the Agency.

Agency form: Form 15 –Reply to Response to Request

A reply that raises new issues, arguments or evidence that were not addressed in the response will require the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten Time Limit
- Section 34: request to file document whose filing is not otherwise provided for in rules

Outcome of a request to make a substantive amendment

After receiving a request to amend a document, the Agency may:

- Deny the request; or
- Approve the request, in whole or in part.

If the Agency approves the request, it may provide parties adverse in interest with the opportunity to respond to the amended document and will set out the process to be followed and the time limits to be met in a decision to the parties.

34. Request to File Document Whose Filing is not Otherwise Provided For in Rules

(1) A person may file a request to file a document whose filing is not otherwise provided for in these Rules. The request must include the information referred to in Schedule 13 and a copy of the document that the person proposes to file.

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include

(a) the information referred to in Schedule 14; and

(b) a description of any prejudice that would be caused to the party if the request were granted including, if applicable, an explanation of how the proposed filing would hinder or delay the fair conduct of the dispute proceeding.

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

(5) The Agency may

(a) deny the request; or

(b) approve the request and, if pleadings are closed and if the Agency considers it just and reasonable to do so, reopen pleadings to provide the other parties with an opportunity to comment on the document.

Annotation: Request to file document whose filing is not otherwise provided for in Rules

This section applies where a person seeks to file a document that is not identified in the Dispute Adjudication Rules or that the Agency has not required to be filed.

A request must be made and approved by the Agency. Without this approval, the documents will not form part of the record and will not be considered by the Agency when making its final decision.

For more information, refer to section 12: Filing After Time Limit

Content of a request to file document whose filing is not otherwise provided for in Rules

In their request the person must include the information referred to in Schedule 13 as well as a copy of the document that the person proposes to file. A person filing a request may either use Form 13 or another document and the other parties must be provided with a copy of the request on the same day as it is filed with the Agency.

The person making the request is responsible for demonstrating that the document should be accepted and form part of the record. In making a request the person should refer to the following factors (whichever are applicable) which the Agency may take into account:

- Was the document available before pleadings were closed or before the expiry of the time limit?
- Could the document have been obtained with reasonable effort (due diligence) before pleadings closed?
- Is the document relevant and necessary to the matter?
- Will the document advance the proceedings or assist the Agency in making its decision?
- Should the document be allowed on the record to avoid a miscarriage of justice – for instance, to correct an error in the record?
- Would the late filing of the new document allow a party to split or reargue their case?
- Will the other party suffer prejudice or harm?

Agency form: Form 13 – Request

Response to a request to file document whose filing is not otherwise provided for in Rules

A party may respond to a request to file documents whose filing is not otherwise provided for in the Dispute Adjudication Rules.

Any party opposing the request must include a description of any prejudice or harm that would be caused to the party if the request were granted, including, if applicable, whether permitting the request will hinder or delay the fair conduct of the proceeding. The response must also include the information set out in Schedule 14. A party filing a response to a request may either use Form 14 or another document and the other parties must be provided with a copy of the response on the same day that it is filed with the Agency.

The response must be filed within three business days after the party receives a copy of the request.

Agency form: Form 14 – Response to Request

Replying to the response to a request to file a document whose filing is not otherwise provided for in Rules

A reply to the response, if any, must be filed within one business day of the party receiving the response. It should clearly address the issues raised in the response and must not raise any new issues. A person filing a response to a request may either use form 15 or another document and the other parties must be provided with a copy of the response on the same day that it is filed with the Agency.

Agency form: Form 15 – Reply to Response to Request

A reply that raises new issues, arguments or evidence that were not addressed in the response will require the person filing the reply to make a request to the Agency under section 34 of the Dispute Adjudication Rules to have the document accepted by the Agency. Without Agency approval, the reply will not form part of the record and will not be considered by the Agency when making its final decision. The party is free to submit a proper reply, however, if the time limit for the filing of the reply has passed, the party will also have to obtain approval to do so by filing a request to extend the deadline under section 30.

For more information, refer to

- Section 30: Request to Extend or Shorten a Time Limit
- Section 34: Request to File Document Whose Filing is Not Otherwise Provided For in Rules

Outcome of a request to file document whose filing is not otherwise provided for in Rules

After receiving a request to file documents after a time limit, the Agency may:

- Deny the request; or
- Approve the request, in whole or in part.

If the Agency approves the request, it may provide parties adverse in interest with the opportunity to respond to the documents and will set out the process to be followed and the time limits to be met in a decision to the parties.

For more information, refer to section 12: Filing After Time Limit

35. Request to Withdraw Document

(1) Subject to section 36, a person may file a request to withdraw any document that they filed in a dispute proceeding. The request must be filed before the close of pleadings and must include the information referred to in Schedule 13.

(2) If the Agency grants the request, it may impose any terms and conditions on the withdrawal that it considers just and reasonable, including the awarding of costs.

Annotation: Request to withdraw document

A party may request to withdraw any document filed in a dispute proceeding before the Agency. The request must include the information set out in Schedule 13. A person filing a request may either use Form 13 or another document. This request must be made before the close of pleadings and the other parties must be provided with a copy of the request on the same day as it is filed with the Agency.

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

The parties will be notified as to the Agency's decision on the matter and, if it approves the withdrawal, any terms and conditions the Agency may determine just and reasonable, such as the applicant paying the costs of another party.

For example, the Agency could require the applicant to pay the costs paid by the respondent in having an expert report prepared to address a document that was filed by the applicant if the applicant later decides to withdraw that document.

For more information, refer to:

- Section 26: Close of Pleadings
- Appendix A: Agency Contact Information

Agency form: Form 13 – Request

36. Request to Withdraw Application

(1) An applicant may file a request to withdraw their application. The request must be filed before a final decision is made by the Agency in respect of the application and must include the information referred to in Schedule 13.

(2) If the Agency grants the request, it may impose any terms and conditions on the withdrawal that it considers just and reasonable, including the awarding of costs.

Annotation: Request to withdraw application

An applicant may request to withdraw their application and discontinue their dispute proceeding before the Agency. This request must be made before the Agency issues its final decision. All other parties must be provided with a copy of the request on the same day that it is filed with the Agency.

The request must include the information set out in Schedule 13. A person filing a request may either use Form 13 or another document. The parties will be notified as to the Agency's decision on the matter and, if it approves the withdrawal, any terms and conditions that the Agency may determine just and reasonable, such as the applicant paying the costs of another party. For example, the Agency could require the applicant to pay the costs incurred by the respondent for that part of the dispute proceeding where the respondent incurred costs preparing expert reports to respond to the application.

Agency form: Form 13 – Request

Dispute Proceedings: Case Management

37. Formulation of Issues

The Agency may formulate the issues to be considered in a dispute proceeding in any of the following circumstances:

(1) the documents filed do not clearly identify the issues;
(2) the formulation would assist in the conduct of the dispute proceeding;
(3) the formulation would assist the parties to participate more effectively in the dispute proceeding.

Annotation: Formulation of issues

It is essential – for both the Agency and the parties – to have the issues in the dispute proceeding clearly identified.

If the submissions filed in a dispute proceeding do not clearly identify the issues, the Agency may, where appropriate, identify or clarify the issues. This will help the Agency conduct an efficient dispute proceeding and identify areas where further information may be required. It will also give the parties a better understanding of the issues before the Agency and allow for clearer and more directed responses.

In some situations, the Agency might require the parties to attend a conference by means of a telephone conference call or by personal attendance in order to identify or clarify the issues.

For more information on conferences, refer to section 40: Conference

An application may be considered incomplete if the applicant has not clearly identified the issues. In these cases, the applicant will be given 20 business days to complete their application.

For more information, refer to section 18: Application

38. Preliminary Determination

The Agency may, at the request of a party, determine that an issue should be decided as a preliminary question.

Annotation: Preliminary determination of issues

In some circumstances, the Agency may make a decision on a certain matter at the outset, before continuing with the dispute proceeding. These matters are often referred to as "preliminary matters". For example, where there is a serious question about whether the party has standing to appear before the Agency, the Agency will usually consider that issue as a preliminary matter and issue a decision on the preliminary issue before starting to gather pleadings and information on the merits of the application.

How to make a request for the preliminary determination of an issue

To request that an issue be determined as a preliminary matter, the process for making a general request to the Agency should be followed.

For more information, refer to: section 27: Requests – general request

Agency form: Form 13 – Request

Staying the proceeding

The Agency may stay the dispute proceeding if the preliminary matter is a central issue, such as the Agency's jurisdiction to consider the issue(s) raised in the application.

This means that the dispute proceeding will stop while the Agency considers the preliminary matter. The Agency will not usually address any other issues raised in the dispute proceeding during the stay.

For more information, refer to section 41: stay of proceeding, order or decision

39. Joining of Applications

The Agency may, at the request of a party, join two or more applications and consider them together in one dispute proceeding to provide for a more efficient and effective process.

Annotation: Joining of applications

The Agency may, where appropriate, decide to join applications filed by different parties and consider them together in one dispute proceeding.

For example, this could occur if one or more applications raise similar issues, whether they are against the same respondents or different respondents. Note that the information contained in the various applications would be provided to all parties, subject to any request for confidentiality being made and a ruling from the Agency that information is confidential and should not be circulated.

How to make a request for the joining of applications

To request the joining of applications, the process for making a general request to the Agency should be followed.

For more information, refer to section 27: Requests – General Request

Agency form: Form 13 – Request

40. Conference

(1) The Agency may, at the request of a party, require the parties to attend a conference by a means of telecommunication or by personal attendance for the purpose of

(a) encouraging settlement of the dispute;

(b) formulating, clarifying or simplifying the issues;

(c) determining the terms of amendment of any document;

(d) obtaining the admission of certain facts or determining whether the verification of those facts by affidavit should be required;

(e) establishing the procedure to be followed in the dispute proceeding;

(f) providing for the exchange by the parties of documents proposed to be submitted;

(g) establishing a process for the identification and treatment of confidential information;

(h) discussing the appointment of experts; and

(i) resolving any other issues to provide for a more efficient and effective process.

(2) The parties may be required to file written submissions on any issue that is discussed at the conference.

(3) Minutes are prepared in respect of the conference and placed on the Agency's record.

(4) The Agency may issue a decision or direction on any issue discussed at the conference without further submissions from the parties.

Annotation: Conference

A conference is a meeting to discuss and resolve procedural matters or other issues. It can be held in person, by teleconference (telephone) or by web conference.

A conference may be conducted by Agency staff, counsel or the Agency Panel assigned to the case.

The result of a conference is usually a procedural direction, which is a decision issued by the Agency setting out specific procedural requirements and instructions to the parties for the processing of the application. For example, a procedural direction might direct the parties to file specific information and if some of that information is confidential, it will also set out the rules as to how it is to be treated and who can have access to that information and under what terms and conditions.

Where the Agency and the parties agree on procedural matters, this agreement will be reflected in the procedural direction. Where the parties do not agree, the Agency will decide the matter based on the positions of the parties, as set out either in the minutes of the meeting and/or any written submissions made by the parties. Note that parties will have the opportunity to comment on the minutes.

Minutes are prepared for all conferences, circulated to the parties to ensure accuracy and placed on the Agency's record.

How to make a request for a conference

To request a conference, the process for making a general request to the Agency should be followed.

For more information, refer to section 27: Requests – General Request

Agency form: Form 13 – Request

41. Stay of Proceeding, Order or Decision

(1) The Agency may, at the request of a party, stay a dispute proceeding in any of the following circumstances:

(a) a decision is pending on a preliminary question in respect of the dispute proceeding;

(b) a decision is pending in another proceeding or before any court in respect of an issue that is the same as or substantially similar to one raised in the dispute proceeding;

(c) a party to the dispute proceeding has not complied with a requirement of these Rules or with a procedural direction issued by the Agency;

(d) the Agency considers it just and reasonable to do so.

(2) The Agency may, at the request of a party, stay a decision or order of the Agency in any of the following circumstances:

(a) a review or re-hearing is being considered by the Agency under section 32 of the Act;

(b) a review is being considered by the Governor in Council under section 40 of the Act;

(c) an application for leave to appeal is made to the Federal Court of Appeal under section 41 of the Act;

(d) the Agency considers it just and reasonable to do so.

(3) In staying a dispute proceeding or a decision or order, the Agency may impose any terms and conditions that it considers to be just and reasonable.

Annotation: Stay of proceeding, order or decision

What is a stay?

When the Agency stays a dispute proceeding, it means that the proceeding is stopped for a period of time. The dispute proceeding may be restarted at a later date. It means that the Agency is stopping the

proceeding while another matter is being decided that has relevance to the matter that is before the Agency.

When the Agency stays a decision or order, it means that it will not enforce compliance with that Agency decision or order for the duration of the stay.

The Agency may decide on its own or at the request of another party to stay a dispute proceeding, or a decision or order of the Agency.

The Agency is much more likely to stay a proceeding than it is to stay a decision or order. The Agency's position is that its decisions and orders are properly made and final and binding unless and until they are overturned by either an appeal court or the Governor-in-Council. As such, the Agency's policy is to ensure compliance with its decisions and orders regardless of whether reviews or appeals are pursued. Should a respondent against whom a decision or an order is made wish to obtain a stay of the decision or order pending a review or appeal, it is the responsibility of that party to either seek a stay of the decision or order from the Agency or from the appeal court in the context of the appeal proceedings.

The Agency determines on a case-by-case basis whether it is appropriate to order a stay.

How to make a request for a stay

To request a stay of a proceeding, order, or decision, the process for general requests under section 27 must be followed.

A stay can delay either the issuance of the final decision or the implementation of any relief/remedies that were ordered by the Agency. As a result, the party making the request must clearly demonstrate to the Agency that the stay is justified.

In deciding whether to grant a stay, the Agency uses a three-part test that has been established by the courts (see below). A party, when providing reasons for the request for a stay, must provide submissions on all three parts of the test for a stay.

The Agency may also provide other parties to the dispute proceeding with the opportunity to comment on the request for a stay and the party requesting the stay will have an opportunity to reply to any responses received.

For more information, refer to section 27: Requests – General Request

Agency form: Form 13 –Request

Three-part test for a stay

To decide whether a stay should be granted, the Agency is guided by the three-part test in the Supreme Court of Canada decision *RJR - Macdonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311 (RJR Macdonald). The Agency must determine whether:

1. There is a serious question to be tried based on a preliminary assessment of the merits of the case;
2. The party seeking the stay would suffer irreparable harm if the stay wasn't granted; and,
3. The party seeking the stay will suffer the greater harm if the stay is refused than the other

party(ies) if the stay is granted (referred to as the balance of inconvenience to the parties).

Related decisions:

- Decision No. LET-R-267-1999
- Decision No. LET-R-174-2000
- Decision No. LET-AT-A-124-2013

The parties will be notified as to the Agency's decision on the matter and, if it approves the stay, any terms and conditions the Agency may determine appropriate, such as one party paying the costs of another party.

42. Notice of Intention to Dismiss Application

(1) The Agency may, by notice to the applicant and before considering the issues raised in the application, require that the applicant justify why the Agency should not dismiss the application if the Agency is of the preliminary view that

(a) the Agency does not have jurisdiction over the subject matter of the application;

(b) the dispute proceeding would constitute an abuse of process; or

(c) the application contains a fundamental defect.

(2) The applicant must respond to the notice within 10 business days after the date of the notice, failing which the application may be dismissed without further notice.

(3) The Agency may provide any other party with an opportunity to comment on whether or not the application should be dismissed.

Annotation: Notice of intention to dismiss application

In certain cases it seems apparent that the Agency does not have jurisdiction over a matter, or that the application does not properly raise an issue, or that the issue is irrelevant or has already been decided. In these cases, the Agency may express a preliminary view that the application should be dismissed but it will give the applicant an opportunity to address the Agency's preliminary view and justify why the application should not be dismissed. In other words, the applicant has the opportunity to change the Agency's initial view of the matter.

If the applicant does not convince the Agency to change its preliminary view, the application will be dismissed, which means that it will not be considered by the Agency.

Time limit for the applicant to respond to the Agency's preliminary view

The applicant must file a response to the Agency's preliminary view within 10 business days after being given notice of the Agency's preliminary view.

If the applicant does not respond within that time limit, the application will be dismissed without further

notice.

Time limit for other parties to respond to the preliminary view

The Agency might provide other parties with an opportunity to comment on whether the application should be dismissed. The Agency will establish time limits for the filling of submissions by the other parties and will communicate this information in a decision.

Impact of dismissal

If an application is dismissed under this provision, this is a substantive, final decision by the Agency and the applicant will not be able to pursue the same matter before the Agency again.

This is different from a situation where an applicant is informed that their incomplete application is being closed as they have not provided the missing information. In this case, the Agency has not considered the application, the file is simply closed and the applicant is free to pursue the matter in the future.

For more information, refer to section 18: Application

Three situations where the Agency can dismiss an application

1. **The Agency does not have jurisdiction over the subject matter of the application:** The Agency can only issue decisions on matters within its mandate, as set out in the *Canada Transportation Act* and other related legislation or regulations. In cases where the matter is clearly outside the Agency's mandate, the applicant will be notified and the application will be returned.
2. **Abuse of proceedings:** An abuse of proceedings could include cases where:
    - The supporting reasons are frivolous or vexatious;
    - Pleadings were initiated with the intent to cause distress or harm to others;
    - A proceeding was initiated for the purpose of delay; or,
    - A proceeding was an unjustified attempt to have a matter redetermined where it was already resolved in an earlier proceeding.
3. **Fundamental defect:** This includes situations where an issue is irrelevant or has already been determined.

43. Transitional Provision

The *Canadian Transportation Agency General Rules*, as they read immediately before the coming into force of these Rules, continue to apply to all proceedings before the Agency that were commenced before the coming into force of these Rules except proceedings in respect of which the application filed before that time was not complete.

The *Canadian Transportation Agency General Rules* (the Rules that existed before the coming into force of these Dispute Adjudication Rules) will continue to apply to all applications that are accepted as complete before June 4, 2014. If an application is filed before June 4 but is not accepted as complete until June 4 or after, these new Dispute Adjudication Rules will apply once the application has been accepted as complete.

44. Repeal

The *Canadian Transportation Agency General Rules*[1] are repealed.

45. Coming into Force

These Rules come into force on June 4, 2014, but if they are published after that day, they come into force on the day on which they are published.

List of Schedules

Schedule 1: Translation — Required Information

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. A list of the translated documents that indicates, for each document, the language of the original document.
4. An affidavit of the translator that includes
    a. the translator's name and the city or town, the province or state and the country in which the document was translated;
    b. an attestation that the translator has translated the document in question and that the translation is, to the translator's knowledge, true, accurate and complete;
    c. the translator's signature and the date on which and the place at which the affidavit was signed; and
    d. the signature and the official seal of the person authorized to take affidavits and the date on which and the place at which the affidavit was made.
5. The name of each party to which a copy of the documents is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 1: Translation — Required Information

Schedule 2: Verification by Affidavit

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. An affidavit that includes

    a. the name of the person making the affidavit and the city or town, the province or state and the country in which it was made;

    b. a full description of the information being verified, a list of any supporting documents and a copy of each of those documents marked as appendices;

    c. an attestation that the person has personal knowledge of the information and that the information is, to their knowledge, true, accurate and complete or, if the person does not have personal knowledge of the information, a statement indicating the source of the information and an attestation that the information is, to their knowledge, true, accurate and complete;

    d. the person's signature and the date of signing; and

    e. the signature and the official seal of a person authorized to take affidavits and the date on which and the place at which the affidavit was made.

4. The name of each party to which a copy of the verification is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 2: Verification by Affidavit

Schedule 3: Verification by Witnessed Statement

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. A statement before a witness that includes

    a. the name of the person making the statement and the city or town and the province or state and the country in which it was made;

    b. a full description of the information being verified, a list of any supporting documents and a copy of each of those documents marked as appendices;

    c. an attestation that the person has personal knowledge of the information and that the information is, to their knowledge, true, accurate and complete or, if the person does not have personal knowledge of the information, a statement indicating the source of the information and an attestation that the information is, to their knowledge, true, accurate and complete;

    d. the person's signature and the date of signing; and

e. the name and signature of the person witnessing the statement and the date on which and place at which the statement was signed.

4. The name of each party to which a copy of the verification is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 3: Verification by Witnessed Statement

Schedule 4: Authorization of Representative

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person giving the authorization and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. The name of the person's representative and the representative's complete address, telephone number and, if applicable, email address and facsimile number.
4. A statement, signed and dated by the representative, indicating that the representative has agreed to act on behalf of the person.
5. A statement, signed and dated by the person giving the authorization, indicating that they authorize the representative to act on their behalf for the purposes of the dispute proceeding.
6. The name of each party to which a copy of the authorization is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 4: Authorization of Representative

Schedule 5: Application

1. The applicant's name, complete address, telephone number and, if applicable, email address and facsimile number.
2. If the applicant is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.
3. If the applicant is represented by a person that is not a member of the bar of a province, a statement to that effect.
4. The respondent's name and, if known, their complete address, telephone number and, if applicable, email address and facsimile number.
5. The details of the application that include

    a. any legislative provisions that the applicant relies on;

    b. a clear statement of the issues;

    c. a full description of the facts;

    d. the relief claimed; and

    e. the arguments in support of the application.

6. A list of any documents submitted in support of the application and a copy of each of those documents.

Form 5: Application

Schedule 6: Answer to Application

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The respondent's name, complete address, telephone number and, if applicable, email address and facsimile number.
3. If the respondent is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.
4. If the respondent is represented by a person that is not a member of the bar of a province, a statement to that effect.
5. The details of the answer that include

    a. a statement that sets out the elements that the respondent agrees with or disagrees with in the application;

    b. a full description of the facts; and

    c. the arguments in support of the answer.

6. A list of any documents submitted in support of the answer and a copy of each of those documents.
7. The name of each party to which a copy of the answer is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 6: Answer to Application

Schedule 7: Reply to Answer

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the reply.
3. The details of the reply that include

    a. a statement that sets out the elements that the applicant agrees with or disagrees with in the answer; and

    b. the arguments in support of the reply.

4. A list of any documents submitted in support of the reply and a copy of each of those documents.
5. The name of each party to which a copy of the reply is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 7: Reply to Answer

Schedule 8: Intervention

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The intervener's name, complete address, telephone number and, if applicable, email address and facsimile number.
3. If the intervener is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.
4. If the intervener is represented by a person that is not a member of the bar of a province, a statement to that effect.
5. The details of the intervention that include

    a. a statement that indicates the day on which the intervener became aware of the application;

    b. a statement that indicates whether the intervener supports the applicant's position, the respondent's position or neither position; and

    c. the information that the intervener would like the Agency to consider.

6. A list of any documents submitted in support of the intervention and a copy of each of those documents.
7. The name of each party to which a copy of the intervention is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 8: Intervention

Schedule 9: Response to Intervention

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the response.
3. The details of the response that include

    a. a statement that sets out the elements that the person agrees with or disagrees with in the intervention; and

    b. the arguments in support of the response.

4. A list of any documents submitted in support of the response and a copy of each of those documents.
5. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 9: Response to Intervention

Schedule 10: Position Statement

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the position statement or, if the person is represented, the name of the person on behalf of which the position statement is being filed, and the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. If the person is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.
4. If the person is represented by a person that is not a member of the bar of a province, a statement to that effect.
5. The details of the position statement that include

    a. a statement that indicates whether the person supports the applicant's position, the respondent's position or neither position; and

    b. the information that the person would like the Agency to consider.

6. A list of any documents submitted in support of the position statement and a copy of each of those documents.

Form 10: Position Statement

Schedule 11: Written Questions or Request for Documents

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the written questions or the request for documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. The name of the party to which the written questions or the request for documents is directed.
4. A list of the written questions or of the documents requested, as the case may be, and an explanation of their relevance to the dispute proceeding.
5. A list of any documents submitted in support of the written questions or the request for documents and a copy of each of those documents.
6. The name of each party to which a copy of the written questions or the request for documents is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 11: Written Questions or Request for Documents

Schedule 12: Response to Written Questions or Request for Documents

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the response to the written questions or the request for documents.
3. A list of the documents produced.
4. A list of any documents submitted in support of the response and a copy of each of those documents.

5. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 12: Response to Written Questions or Request for Documents

Schedule 13: Request

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the request and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. The details of the request that include

    a. the relief claimed;

    b. a summary of the facts; and

    c. the arguments in support of the request.

4. A list of any documents submitted in support of the request and a copy of each of those documents.
5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 13: Request

Schedule 14: Response to Request

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the response.
3. An identification of the request to which the person is responding, including the name of the person that filed the request.
4. The details of the response that include

    a. a statement that sets out the elements that the person agrees with or disagrees with in the request; and

    b. the arguments in support of the response.

5. A list of any documents submitted in support of the response and a copy of each of those documents.
6. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 14: Response to Request

Schedule 15: Reply to Response to Request

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the reply.
3. An identification of the response to which the person is replying, including the name of the person that filed the response.
4. The details of the reply that include

    a. a statement that sets out the elements that the person agrees with or disagrees with in the response; and

    b. the arguments in support of the reply.

5. A list of any documents submitted in support of the reply and a copy of each of those documents.
6. The name of each party to which a copy of the reply is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 15: Reply to Response to Request

Schedule 16: Request to Intervene

1. The applicant's name, the respondent's name and the file number assigned by the Agency
2. The name of the person that wishes to intervene in the dispute proceeding, their complete address, telephone number and, if applicable, email address and facsimile number.
3. If the person is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.
4. If the person is represented by a person that is not a member of the bar of a province, a statement to that effect.
5. The details of the request that include

    a. a demonstration of the person's substantial and direct interest in the dispute proceeding;

    b. a statement specifying the date on which the person became aware of the application;

    c. a statement that indicates whether the person supports the applicant's position, the respondent's position or neither position; and

    d. a statement of the participation rights that the person wishes to be granted in the dispute proceeding.

6. A list of any documents submitted in support of the request and a copy of each of those documents.
7. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Schedule 17: Request for Confidentiality

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the request and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.
3. The details of the request that include

    a. an identification of the document or the portion of the document that contains confidential information;

    b. a list of the parties, if any, with which the person would be willing to share the document; and

    c. the arguments in support of the request, including an explanation of the relevance of the document to the dispute proceeding and a description of the specific direct harm that could result from the disclosure of the confidential information.

4. A list of any documents submitted in support of the request and a copy of each of those documents.
5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 17: Request for Confidentiality

Schedule 18: Request for Disclosure

1. The applicant's name, the respondent's name and the file number assigned by the Agency.
2. The name of the person filing the request.
3. The details of the request that include

    a. an identification of the documents for which the party is requesting disclosure;

    b. a list of the individuals who need access to the documents; and

    c. an explanation as to the relevance of the documents for which disclosure is being requested and the public interest in its disclosure.

4. A list of any documents submitted in support of the request and a copy of each of those documents.
5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

Form 18: Request for Disclosure

Appendix A: Agency Contact Information

Documents must be sent to the Secretary of the Canadian Transportation Agency.

By mail
Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

By courier
Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec
J8X 4B3

By fax
819-953-5253

By e-mail
secretariat@otc-cta.gc.ca

For further information:

Canadian Transportation Agency
Ottawa, Ontario K1A 0N9
Tel: 1-888-222-2592
TTY: 1-800-669-5575
Web: www.cta.gc.ca
E-mail: info@otc-cta.gc.ca

If you need help determining whether pleadings are closed, please refer to the list of current cases before the Agency.

For more information, refer to section 26: close of pleadings

Notes

Note 1

SOR/2005-35 1

This is **Exhibit "D"** to the Affidavit of Dr. Gábor Lukacs affirmed before me on September 24, 2014

_____

Signature

From Barbara.Cuber@otc-cta.gc.ca Fri Aug 22 12:24:33 2014
Date: Fri, 22 Aug 2014 15:24:25 +0000
From: Barbara Cuber <Barbara.Cuber@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@AirPassengerRights.ca>
Subject: RE: A-357-14 - Gabor Lukacs v. CTA

[The following text is in the "iso-8859-1" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Hello there,

This is to follow up on our conversation of last week. I'm writing to let you know th at the Annotation has been amended to reflect concerns that you raised about the Agen cy's procedures. You can consult the Annotation online and you can now print a pdf ve rsion of it. I've described the location of the amendments below and, for ease of ref erence, I've copied the amended text into this email. Once you've had a chance to rev iew the amendments, please let me know your thoughts on the inclusion of the Annotati on in the Appeal Book. I'm available to discuss further as needed.

1. With respect to the Agency providing reasons for its decisions, the Annotatio n has been amended as follows:

Under section 1, definition of "Dispute Proceeding" under the subheading "Agency Deci sion or Order":

"The Agency's decision or order will contain a summary of the application and other i nformation provided during the pleadings, the Agency's decision, including reasons fo r that decision, and any corrective action it deemed necessary."

And

Under the part entitled "Dispute Proceedings: Requests", under the subheading "Reques ts":

"The Agency will render a decision or order on each request. The decision or order wi ll contain a summary of the request as well as the Agency's conclusions. Where the re quest is contested, the Agency will provide reasons for its decision."

2. With respect to conducting oral hearings, the Annotation has been amended as follows:

Under Section 2: Dispute Proceedings, under the subheading "Rules apply to contested matters":

"Alternatively, the Agency may decide to organize an oral hearing as a means to gathe r and test the information it needs to make its decision. In an oral hearing, the par ties appear before the Agency and make submissions in person. If the proceeding is to be dealt with by way of an oral hearing, then at the time that an oral hearing is ca lled, a pre-hearing conference will typically be held to work out the details of the procedures to be used in that case. These procedures will then be contained in a Proc edural Direction specific to that case. The Rules will continue to apply to disputes that proceed by way of oral hearing subject to the Agency establishing customized pro cedures in any Procedural Direction that may be issued within the proceeding. The Age ncy has established guidelines in relation to one type of oral hearing, the 35-day ad judication process under section 169.43 of the CTA, and is working to establish more general guidelines in relation to all oral hearings."

In addition, under section 40, Conference:

"A conference may be held during any proceeding. However, if the proceeding is to be

dealt with by way of an oral hearing, then at the time that an oral hearing is called , a pre-hearing conference will typically be held to work out the details of the proc edures to be used in that case."

3. With respect to conducting oral cross-examinations, the Annotation has been a mended as follows:

Under sections 15, Verification by Affidavit or by Witnessed Statement, the subheadin g called "Affidavit" and under section 32, Request for Agency to Require Party to Res pond, the subheading called "Request":

"Note that if a party adverse in interest makes a request before the close of pleadin gs and the request is approved by the Agency, they may be permitted to conduct oral c ross-examinations on an affidavit to test the evidence contained in the affidavit. A party may make such a request under section 27 of the Dispute Adjudication Rules."

In addition, under section 24, Written Questions and Production of Documents, under t he subheading "Asking questions or requesting documents of another party":

"The notice to respond to questions or produce documents allows a party to test evide nce or submissions made by another party adverse in interest to them, or to obtain fu rther information in relation to the dispute."

[.]

"Note that if a party adverse in interest makes a request before the close of pleadin gs and the request is approved by the Agency, they may be permitted to conduct oral c ross-examinations on an affidavit to test the evidence contained in the affidavit. A party may make such a request under section 27 of the Dispute Adjudication Rules."

4. With respect to making submissions at the request to intervene stage, the An notation has been amended as follows:

Under section 29, Request to Intervene, under the subheading "Contents of the request to intervene in a dispute proceeding":

"The discretion to allow an intervention lies with the Agency based on the Panel’s as sessment of whether the intervention will bring new information from a different pers pective to the Agency that is relevant and necessary to its decision. As a result, a right of response and reply has not been provided. In exceptional cases, however, the Agency may, upon request filed under section 34 or on its own initiative, provide pa rties who are adverse in interest with the opportunity to respond to such requests, a s well as a right of reply to the person seeking intervener status.

If the request to intervene is approved by the Agency, parties adverse in interest wi ll have an opportunity to respond to the intervention when it is filed."

Sincerely,

Barbara

Barbara Cuber
Avocate / Counsel
téléphone/telephone 819-953-2236 | télécopieur/facsimile 819-953-9269 barbara.cuber@o tc-cta.gc.ca Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Can adian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canad a / Government of Canada

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-----Original Message-----
From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: August-14-14 3:05 PM
To: Barbara Cuber
Subject: RE: A-357-14 - Gabor Lukacs v. CTA

Hi Barbara,

It was nice talking to you over Skype today.

Thank you for the two cases. I will review them before we speak again.

I look forward to hearing you about the amendments to the annotations.

Best wishes,
Gabi

On Thu, 14 Aug 2014, Barbara Cuber wrote:

> Hello,
>
> This is to follow up on our discussion just now.
>
> Here is a link to the Ontario Superior Court of Justice decision to which I referre
d concerning referring to commentary on a rule:
>
> http://www.canlii.org/en/on/onscdc/doc/2013/2013onsc7636/2013onsc7636.
> html?searchUrlHash=AAAAAAAAAAEAFTIwMDcgRkNBIDE5OCAoQ2FuTElJKQAAAAIALi9
> lbi9jYS9mY2EvZG9jLzIwMDcvMjAwN2ZjYTE5OC8yMDA3ZmNhMTk4Lmh0bWwALi9mci9jY
> S9jYWYvZG9jLzIwMDcvMjAwN2NhZjE5OC8yMDA3Y2FmMTk4Lmh0bWwB
>
> The Federal Court considered a commentary to Immigration and Refugee Board rules in
 a judicial review proceeding here:
>
> http://www.canlii.org/en/ca/fct/doc/2004/2004fc150/2004fc150.html?sear
> chUrlHash=AAAAAQA1Y29tbWVudGFyeSAvcyBydWxlcyAmIGZhaXIgbm90ICJwcm9mZXNz
> aW9uYWwgY29uZHVjdCIAAAAAAQ
>
> As promised, I will contact you as soon as the annotation amendments
> are online and we can touch base again about the contents of the
> Appeal Book.
>
> Have a good afternoon.
>
> Sincerely,
>
> Barbara
>
> Barbara Cuber

> Avocate / Counsel
> téléphone/telephone 819-953-2236 | télécopieur/facsimile 819-953-9269
> barbara.cuber@otc-cta.gc.ca Office des transports du Canada | 15, rue
> Eddy, Gatineau QC K1A 0N9 Canadian Transportation Agency | 15 Eddy
> St., Gatineau QC K1A 0N9 Gouvernement du Canada / Government of
> Canada
>
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>
>
> -----Original Message-----
> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
> Gabor Lukacs
> Sent: August-13-14 3:57 PM
> To: Barbara Cuber
> Subject: RE: A-357-14 - Gabor Lukacs v. CTA
>
> Hi Ms. Cuber,
>
> My Skype name is (still) "drlukacs". I look forward to speaking to you tomorrow.
>
> Best wishes,
> Gabor
>
>
>
> On Wed, 13 Aug 2014, Barbara Cuber wrote:
>
>> Hello Dr. Lukacs,
>>
>> Yes that's fine. I think we have your Skype name (or handle?) from
>> our last Skype-conference, but could you provide it to me again, in
>> case our tech people need it?
>>
>> Thanks.
>>
>> Barbara
>>
>> -----Original Message-----
>> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
>> Gabor Lukacs
>> Sent: August-13-14 3:46 PM
>> To: Barbara Cuber
>> Subject: RE: A-357-14 - Gabor Lukacs v. CTA
>>
>> Dear Ms. Cuber,
>>
>> I am already back in Halifax. How about speaking on Skype at 1pm Gatineau's time,
which is 2pm in Halifax?

>>
>> Best wishes,
>> Gabor
>>
>>
>> On Wed, 13 Aug 2014, Barbara Cuber wrote:
>>
>>> Hello Dr. Lukacs,
>>>
>>> Maybe we should discuss this over Skype. I don’t want you to be
>>> rushed or concerned about timing.
>>>
>>> Is there a time tomorrow that works best for you? Afternoon Gatineau
>>> time would be preferable though I’m not sure whether you’re still in
>>> Hungary and therefore only available in the morning, my time.
>>>
>>> Barbara
>>>
>>> -----Original Message-----
>>> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
>>> Gabor Lukacs
>>> Sent: August-13-14 3:01 PM
>>> To: Barbara Cuber
>>> Subject: RE: A-357-14 - Gabor Lukacs v. CTA
>>>
>>> Dear Ms. Cuber,
>>>
>>> Thank you for your message.
>>>
>>> You are quite right: in order to have the matter heard during the November 3-6 si
tting, I would need to have your factum by mid-September.
>>>
>>> The rules themselves provide for 30 days for filing the respondent’s factum, so e
xpediting the process would probably mean reducing that period to 2 weeks, if you wou
ld agree to that. What I would not want to do is to rush to prepare my factum in a ma
tter of few days, and then you taking 30 days to file yours.
>>>
>>> This Friday, I expect to be unavailable, but I could make myself available today
(Wednesday), or tomorrow (Thursday) afternoon, for a Skype-conference.
>>>
>>> Please let me know if this works for you.
>>>
>>> I look forward to hearing from you.
>>>
>>> Best wishes,
>>> Dr. Gabor Lukacs
>>>
>>> On Wed, 13 Aug 2014, Barbara Cuber wrote:
>>>
>>>> Hello Dr. Lukacs,
>>>>
>>>> If you would like to have the Agency’s factum 45 days before the
>>>> scheduled (for
>>>> now) November 3-6 sitting, that would bring my filing date to
>>>> mid-September. I’m willing to aim for that but I would hope to have
>>>> a couple of weeks with your factum. That may not be very convenient
>>>> and I in no way want to rush the process in a way that doesn’t work
>>>> for you. If you prefer, we can just stick to the established time
>>>> lines and I can make alternative arrangements if I can’t make it to the hearing.
>>>>
>>>> Are you available for a Skype-conference this Friday? If so, we can
>>>> discuss this further, along with the contents of the appeal book.

>>>> If you’re free on Friday, name a time.
>>>>
>>>> Sincerely,
>>>>
>>>> Barbara Cuber
>>>> Avocate / Counsel
>>>> téléphone/telephone 819-953-2236 | télécopieur/facsimile
>>>> 819-953-9269 barbara.cuber@otc-cta.gc.ca Office des transports du
>>>> Canada | 15, rue Eddy, Gatineau QC K1A 0N9 Canadian Transportation
>>>> Agency | 15 Eddy St., Gatineau QC K1A 0N9 Gouvernement du Canada /
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>>>>
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>>>> If you receive this message in error, please notify the sender
>>>> immediately and destroy the original message as well as all copies.
>>>> Any use, disclosure or copying of the information is strictly prohibited. Thank
 you.
>>>>
>>>>
>>>> -----Original Message-----
>>>> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
>>>> Gabor Lukacs
>>>> Sent: August-12-14 4:16 PM
>>>> To: Barbara Cuber
>>>> Subject: RE: A-357-14 - Gabor Lukacs v. CTA
>>>>
>>>> Dear Ms. Cuber,
>>>>
>>>> Thank you for your kind message and your cooperation.
>>>>
>>>> I understand that some airlines refuse to transport women in late
>>>> stages of their pregnancy, and that this may be an issue for you. I
>>>> am more than happy to work with you to obtain a hearing date that is suitable fo
r both of us.
>>>>
>>>> Would you like to schedule a Skype-conference to talk about scheduling matters?
>>>>
>>>> Currently, it seems that the Federal Court of Appeal will be
>>>> sitting in Halifax only in September and in early November:
>>>>
>>>> http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fca-caf_eng
>>>> /
>>>> s
>>>> i
>>>> ttings-sea
>>>> nces_eng
>>>>
>>>> Would it be realistic in your opinion to bring the matter to a
>>>> hearing in early November? How long will you need to prepare the
>>>> Agency’s factum? (On my part, I would like to have at least 45 days

>>>> between the receipt of the Agency’s factum and the hearing.)
>>>>
>>>> I look forward to hearing from you.
>>>>
>>>> Best wishes,
>>>> Dr. Gabor Lukacs
>>>
>>
>

This is **Exhibit "E"** to the Affidavit of Dr. Gábor Lukacs affirmed before me on September 24, 2014

_____

Signature

From lukacs@AirPassengerRights.ca Fri Aug 22 14:31:23 2014
Date: Fri, 22 Aug 2014 14:31:21 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: Barbara Cuber <Barbara.Cuber@otc-cta.gc.ca>
Subject: RE: A-357-14 - Gabor Lukacs v. CTA

Hi Barbara,

Thank you for your message concerning the recent amendments to the Annotated Dispute Adjudication Rules.

I do not believe that it would be appropriate to include any version of this document in the Appeal Book. I have come to this conclusion for a number of reasons, including:

1. Lack of official status and/or legal authority:

(a) The document contains a disclaimer that explicitly states that it "has no official sanction." (Indeed, the Agency's rules must be made pursuant to the Statutory Instruments Act, which requires publication in Gazette.)

(b) Making guidelines requires an explicit statutory authorization, such as paragraph 159(1)(h) of the Immigration and Refugee Protection Act. The Canada Transportation Act contains no such provision, and the Agency's powers are confined to making rules pursuant to s. 17.

2. Authorship and date(s) of revision(s): the document does not state its author(s) nor the date(s) or nature of its revision(s) or amendment(s).

3. New evidence: the current version of the document was published after the Notice of Appeal was filed and served.

Therefore, I am asking that you agree that no version of this document be included in the Appeal Book.

I am available to speak to you over Skype this afternoon if you would like to discuss this further.

Best wishes,
Gabi

Court File No.: A-357-14

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

WRITTEN REPRESENTATIONS OF THE APPELLANT

PART I – STATEMENT OF FACTS

A. OVERVIEW

1. The present proceeding is an appeal on questions of law and/or jurisdiction, brought with leave of this Court pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10. The questions concern the validity and reasonableness of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 (the "New Rules"), published in the *Canada Gazette* on May 21, 2014.

2. On this motion, the Canadian Transportation Agency is seeking to include in the appeal book and/or adduce as fresh evidence the August 22, 2014 version of a document entitled "Annotated Dispute Adjudication Rules."

3. The Agency's motion suffers from several fatal flaws:

(a) page 1 of the document contains a disclaimer cautioning the reader that the document "has no official sanction" (page 120 of the Agency's motion record, at the top);

(b) no evidence was tendered to establish the authenticity or authorship of the document, the reliability and credibility of its contents, nor any of the factual allegations advanced by the Agency;

(c) Parliament conferred no guideline-making powers on the Chairperson of the Agency, and thus the document is a nullity; and

(d) the document is irrelevant, because the appeal does not involve questions of fact, but only questions of law and/or jurisdiction.

4. The Appellant submits that if any version of the "Annotated Dispute Adjudication Rules" is to be included in the appeal book (which is being disputed), then it should be the original version, published in June 2014.

B. THE STATUTORY CONTEXT

5. The Canadian Transportation Agency ("Agency") is a federal regulator and quasi-judicial tribunal created by the *Canada Transportation Act*, S.C. 1996, c. 10. In its rule as a quasi-judicial tribunal, the Agency adjudicates commercial and consumer transportation-related disputes.

6. Parliament conferred on the Agency the power to make rules governing its proceedings and business. Rules made by the Agency may be appealed, with leave, to the Federal Court of Appeal on questions of law or jurisdiction.

***Canada Transportation Act*, ss. 17, 41** **[Tab 3, P122, P123]**

7. Rules governing proceedings before the Agency must be registered and published in the *Canada Gazette*.

***Statutory Instruments Act*, R.S.C. 1985, c. S-22 ss. 2, 5, 9, 11(1)** **[Tab 6, P165-P170]**

C. THE NEW RULES AND THE PRESENT APPEAL

8. The Appellant, Dr. Gábor Lukács, is a Canadian air passenger rights advocate.

Lukács Affidavit, para. 1 **[Tab 1, P1]**

9. On May 21, 2014, the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 (the "New Rules") were published in the *Canada Gazette*. The New Rules were registered on May 5, 2014, as required.

New Rules **[Tab 4]**

10. This Honourable Court granted Lukács leave to appeal the New Rules.

Lukács Affidavit, Exhibit "A" **[Tab 1A, P4]**

11. The present appeal raises two questions of law and/or jurisdiction:

(a) whether subsections 41(2)(b), 41(2)(c), and 41(2)(d) of the New Rules are *ultra vires* and/or invalid; and

(b) whether the New Rules are unreasonable and establish inherently unfair procedures that are inconsistent with the intent of Parliament in establishing the Agency.

The second issue concerns the rules and/or the abolishment of rules and/or the absence of rules governing certain aspects of motions to intervene, the requirement to provide reasons, examinations of deponents or affiants, and oral hearings.

Lukács Affidavit, Exhibit "B" **[Tab 1B, P7]**

D. THE "ANNOTATION"

12. In June 2014, the Agency created a page entitled "Annotated Dispute Adjudication Rules" (the "Original Annotation") on its website. The page contained the following disclaimer (the "Disclaimer"):

> **Disclaimer:** This document is not the official version of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (Dispute Adjudication Rules). This document is a reference tool only. It is not a substitute for legal advice and has no official sanction.
>
> [Emphasis added.]

Lukács Affidavit, Exhibit "C" **[Tab 1C, P13]**

13. On or around August 22, 2014, the Agency engaged in what transpires as a media stunt: without amending any portion of the New Rules, the Agency says that it amended the "Annotated Dispute Adjudication Rules" webpage by augmenting it with texts purporting to speak to some of the issues on appeal (the "Amended Annotation").

Lukács Affidavit, Exhibit "D" **[Tab 1D, P92]**

14. The Amended Annotation contains the same Disclaimer as the Original Annotations, cautioning the reader that it "has no official sanction."

Agency's Motion Record, Tab 11, p. 120

15. The Amended Annotation is available only on the Agency's website, and was not published in the *Canada Gazette*.

16. On the present motion, the Agency seeks to include the Amended Annotation in the appeal book and/or to adduce it as fresh evidence.

PART II – STATEMENT OF THE POINTS IN ISSUE

17. The present motion raises three questions:

(a) Is any version of the Annotation admissible?

(b) Should any version of the Annotation be included in the appeal book?

(c) Should any version of the Annotation be admitted as fresh evidence?

18. Lukács submits that these questions should be answered in the negative with respect to all versions of the Annotation.

19. Lukács further submits that if this Honourable Court is of the opinion that some version of the Annotation should be included in the appeal book and/or admitted as fresh evidence, then only the Original Annotation would be appropriate for that purpose.

PART III – STATEMENT OF SUBMISSIONS

A. ADMISSIBILITY

20. Before any document can be admitted into evidence, there are two obstacles it must pass:

> First, it must be authenticated in some way by the party who wishes to rely on it. This authentication requires testimony by some witness; a document cannot simply be placed on the bench in front of the judge. Second, if the document is to be admitted as evidence of the truth of the statements it contains, it must be shown to fall within one of the exceptions to the hearsay rule (Delisle, Evidence: Principles and Problems, at pp. 103-105; Ewart, Documentary Evidence in Canada, at pp. 12, 13, 33; Wigmore on Evidence, vol. 7, 3rd ed., paras. 2128-2135).
>
> [Emphasis added.]

***R. v. Schwartz*, [1988] 2 S.C.R. 443, para. 58** **[Tab 8, P200]**

(i) Lack of official status

21. The Agency's claim at paragraph 14 of its submissions that the Amended Annotation was approved by the Agency's Chairperson flies in the face of the very document that the Agency seeks to be admitted: the Amended Annotation contains a disclaimer cautioning the reader that the document "has no official sanction."

Agency's Motion Record, Tab 11, p. 120

22. Lukács submits that a document purporting to reflect the practices of a quasi-judicial tribunal such as the Agency cannot be admitted as evidence of the truth of the statements it contains if it "has no official sanction." This is particularly so with respect to a constantly changing, "evergreen" document that the Agency claims the Annotation to be, which exists in multiple versions that substantially differ from each other.

(ii) Lack of evidence supporting the Annotation

23. On a motion to determine the contents of the appeal book or to adduce fresh evidence, authentication of documents may be accomplished by attaching the document as an exhibit to an affidavit, and the affiant affirming the facts related to the document. As a general rule, on a motion or application, a document that is not supported by an affidavit is inadmissible. There are only a few exceptions to this rule, such as judicial notice of statutory instruments published in the *Canada Gazette*, which are not applicable here.

***"Capricorn" v. Antares Shipping Corporation*, [1978] 1 F.C. 116, para. 6**	**[Tab 7, P174]**
***Teale v. Canada (Attorney General)*, [2000] F.C.J. No. 1666, para. 4.**	**[Tab 9, P214]**
***Statutory Instruments Act*, R.S.C. 1985, c. S-22, s. 16**	**[Tab 6, P171]**

24. The affidavit of Mr. Baturin tendered by the Agency in support of the present motion is silent about the Annotation. Although Lukács advised the Agency that several issues regarding the Annotation are contentious (**[Tab 1E]**), the Agency has chosen not to tender any evidence capable of authenticating the very document it seeks to include in the appeal book or adduce as new evidence. The Agency's allegations as to the purpose, authorship, and approval of the document are not supported by any evidence, and are hearsay.

25. Thus, the Amended Annotation is not admissible. Furthermore, accepting the Annotation without a supporting affidavit would deprive Lukács of his right to test the Agency's claims with respect to the document by way of cross-examination. (Since Mr. Baturin made no reference to the Annotation in his affidavit, there would be no practical benefit in cross-examining him.)

(iii) Invalidity: the Chairperson cannot make guidelines

26. The *Canada Transportation Act* confers no guideline-making powers on the Chairperson of the Agency:

> **13.** The Chairperson is the chief executive officer of the Agency and has the supervision over and direction of the work of the members and its staff, including the apportionment of work among the members and the assignment of members to deal with any matter before the Agency.
>
> ***Canada Transportation Act*, s. 13** **[Tab 3, P121]**

27. When Parliament wants to confer guideline-making powers upon the chairperson of a tribunal, it does so explicitly. For example, subsection 159(1) of the *Immigration and Refugee Protection Act* states that:

> **159.** (1) The Chairperson is, by virtue of holding that office, a member of each Division of the Board and is the chief executive officer of the Board. In that capacity, the Chairperson
>
> (a) has supervision over and direction of the work and staff of the Board;
>
> (b) may at any time assign a member appointed under paragraph 153(1)(a) to the Refugee Appeal Division or the Immigration Appeal Division;
>
> (c) may at any time, despite paragraph 153(1)(a), assign a member of the Refugee Appeal Division or the Immigration Appeal Division to work in another regional or district office to satisfy operational requirements, but an assignment may not exceed 120 days without the approval of the Governor in Council;
>
> (d) may designate, from among the full-time members appointed under paragraph 153(1)(a), coordinating members for the Refugee Appeal Division or the Immigration Appeal Division;

(e) assigns administrative functions to the members of the Board;

(f) apportions work among the members of the Board and fixes the place, date and time of proceedings;

(g) takes any action that may be necessary to ensure that the members of the Board carry out their duties efficiently and without undue delay;

(h) may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons, to assist members in carrying out their duties; and

(i) may appoint and, subject to the approval of the Treasury Board, fix the remuneration of experts or persons having special knowledge to assist the Divisions in any matter.

[Emphasis added.]

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27, para. 159** **[Tab 5, P161]**

28. The fact that Parliament chose to address the power to make guidelines in subsection 159(1)(h) of the *Immigration and Refugee Protection Act*, while it chose not to include a similar provision in section 13 of the *Canada Transportation Act*, demonstrates two things: First, the power of "supervision and direction of the work and staff" does not entail guideline-making powers. (Otherwise, subsection 159(1)(h) would have been redundant.) Second, Parliament chose not to confer any guideline-making powers on the Chairperson of the Agency.

29. Therefore, only the Agency, and not its Chairperson acting alone, could approve the Amended Annotation, which the Agency claims to be guidelines of some sort. Hence, the Amended Annotation is a nullity; in particular, it is inadmissible as evidence of the truth of the statements it contains.

B. PUBLIC POLICY CONCERN: CIRCUMVENTING JUDICIAL SUPERVISION

30. Section 41 of the *Canada Transportation Act* explicitly provides a right of appeal to this Court, with leave, from rules made by the Agency. Since leave must be sought within one month from the making of the rules, Parliament chose not to condition the right of appeal on the rules being applied in a specific case before the Agency nor the presence of a concrete factual matrix.

***Canada Transportation Act*, s. 41** **[Tab 3, P123]**

31. According to the Agency, the Original Annotation was published on June 4, 2014, when the New Rules came into effect; the Agency also claims that it published the Amended Annotation on August 22, 2014, that is, three weeks after the present appeal was commenced, "to address the concerns raised by the appellant." The Agency argues that the Amended Annotation is "practically conclusive of the issues on appeal" because, according to the Agency, it shows that the New Rules "are not inherently unfair."

Agency's submissions, paras. 36-37

32. The difficulty with the Agency's argument is that it allows for circumventing the jurisdiction of this Court: If the Agency succeeds at relying on the Annotation to have the present appeal dismissed, it may then revert back to the Original Annotation, and delete the texts that were inserted for the purpose of the present appeal. At that point, this Court may be *functus officio* with respect to the New Rules, and Lukács would be left without any remedy.

33. Parliament clearly did not intend to allow the Agency to circumvent, by publishing guidelines, the jurisdiction of this Court to review rules. Thus, Parliament intended this Court to review rules made by the Agency without reference to any "evergreen document" that may change overnight.

C. CREDIBILITY OF THE AMENDED ANNOTATION

34. The Amended Annotation is a self-serving document that the Agency created for the purpose of thwarting the present appeal. The Agency published, within the timeframe of 3 months, two documents purporting to explain the New Rules: the Original Annotation and the Amended Annotation. The two documents substantially differ: texts purporting to address some of the issues on this appeal, which were were not present in the Original Annotation, were added to the Amended Annotation, even though the New Rules remained unchanged.

35. After the publication of the Original Annotation, this Honourable Court granted Lukács leave to appeal the New Rules, and Lukács filed and served a notice of appeal. There is no evidence that texts were omitted from the Original Annotation as the result of an error. Rather, the Agency has acknowledged that the Amended Annotation was created for the purpose of addressing some of the concerns Lukács raised.

36. The timing and the circumstances of the publication of the Amended Annotation cast doubt on its credibility as a document that explains the New Rules. The meaning of the provisions contained in the New Rules cannot change overnight just because the New Rules are now subject to an appeal. The Agency has provided no explanation as to why this Court should prefer the Amended Annotation to the Original Annotation.

37. Therefore, it is submitted that, unless the Original Annotation was published in error, the Original Annotation is the only version of the Annotation that can possibly credibly explain the New Rules.

D. RELEVANCE

38. Even if some version of the Annotation is admissible, it is submitted that it is not relevant to the present appeal.

(i) No question of fact on the present appeal

39. The present appeal concerns only questions of law and/or jurisdiction. Leave was neither sought nor granted for any other type of questions, and no leave could have been granted on a question of fact pursuant to section 41 of the *Canada Transportation Act*.

40. The present appeal challenges the New Rules, and not the Agency's intentions. Since Lukács is not seeking a finding of bad faith against the Agency, the question of whether the New Rules adequately reflect the Agency's intentions is not relevant to the appeal.

41. Lukács argues that something is wrong with the New Rules, and he is seeking an Order directing the Agency to correct the New Rules. Thus, the relevant questions are what the New Rules *do* say, *can* say, and *should* say. These are all questions of law and/or jurisdiction.

42. The purpose of evidence is to settle questions of fact. Rule 351 speaks about leave to "a party to present evidence on a question of fact." The Agency has failed to identify any question of fact that needs to be decided on the present appeal, and with respect to which the Annotation is relevant.

(ii) Attempt to elevate legal position to evidence

43. According to the Agency, "the Annotation is the only source of insight available into the Agency's position on the issues raised" (emphasis added). Lukács agrees that the Annotation contains, to a great extent, legal opinions and/or positions.

Agency's submissions, para. 39

44. The Agency is attempting to use the Annotation for the improper purpose of elevating its "position on the issues raised" to evidence. The Agency will have ample opportunities to present its position, both in writing and at the hearing of the appeal; however, the Agency's position is not entitled to a special treatment: it is not evidence, and in particular, not relevant evidence.

(iii) The Amended Annotation did not exist at the time the New Rules were made

45. The New Rules were published in the *Canada Gazette* on May 21, 2014. The Agency says that the Original Annotation was published on its website on June 4, 2014, and the Amended Annotation on August 22, 2014.

46. The only document that Members of the Agency *might* have had in mind while drafting the New Rules is the Original Annotation, because it is not impossible that the two were drafted at the same time, although there is no evidence about the drafting process of either.

47. Therefore, the Amended Annotation cannot possibly be relevant to the New Rules, because it did not exist and could not have existed on May 21, 2014, when the New Rules were published.

(iv) Case law cited by the Agency

48. The Agency's position that reference may be had to "commentary or guidelines that explain the meaning to be attributed to written procedures when these procedures have been impugned" is not supported by the cases cited.

49. In *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, the reference to the training document "Questioning 101" was a negative one: it was not used to interpret or explain "Guideline 7."

***Thamotharem v. Canada (Minister of Citizenship and Imm.)*, 2007 FCA 198, para. 43** — **Agency's Record, Tab 9**

50. *Duale v. Canada (Minister of Citizenship and Immigration)* turned on the failure to comply with the statutory obligation set out in subsection 167(2) of the *IRPA*, the rules of the Refugee Board, and the guidelines made under paragraph 159(1)(h) of the *IRPA*, requiring the appointment of a designated representative for a minor. Dawson, J. (as she was then) did not use the Commentary to interpret the *IRPA* or the rules of the Refugee Board, but rather as an indication of the Refugee Board's acknowledgment of the statutory obligation.

***Duale v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 150, paras. 4-6** — **Agency's Record, Tab 7**

51. *ACTO v. Ontario (Landlord and Tenant Board)* concerned a challenge to a discretionary rule of the Landlord and Tenant Board ("LTB"). The court did not use the commentary as evidence of how that discretion would be applied in cases before the LTB; on the contrary, the application was dismissed, precisely because it was impossible for the court to assess how the rule would be applied in actual cases.

***ACTO v. Ontario (Landlord and Tenant Board)*, 2013 ONSC 7636, para. 10** — **Agency's Record, Tab 4**

E. THE AMENDED ANNOTATION IS NOT "PRACTICALLY CONCLUSIVE"

52. Lukács disputes the Agency's argument that the Amended Annotation "is practically conclusive of the issues on appeal," because the Amended Annotation only states that the Agency may make discretionary decisions to depart from the New Rules, and permit parties to exercise the rights that, according to Lukács, the parties should always have as a matter of procedural fairness.

Agency's submissions, para. 37(b)

53. Lukács argues on appeal that the New Rules deprive parties of an opportunity to respond and object to requests of non-parties to intervene. The Amended Annotation states that "in exceptional circumstances" the Agency may allow a party to respond to a request to intervene, if the party asks to. This fails to address the thrust of Lukács's position, which is that parties to a proceeding are entitled, as a matter of procedural fairness, to lead evidence and make submissions in opposition to requests of non-parties to intervene, and that the New Rules fail to incorporate this right.

54. Lukács also argues that although cross-examinations and oral hearings are indispensable in determining consumer disputes where the parties' evidence is contradictory, the New Rules contain no provisions governing these, and set out a paper-only proceeding. The Amended Annotation states that a party may ask the Agency for a permission to cross-examine an affiant and that the Agency may decide to hold an oral hearing. This fails to address the thrust of Lukács's position, which is that none of this appears in the New Rules, and that in consumer disputes where the evidence is contradictory, it is inherently unfair to conduct a proceeding without cross-examinations and an oral hearing; such matters should be determined in writing only in exceptional cases.

55. With respect to the right of parties for reasons, the Amended Annotation does not guarantee such a right. It simply states, in a non-binding manner, the Agency's intention to provide reasons. Lukács, however, argues that this right should be "hard law" that is spelled out in the New Rules.

56. Finally, the Amended Annotation does not address at all the questions related to the validity of certain provisions of the New Rules.

57. Therefore, the Amended Annotation fails to be "practically conclusive" of any of the issues on appeal.

F. THE INTEREST OF JUSTICE: PREJUDICE TO LUKÁCS

58. Lukács submits that it would be prejudicial to his ability to present his appeal if the Amended Annotation was admitted into evidence without Lukács being allowed to conduct some form of discoveries about the circumstances related to the creation of the Amended Annotation. Unfortunately, such procedures are not available on an appeal.

59. Lukács would not be able to make meaningful submissions to the Panel hearing the appeal about the weight to be given to the Amended Annotation without being able to rely on other evidence related to the suspicious timing and circumstances of the creation of the Amended Annotation.

60. Therefore, it is submitted that the interest of justice militates against including the Amended Annotation in the appeal book and/or admitting it as fresh evidence.

PART IV – ORDER SOUGHT

61. The Appellant, Dr. Gábor Lukács, is seeking an Order:

(a) dismissing the Agency's within motion for including the "Annotated Dispute Adjudication Rules" in the appeal book and/or to adduce them as fresh evidence;

(b) or alternatively, directing that among the different versions of the "Annotated Dispute Adjudication Rules," only the original version, shown in Exhibit "C" to the affidavit of Dr. Lukács, be included in the appeal book; and

(c) granting such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

September 29, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Appellant

PART V – LIST OF AUTHORITIES

CASES

"Capricorn" v. Antares Shipping Corporation,
[1978] 1 F.C. 116

R. v. Schwartz, [1988] 2 S.C.R. 443

Teale v. Canada (Attorney General),
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STATUTES AND REGULATIONS

Canada Transportation Act, S.C. 1996, c. 10,
ss. 13, 17, 41

Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings),
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Immigration and Refugee Protection Act, S.C. 2001, c. 27,
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Statutory Instruments Act, R.S.C. 1985, c. S-22,
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CANADA

CONSOLIDATION

CODIFICATION

Canada Transportation Act

Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to November 26, 2013

À jour au 26 novembre 2013

Last amended on June 26, 2013

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Expenses

(2) Each member is entitled to be paid reasonable travel and living expenses incurred by the member in carrying out duties under this Act or any other Act of Parliament while absent from the member's ordinary place of work.

Frais de déplacement

(2) Les membres ont droit aux frais de déplacement et de séjour entraînés par l'exercice, hors de leur lieu de travail habituel, des fonctions qui leur sont confiées en application de la présente loi ou de toute autre loi fédérale.

Members — retirement pensions

12. (1) A member appointed under paragraph 7(2)(*a*) is deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

Pensions de retraite des membres

12. (1) Les membres nommés en vertu du paragraphe 7(2) sont réputés appartenir à la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*.

Temporary members not included

(2) A temporary member is deemed not to be employed in the public service for the purposes of the *Public Service Superannuation Act* unless the Governor in Council, by order, deems the member to be so employed for those purposes.

Membres temporaires

(2) Sauf décret prévoyant le contraire, les membres temporaires sont réputés ne pas appartenir à la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*.

Accident compensation

(3) For the purposes of the *Government Employees Compensation Act* and any regulation made pursuant to section 9 of the *Aeronautics Act*, a member is deemed to be an employee in the federal public administration.

Indemnisation

(3) Pour l'application de la *Loi sur l'indemnisation des agents de l'État* et des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*, les membres sont réputés appartenir à l'administration publique fédérale.

1996, c. 10, s. 12; 2003, c. 22, ss. 224(E), 225(E).

1996, ch. 10, art. 12; 2003, ch. 22, art. 224(A) et 225(A).

Chairperson

Président

Duties of Chairperson

13. The Chairperson is the chief executive officer of the Agency and has the supervision over and direction of the work of the members and its staff, including the apportionment of work among the members and the assignment of members to deal with any matter before the Agency.

Pouvoirs et fonctions

13. Le président est le premier dirigeant de l'Office; à ce titre, il assure la direction et le contrôle de ses travaux et la gestion de son personnel et procède notamment à la répartition des tâches entre les membres et à la désignation de ceux qui traitent des questions dont est saisi l'Office.

Absence of Chairperson

14. In the event of the absence or incapacity of the Chairperson or if the office of Chairperson is vacant, the Vice-Chairperson has all the powers and shall perform all the duties and functions of the Chairperson.

Intérim du président

14. En cas d'absence ou d'empêchement du président ou de vacance de son poste, la présidence est assumée par le vice-président.

Absence of both Chairperson and Vice-Chairperson

15. The Chairperson may authorize one or more of the members to act as Chairperson for the time being if both the Chairperson and Vice-Chairperson are absent or unable to act.

Choix d'un autre intérimaire

15. Le président peut habiliter un ou plusieurs membres à assumer la présidence en prévision de son absence ou de son empêchement, et de ceux du vice-président.

Quorum

Quorum

Quorum

16. (1) Subject to the Agency's rules, two members constitute a quorum.

Quorum

16. (1) Sous réserve des règles de l'Office, le quorum est constitué de deux membres.

Quorum lost because of incapacity of member

(2) Where a member who is conducting a hearing in respect of a matter becomes incapacitated or dies during the hearing or after the conclusion of the hearing but before rendering a decision and quorum is lost as a result, the

Perte de quorum due à un décès ou un empêchement

(2) En cas de décès ou d'empêchement d'un membre chargé d'une audience, pendant celle-ci ou entre la fin de l'audience et le prononcé de la décision, et de perte de quorum résultant de ce fait, le président peut, avec le consente-

Chairperson may, with the consent of all the parties to the hearing,

(*a*) if the incapacity or death occurs during the hearing, authorize another member to continue the hearing and render a decision, or

(*b*) if the incapacity or death occurs after the conclusion of the hearing, authorize another member to examine the evidence presented at the hearing and render a decision,

and in either case, the quorum in respect of the matter is deemed never to have been lost.

ment des parties à l'audience, si le fait survient :

a) pendant l'audience, habiliter un autre membre à continuer l'audience et à rendre la décision;

b) après la fin de l'audience, habiliter un autre membre à examiner la preuve présentée à l'audience et à rendre la décision.

Dans l'une ou l'autre de ces éventualités, le quorum est réputé avoir toujours existé.

Quorum not lost because of incapacity of member

(3) Where a member who is conducting a hearing in respect of a matter becomes incapacitated or dies during the hearing and quorum is not lost as a result, another member may be assigned by the Chairperson to participate in the hearing and in the rendering of a decision.

Décès ou empêchement sans perte de quorum

(3) En cas de décès ou d'empêchement, pendant une audience, du membre qui en est chargé, sans perte de quorum résultant de ce fait, le président peut habiliter un autre membre à participer à l'audience et au prononcé de la décision.

Rules

Rules

17. The Agency may make rules respecting

(*a*) the sittings of the Agency and the carrying on of its work;

(*b*) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which hearings may be held in private; and

(*c*) the number of members that are required to hear any matter or perform any of the functions of the Agency under this Act or any other Act of Parliament.

Règles

Règles

17. L'Office peut établir des règles concernant :

a) ses séances et l'exécution de ses travaux;

b) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos;

c) le nombre de membres qui doivent entendre les questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale.

Head Office

Head office

18. (1) The head office of the Agency shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Residence of members

(2) The members appointed under subsection 7(2) shall reside in the National Capital Region described in the schedule to the *National Capital Act* or within any distance of it that the Governor in Council determines.

1996, c. 10, s. 18; 2007, c. 19, s. 5; 2008, c. 21, s. 61.

Siège de l'Office

Siège

18. (1) Le siège de l'Office est fixé dans la région de la capitale nationale délimitée à l'annexe de la *Loi sur la capitale nationale*.

Lieu de résidence des membres

(2) Les membres nommés au titre du paragraphe 7(2) résident dans la région de la capitale nationale délimitée à l'annexe de la *Loi sur la capitale nationale* ou dans la périphérie de cette région définie par le gouverneur en conseil.

1996, ch. 10, art. 18; 2007, ch. 19, art. 5; 2008, ch. 21, art. 61.

Staff

Secretary, officers and employees

19. The Secretary of the Agency and the other officers and employees that are necessary for the proper conduct of the business of the

Personnel

Secrétaire et personnel

19. Le secrétaire de l'Office et le personnel nécessaire à l'exécution des travaux de celui-ci

Appeal from Agency

41. (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.

Appel

41. (1) Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.

Time for making appeal

(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.

Délai

(2) Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.

Powers of Court

(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.

Pouvoirs de la cour

(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.

Agency may be heard

(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.

Plaidoirie de l'Office

(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.

Report of Agency

Rapport de l'Office

Agency's report

42. (1) Each year the Agency shall, before the end of July, make a report on its activities for the preceding year and submit it, through the Minister, to the Governor in Council describing briefly, in respect of that year,

(*a*) applications to the Agency and the findings on them; and

(*b*) the findings of the Agency in regard to any matter or thing respecting which the Agency has acted on the request of the Minister.

Rapport de l'Office

42. (1) Chaque année, avant la fin du mois de juillet, l'Office présente au gouverneur en conseil, par l'intermédiaire du ministre, un rapport de ses activités de l'année précédente résumant :

a) les demandes qui lui ont été présentées et ses conclusions à leur égard;

b) ses conclusions concernant les questions ou les objets à l'égard desquels il a agi à la demande du ministre.

Assessment of Act

(2) The Agency shall include in every report referred to in subsection (1) the Agency's assessment of the operation of this Act and any difficulties observed in the administration of this Act.

Évaluation de la loi

(2) L'Office joint à ce rapport son évaluation de l'effet de la présente loi et des difficultés rencontrées dans l'application de celle-ci.

Tabling of report

(3) The Minister shall have a copy of each report made under this section laid before each House of Parliament on any of the first thirty

Dépôt

(3) Dans les trente jours de séance de chaque chambre du Parlement suivant la réception du rapport par le ministre, celui-ci le fait déposer devant elle.

1996, ch. 10, art. 42; 2013, ch. 31, art. 2.

Registration
SOR/2014-104 May 5, 2014

CANADA TRANSPORTATION ACT

Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)

The Canadian Transportation Agency, pursuant to section 17 of the *Canada Transportation Act*[a], makes the annexed *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*.

Gatineau, April 29, 2014

GEOFFREY C. HARE
Chairperson
Canadian Transportation Agency

SAM BARONE
Vice-Chairperson
Canadian Transportation Agency

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En vertu de l'article 17 de la *Loi sur les transports au Canada*[a], l'Office des transports du Canada établit les *Règles de l'Office des transports du Canada (Instances de règlement des différends et certaines règles applicables à toutes les instances)*, ci-après.

Gatineau, le 29 avril 2014

Le président
de l'Office des transports du Canada
GEOFFREY C. HARE

Le vice-président
de l'Office des transports du Canada
SAM BARONE

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CANADIAN TRANSPORTATION AGENCY RULES (DISPUTE PROCEEDINGS AND CERTAIN RULES APPLICABLE TO ALL PROCEEDINGS)

INTERPRETATION

Definitions

1. The following definitions apply in these Rules.

"Act" « *Loi* » "Act" means the *Canada Transportation Act*.

"affidavit" « *affidavit* » "affidavit" means a written statement confirmed by oath or a solemn declaration.

"applicant" « *demandeur* » "applicant" means a person that files an application with the Agency.

"application" « *demande* » "application" means a document that is filed to commence a proceeding before the Agency under any legislation or regulations that are administered in whole or in part by the Agency.

"business day" « *jour ouvrable* » "business day" means a day that the Agency is ordinarily open for business.

"dispute proceeding" « *instance de règlement des différends* » "dispute proceeding" means any contested matter that is commenced by application to the Agency.

"document" « *document* » "document" includes any information that is recorded in any form.

"intervener" « *intervenant* » "intervener" means a person whose request to intervene filed under section 29 has been granted.

"party" « *partie* » "party" means an applicant, a respondent or a person that is named by the Agency as a party.

"person" « *personne* » "person" includes a partnership and an unincorporated association.

"proceeding" « *instance* » "proceeding" means any matter that is commenced by application to the Agency, whether contested or not.

"respondent" « *défendeur* » "respondent" means a person that is named as a respondent in an application and any person that is named by the Agency as a respondent.

APPLICATION

Dispute proceedings

2. Subject to sections 3 and 4, these Rules apply to dispute proceedings other than a matter that is the subject of mediation.

RÈGLES DE L'OFFICE DES TRANSPORTS DU CANADA (INSTANCES DE RÈGLEMENT DES DIFFÉRENDS ET CERTAINES RÈGLES APPLICABLES À TOUTES LES INSTANCES)

DÉFINITIONS

Définitions

1. Les définitions qui suivent s'appliquent aux présentes règles.

« affidavit » Déclaration écrite certifiée par serment ou affirmation solennelle. « affidavit » "*affidavit*"

« défendeur » Personne nommée à ce titre dans une demande, ou toute autre personne désignée comme tel par l'Office. « défendeur » "*respondent*"

« demande » Document introductif d'une instance déposé devant l'Office en vertu d'une loi ou d'un règlement qu'il est chargé d'appliquer en tout ou en partie. « demande » "*application*"

« demandeur » Personne qui dépose une demande auprès de l'Office. « demandeur » "*applicant*"

« document » S'entend notamment de tout renseignement qui est enregistré, quelqu'en soit le support. « document » "*document*"

« instance » Affaire, contestée ou non, qui est introduite devant l'Office au moyen d'une demande. « instance » "*proceeding*"

« instance de règlement des différends » Affaire contestée qui est introduite devant l'Office au moyen d'une demande. « instance de règlement des différends » "*dispute proceeding*"

« intervenant » Personne dont la requête d'intervention déposée en vertu de l'article 29 a été accordée. « intervenant » "*intervener*"

« jour ouvrable » Jour où l'Office est normalement ouvert au public. « jour ouvrable » "*business day*"

« Loi » La *Loi sur les transports au Canada*. « Loi » "*Act*"

« partie » Le demandeur, le défendeur ou toute personne désignée comme telle par l'Office. « partie » "*party*"

« personne » S'entend notamment d'une société de personnes et d'une association sans personnalité morale. « personne » "*person*"

APPLICATION

Instances de règlement des différends

2. Sous réserve des articles 3 et 4, les présentes règles s'appliquent aux instances de règlement des différends, à l'exception de toute question qui fait l'objet d'une médiation.

ALL PROCEEDINGS

Quorum

3. In all proceedings, one member constitutes a quorum.

Principle of proportionality

4. The Agency is to conduct all proceedings in a manner that is proportionate to the importance and complexity of the issues at stake and the relief claimed.

DISPUTE PROCEEDINGS

GENERAL

Interpretation and Dispensing with Compliance

Interpretation of Rules

5. (1) These Rules are to be interpreted in a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice.

Agency's initiative

(2) Anything that may be done on request under these Rules may also be done by the Agency of its own initiative.

Dispensing with compliance and varying rule

6. The Agency may, at the request of a person, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will allow for the just determination of the issues.

Filing of Documents and Sending of Copy to Parties

Filing

7. (1) Any document filed under these Rules must be filed with the Secretary of the Agency.

Agency's public record

(2) All filed documents are placed on the Agency's public record unless the person filing the document files, at the same time, a request for confidentiality under section 31 in respect of the document.

Copy to parties

8. A person that files a document must, on the same day, send a copy of the document to each party or, if a party is represented, to the party's representative, except if the document is

(*a*) a confidential version of a document in respect of which a request for confidentiality is filed under section 31;

(*b*) an application; or

(*c*) a position statement.

Means of transmission

9. Documents may be filed with the Agency and copies may be sent to the other parties by courrier, personal delivery, email, facsimile or other electronic means specified by the Agency.

Facsimile — cover page

10. A person that files or sends a document by facsimile must include a cover page indicating the total number of pages transmitted, including the cover page, and the name and telephone number of a contact person if problems occur in the transmission of the document.

TOUTES LES INSTANCES

Quorum

3. Dans toute instance, le quorum est constitué de un membre.

Principe de proportionnalité

4. L'Office mène ses instances de manière qui soit proportionnée à l'importance et la complexité des questions en jeu et à la réparation demandée.

INSTANCES DE RÈGLEMENT DES DIFFÉRENDS

RÈGLES D'ORDRE GÉNÉRAL

Interprétation et dispense d'observation des règles

Interprétation des Règles

5. (1) Les présentes règles sont interprétées de façon à faciliter le règlement le plus expéditif qui soit de l'instance de règlement des différends, l'utilisation optimale des ressources de l'Office et des parties et à promouvoir la justice.

Initiative de l'Office

(2) Toute chose qui peut être faite sur requête au titre des présentes règles peut être faite par l'Office de sa propre initiative.

Dispense d'observation et modification de règles

6. L'Office peut, à la requête d'une personne, soustraire une instance de règlement des différends à l'application d'une règle, modifier celle-ci ou autoriser quelque autre réparation, avec ou sans conditions, en vue du règlement équitable des questions.

Dépôt de documents et envoi de copies aux autres parties

Dépôt

7. (1) Le dépôt de documents au titre des présentes règles se fait auprès du secrétaire de l'Office.

Archives publiques de l'Office

(2) Les documents déposés sont versés aux archives publiques de l'Office, sauf si la personne qui dépose le document dépose au même moment une requête de confidentialité, en vertu de l'article 31, à l'égard du document.

Copie aux autres parties

8. La personne qui dépose un document envoie le même jour une copie du document à chaque partie ou à son représentant, le cas échéant, sauf s'il s'agit :

a) d'une version confidentielle d'un document à l'égard duquel une requête de confidentialité a été déposée en vertu de l'article 31;

b) d'une demande;

c) d'un énoncé de position.

Modes de transmission

9. Le dépôt de documents et l'envoi de copies aux autres parties peut se faire par remise en mains propres, par service de messagerie, par courriel, par télécopieur ou par tout autre moyen électronique que précise l'Office.

Télécopieur — page couverture

10. La personne qui dépose ou transmet un document par télécopieur indique sur une page couverture le nombre total de pages transmises, y compris la page couverture, ainsi que le nom et le numéro de téléphone d'une personne à joindre en cas de difficultés de transmission.

Electronic transmission

11. (1) A document that is sent by email, facsimile or other electronic means is considered to be filed with the Agency and received by the other parties on the date of its transmission if it is sent at or before 5:00 p.m. Gatineau local time on a business day. A document that is sent after 5:00 p.m. Gatineau local time or on a day that is not a business day is considered to be filed with the Agency and received by the other parties on the next business day.

Transmission électronique

11. (1) Le document transmis par courriel, télécopieur ou tout autre moyen électronique est considéré comme déposé auprès de l'Office et reçu par les autres parties à la date de la transmission s'il a été envoyé un jour ouvrable au plus tard à 17 heures, heure de Gatineau; sinon, il est considéré comme déposé et reçu le jour ouvrable suivant.

Courier or personal delivery

(2) A document that is sent by courier or personal delivery is filed with the Agency and received by the other parties on the date of its delivery if it is delivered to the Agency and the other parties at or before 5:00 p.m. Gatineau local time on a business day. A document that is delivered after 5:00 p.m. Gatineau local time or on a day that is not a business day is considered to be filed with the Agency and received by the other parties on the next business day.

Services de messagerie ou remise en mains propres

(2) La remise d'un document envoyé par messagerie ou remis en mains propres est déposé auprès de l'Office et reçu par les autres parties à la date de la remise s'il a été reçu par l'Office et par les autres parties un jour ouvrable au plus tard à 17 heures, heure de Gatineau; sinon, il est considéré comme déposé et reçu le jour ouvrable suivant.

Filing after time limit

12. (1) A person must not file a document after the end of the applicable time limit for filing the document unless a request has been filed under subsection 30(1) and the request has been granted by the Agency.

Dépôt hors délai

12. (1) Nul ne peut déposer de document après l'expiration des délais prévus pour ce faire, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens en vertu du paragraphe 30(1).

Filing not provided for in Rules

(2) A person must not file a document whose filing is not provided for in these Rules unless a request has been filed under subsection 34(1) and the request has been granted by the Agency.

Dépôt non prévu

(2) Nul ne peut déposer de document dont le dépôt n'est pas prévu par les présentes règles, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens en vertu du paragraphe 34(1).

Failure to comply

(3) A document that is filed in contravention of subsection (1) or (2) will not be placed on the Agency's record.

Défaut de se conformer

(3) Les documents déposés en contravention des paragraphes (1) ou (2) ne sont pas versés aux archives de l'Office.

Language of Documents

Langues des documents

English or French

13. (1) Every document filed with the Agency must be in either English or French.

Français ou anglais

13. (1) Les documents déposés sont en français ou en anglais.

Translation

(2) If a person files a document that is in a language other than English or French, they must at the same time file an English or French translation of the document and the information referred to in Schedule 1.

Traduction

(2) Les documents déposés qui sont dans une langue autre que l'anglais ou le français sont accompagnés d'une traduction dans l'une ou l'autre de ces deux langues ainsi que des éléments visés à l'annexe 1.

Treated as original

(3) The translation is treated as the original for the purposes of the dispute proceeding.

Considérée comme original

(3) La traduction tient lieu d'original pour les fins de l'instance de règlement des différends.

Amended Documents

Modification de documents

Substantive amendment

14. (1) If a person proposes to make a substantive amendment to a previously filed document, they must file a request under subsection 33(1).

Modification de fond

14. (1) La personne qui souhaite apporter une modification de fond à un document qu'elle a déposé présente une requête en ce sens en vertu du paragraphe 33(1).

Identification of amendment

(2) A person that files a document that amends a previously filed document, whether the amendment is substantive or not, must ensure that the amendment is clearly identified in the document and that the word "AMENDED" appears in capital letters in the top right corner of the first page.

Indication des modifications

(2) La personne qui dépose une version modifiée d'un document qu'elle a déposé, que les modifications soient de fond ou non, indique clairement dans le document les modifications et inscrit la mention « MODIFIÉ » en lettres majuscules dans le coin supérieur droit de la première page.

Verification by Affidavit or by Witnessed Statement

Attestation par affidavit ou déclaration devant témoin

Verification of contents

15. (1) If the Agency considers it just and reasonable, the Agency may, by notice, require that a

Attestation du contenu

15. (1) S'il l'estime juste et raisonnable, l'Office peut, par avis, exiger qu'une personne atteste, en

person provide verification of the contents of all or any part of a document by affidavit or by witnessed statement.

tout ou en partie, le contenu d'un document par affidavit ou déclaration devant témoin.

Filing of verification

(2) The verification by affidavit or by witnessed statement must be filed within five business days after the date of the notice referred to in subsection (1) and must include the information referred to in Schedule 2 or Schedule 3, respectively.

(2) L'attestation par affidavit ou par déclaration devant témoin est déposée dans les cinq jours ouvrables suivant la date de l'avis visé au paragraphe (1) et comporte les éléments visés à l'annexe 2 ou à l'annexe 3, respectivement.

Dépôt de l'attestation

Failure to file verification

(3) The Agency may strike the document or the part of the document in question from the Agency's record if the person fails to file the verification.

(3) L'Office peut retirer de ses archives tout ou partie d'un document si la personne ne dépose pas l'attestation par affidavit ou par déclaration devant témoin.

Défaut de déposer l'attestation

Representation and Change of Contact Information

Représentation et changements des coordonnées

Representative not a member of the bar

16. A person that is represented in a dispute proceeding by a person that is not a member of the bar of a province must authorize that person to act on their behalf by filing the information referred to in Schedule 4.

16. La personne qui, dans le cadre d'une instance de règlement des différends, est représentée par une personne qui n'est membre du barreau d'aucune province dépose une autorisation en ce sens, qui comporte les éléments visés à l'annexe 4.

Représentant — non-membre du barreau

Change of contact information

17. A person must, if the contact information they provided to the Agency changes during the course of a dispute proceeding, provide their new contact information to the Agency and the parties without delay.

17. La personne qui a fourni ses coordonnées à l'Office et dont les coordonnées changent au cours d'une instance de règlement des différends fournit sans délai ses nouvelles coordonnées à l'Office et aux parties.

Changement des coordonnées

PLEADINGS

ACTES DE PROCÉDURE

Application

Demande

Filing of application

18. (1) Any application filed with the Agency must include the information referred to in Schedule 5.

18. (1) Toute demande déposée auprès de l'Office comporte les éléments visés à l'annexe 5.

Dépôt de la demande

Application complete

(2) If the application is complete, the parties are notified in writing that the application has been accepted.

(2) Si la demande est complète, les parties sont avisées par écrit de l'acceptation de la demande.

Demande complète

Incomplete application

(3) If the application is incomplete, the applicant is notified in writing and the applicant must provide the missing information within 20 business days after the date of the notice.

(3) Si la demande est incomplète, le demandeur en est avisé par écrit et dispose de vingt jours ouvrables suivant la date de l'avis pour la compléter.

Demande incomplète

Closure of file

(4) If the applicant fails to provide the missing information within the time limit, the file is closed.

(4) Si le demandeur ne complète pas la demande dans le délai imparti, le dossier est fermé.

Fermeture du dossier

New application

(5) An applicant whose file is closed may file a new application in respect of the same matter.

(5) Le demandeur dont le dossier est fermé peut déposer à nouveau une demande relativement à la même affaire.

Nouvelle demande

Answer

Réponse

Filing of answer

19. A respondent may file an answer to the application. The answer must be filed within 15 business days after the date of the notice indicating that the application has been accepted and must include the information referred to in Schedule 6.

19. Le défendeur qui souhaite déposer une réponse le fait dans les quinze jours ouvrables suivant la date de l'avis d'acceptation de la demande. La réponse comporte les éléments visés à l'annexe 6.

Dépôt d'une réponse

Reply

Réplique

Filing of reply

20. (1) An applicant may file a reply to the answer. The reply must be filed within five business days after the day on which they receive a copy of the answer and must include the information referred to in Schedule 7.

20. (1) Le demandeur qui souhaite déposer une réplique à la réponse le fait dans les cinq jours ouvrables suivant la date de réception de la copie de la réponse. La réplique comporte les éléments visés à l'annexe 7.

Dépôt d'une réplique

No new issues

(2) The reply must not raise issues or arguments that are not addressed in the answer or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Nouvelles questions

(2) La réplique ne peut soulever des questions ou arguments qui ne sont pas abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens.

Intervention

Intervention

Filing of intervention

21. (1) An intervener may file an intervention. The intervention must be filed within five business days after the day on which their request to intervene is granted by the Agency and must include the information referred to in Schedule 8.

Dépôt de l'intervention

21. (1) L'intervenant qui souhaite déposer une intervention le fait dans les cinq jours ouvrables suivant la date à laquelle sa requête d'intervention a été accordée. L'intervention comporte les éléments visés à l'annexe 8.

Participation rights

(2) An intervener's participation is limited to the participation rights granted by the Agency.

Droits de participation

(2) La participation de l'intervenant se limite aux droits de participation que lui accorde l'Office.

Response to intervention

22. An applicant or a respondent that is adverse in interest to an intervener may file a response to the intervention. The response must be filed within five business days after the day on which they receive a copy of the intervention and must include the information referred to in Schedule 9.

Réponse à l'intervention

22. Le demandeur ou le défendeur qui a des intérêts opposés à ceux d'un intervenant et qui souhaite déposer une réponse à l'intervention le fait dans les cinq jours ouvrables suivant la date de réception de la copie de l'intervention. La réponse à l'intervention comporte les éléments visés à l'annexe 9.

Position Statement

Énoncé de position

Filing of position statement

23. (1) An interested person may file a position statement. The position statement must be filed before the close of pleadings and must include the information referred to in Schedule 10.

Dépôt de l'énoncé de position

23. (1) Toute personne intéressée peut déposer un énoncé de position. Celui-ci est déposé avant la clôture des actes de procédure et comporte les éléments visés à l'annexe 10.

No participation rights

(2) A person that files a position statement has no participation rights and is not entitled to receive any notice in the dispute proceeding.

Énoncé de position

(2) La personne qui dépose un énoncé de position n'a aucun droit de participation ni droit aux avis relatifs à l'instance de règlement des différends.

Written Questions and Production of Documents

Questions écrites et production de documents

Notice

24. (1) A party may, by notice, request that any party that is adverse in interest respond to written questions that relate to the matter in dispute or produce documents that are in their possession or control and that relate to the matter in dispute. The notice must include the information referred to in Schedule 11 and must be filed

(*a*) in the case of written questions, before the close of pleadings; and

(*b*) in the case of the production of documents, within five business days after the day on which the party becomes aware of the documents or before the close of pleadings, whichever is earlier.

Avis

24. (1) Toute partie peut, par avis, demander à une partie qui a des intérêts opposés aux siens de répondre à des questions écrites ou de produire des documents qui se trouvent en sa possession ou sous sa garde et qui sont pertinents à l'affaire. L'avis comporte les éléments visés à l'annexe 11 et est déposé dans les délais suivants :

a) s'agissant de questions écrites, avant la clôture des actes de procédure;

b) s'agissant de la production de documents, soit, dans les cinq jours ouvrables suivant la date à laquelle la partie a pris connaissance de leur existence, soit, si elle est antérieure, avant la clôture des actes de procédure.

Response to notice

(2) The party to which a notice has been given must, within five business days after the day on which they receive a copy of the notice, file a complete response to each question or the requested documents, as the case may be, accompanied by the information referred to in Schedule 12.

Réponse à l'avis

(2) Dans les cinq jours ouvrables suivant la date de réception de la copie de l'avis, la partie à qui l'avis est envoyé dépose une réponse complète à chacune des questions ou les documents demandés, selon le cas, ainsi que les éléments visés à l'annexe 12.

Objection

(3) If a party wishes to object to a question or to producing a document, that party must, within the time limit set out in subsection (2), file an objection that includes

(*a*) a clear and concise explanation of the reasons for the objection including, as applicable, the relevance of the information or document requested and their availability for production;

Opposition

(3) La partie qui souhaite s'opposer à une question ou à la demande de production d'un document dépose une opposition dans les délais prévus au paragraphe (2). L'opposition comporte les éléments suivants :

a) un exposé clair et concis des motifs de l'opposition, notamment la pertinence des renseignements ou du document demandé ou leur disponibilité, selon le cas;

(*b*) any document that is relevant in explaining or supporting the objection; and

(*c*) any other information or document that is in the party's possession or control and that would be of assistance to the party making the request.

b) tout document pertinent à l'appui de l'opposition;

c) tout autre renseignement ou document en la possession ou sous la garde de la partie et susceptible d'aider la partie qui a fait la demande.

Expedited Process

Processus accéléré

Decision to apply expedited process

25. (1) The Agency may, at the request of a party under section 28, decide that an expedited process applies to an answer under section 19 and a reply under section 20 or to any request filed under these Rules.

Décision d'appliquer le processus accéléré

25. (1) L'Office peut, sur requête déposée en vertu de l'article 28, décider que le processus accéléré s'applique à une réponse déposée en vertu de l'article 19 et à une réplique déposée en vertu de l'article 20, ou à toute autre requête déposée au titre des présentes règles.

Time limits for filing — answer and reply

(2) If an expedited process applies to an answer under section 19 and a reply under section 20, the following time limits apply:

(*a*) the answer must be filed within five business days after the date of the notice indicating that the application has been accepted; and

(*b*) the reply must be filed within three business days after the day on which the applicant receives a copy of the answer.

Délais de dépôt — réponse et réplique

(2) Lorsque le processus accéléré est appliqué relativement à une réponse déposée en vertu de l'article 19 et à une réplique déposée en vertu de l'article 20, les délais suivants s'appliquent :

a) le dépôt de la réponse se fait dans les cinq jours ouvrables suivant la date de l'avis d'acceptation de la demande;

b) le dépôt de la réplique se fait dans les trois jours ouvrables suivant la date de réception de la copie de la réponse.

Time limits for filing — request

(3) If an expedited process applies to a request filed under these Rules, the following time limits apply:

(*a*) any response to a request must be filed within two business days after the day on which the person who is responding to the request receives a copy of the request; and

(*b*) any reply to a response must be filed within one business day after the day on which the person who is replying to the response receives a copy of the response.

Délai de dépôt — Requête

(3) Lorsque le processus accéléré est appliqué relativement à une requête déposée au titre des présentes règles, les délais suivants s'appliquent :

a) le dépôt de la réponse à la requête se fait dans les deux jours ouvrables suivant la date de réception de la copie de la requête;

b) le dépôt de la réplique à la réponse se fait au plus tard un jour ouvrable après la date de réception de la copie de la réponse.

Close of Pleadings

Clôture des actes de procédure

Normal process

26. (1) Subject to subsection (2), pleadings are closed

(*a*) if no answer is filed, 20 business days after the date of the notice indicating that the application has been accepted;

(*b*) if an answer is filed and no additional documents are filed after that answer, 25 business days after the date of the notice indicating that the application has been accepted; or

(*c*) if additional documents are filed after an answer is filed, the day on which the last document is to be filed under these Rules.

Procédure normale

26. (1) Sous réserve du paragraphe (2), les actes de procédure sont clos dans les délais suivants :

a) si aucune réponse n'est déposée, vingt jours ouvrables après la date de l'avis d'acceptation de la demande;

b) si une réponse est déposée, et qu'aucun autre document n'est déposé par la suite, vingt-cinq jours ouvrables après la date de l'avis d'acceptation de la demande;

c) si d'autres documents sont déposés après le dépôt de la réponse, à la date à laquelle le dernier document doit être déposé au titre des présentes règles.

Expedited process

(2) Under the expedited process, pleadings are closed

(*a*) if no answer is filed, seven business days after the date of the notice indicating that the application has been accepted;

(*b*) if an answer is filed and no additional documents are filed after that answer, 10 business days after the date of the notice indicating that the application has been accepted; or

Processus accéléré

(2) Si le processus accéléré est appliqué, les actes de procédure sont clos dans les délais suivants :

a) si aucune réponse n'est déposée, sept jours ouvrables après la date de l'avis d'acceptation de la demande;

b) si une réponse a été déposée, et qu'un aucun autre document n'est déposé par la suite, dix jours ouvrables après la date de l'avis d'acceptation de la demande;

(*c*) if additional documents are filed after an answer is filed, the day on which the last document is to be filed under these Rules.

c) si d'autres documents sont déposés après le dépôt de la réponse, à la date à laquelle le dernier document doit être déposé au titre des présentes règles.

REQUESTS

General Request

REQUÊTES

Requête générale

Filing of request

27. (1) A person may file a request for a decision on any issue that arises within a dispute proceeding and for which a specific request is not provided for under these Rules. The request must be filed as soon as feasible but, at the latest, before the close of pleadings and must include the information referred to in Schedule 13.

27. (1) Toute personne peut déposer une requête en vue d'obtenir une décision sur toute question soulevée dans le cadre d'une instance de règlement des différents, mais à laquelle aucune requête spécifique n'est prévue au titre des présentes règles. La requête est déposée dès que possible, mais au plus tard avant la clôture des actes de procédure. Elle comporte les éléments visés à l'annexe 13. Dépôt d'une requête

Response

(2) Any party may file a response to the request. The response must be filed within five business days after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

(2) Toute partie peut déposer une réponse à la requête dans les cinq jours ouvrables suivant la date de réception de la copie de la requête. La réponse comporte les éléments visés à l'annexe 14. Réponse

Reply

(3) The person that filed the request may file a reply to the response. The reply must be filed within two business days after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(3) La personne ayant déposé la requête et qui souhaite déposer une réplique à la réponse le fait dans les deux jours ouvrables suivant la date de réception de la copie de la réponse. La réplique comporte les éléments visés à l'annexe 15. Réplique

No new issues

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

(4) La réplique ne peut soulever des questions ou arguments qui ne sont pas abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens. Nouvelles questions

Specific Requests

Requêtes spécifiques

Request for Expedited Process

Requête en processus accéléré

Expedited process

28. (1) A party may file a request to have an expedited process applied to an answer under section 19 and a reply under section 20 or to another request filed under these Rules. The request must include the information referred to in Schedule 13.

28. (1) Toute partie peut déposer une requête pour demander l'application du processus accéléré relativement à une réponse déposée en vertu de l'article 19 et à une réplique déposée en vertu de l'article 20, ou à une autre requête déposée au titre des présentes règles. La requête comporte les éléments visés à l'annexe 13. Processus accéléré

Justification for request

(2) The party filing the request must demonstrate to the satisfaction of the Agency that adherence to the time limits set out in these Rules would cause them financial or other prejudice.

(2) La partie qui dépose la requête doit convaincre l'Office qu'un préjudice financier ou autre lui serait causé si les délais prévus dans les présentes règles étaient appliqués. Justification de la requête

Time limit for filing

(3) The request must be filed

(*a*) if the request is to have an expedited process apply to an answer and a reply,

(i) in the case of an applicant, at the time that the application is filed, or

(ii) in the case of a respondent, within one business day after the date of the notice indicating that the application has been accepted; or

(*b*) if the request is to have an expedited process apply to another request,

(i) in the case of a person filing the other request, at the time that that request is filed, or

(ii) in the case of a person responding to the other request, within one business day after the

(3) La requête est déposée dans les délais suivants : Délai de dépôt

a) si la requête vise la réponse et la réplique :

(i) en ce qui concerne le demandeur, au moment du dépôt de la demande,

(ii) en ce qui concerne le défendeur, au plus tard un jour ouvrable après la date de l'avis d'acceptation de la demande;

b) si la requête vise une autre requête :

(i) en ce qui concerne la personne qui dépose cette autre requête, au moment du dépôt de celle-ci;

(ii) en ce qui concerne de la personne qui répond à cette autre requête, au plus tard un

day on which they receive a copy of that request.

Response

(4) Any party may file a response to the request. The response must be filed within one business day after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

Reply

(5) The party that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

No new issues

(6) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Request to Intervene

Request to intervene

29. (1) A person that has a substantial and direct interest in a dispute proceeding may file a request to intervene. The request must be filed within 10 business days after the day on which the person becomes aware of the application or before the close of pleadings, whichever is earlier, and must include the information referred to in Schedule 16.

Limits and conditions

(2) If the Agency grants the request, it may set limits and conditions on the intervener's participation in the dispute proceeding.

Request to Extend or Shorten Time Limit

Extend or shorten

30. (1) A person may file a request to extend or shorten a time limit that applies in respect of a dispute proceeding. The request may be filed before or after the end of the time limit and must include the information referred to in Schedule 13.

Response

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include the information referred to in Schedule 14.

Reply

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

No new issues

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Request for Confidentiality

Confidential treatment

31. (1) A person may file a request for confidentiality in respect of a document that they are filing.

jour ouvrable après la date de réception de la copie de celle-ci.

Réponse

(4) La partie qui souhaite déposer une réponse à la requête le fait au plus tard un jour ouvrable après la date de réception de la copie de la requête. La réponse comporte les éléments visés à l'annexe 14.

Réplique

(5) La partie ayant déposé la requête et qui souhaite déposer une réplique à la réponse le fait au plus tard un jour ouvrable après la date de réception de la copie de la réponse. La réplique comporte les éléments visés à l'annexe 15.

Nouvelles questions

(6) La réplique ne peut soulever des questions ou arguments qui ne sont pas abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens.

Requête d'intervention

Requête d'intervention

29. (1) Toute personne qui a un intérêt direct et substantiel dans une instance de règlement des différends peut déposer une requête d'intervention. La requête est déposée, soit, dans les dix jours ouvrables suivant la date à laquelle la personne a pris connaissance de la demande, soit, si elle est antérieure, avant la clôture des actes de procédure. La requête comporte les éléments visés à l'annexe 16.

Limites et conditions

(2) Si l'Office accorde la requête, il peut fixer les limites et les conditions de l'intervention.

Requête de prolongation ou d'abrégement de délai

Prolongation ou abrégement

30. (1) Toute personne peut déposer une requête pour demander la prolongation ou l'abrégement de tout délai applicable dans le cadre d'une instance de règlement des différends avant ou après son expiration. La requête comporte les éléments visés à l'annexe 13.

Réponse

(2) La partie qui souhaite déposer une réponse à la requête le fait dans les trois jours ouvrables suivant la date de réception de la copie de la requête. La réponse comporte les éléments visés à l'annexe 14.

Réplique

(3) La personne ayant déposé la requête et qui souhaite déposer une réplique à la réponse le fait au plus tard un jour ouvrable après la date de réception de la copie de la réponse. La réplique comporte les éléments visés à l'annexe 15.

Nouvelles questions

(4) La réplique ne peut soulever des questions ou arguments qui ne sont abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens.

Requête de confidentialité

Traitement confidentiel

31. (1) Toute personne peut déposer une requête de confidentialité portant sur un document qu'elle

The request must include the information referred to in Schedule 17 and must be accompanied by, for each document identified as containing confidential information,

(*a*) one public version of the document from which the confidential information has been redacted; and

(*b*) one confidential version of the document that identifies the confidential information that has been redacted from the public version of the document and that includes, at the top of each page, the words: "CONTAINS CONFIDENTIAL INFORMATION" in capital letters.

Agency's record

(2) The request for confidentiality and the public version of the document from which the confidential information has been redacted are placed on the Agency's public record. The confidential version of the document is placed on the Agency's confidential record pending a decision of the Agency on the request for confidentiality.

Request for disclosure

(3) Any party may oppose a request for confidentiality by filing a request for disclosure. The request must be filed within five business days after the day on which they receive a copy of the request for confidentiality and must include the information referred to in Schedule 18.

Response to request for disclosure

(4) The person that filed the request for confidentiality may file a response to a request for disclosure. The response must be filed within three business days after the day on which they receive a copy of the request for disclosure and must include the information referred to in Schedule 14.

Agency's decision

(5) The Agency may

(*a*) if the Agency determines that the document is not relevant to the dispute proceeding, decide to not place the document on the Agency's record;

(*b*) if the Agency determines that the document is relevant to the dispute proceeding and that no specific direct harm would likely result from its disclosure or that any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed, decide to place the document on the Agency's public record; or

(*c*) if the Agency determines that the document is relevant to the dispute proceeding and that the specific direct harm likely to result from its disclosure justifies confidentiality,

(i) decide to confirm the confidentiality of the document or any part of it and keep the document or part of the document on the Agency's confidential record,

(ii) decide to place a version of the document or any part of it from which the confidential information has been redacted on the Agency's public record,

(iii) decide to keep the document or any part of it on the Agency's confidential record but require that the person requesting confidentiality provide a copy of the document or part of the document in confidence to any party to the

dépose. La requête comporte les éléments visés à l'annexe 17 et, pour chaque document désigné comme étant confidentiel :

a) une version publique du document, de laquelle les renseignements confidentiels ont été supprimés;

b) une version confidentielle du document, qui indique les passages qui ont été supprimés de la version publique du document et qui porte la mention « CONTIENT DES RENSEIGNEMENTS CONFIDENTIELS » en lettres majuscules au haut de chaque page.

Archives de l'Office

(2) La requête de confidentialité et la version publique du document de laquelle les renseignements confidentiels ont été supprimés sont versées aux archives publiques de l'Office. La version confidentielle du document est versée aux archives confidentielles de l'Office en attendant que celui-ci statue sur la requête.

Requête de communication

(3) La partie qui souhaite s'opposer à une requête de confidentialité dépose une requête de communication dans les cinq jours ouvrables suivant la date de réception de la copie de la requête de confidentialité. La requête de communication comporte les éléments visés à l'annexe 18.

Réponse à la requête de communication

(4) La personne ayant déposé la requête de confidentialité et qui souhaite déposer une réponse à une requête de communication le fait dans les trois jours ouvrables suivant la date de réception de copie de la requête de communication. La réponse comporte les éléments visés à l'annexe 14.

Décision de l'Office

(5) L'Office peut :

a) s'il conclut que le document n'est pas pertinent au regard de l'instance de règlement des différends, décider de ne pas le verser aux archives de l'Office;

b) s'il conclut que le document est pertinent au regard de l'instance de règlement des différends et que sa communication ne causerait vraisemblablement pas de préjudice direct précis ou que l'intérêt du public à ce qu'il soit communiqué l'emporte sur le préjudice direct précis qui pourrait en résulter, décider de le verser aux archives publiques de l'Office;

c) s'il conclut que le document est pertinent au regard de l'instance de règlement des différends et que le préjudice direct précis que pourrait causer sa communication justifie le traitement confidentiel :

(i) décider de confirmer le caractère confidentiel du document ou d'une partie de celui-ci et garder le document ou une partie de celui-ci dans ses archives confidentielles,

(ii) décider qu'une version ou une partie du document, de laquelle les renseignements confidentiels ont été supprimés, soit versée à ses archives publiques,

(iii) décider de garder le document ou une partie de celui-ci dans ses archives confidentielles,

dispute proceeding, or to certain of their advisors, experts and representatives, as specified by the Agency, after the person requesting confidentiality has received a signed undertaking of confidentiality from the person to which the copy is to be provided, or

(iv) make any other decision that it considers just and reasonable.

mais exiger que la personne qui demande la confidentialité fournisse une copie du document ou une partie de celui-ci de façon confidentielle à une partie à l'instance, à certains de ses conseillers, experts ou représentants, tel qu'il le précise, après que la personne qui demande la confidentialité ait reçu un engagement de non-divulgation signé de chaque personne à qui le document devra être envoyé,

(iv) rendre toute autre décision qu'il estime juste et raisonnable.

Filing of undertaking of confidentiality

(6) The original copy of the undertaking of confidentiality must be filed with the Agency.

(6) L'original de l'engagement de non-divulgation est déposé auprès de l'Office.

Dépôt de l'engagement de non-divulgation

Request to Require Party to Provide Complete Response

Requête visant à obliger une partie à fournir une réponse complète à l'avis

Requirement to respond

32. (1) A party that has given notice under subsection 24(1) may, if they are not satisfied with the response to the notice or if they wish to contest an objection to their request, file a request to require the party to which the notice was directed to provide a complete response. The request must be filed within two business days after the day on which they receive a copy of the response to the notice or the objection, as the case may be, and must include the information referred to in Schedule 13.

32. (1) La partie qui a donné un avis en vertu du paragraphe 24(1) et qui est insatisfaite des réponses à l'avis ou qui souhaite contester l'opposition à sa demande peut déposer une requête pour demander que la partie à qui l'avis a été donné fournisse une réponse complète. La requête est déposée dans les deux jours ouvrables suivant la date de réception de la copie des réponses à l'avis ou de l'opposition et comporte les éléments visés à l'annexe 13.

Obligation de répondre

Agency's decision

(2) The Agency may do any of the following:

(*a*) require that a question be answered in full or in part;

(*b*) require that a document be provided;

(*c*) require that a party submit secondary evidence of the contents of a document;

(*d*) require that a party produce a document for inspection only;

(*e*) deny the request in whole or in part.

(2) L'Office peut :

a) exiger qu'il soit répondu à la question en tout ou en partie;

b) exiger la production d'un document;

c) exiger qu'une partie présente une preuve secondaire du contenu d'un document;

d) exiger qu'une partie produise un document pour examen seulement;

e) rejeter la requête en tout ou en partie.

Décisions de l'Office

Request to Amend Document

Requête de modification de document

Amendment

33. (1) A person may, before the close of pleadings, file a request to make a substantive amendment to a previously filed document. The request must include the information referred to in Schedule 13 and a copy of the amended document that the person proposes to file.

33. (1) Toute personne peut, avant la clôture des actes de procédure, déposer une requête en vue d'apporter une modification de fond à un document qu'elle a déposé. La requête comporte les éléments visés à l'annexe 13 ainsi que la copie du document modifié que la personne a l'intention de déposer.

Modification

Response

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include

(*a*) the information referred to in Schedule 14; and

(*b*) a description of any prejudice that would be caused to the party if the request were granted including, if applicable, an explanation of how the proposed amendments would hinder or delay the fair conduct of the dispute proceeding.

(2) La partie qui souhaite déposer une réponse à la requête le fait dans les trois jours ouvrables suivant la date de réception de la copie de la requête. La réponse comporte :

a) les éléments visés à l'annexe 14;

b*)* une description de tout préjudice qui serait causé à la partie si la requête était accordée, y compris, le cas échéant, la manière dont le dépôt des modifications proposées entraverait ou retarderait le déroulement équitable de l'instance de règlement des différends.

Réponse

Reply

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

(3) La partie ayant déposé la requête et qui souhaite déposer une réplique à la réponse le fait au plus tard un jour ouvrable après la date de réception de la copie de réponse à la requête. La réplique comporte les éléments visés à l'annexe 15.

Réplique

No new issues

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Nouvelles questions

(4) La réplique ne peut soulever des questions ou arguments qui ne sont pas abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens.

Agency's decision

(5) The Agency may

(*a*) deny the request; or

(*b*) approve the request in whole or in part and, if the Agency considers it just and reasonable to do so, provide parties that are adverse in interest with an opportunity to respond to the amended document.

Décisions de l'Office

(5) L'Office peut :

a) rejeter la requête;

b) accorder la requête de modification en tout ou en partie et, s'il l'estime juste et raisonnable, donner aux parties adverses la possibilité de répondre au document modifié.

Request to File Document Whose Filing is not Otherwise Provided for in Rules

Requête de dépôt de document dont le dépôt n'est pas prévu par les règles

Filing

34. (1) A person may file a request to file a document whose filing is not otherwise provided for in these Rules. The request must include the information referred to in Schedule 13 and a copy of the document that the person proposes to file.

Dépôt

34. (1) La personne qui souhaite déposer un document dont le dépôt n'est pas prévu par les présentes règles dépose une requête en ce sens. La requête comporte les éléments visés à l'annexe 13 ainsi que la copie du document que la partie a l'intention de déposer.

Response

(2) Any party may file a response to the request. The response must be filed within three business days after the day on which they receive a copy of the request and must include

(*a*) the information referred to in Schedule 14; and

(*b*) a description of any prejudice that would be caused to the party if the request were granted including, if applicable, an explanation of how the proposed filing would hinder or delay the fair conduct of the dispute proceeding.

Réponse

(2) La partie qui souhaite déposer une réponse à la requête le fait dans les trois jours ouvrables suivant la date de réception de la copie de la requête. La réponse comporte :

a) les éléments visés à l'annexe 14;

b) une description de tout préjudice qui serait causé à la partie si la requête était accordée, y compris, le cas échéant, une explication qui précise comment le dépôt du document entraverait ou retarderait le déroulement équitable de l'instance de règlement des différends.

Reply

(3) The person that filed the request may file a reply to the response. The reply must be filed within one business day after the day on which they receive a copy of the response and must include the information referred to in Schedule 15.

Réplique

(3) La partie ayant déposé la requête et qui souhaite déposer une réplique à la réponse le fait au plus tard un jour ouvrable après la date de réception de la copie de la réponse à la requête. La réplique comporte les éléments visés à l'annexe 15.

No new issues

(4) The reply must not raise issues or arguments that are not addressed in the response or introduce new evidence unless a request has been filed to that effect and the request has been granted by the Agency.

Nouvelles questions

(4) La réplique ne peut soulever des questions ou arguments qui ne sont pas abordés dans la réponse, ni introduire de nouvelle preuve, sauf sur autorisation de l'Office à la suite d'une requête déposée en ce sens.

Agency's decision

(5) The Agency may

(*a*) deny the request; or

(*b*) approve the request and, if pleadings are closed and if the Agency considers it just and reasonable to do so, reopen pleadings to provide the other parties with an opportunity to comment on the document.

Décisions de l'Office

(5) L'Office peut :

a) rejeter la requête;

b) accorder la requête et, si les actes de procédure sont clos, les rouvrir pour donner aux autres parties la possibilité de formuler des commentaires sur le document, s'il l'estime juste et raisonnable.

Request to Withdraw Document

Requête de retrait de document

Withdrawal of document

35. (1) Subject to section 36, a person may file a request to withdraw any document that they filed in a dispute proceeding. The request must be filed before the close of pleadings and must include the information referred to in Schedule 13.

Retrait de document

35. (1) Sous réserve de l'article 36, toute personne peut, avant la clôture des actes de procédure, déposer une requête en vue de retirer un document qu'elle a déposé dans le cadre d'une instance de règlement des différends. La requête comporte les éléments visés à l'annexe 13.

Terms and conditions

(2) If the Agency grants the request, it may impose any terms and conditions on the withdrawal that it considers just and reasonable, including the awarding of costs.

Conditions de retrait

(2) L'Office peut, s'il accorde la requête, fixer les conditions de retrait qu'il estime justes et raisonnables, y compris l'adjudication des frais.

Request to Withdraw Application

Requête de retrait d'une demande

Withdrawal of application

36. (1) An applicant may file a request to withdraw their application. The request must be filed before a final decision is made by the Agency in respect of the application and must include the information referred to in Schedule 13.

Retrait d'une demande

36. (1) Le demandeur peut, avant que l'Office ne rende une décision définitive, déposer une requête en vue de retirer sa demande. La requête comporte les éléments visés à l'annexe 13.

Terms and conditions

(2) If the Agency grants the request, it may impose any terms and conditions on the withdrawal that it considers just and reasonable, including the awarding of costs.

Conditions de retrait

(2) L'Office peut, s'il accorde la requête, fixer les conditions de retrait qu'il estime justes et raisonnables, y compris l'adjudication des frais.

CASE MANAGEMENT

GESTION DE L'INSTANCE

Formulation of issues

37. The Agency may formulate the issues to be considered in a dispute proceeding in any of the following circumstances:

(*a*) the documents filed do not clearly identify the issues;

(*b*) the formulation would assist in the conduct of the dispute proceeding;

(*c*) the formulation would assist the parties to participate more effectively in the dispute proceeding.

Formulation des questions

37. (1) L'Office peut, dans les cas suivants, formuler les questions qui seront examinées dans une instance de règlement des différends :

a) les documents déposés n'établissent pas clairement les questions en litige;

b) cette démarche faciliterait le déroulement de l'instance de règlement des différends;

c) cette démarche contribuerait à la participation plus efficace des parties à l'instance de règlement des différends.

Preliminary determination

38. The Agency may, at the request of a party, determine that an issue should be decided as a preliminary question.

Décision préliminaire

38. L'Office peut, sur requête, décider de trancher une question à titre préliminaire.

Joining of applications

39. The Agency may, at the request of a party, join two or more applications and consider them together in one dispute proceeding to provide for a more efficient and effective process.

Jonction de demandes

39. L'Office peut, sur requête, joindre plusieurs demandes dans une instance de règlement des différends pour assurer un processus plus efficace et efficient.

Conference

40. (1) The Agency may, at the request of a party, require the parties to attend a conference by a means of telecommunication or by personal attendance for the purpose of

(*a*) encouraging settlement of the dispute;

(*b*) formulating, clarifying or simplifying the issues;

(*c*) determining the terms of amendment of any document;

(*d*) obtaining the admission of certain facts or determining whether the verification of those facts by affidavit should be required;

(*e*) establishing the procedure to be followed in the dispute proceeding;

(*f*) providing for the exchange by the parties of documents proposed to be submitted;

(*g*) establishing a process for the identification and treatment of confidential information;

(*h*) discussing the appointment of experts; and

(*i*) resolving any other issues to provide for a more efficient and effective process.

Conférence

40. (1) L'Office peut, sur requête, exiger que les parties participent à une conférence par moyen de télécommunication ou en personne pour :

a) encourager le règlement des différends;

b) formuler, préciser ou simplifier les questions en litige;

c) fixer les conditions de modification d'un document;

d) obtenir la reconnaissance de certains faits ou décider si l'attestation de ces faits par affidavit est nécessaire;

e) établir la procédure à suivre pendant l'instance de règlement des différends;

f) permettre l'échange entre les parties des documents qu'elles ont l'intention de produire;

g) établir un processus d'identification et de traitement des renseignements confidentiels;

h) discuter de la nomination d'experts;

i) trancher toute autre question en vue de rendre le processus plus efficace et efficient.

Written submissions

(2) The parties may be required to file written submissions on any issue that is discussed at the conference.

Observations écrites

(2) Les parties peuvent être tenues de déposer des observations écrites sur toute question discutée pendant la conférence.

Minutes

(3) Minutes are prepared in respect of the conference and placed on the Agency's record.

Agency decision or direction

(4) The Agency may issue a decision or direction on any issue discussed at the conference without further submissions from the parties.

Stay of dispute proceeding

41. (1) The Agency may, at the request of a party, stay a dispute proceeding in any of the following circumstances:

(*a*) a decision is pending on a preliminary question in respect of the dispute proceeding;

(*b*) a decision is pending in another proceeding or before any court in respect of an issue that is the same as or substantially similar to one raised in the dispute proceeding;

(*c*) a party to the dispute proceeding has not complied with a requirement of these Rules or with a procedural direction issued by the Agency;

(*d*) the Agency considers it just and reasonable to do so.

Stay of decision or order

(2) The Agency may, at the request of a party, stay a decision or order of the Agency in any of the following circumstances:

(*a*) a review or re-hearing is being considered by the Agency under section 32 of the Act;

(*b*) a review is being considered by the Governor in Council under section 40 of the Act;

(*c*) an application for leave to appeal is made to the Federal Court of Appeal under section 41 of the Act;

(*d*) the Agency considers it just and reasonable to do so.

Stay — terms and conditions

(3) In staying a dispute proceeding or a decision or order, the Agency may impose any terms and conditions that it considers to be just and reasonable.

Notice of intention to dismiss application

42. (1) The Agency may, by notice to the applicant and before considering the issues raised in the application, require that the applicant justify why the Agency should not dismiss the application if the Agency is of the preliminary view that

(*a*) the Agency does not have jurisdiction over the subject matter of the application;

(*b*) the dispute proceeding would constitute an abuse of process; or

(*c*) the application contains a fundamental defect.

Response

(2) The applicant must respond to the notice within 10 business days after the date of the notice, failing which the application may be dismissed without further notice.

Opportunity to comment

(3) The Agency may provide any other party with an opportunity to comment on whether or not the application should be dismissed.

Compte rendu

(3) Un compte rendu de la conférence est préparé et est versé aux archives de l'Office.

Pouvoir décisionnel de l'Office

(4) L'Office peut rendre une décision ou donner une directive sur toute question discutée pendant la conférence sans qu'il soit nécessaire de recevoir d'autres observations des parties.

Suspension d'une instance de règlement des différents

41. (1) L'Office peut, sur requête, suspendre une instance de règlement des différends dans les cas suivants :

a) il est en attente d'une décision sur une question préliminaire soulevée à l'égard de règlement des différends;

b) il est en attente d'une décision pendante dans une autre instance ou devant un autre tribunal sur une question identique ou très similaire à une question qui est soulevée à l'égard de l'instance de règlement des différends;

c) une partie à l'instance de règlement des différends ne s'est pas conformée à une exigence des présentes règles ou à une directive de l'Office sur la procédure à suivre;

d) l'Office l'estime juste et raisonnable.

Sursis à l'exécution d'une décision ou d'un arrêté

(2) L'Office peut, sur requête, surseoir à l'exécution de sa décision ou de son arrêté dans les cas suivants :

a) l'Office considère la possibilité de mener une révision ou une nouvelle audience en vertu de l'article 32 de la Loi;

b) le gouverneur en conseil considère la possibilité de mener une révision en vertu de l'article 40 de la Loi;

c) une demande d'autorisation d'interjeter appel a été présentée devant la Cour d'appel fédérale en vertu de l'article 41 de la Loi;

d) il l'estime juste et raisonnable.

Conditions de suspension ou de sursis

(3) L'Office peut, en cas de suspension d'une instance de règlement des différends ou de sursis à l'exécution d'une décision ou d'un arrêté, fixer les conditions qu'il estime justes et raisonnables.

Avis d'intention de rejeter une demande

42. (1) L'Office peut, moyennant un avis au demandeur et avant d'examiner les questions soulevées dans la demande, exiger que le demandeur fournisse les raisons pour lesquelles l'Office ne devrait pas rejeter la demande, s'il lui apparaît à première vue que :

a) il n'a pas compétence sur la matière dont il est saisi;

b) l'instance de règlement des différends constituerait un abus de procédure;

c) la demande comporte un défaut fondamental.

Réponse

(2) Le demandeur répond à l'avis dans les dix jours ouvrables suivant la date de l'avis, faute de quoi la demande peut être rejetée sans autre préavis.

Commentaires

(3) L'Office peut donner à toute autre partie la possibilité de formuler des commentaires sur la question de savoir si la demande devrait être rejetée.

TRANSITIONAL PROVISION, REPEAL AND COMING INTO FORCE

TRANSITIONAL PROVISION

SOR/2005-35

43. The *Canadian Transportation Agency General Rules*, as they read immediately before the coming into force of these Rules, continue to apply to all proceedings before the Agency that were commenced before the coming into force of these Rules except proceedings in respect of which the application filed before that time was not complete.

REPEAL

44. The *Canadian Transportation Agency General Rules*[1] are repealed.

COMING INTO FORCE

June 4, 2014

45. These Rules come into force on June 4, 2014, but if they are published after that day, they come into force on the day on which they are published.

DISPOSITION TRANSITOIRE, ABROGATION ET ENTRÉE EN VIGUEUR

DISPOSITION TRANSITOIRE

DORS/2005-35

43. Les *Règles générales de l'Office de transports du Canada*, dans leur version antérieure à l'entrée en vigueur des présentes règles, continuent de s'appliquer à toutes les instances introduites avant l'entrée en vigueur des présentes règles, sauf aux instances dont les demandes déposées avant ce moment étaient incomplètes.

ABROGATION

44. Les *Règles générales de l'Office des transports du Canada*[1] sont abrogées.

ENTRÉE EN VIGUEUR

4 juin 2014

45. Les présentes règles entrent en vigueur le 4 juin 2014 ou, si elles sont publiées après cette date, à la date de leur publication.

SCHEDULE 1
(Subsection 13(2))

TRANSLATION — REQUIRED INFORMATION

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. A list of the translated documents that indicates, for each document, the language of the original document.

4. An affidavit of the translator that includes

(*a*) the translator's name and the city or town, the province or state and the country in which the document was translated;

(*b*) an attestation that the translator has translated the document in question and that the translation is, to the translator's knowledge, true, accurate and complete;

(*c*) the translator's signature and the date on which and the place at which the affidavit was signed; and

(*d*) the signature and the official seal of the person authorized to take affidavits and the date on which and the place at which the affidavit was made.

5. The name of each party to which a copy of the documents is being sent and the complete address, the email address or the facsimile number to which it is being sent.

[1] SOR/2005-35

ANNEXE 1
(Paragraphe 13(2))

TRADUCTION — RENSEIGNEMENTS REQUIS

1. Les noms du demandeur et du défendeur ainsi que et le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose les documents et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. La liste des documents traduits, et pour chaque document, l'indication de la langue originale du document.

4. L'affidavit du traducteur, qui comporte notamment :

a) le nom du traducteur ainsi que la ville, la province ou l'État et le pays où le document a été traduit;

b) une déclaration du traducteur portant qu'il a traduit les documents et qu'à sa connaissance, la traduction est véridique, exacte et complète;

c) la signature du traducteur ainsi que les date et lieu où l'affidavit a été signé;

d) la signature et le sceau officiel de la personne qui reçoit l'affidavit ainsi que les date et lieu où l'affidavit a été fait;

5. Le nom de chaque partie à qui une copie est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

[1] DORS/2005-35

SCHEDULE 2
(Subsection 15(2))

VERIFICATION BY AFFIDAVIT

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. An affidavit that includes

(*a*) the name of the person making the affidavit and the city or town, the province or state and the country in which it was made;

(*b*) a full description of the information being verified, a list of any supporting documents and a copy of each of those documents marked as appendices;

(*c*) an attestation that the person has personal knowledge of the information and that the information is, to their knowledge, true, accurate and complete or, if the person does not have personal knowledge of the information, a statement indicating the source of the information and an attestation that the information is, to their knowledge, true, accurate and complete;

(*d*) the person's signature and the date of signing; and

(*e*) the signature and the official seal of a person authorized to take affidavits and the date on which and the place at which the affidavit was made.

4. The name of each party to which a copy of the verification is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 2
(Paragraphe 15(2))

ATTESTATION PAR AFFIDAVIT

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose le document et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Un affidavit, qui comporte notamment :

a) le nom de la personne qui dépose l'affidavit ainsi que la ville, la province ou l'État et le pays où l'affidavit a été fait;

b) un exposé détaillé des renseignements faisant l'objet de l'attestation et la liste des documents à l'appui ainsi qu'une copie de chacun de ces documents en annexe et marquée comme telle;

c) une attestation portant que la personne a une connaissance directe des renseignements ou, si tel n'est pas le cas, la source de ces renseignements et, dans tous les cas, qu'à sa connaissance, les renseignements sont véridiques, exacts et complets;

d) la signature de la personne qui fait l'affidavit et la date de signature;

e) la signature et le sceau officiel de la personne qui reçoit l'affidavit et les date et lieu où l'affidavit a été fait.

4. Le nom de chaque partie à qui une copie de l'attestation est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 3
(Subsection 15(2))

VERIFICATION BY WITNESSED STATEMENT

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. A statement before a witness that includes

(*a*) the name of the person making the statement and the city or town and the province or state and the country in which it was made;

(*b*) a full description of the information being verified, a list of any supporting documents and a copy of each of those documents marked as appendices;

(*c*) an attestation that the person has personal knowledge of the information and that the information is, to their knowledge, true, accurate and complete or, if the person does not have personal knowledge of the information, a statement indicating the source of the information and an attestation that the information is, to their knowledge, true, accurate and complete;

(*d*) the person's signature and the date of signing; and

(*e*) the name and signature of the person witnessing the statement and the date on which and place at which the statement was signed.

ANNEXE 3
(Paragraphe 15(2))

ATTESTATION PAR DÉCLARATION DEVANT TÉMOIN

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose le document et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Une déclaration devant témoin qui comporte notamment :

a) le nom de la personne qui fait la déclaration ainsi que la ville, la province ou l'État et le pays où la déclaration a été faite;

b) un exposé détaillé des renseignements faisant l'objet de la déclaration et la liste des documents à l'appui ainsi qu'une copie de chacun de ces documents en annexe et marquée comme telle;

c) une attestation portant que la personne a une connaissance directe des renseignements ou, si tel n'est pas le cas, la source de ces renseignements et, dans tous les cas, qu'à sa connaissance, les renseignements sont véridiques, exacts et complets;

d) la signature de la personne qui fait la déclaration et la date celle-ci;

e) le nom et signature de la personne devant qui la déclaration est faite et les date et lieu où la déclaration a été faite;

4. The name of each party to which a copy of the verification is being sent and the complete address, the email address or the facsimile number to which it is being sent.

4. Le nom de chaque partie à qui une copie de l'attestation est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 4
(Section 16)

ANNEXE 4
(Article 16)

AUTHORIZATION OF REPRESENTATIVE

AUTORISATION DE REPRÉSENTATION

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person giving the authorization and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. The name of the person's representative and the representative's complete address, telephone number and, if applicable, email address and facsimile number.

4. A statement, signed and dated by the representative, indicating that the representative has agreed to act on behalf of the person.

5. A statement, signed and dated by the person giving the authorization, indicating that they authorize the representative to act on their behalf for the purposes of the dispute proceeding.

6. The name of each party to which a copy of the authorization is being sent and the complete address, the email address or the facsimile number to which it is being sent.

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui donne l'autorisation et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Le nom du représentant, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

4. Une déclaration du représentant, signée et datée, portant qu'il accepte d'agir au nom de la personne en question.

5. Une déclaration de la personne qui donne l'autorisation, signée et datée, portant qu'elle autorise le représentant à agir en son nom dans le cadre de l'instance de règlement des différends.

6. Le nom de chaque partie à qui une copie de l'autorisation est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 5
(Subsection 18(1))

ANNEXE 5
(Paragraphe 18(1))

APPLICATION

DEMANDE

1. The applicant's name, complete address, telephone number and, if applicable, email address and facsimile number.

2. If the applicant is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.

3. If the applicant is represented by a person that is not a member of the bar of a province, a statement to that effect.

4. The respondent's name and, if known, their complete address, telephone number and, if applicable, email address and facsimile number.

5. The details of the application that include

(*a*) any legislative provisions that the applicant relies on;

(*b*) a clear statement of the issues;

(*c*) a full description of the facts;

(*d*) the relief claimed; and

(*e*) the arguments in support of the application.

6. A list of any documents submitted in support of the application and a copy of each of those documents.

1. Les nom et adresse complète ainsi que le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du demandeur.

2. Si le demandeur est représenté par un membre du barreau d'une province, les noms du représentant et de son cabinet, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Si le représentant n'est membre du barreau d'aucune province, la mention de ce fait.

4. Le nom du défendeur et, s'il sont connus, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

5. Les détails concernant la demande, notamment :

a) les dispositions législatives sur lesquelles la demande est fondée;

b) un énoncé clair des questions en litige;

c) une description complète des faits;

d) les réparations demandées;

e) les arguments à l'appui de la demande.

6. La liste de tous les documents à l'appui de la demande et une copie de chacun de ceux-ci.

SCHEDULE 6
(Section 19)

ANSWER TO APPLICATION

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The respondent's name, complete address, telephone number and, if applicable, email address and facsimile number.

3. If the respondent is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.

4. If the respondent is represented by a person that is not a member of the bar of a province, a statement to that effect.

5. The details of the answer that include

(*a*) a statement that sets out the elements that the respondent agrees with or disagrees with in the application;

(*b*) a full description of the facts; and

(*c*) the arguments in support of the answer.

6. A list of any documents submitted in support of the answer and a copy of each of those documents.

7. The name of each party to which a copy of the answer is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 6
(Article 19)

RÉPONSE À UNE DEMANDE

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom du défendeur, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Si le défendeur est représenté par un membre du barreau d'une province, les noms du représentant et de son cabinet, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

4. Si le représentant n'est membre du barreau d'aucune province, la mention de ce fait.

5. Les détails concernant la réponse, notamment :

a) les points de la demande sur lesquels le défendeur est d'accord ou en désaccord;

b) une description complète des faits;

c) les arguments à l'appui de la réponse.

6. La liste de tous les documents à l'appui de sa réponse et une copie de chacun de ceux-ci.

7. Le nom de chaque partie à qui une copie de la réponse est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 7
(Subsection 20(1))

REPLY TO ANSWER

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the reply.

3. The details of the reply that include

(*a*) a statement that sets out the elements that the applicant agrees with or disagrees with in the answer; and

(*b*) the arguments in support of the reply.

4. A list of any documents submitted in support of the reply and a copy of each of those documents.

5. The name of each party to which a copy of the reply is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 7
(Paragraphe 20(1))

RÉPLIQUE À LA RÉPONSE

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la réplique.

3. Les détails concernant la réplique, notamment :

a) les points de la réponse sur lesquels le demandeur est d'accord ou en désaccord;

b) les arguments à l'appui de la réplique;

4. La liste de tous les documents à l'appui de la réplique et une copie de chacun de ceux-ci.

5. Le nom de chaque partie à qui une copie de la réplique est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 8
(Subsection 21(1))

INTERVENTION

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The intervener's name, complete address, telephone number and, if applicable, email address and facsimile number.

ANNEXE 8
(Paragraphe 21(1))

INTERVENTION

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de l'intervenant, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. If the intervener is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.

4. If the intervener is represented by a person that is not a member of the bar of a province, a statement to that effect.

5. The details of the intervention that include

(*a*) a statement that indicates the day on which the intervener became aware of the application;

(*b*) a statement that indicates whether the intervener supports the applicant's position, the respondent's position or neither position; and

(*c*) the information that the intervener would like the Agency to consider.

6. A list of any documents submitted in support of the intervention and a copy of each of those documents.

7. The name of each party to which a copy of the intervention is being sent and the complete address, the email address or the facsimile number to which it is being sent.

3. Si l'intervenant est représenté par un membre du barreau d'une province, les noms du représentant et de son cabinet, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

4. Si le représentant n'est membre du barreau d'aucune province, la mention de ce fait.

5. Les détails concernant l'intervention, notamment :

a) la date à laquelle l'intervenant a pris connaissance de la demande;

b) une mention indiquant s'il appuie la position du demandeur, celle du défendeur ou s'il n'appuie aucune des deux positions;

c) les éléments dont l'intervenant souhaite que l'Office tienne compte.

6. La liste de tous les documents à l'appui à l'intervention et une copie de chacun de ceux-ci.

7. Le nom de chaque partie à qui une copie de l'intervention est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 9
(Section 22)

RESPONSE TO INTERVENTION

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the response.

3. The details of the response that include

(*a*) a statement that sets out the elements that the person agrees with or disagrees with in the intervention; and

(*b*) the arguments in support of the response.

4. A list of any documents submitted in support of the response and a copy of each of those documents.

5. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 9
(Article 22)

RÉPONSE À L'INTERVENTION

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la réponse.

3. Les détails concernant la réponse, notamment :

a) les points de l'intervention sur lesquels la personne est d'accord ou en désaccord;

b) les arguments à l'appui de la réponse.

4. La liste de tous les documents à l'appui de la réponse et une copie de chacun de ceux-ci.

5. Le nom de chaque partie à qui une copie de la réponse est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 10
(Subsection 23(1))

POSITION STATEMENT

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the position statement or, if the person is represented, the name of the person on behalf of which the position statement is being filed, and the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. If the person is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.

4. If the person is represented by a person that is not a member of the bar of a province, a statement to that effect.

ANNEXE 10
(Paragraphe 23(1))

ÉNONCÉ DE POSITION

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose l'énoncé de position ou, si la personne est représentée, le nom de la personne pour le compte de laquelle l'énoncé de position est déposé, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Si la personne qui dépose l'énoncé est représentée par un membre du barreau d'une province, les noms du représentant et de son cabinet, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

4. Si le représentant n'est membre du barreau d'aucune province, la mention de ce fait.

5. The details of the position statement that include

(*a*) a statement that indicates whether the person supports the applicant's position, the respondent's position or neither position; and

(*b*) the information that the person would like the Agency to consider.

6. A list of any documents submitted in support of the position statement and a copy of each of those documents.

5. Les détails concernant l'énoncé de la position, notamment :

a) une mention indiquant si la personne appuie la position du demandeur, celle du défendeur ou si elle n'appuie aucune des deux positions;

b) les points dont la personne souhaite que l'Office tienne compte.

6. La liste de tous les documents à l'appui de l'énoncé de position et une copie de chacun de ceux-ci.

SCHEDULE 11
(Subsection 24(1))

WRITTEN QUESTIONS OR REQUEST FOR DOCUMENTS

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the written questions or the request for documents and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. The name of the party to which the written questions or the request for documents is directed.

4. A list of the written questions or of the documents requested, as the case may be, and an explanation of their relevance to the dispute proceeding.

5. A list of any documents submitted in support of the written questions or the request for documents and a copy of each of those documents.

6. The name of each party to which a copy of the written questions or the request for documents is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 11
(Paragraphe 24(1))

QUESTIONS ÉCRITES OU DEMANDE DE DOCUMENTS

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office

2. Le nom de la personne qui dépose les questions écrites ou la demande de documents et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Le nom de la personne à qui les questions écrites ou la demande de documents sont adressées.

4. La liste des questions écrites ou de documents demandés, selon le cas, et leur pertinence au regard de l'instance de règlement des différends.

5. La liste de tous les documents à l'appui des questions écrites ou de la demande de documents et une copie de chacun de ceux-ci.

6. Le nom de chaque partie à qui une copie des questions écrites ou de la demande de documents est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 12
(Subsection 24(2))

RESPONSE TO WRITTEN QUESTIONS OR REQUEST FOR DOCUMENTS

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the response to the written questions or the request for documents.

3. A list of the documents produced.

4. A list of any documents submitted in support of the response and a copy of each of those documents.

5. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 12
(Paragraphe 24(2))

RÉPONSES AUX QUESTIONS ÉCRITES OU À LA DEMANDE DE DOCUMENTS

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la réponse aux questions écrites ou à la demande de documents.

3. La liste des documents produits.

4. La liste de tous les documents à l'appui de la réponse et une copie de chacun de ceux-ci.

5. Le nom de chaque partie à qui une copie la réponse est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 13
(Subsections 27(1), 28(1), 30(1), 32(1), 33(1), 34(1), 35(1) and 36(1))

REQUEST

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the request and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

3. The details of the request that include

(*a*) the relief claimed;

(*b*) a summary of the facts; and

(*c*) the arguments in support of the request.

4. A list of any documents submitted in support of the request and a copy of each of those documents.

5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 13
(Paragraphes 27(1), 28(1), 30(1), 32(1), 33(1), 34(1), 35(1) et 36(1))

REQUÊTE

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la requête et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Les détails concernant la requête, notamment :

a) la réparation demandée;

b) le résumé des faits;

c) les arguments à l'appui de la requête;

4. La liste de tous les documents à l'appui de la requête et une copie de chacun de ceux-ci.

5. Le nom de chaque partie à qui une copie de la requête est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 14
(Subsections 27(2), 28(4), 30(2) and 31(4) and paragraphs 33(2)(a) and 34(2)(a))

RESPONSE TO REQUEST

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the response.

3. An identification of the request to which the person is responding, including the name of the person that filed the request.

4. The details of the response that include

(*a*) a statement that sets out the elements that the person agrees with or disagrees with in the request; and

(*b*) the arguments in support of the response.

5. A list of any documents submitted in support of the response and a copy of each of those documents.

6. The name of each party to which a copy of the response is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 14
(Paragraphes 27(2), 28(4), 30(2), 31(4), alinéas 33(2)a) et 34(2)a))

RÉPONSE À UNE REQUÊTE

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la réponse.

3. L'indication de la requête à laquelle la personne répond ainsi que le nom de la personne qui a déposé la requête.

4. Les détails concernant la réponse, notamment :

a) les points de la requête sur lesquels la personne est d'accord ou en désaccord;

b) les arguments à l'appui de la réponse.

5. La liste de tous les documents à l'appui de la réponse et une copie de chacun de ceux-ci.

6. Le nom de chaque partie à qui une copie de la réponse est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 15
(Subsections 27(3), 28(5), 30(3), 33(3) and 34(3))

REPLY TO RESPONSE TO REQUEST

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the reply.

3. An identification of the response to which the person is replying, including the name of the person that filed the response.

ANNEXE 15
(Paragraphes 27(3), 28(5), 30(3),33(3)et 34(3))

RÉPLIQUE À LA RÉPONSE À UNE REQUÊTE

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la réplique.

3. L'indication de la réponse à laquelle la personne réplique ainsi que le nom de la personne qui a déposé la réponse.

4. The details of the reply that include

(*a*) a statement that sets out the elements that the person agrees with or disagrees with in the response; and

(*b*) the arguments in support of the reply.

5. A list of any documents submitted in support of the reply and a copy of each of those documents.

6. The name of each party to which a copy of the reply is being sent and the complete address, the email address or the facsimile number to which it is being sent.

4. Les détails concernant la réplique, notamment :

a) les points de la réponse à la requête sur lesquels la personne est d'accord ou en désaccord;

b) les arguments à l'appui de la réplique.

5. La liste de tous les documents à l'appui de la réplique et une copie de chacun de ceux-ci.

6. Le nom de chaque partie à qui une copie de la réplique est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 16
(Subsection 29(1))

REQUEST TO INTERVENE

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person that wishes to intervene in the dispute proceeding, their complete address, telephone number and, if applicable, email address and facsimile number.

3. If the person is represented by a member of the bar of a province, the representative's name, firm, complete address, telephone number and, if applicable, email address and facsimile number.

4. If the person is represented by a person that is not a member of the bar of a province, a statement to that effect.

5. The details of the request that include

(*a*) a demonstration of the person's substantial and direct interest in the dispute proceeding;

(*b*) a statement specifying the date on which the person became aware of the application;

(*c*) a statement that indicates whether the person supports the applicant's position, the respondent's position or neither position; and

(*d*) a statement of the participation rights that the person wishes to be granted in the dispute proceeding.

6. A list of any documents submitted in support of the request and a copy of each of those documents.

7. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

ANNEXE 16
(Paragraphe 29(1))

REQUÊTE D'INTERVENTION

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui souhaite intervenir dans l'instance de règlement des différends, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. Si la personne est représentée par un membre du barreau d'une province, les noms du représentant et de son cabinet, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

4. Si le représentant n'est membre du barreau d'aucune province, la mention de ce fait.

5. Les détails concernant la requête, notamment :

a) la démonstration de l'intérêt direct et substantiel de la personne dans l'instance de règlement des différends;

b) la date à laquelle la personne a pris connaissance de la demande;

c) une mention indiquant si la personne appuie la position du demandeur, celle du défendeur ou si elle n'appuie aucune des deux positions;

d) les droits de participation que la personne souhaite avoir dans l'instance de règlement des différends.

6. La liste de tous les documents à l'appui de la requête et une copie de chacun de ceux-ci.

7. Le nom de chaque partie à qui une copie de la requête est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

SCHEDULE 17
(Subsection 31(1))

REQUEST FOR CONFIDENTIALITY

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the request and, if the information has not already been provided to the Agency, the person's complete address, telephone number and, if applicable, email address and facsimile number.

ANNEXE 17
(Paragraphe 31(1))

REQUÊTE DE CONFIDENTIALITÉ

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la requête et, s'ils n'ont pas été déjà fournis, ses adresse complète et numéro de téléphone et, le cas échéant, ses numéro de télécopieur et adresse électronique.

3. The details of the request that include

(*a*) an identification of the document or the portion of the document that contains confidential information;

(*b*) a list of the parties, if any, with which the person would be willing to share the document; and

(*c*) the arguments in support of the request, including an explanation of the relevance of the document to the dispute proceeding and a description of the specific direct harm that could result from the disclosure of the confidential information.

4. A list of any documents submitted in support of the request and a copy of each of those documents.

5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

SCHEDULE 18
(Subsection 31(3))

REQUEST FOR DISCLOSURE

1. The applicant's name, the respondent's name and the file number assigned by the Agency.

2. The name of the person filing the request.

3. The details of the request that include

(*a*) an identification of the documents for which the party is requesting disclosure;

(*b*) a list of the individuals who need access to the documents; and

(*c*) an explanation as to the relevance of the documents for which disclosure is being requested and the public interest in its disclosure.

4. A list of any documents submitted in support of the request and a copy of each of those documents.

5. The name of each party to which a copy of the request is being sent and the complete address, the email address or the facsimile number to which it is being sent.

3. Les détails concernant la requête, notamment :

a) l'indication du document ou de la partie du document contenant des renseignements confidentiels;

b) la liste des parties, le cas échéant, avec qui la personne serait disposée à partager le document;

c) les arguments à l'appui de sa requête, notamment la pertinence du document et la description du préjudice direct précis qui pourrait résulter de la communication des renseignements confidentiels.

4. La liste des documents à l'appui de la requête et une copie de chacun de ceux-ci.

5. Le nom de chaque partie à qui une copie de la requête est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

ANNEXE 18
(Paragraphe 31(3))

REQUÊTE DE COMMUNICATION

1. Les noms du demandeur et du défendeur ainsi que le numéro de dossier attribué par l'Office.

2. Le nom de la personne qui dépose la requête.

3. Les détails concernant la requête, notamment :

a) la liste des documents dont la partie demande la communication;

b) la liste des personnes physiques qui ont besoin d'avoir accès aux documents;

c) la pertinence des documents demandés et l'intérêt public dans leur communication;

4. La liste de tous les documents à l'appui de la requête et une copie de chacun de ces documents.

5. Le nom de chaque partie à qui une copie de la requête est envoyée ainsi que l'adresse complète, l'adresse électronique ou le numéro de télécopieur auquel la copie est envoyée.

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the Rules.*)

Issues

The Canadian Transportation Agency (the Agency) has used the *Canadian Transportation Agency General Rules*, SOR/2005-35 (the General Rules) to establish procedures for both dispute adjudications and economic determinations. However, this has resulted in rules of procedure that are overly broad, difficult for parties without legal representation to understand and, at times, inefficient. While the Agency has always had full discretion under the General Rules to adopt different procedures on a case-by-case basis and is required to use these powers regularly to craft customized procedures that are efficient and effective in individual cases, this ad hoc approach has not provided the predictability and clarity that the Agency's clients and stakeholders expect.

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(*Ce résumé ne fait pas partie des Règles.*)

Enjeux

L'Office des transports du Canada (l'Office) a utilisé les *Règles générales de l'Office des transports du Canada*, DORS/2005-35 (règles générales) pour établir ses procédures pour le règlement des différends et les décisions d'ordre économique. Cependant, cela a donné lieu à des règles de procédure qui ont une portée trop large, qui sont difficiles à comprendre pour les parties non représentées, et qui sont parfois inefficaces. L'Office a toujours eu le pouvoir, en vertu des règles générales, d'adopter différentes règles de procédure au cas par cas et ces pouvoirs sont utilisés régulièrement pour élaborer des règles de procédure personnalisées qui sont efficientes et efficaces pour des cas précis, mais cette approche ponctuelle n'a pas permis d'obtenir la prévisibilité et la clarté désirées par les clients et les intervenants de l'Office.

Background

The Agency is an independent, quasi-judicial tribunal. It makes decisions and determinations on a wide range of matters involving modes of transportation under the authority of Parliament, as set out in the *Canada Transportation Act*, S.C. 1996, c. 10 (CTA). The Agency's vision is a competitive and accessible national transportation system that fulfills the needs of Canadians and the Canadian economy.

The Agency's mission is to be a respected and trusted tribunal and economic regulator through efficient dispute resolution and essential economic regulation.

The Agency's values include integrity, fairness, transparency and quality of service. The Agency is committed to expand client-oriented resources and develop new ones to facilitate access to dispute resolution services.

Objectives

The Agency has the power under section 17 of the CTA to establish its own rules of procedure and the courts have been deferential to the Agency's procedural decisions, continually affirming that the Agency is the master of its own procedures.

Accordingly, and as part of its effort to ensure that its services are timely, effective, responsive, fair and transparent, the Agency is implementing new Rules entitled the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* [the Rules], the objectives of which are as follows:

- To modernize and streamline the Agency's procedures for dispute adjudication;
- To enhance the clarity, transparency and predictability of the formal adjudication process in dispute proceedings;
- To improve the efficiency of case processing; and
- To better inform and assist persons who do not have legal representation or commercial parties that are first-time users of the Agency's processes.

Description

The Agency is repealing the General Rules and putting in place the new Rules. The Rules introduce the following main changes:

1. The use of schedules that incorporate specific information requirements to improve the completeness of filings with the Agency and assist applicants in providing the information required;

2. A standard pleadings process of 20 business days and an expedited pleadings process of 8 business days for the filing of any answers and replies after the notice of acceptance of a complete application or 3 business days for the filing of any responses and replies in relation to a request;

3. An emphasis on the use of electronic means of filing documents with the Agency;

4. Limiting the application of the Rules to dispute proceedings, except for sections 3 and 4 concerning the Agency's quorum and the principle of proportionality, which apply to all proceedings before the Agency; and

5. The introduction of a full range of provisions addressing common requests made to the Agency in the course of dispute proceedings to simplify the process and raise the awareness of

Contexte

L'Office est un tribunal quasi judiciaire indépendant. Il prend des décisions sur un éventail de questions au sujet des modes de transport relevant du Parlement, comme le prévoit la *Loi sur les transports au Canada*, L.C. (1996), ch. 10 (LTC). La vision de l'Office est un réseau de transport national concurrentiel et accessible qui répond aux besoins des Canadiens et de l'économie canadienne.

La mission de l'Office est d'être un tribunal et un organisme de réglementation économique respecté et digne de confiance grâce au règlement des différends et à une réglementation économique essentielle.

Les valeurs de l'Office sont l'intégrité, l'équité, la transparence et la qualité du service. L'Office est déterminé à renforcer ses ressources axées sur le client et à en instaurer de nouvelles dans le but de faciliter l'accès aux services de règlement des différends.

Objectifs

L'Office a le pouvoir, en vertu l'article 17 de la LTC, d'établir ses propres règles de procédure et les tribunaux ont généralement respecté les décisions en matière de procédure de l'Office et ont affirmé que l'Office peut établir ses propres procédures.

Par conséquent, dans le cadre de ses efforts visant à assurer que ses services sont efficaces, adaptés aux besoins, équitables, transparents et opportuns, l'Office met en place les nouvelles règles, intitulées *Règles de l'Office des transports du Canada (Instances de règlement des différends et certaines règles applicables à toutes les instances)* [les règles], dont les objectifs sont les suivants :

- moderniser et simplifier les procédures de l'Office relatives au règlement des différends;
- améliorer la clarté, la transparence et la prévisibilité du processus décisionnel formel dans les instances de règlement des différends;
- améliorer l'efficience du traitement des cas;
- mieux informer et aider les personnes qui ne sont pas représentées ou les parties commerciales qui ont recours pour la première fois aux processus de l'Office.

Description

L'Office abroge les règles générales et met en place les nouvelles règles. Les règles contiennent les changements suivants :

1. le recours aux annexes qui contiennent des exigences particulières en matière de renseignements pour améliorer l'intégralité des documents déposés auprès de l'Office et aider les demandeurs à fournir les renseignements requis;

2. un processus standard d'actes de procédure de 20 jours ouvrables et un processus d'actes de procédure accéléré de 8 jours ouvrables après l'avis d'acceptation d'une demande complète pour le dépôt de toute réponse ou réplique, ou de 3 jours ouvrables pour le dépôt de toute réponse ou réplique liée à une requête;

3. l'accent sur le recours aux moyens électroniques pour déposer des documents auprès de l'Office;

4. le fait de limiter l'application des règles aux seules instances de règlement des différends, sauf pour les articles 3 et 4 concernant le quorum de l'Office et le principe de la proportionnalité, qui s'appliquent à toutes les instances devant l'Office;

5. l'introduction d'une gamme complète de dispositions sur les requêtes communes présentées à l'Office dans le cadre

persons interacting with the Agency of common matters to be addressed.

It is noted that during a transitional period after the coming into force of the Rules, the General Rules will continue to apply to all proceedings before the Agency that are commenced before the coming into force of these Rules unless the application filed before that time was not complete.

"One-for-One" Rule

The "One-for-One" Rule does not apply to these Rules, as there is no change in administrative costs to business.

Small business lens

The small business lens does not apply as the Rules would not increase administrative or compliance burden on small business.

Consultation

The Agency launched, on November 13, 2012, its consultation on the revisions to the General Rules. Interested parties were given until December 21, 2012, to submit their comments. The Agency received eight written submissions from industry and consumers. In addition, six meetings were held with targeted transportation service provider and related stakeholders.

The following section addresses the main substantive comments received during the consultation process and explains how these comments were taken into account.

Comments resulting in substantial changes to the Rules

Use of forms

At the time of consultation, the Agency proposed the introduction of 28 mandatory forms. One form was provided as an example.

Several stakeholders commented on the Agency's proposed use of mandatory forms. Stakeholders indicated that the introduction of 28 mandatory forms might complicate matters and may represent an unnecessary hurdle for unrepresented parties. A comment was also made that while forms might be useful in handling certain applications, such as those concerning lost luggage, they may be less effective in handling rail complaints. Concerns were also raised that forms may leave little room for describing facts. Finally, it was suggested that form numbering should correspond to rule numbers for ease of reference.

Following receipt of these comments, the Agency created online forms whose use is now voluntary and whose numbering matches those of the schedules. The Agency has also reduced the number of forms accompanying the Rules to 18.

In order to ensure that the forms leave sufficient room for describing the facts, issues, arguments and relief, the online forms have no space limitations. In addition, the Agency has developed specific forms that will be available to be used in particular disputes, including disability-related applications and noise and vibration applications. Although the use of forms will not be mandatory, it is believed that with these changes, the forms will be an

d'instances de règlement des différends pour simplifier le processus et sensibiliser les personnes qui interagissent avec l'Office aux points communs à traiter.

Il est à noter que durant une période transitoire suivant l'entrée en vigueur des présentes règles, les règles générales continueront de s'appliquer à toutes les instances introduites devant l'Office avant l'entrée en vigueur des présentes règles sauf si les demandes déposées avant ce moment étaient incomplètes.

Règle du « un pour un »

La règle du « un pour un » ne s'applique pas aux règles, car il n'y a aucun changement des coûts administratifs imposés aux entreprises.

Lentille des petites entreprises

La lentille des petites entreprises ne s'applique pas étant donné que les règles n'augmenteraient pas le fardeau administratif et réglementaire pour les petites entreprises.

Consultation

L'Office a lancé, le 13 novembre 2012, sa consultation sur les révisions des règles générales. Il a donné aux parties intéressées jusqu'au 21 décembre 2012 pour soumettre leurs commentaires. L'Office a reçu huit présentations écrites de l'industrie et des consommateurs. De plus, six réunions ont été tenues avec des fournisseurs de services de transport ciblés et des intervenants connexes.

La section qui suit traite des principaux commentaires de fond reçus pendant le processus de consultation et la façon dont ces commentaires ont été pris en compte.

Commentaires qui ont entraîné d'importants changements aux règles

Le recours aux formulaires

Au moment de la consultation, l'Office proposait l'introduction de 28 formulaires obligatoires. Un formulaire était fourni à titre d'exemple.

Plusieurs intervenants ont fourni des commentaires sur le recours aux formulaires proposés par l'Office. Les intervenants ont indiqué que l'introduction de 28 formulaires obligatoires pourrait compliquer les choses et représenter un obstacle indu pour les parties non représentées. Un commentaire soulignait que même si les formulaires sont utiles dans le traitement de certaines demandes, comme celles portant sur les bagages perdus, ils pourraient être moins efficaces dans le traitement des différends ferroviaires. Des préoccupations ont également été soulevées sur le peu d'espace prévu sur les formulaires pour décrire les faits. Enfin, il a été indiqué que la numérotation des formulaires devrait correspondre aux règles pour un renvoi facile.

Après avoir reçu ces commentaires, l'Office a créé des formulaires en ligne dont l'utilisation est volontaire et dont la numérotation correspond à celle des annexes. L'Office a également réduit à 18 le nombre de formulaires qui accompagnent les règles.

Pour veiller à ce que les formulaires fournissent suffisamment d'espace pour décrire les faits, les questions, les arguments et les réparations, les formulaires en ligne n'ont aucune limite d'espace. En outre, l'Office a créé des formulaires précis conçus pour des différends particuliers, y compris les demandes liées à une déficience et les demandes liées au bruit et aux vibrations. Même si le recours aux formulaires n'est pas obligatoire, on croit qu'avec ces

important client-focused resource for persons in their interactions with the Agency and will improve the efficiency of case processing by assisting people to ensure that the Agency receives all of the information that it requires to make its decisions.

In order to address the Agency's ongoing concerns about the incompleteness of the information that it receives in dispute proceedings and the time that it takes to address this issue, the Agency has developed 18 schedules to the Rules, which outline the required content of different documents that may be filed with the Agency. While persons are not required to use the forms, the schedules set out specific information requirements to improve the completeness of filings with the Agency. The Agency has numbered the schedules and provided references in each schedule to the applicable sections of the Rules. The Agency will release resource tools to assist people in using the Rules which will include links to the related forms.

Facilitation and mediation

The proposed Rules contained a section stating that, at any time in a dispute proceeding, the Agency may request that the parties participate in facilitation or mediation to help settle a dispute or any issue in a dispute where this would lead to a more effective and efficient resolution of any of the issues in dispute.

Comments from stakeholders on this provision were mixed. While some welcomed the Agency's approach of requesting mediation, others expressed a concern that the Agency's role as an impartial adjudicator should be kept separate from its new role as a promoter and facilitator of alternative dispute resolution. Other stakeholders expressed concern that the section might purport to confer upon the Agency a power to compel parties to participate in mediation. One stakeholder indicated that a section allowing the Agency to compel parties to participate in mediation is *ultra vires* the Agency's powers.

Although the intent of the section was not to compel parties to participate in facilitation or mediation as this remains a voluntary process, the Agency has removed these references from the Rules given that the focus of the Rules is on the adjudication of disputes. However, the Agency will continue to promote alternative dispute resolution mechanisms as successful and efficient client-focused processes, and has thus retained the reference to encouraging the settlement of disputes through both adjudication and alternative dispute resolution mechanisms.

Guidelines

The Agency proposed a section stating that it may establish guidelines for the processing of specific proceedings. This section met with mixed reaction from stakeholders. While one stakeholder favoured the use of guidelines to streamline the Rules, others expressed concern that the Agency is attempting to give guidelines a binding effect or to circumvent rule- and regulation-making requirements.

The Agency has removed this section from the Rules.

Reopening a decision or order of the Agency

The proposed Rules contained a section that addressed situations in which the Agency might reopen a decision or order.

changements, les formulaires constitueront pour les gens une importante ressource axée sur les clients dans leurs interactions avec l'Office et qu'ils amélioreront l'efficience du traitement des cas en aidant les gens à s'assurer que l'Office reçoit tous les renseignements qu'il requiert pour prendre ses décisions.

Pour régler la préoccupation constante quant aux renseignements incomplets qu'il reçoit dans les instances de règlement des différends et au temps requis pour les obtenir, l'Office a créé 18 annexes aux règles qui décrivent le contenu requis de différents documents qui peuvent être déposés auprès de l'Office. Même si l'utilisation des formulaires n'est pas obligatoire, les annexes énoncent des exigences précises en matière de renseignements pour aider les parties à déposer tous les documents nécessaires auprès de l'Office. L'Office a numéroté les annexes et fourni dans chaque annexe des références aux articles des règles qui s'appliquent. Il publiera des outils d'information pour aider les gens à utiliser les règles, qui contiendront des liens vers les formulaires connexes.

Facilitation et médiation

Les règles proposées contenaient une section qui prévoyait qu'à tout moment au cours d'une instance de règlement des différends, l'Office pourrait demander aux parties de participer à la facilitation ou à la médiation pour aider au règlement d'un différend ou pour régler une question du règlement d'un différend, si cela assurait un règlement plus efficace et plus efficient des questions en litige.

Les commentaires des intervenants sur cette disposition étaient partagés. Même si certains étaient favorables à la démarche de l'Office visant à demander la médiation, d'autres ont soulevé une préoccupation selon laquelle le rôle d'arbitre impartial de l'Office devrait être séparé de son nouveau rôle de promoteur et d'animateur des modes alternatifs de règlement des différends. D'autres intervenants ont exprimé une préoccupation selon laquelle cet article pourrait avoir pour objet de donner à l'Office le pouvoir de forcer les parties à participer à la médiation. Un intervenant a indiqué qu'un article permettant à l'Office de forcer les parties à participer à une médiation outrepasse les pouvoirs de l'Office.

Même si l'objet de cet article n'était pas de forcer les parties à participer à la facilitation ou à la médiation puisque cela demeure un processus volontaire, l'Office a retiré ces références des règles, puisque leur but premier est le règlement des différends. Toutefois, l'Office continuera de promouvoir les mécanismes alternatifs de règlement des différends comme des processus axés sur les clients efficients et valables, et il a donc retenu la référence qui encourage le règlement des différends tant par le processus décisionnel formel qu'au moyen de modes alternatifs de règlement des différends.

Lignes directrices

L'Office a proposé un article qui prévoit qu'il peut établir des lignes directrices pour le traitement d'instances particulières. Cet article a suscité des réactions partagées des intervenants. Bien qu'un intervenant favorisait le recours aux lignes directrices pour simplifier les règles, d'autres étaient préoccupés de ce que l'Office tente de donner aux lignes directrices un effet obligatoire ou de contourner les exigences en matière de création de règles ou de règlement.

L'Office a retiré cet article des règles.

Réouverture d'une décision ou d'un arrêté de l'Office

Les règles proposées contenaient un article qui traitait des cas où l'Office pourrait rouvrir une décision ou un arrêté. Plusieurs

Several stakeholders provided comments on this section, and questioned the content and procedures set out in the proposed provision.

The Agency has removed this section from the Rules.

Applications

In addition to commenting that it is unclear when the time limit for providing an answer to an application would begin to run, stakeholders indicated that respondent contact information is not always available and parties should not be required to copy the respondent on an originating document.

Parties will be notified when the application has been accepted as complete and the date on which the pleadings process begins. This notification will also provide the respondents with clear information on when their answers are due.

The Rules will not require an applicant to send a copy of their application to the respondent. Applications should be filed with the Agency and respondents will receive a copy along with the notice that the application has been accepted as complete.

Request for expedited pleadings process

Some stakeholders commented that the Agency should clarify the circumstances under which such a process would be available, or that it should only be available where there is a demonstrated necessity for such a process. One stakeholder asked whether the expedited process would entail an expedited decision-making process. Another stakeholder commented that a time limit of one day to respond to a request for an expedited process has the potential of abuse against unrepresented parties.

The Rules specify the documents to which an expedited process may apply, namely to an answer, a reply or any request filed under the Rules. The Agency has indicated when requests for an expedited process must be filed.

Following the consultation, the Rules now indicate that the party filing a request for an expedited process must demonstrate that adherence to the time limits set out in the Rules would cause them financial or other prejudice. Finally, the Agency has provided for a right of response and reply in relation to requests for an expedited process.

This provision is consistent with the most efficient processing of disputes and recognizes that certain matters demand shorter pleadings timeframes.

Removal of oral hearings provisions

Three stakeholders commented on the removal of Part III of the General Rules relating to oral hearings. They commented that the Agency should maintain a set of rules applicable to oral hearings as the Agency may benefit from the option of an oral hearings process.

While Part III of the General Rules set out procedures applicable to oral hearings, the provisions did not adequately address the procedural steps involved in an oral hearing process, and therefore, these provisions were not carried over in the Rules. However, the Rules will apply to disputes that proceed by way of oral hearing. In addition, the Agency may establish guidelines in relation to oral hearings and may further establish the procedures and time limits that will apply to each proceeding to be heard by way of oral hearing. This case-by-case approach is consistent with past practice in disputes before the Agency that have proceeded by way of oral hearing.

intervenants ont fourni des commentaires sur cet article et remis en question le contenu et les procédures établis dans la disposition proposée.

L'Office a retiré cet article des règles.

Demandes

Outre le commentaire voulant qu'il n'est pas clair à quel moment le délai pour fournir une réponse à une demande commence, les intervenants ont indiqué que les coordonnées du défenseur ne sont pas toujours disponibles et que les parties ne devraient pas être tenues de lui soumettre une copie de l'acte introductif.

Les parties seront avisées que la demande a été acceptée comme complète et de la date du début des actes de procédure. Cet avis fournira également aux défenseurs une indication claire du moment où leur réponse doit être fournie.

Les règles n'exigeront pas qu'un demandeur soumette une copie de sa demande au défenseur. Les demandes doivent être déposées auprès de l'Office et les défenseurs en recevront une copie avec l'avis que la demande a été acceptée comme complète.

Requête de processus accéléré

Certains intervenants ont indiqué que l'Office devrait préciser les circonstances dans lesquelles on peut avoir recours au processus accéléré ou que ce processus ne devrait être offert que lorsqu'il est démontré qu'il est nécessaire. Un intervenant a demandé si le processus accéléré supposerait un processus de prise de décision accéléré. Un autre a indiqué qu'un délai d'une journée pour répondre à une requête de processus accéléré pourrait être abusif pour les parties non représentées.

Les règles précisent les documents auxquels le processus accéléré peut s'appliquer, soit une réponse, une réplique ou toute requête présentée en vertu des règles. L'Office a indiqué quand une requête de processus accéléré doit être déposée.

À la suite de la consultation, les règles indiquent maintenant qu'une partie qui dépose une requête de processus accéléré doit démontrer que le respect des délais établis dans les règles leur causerait un préjudice financier ou autre. Enfin, l'Office a prévu un droit de réponse et de réplique pour les requêtes de processus accéléré.

Cette disposition est conforme au traitement le plus efficace des différends et reconnaît que certaines affaires exigent des actes de procédure accélérés.

Retrait des dispositions sur les audiences publiques

Trois intervenants ont fourni des commentaires sur le retrait de la partie III des règles générales liée aux audiences. Ils ont indiqué que l'Office devrait maintenir un ensemble de règles applicables aux audiences puisqu'il pourrait se prévaloir de l'option d'un processus d'audience publique.

Même si la partie III des règles générales établissait les procédures applicables aux audiences publiques, ces dispositions ne traitaient pas adéquatement des étapes procédurales d'une audience publique et, par conséquent, elles n'ont pas été conservées dans les règles. Toutefois, les règles s'appliqueront aux différends réglés au moyen d'une audience publique. En outre, l'Office peut établir des lignes directrices pour les audiences publiques et ensuite établir les procédures et les délais qui s'appliqueront à chaque instance qui sera entendue en audience. Cette démarche au cas par cas est cohérente avec la pratique passée en ce qui a trait aux instances de différends devant l'Office qui ont été réglées au moyen d'une audience publique.

Comments not resulting in substantial changes to the Rules

Time limits

Seven stakeholders objected to the shortened time limits for filing pleadings. Concerns were that the shorter time limits sacrifice fairness and quality of pleadings and decisions in favour of expediency; that the Agency will receive more requests for extensions of time resulting in higher Agency workload; that the time limits are insufficient for complex cases; and that the time limits create a substantial barrier for unrepresented parties.

Stakeholders suggested that, if the shortened time limits are adopted, the Agency should improve communication as to when proceedings commence, and that time limits should start to run from the time that the Agency has provided notice of the completeness of an application and, in the case of the time limit for filing a request to intervene, from the time that the Agency posted the application on its Web site. A stakeholder also suggested that extensions by consent of the parties should be considered.

The Agency has adopted a change in the time limits for filing documents in a dispute proceeding — 15 business days rather than 30 calendar days to file an answer and 5 business days rather than 10 calendar days to file a reply. The time limits for filing pleadings in relation to requests have also been shortened.

The Agency considers that the time limits set out in the Rules should be adequate in most low and medium complexity disputes given instantaneous communication. In August 2012, industry and consumer stakeholders were informed of a change in Agency practice whereby filing time limits would be shortened to 21 and 7 calendar days for answers and replies respectively. This practice has been in effect for nearly two years without any reported problems. The time limits for filing an answer and a reply to applications provided for in the Rules are roughly equivalent to the current time limits being applied by the Agency.

Persons filing documents always have the opportunity to request an extension of time under section 30 where the complexity of the file or some other justification makes the time limits inadequate.

In the past, there has been some confusion as to whether an application was complete, and therefore should be answered by the respondent. The existing section simply states that an answer is to be filed "within 30 days after receiving it." This confusion has now been addressed under the Rules in that an answer is to be filed within 15 business days after the date of the notice indicating that the application has been accepted.

In order to further assist parties, the Agency has defined the term "business day" in the Rules and is providing an annotation to explain how time will be calculated and which days are holidays for the Agency. Finally, and in keeping with current practice, wherever possible, the Agency will identify deadlines by the specific date on which the deadline falls, thus eliminating confusion around the calculation of deadlines.

Requests to intervene

Several stakeholders were concerned that the Agency is introducing a new test of "substantial and direct interest," and that potential interveners may have difficulty meeting this test. They argue

Commentaires qui n'ont pas entraîné d'importants changements aux règles

Délais

Sept intervenants se sont opposés à l'abrégement des délais pour déposer des actes de procédure. Des préoccupations ont été soulevées selon lesquelles les délais plus courts sacrifieraient l'équité et la qualité des actes de procédure et des décisions au profit de la rapidité; l'Office recevrait plus de requêtes visant les prolongations de délais, ce qui augmenterait sa charge de travail; les délais seraient insuffisants dans les cas complexes; et les délais créeraient un obstacle important pour les parties non représentées.

Les intervenants ont indiqué que si l'abrégement des délais était accepté, l'Office devrait améliorer la communication dès le début des instances et que les délais devraient commencer au moment où l'Office a donné avis qu'une demande est complète et, dans le cas des délais pour déposer une requête pour intervention, au moment où l'Office a publié la demande sur son site Web. Un intervenant a également indiqué que la prolongation sur consentement des parties devrait être considérée.

L'Office a adopté un changement des délais pour déposer les documents dans le cadre d'une instance de règlement d'un différend, soit 15 jours ouvrables plutôt que 30 jours civils pour déposer une réponse et 5 jours ouvrables plutôt que 10 jours civils pour déposer une réplique. Les délais pour déposer des arguments en réponse à des requêtes ont également été abrégés.

L'Office considère que les délais établis dans les règles devraient être appropriés dans la plupart des différends d'une complexité faible ou moyenne compte tenu de l'instantanéité des communications. En août 2012, l'industrie et les intervenants ont été informés d'un changement dans la pratique de l'Office voulant que les délais de dépôt soient écourtés à 21 et à 7 jours civils pour les réponses et les répliques respectivement. Cette pratique est en vigueur depuis presque deux ans sans qu'aucun problème n'ait été signalé. Les délais pour le dépôt d'une réponse et d'une réplique aux demandes prévus dans les règles sont sensiblement équivalents aux délais actuels appliqués par l'Office.

Aux termes de l'article 30, les personnes qui déposent des documents ont l'occasion de demander une prolongation du délai lorsque la complexité du dossier ou une autre justification fait en sorte que les délais sont inappropriés.

Dans le passé, il y a eu confusion à savoir si une demande était complète et si le défendeur devait donc y répondre. L'article antérieur énonçait simplement que la réponse devait être déposée « dans les 30 jours suivant la réception de la demande ». Cette confusion est maintenant éliminée puisque les nouvelles règles prévoient qu'une réponse doit être déposée dans les 15 jours ouvrables suivant la date de l'avis que la demande a été acceptée.

Pour aider davantage les parties, l'Office a défini dans les règles le terme « jour ouvrable » et offre une annotation pour expliquer comment le temps sera calculé et quels jours sont fériés pour l'Office. Enfin, conformément à la pratique actuelle, lorsque c'est possible, l'Office indiquera les délais selon leur date d'échéance précise, ce qui éliminera toute confusion pour le calcul des délais.

Requêtes pour intervention

De nombreux intervenants s'inquiétaient de ce que l'Office introduise un nouveau critère d'« intérêt substantiel et direct » et que les intervenants éventuels pourraient avoir de la difficulté à

that this will have a negative impact on lobby groups, trade organizations, industry and shipper associations, railway companies, unions and municipalities.

One stakeholder commented that imposing an obligation to apply for intervener status is an undue obstacle, whereas another commented that it is a breach of the duty of fairness not to provide a right of reply to a request to intervene.

Finally, there was a concern with the time limit of 10 business days to file an intervention once a person becomes aware of an application. It was noted that the Agency's Web site is not always updated and that the posting of applications is not always consistent.

The new Rules, and use of the term "substantial and direct interest," provide for greater clarity as to who may be an intervener in a dispute proceeding. The intent is not to impose a new test but to clarify an existing test that has been applied by the Agency in its decisions.

The process for intervention is now a two-step process in which a potential intervener must first make a request to intervene and may only file an intervention if the Agency grants the request. Under the General Rules, a person simply filed an intervention without the Agency first making a determination as to their intervener status. The right to respond to interventions has been carried over from the General Rules, however, the new approach represents an improvement in that it ensures that parties only respond to interventions filed by Agency-approved interveners.

In order to facilitate awareness of applications, the Agency intends to ensure the timely posting of applications on its Web site when the new Rules come into effect.

Position statements

Stakeholders commented on the addition of a rule relating to position statements. There were various concerns raised, namely that persons may be discouraged from filing position statements as they may be required to answer questions or produce documents and they may not have the desire or resources to do so; that this will take procedural rights from the parties as there is no automatic right to cross-examine on a position statement; and that unrepresented parties with limited resources will be disadvantaged by being forced to respond to position statements while having no avenue to recover costs from the authors of those position statements.

Section 23 of the Rules resembles section 46 of the General Rules respecting "interested persons" and clarifies expectations by confirming that a person filing a position statement receives no further participation rights or notice in the dispute proceeding.

One important feature of administrative law is the ability of tribunals to take into consideration, in their decision-making, broader public views and interests, where appropriate. This section is intended to provide interested persons with a simple, transparent and effective way to make their views known to the Agency. From the Agency's perspective, it is necessary to have a streamlined process for the receipt of this type of material, so that the public's right

respecter ce critère. Ils avancent que cela aura un effet défavorable sur les groupes de pression, sur les associations corporatives, sur l'industrie et les associations d'expéditeurs, sur les compagnies de chemin de fer, sur les syndicats et sur les municipalités.

Un intervenant a indiqué que le fait d'imposer une obligation de demander le statut d'intervenant est un obstacle indu, alors qu'un autre a indiqué que le fait de ne pas fournir de droit de réplique à une requête pour intervention contrevient au devoir d'agir équitablement.

Enfin, une préoccupation a été soulevée à l'égard du délai de 10 jours ouvrables pour déposer une intervention une fois qu'une personne a pris connaissance d'une demande. Il a été noté que le site Web de l'Office n'est pas toujours mis à jour et que l'affichage des demandes n'est pas toujours cohérent.

Les nouvelles règles et le recours à l'expression « intérêt substantiel et direct » précisent mieux qui peut intervenir dans une instance de règlement d'un différend. Le but n'est pas d'imposer un nouveau critère, mais de préciser le critère existant que l'Office applique dans ses décisions.

Le processus d'intervention comporte maintenant deux volets en vertu desquels l'intervenant éventuel doit d'abord déposer une requête pour intervention et ne peut intervenir que si l'Office accorde cette requête. En vertu des règles générales, une personne n'avait qu'à déposer une intervention sans que l'Office décide d'abord de son statut d'intervenant. Le droit de répondre aux interventions qui était établi dans les règles générales a été conservé, mais la nouvelle démarche représente une amélioration en ce qu'elle assure que les parties ne répondent qu'aux interventions déposées par les intervenants approuvés par l'Office.

Pour faciliter la prise de connaissance des demandes, l'Office entend veiller à la publication opportune des demandes sur son site Web lorsque les nouvelles règles seront en vigueur.

Énoncés de position

Les intervenants ont fourni des commentaires sur l'ajout d'une règle relative aux énoncés de position. Diverses préoccupations ont été soulevées, notamment le fait que les personnes pourraient être tenues de répondre à des questions ou de produire des documents alors qu'elles ne souhaitent pas le faire et qu'elles n'ont pas les ressources pour le faire et que cela pourrait les décourager de déposer un énoncé de position; que cela réduirait les droits des parties en matière de procédure puisqu'il n'y a pas de droit automatique de contre-interrogatoire dans le cas des énoncés de position; et que les parties non représentées qui ont des ressources limitées seraient défavorisées si on les forçait à répondre aux énoncés de position sans disposer d'un moyen de récupérer les frais des auteurs de ces énoncés.

L'article 23 des règles ressemble à l'article 46 des règles générales concernant les « personnes intéressées » et précise les attentes en confirmant que toute personne qui dépose un énoncé de position ne reçoit aucun autre droit de participation ou aucun autre avis dans l'instance de règlement d'un différend.

Une caractéristique importante du droit administratif est la possibilité pour les tribunaux de tenir compte dans leur prise de décision des opinions et des intérêts plus larges du public, le cas échéant. Cet article a pour but de fournir aux personnes intéressées un moyen simple, transparent et efficace de faire connaître leurs opinions à l'Office. Du point de vue de l'Office, il est essentiel d'avoir un processus simplifié pour la réception de ce type de

to make its views known is respected, but in a manner that is not resource intensive for either the Agency or the parties.

The filing of a position statement is, in most cases, the extent of a person's participation in a file. Position statements are typically just that, a statement of an individual's position on a matter, whether they support or oppose an application. On occasion, position statements are submitted in the form of petitions signed by large numbers of individuals. In the Agency's experience, it is generally sufficient that these statements be placed on the record as evidence of public interest in a matter and there is no need for the parties to respond to these statements or to conduct any follow-up in the way of questions or document requests.

Less frequently, persons may have information that is relevant and necessary to the Agency, but they may wish to limit their participation in the proceeding. They, too, may use a position statement to bring this information forward; however, the Agency may decide to ask questions or make a request that further documents be submitted if necessary. Furthermore, although there is no automatic right to respond to a position statement, if a party wants to respond to a position statement that contains relevant and necessary information, they may seek permission to do so from the Agency pursuant to section 34 of the Rules.

Questions or document requests between parties

Several stakeholders commented on this proposed provision. Among the comments received, stakeholders expressed concern for the time limits for responding to a notice of written questions or a document request. Stakeholders further commented that subjecting a document request "after the party becomes aware of the document" could result in a series of cascading deadlines for parties. In addition, a stakeholder commented that it was unclear what efficiencies would be gained from allowing for a notice to be sent at any time prior to the close of pleadings, and that the Agency should consider providing for an interrogatory phase. One stakeholder suggested adopting a principle of proportionality in relation to these requests.

The time limits for providing a notice of written questions or the production of documents between parties, as well as the time limits for responding to such a notice, have been retained from the proposed provision following the consultation. The Agency considers the time limit for providing notice to be fair, and that the time limit for responding should be adequate in most low and medium complexity disputes.

The General Rules do not limit the time for questions or document requests in any way. This has resulted in inefficiencies as parties attempt to continue this phase after the close of pleadings. The new time limits have been introduced in order to clarify that the time for questions and document requests should be limited to the period when pleadings are open. Also, there should be no further exchange of documents or information after the close of pleadings and while the Agency is deliberating, except in exceptional circumstances and with the approval of the Agency.

document pour que soit respecté le droit du public de faire connaître ses opinions, mais d'une manière qui exige peu de ressources de l'Office et des parties.

Dans la plupart des cas, le dépôt d'un énoncé de position constitue toute la participation d'une personne au dossier. Habituellement, l'énoncé de position représente cela, un énoncé de la position d'une personne sur une question, qu'elle appuie une demande ou qu'elle s'y oppose. À l'occasion, un énoncé de position est déposé sous forme de pétition signée par un grand nombre de personnes. Selon l'expérience de l'Office, il suffit que ces énoncés soient versés aux archives comme élément de preuve de l'intérêt du public dans une affaire et les parties n'ont pas à y répondre ni à en faire le suivi au moyen de questions ou d'une requête de production de document.

Plus rarement, certaines personnes peuvent avoir des renseignements pertinents nécessaires à l'Office, mais elles peuvent souhaiter limiter leur participation à l'instance. Elles peuvent aussi avoir recours à l'énoncé de position pour faire connaître ces renseignements, mais l'Office peut décider de poser des questions et demander que d'autres documents soient déposés au besoin. De plus, même s'il n'y a pas de droit de réponse automatique à un énoncé de position, si une partie souhaite répondre à un énoncé de position qui contient des renseignements pertinents et nécessaires, elle peut demander la permission de le faire à l'Office en vertu de l'article 34 des règles.

Questions ou requêtes de production de documents entre les parties

De nombreux intervenants ont fourni des commentaires à l'égard de cette disposition proposée. Parmi les commentaires reçus, les intervenants ont soulevé des préoccupations à l'égard des délais pour répondre à un avis de question écrite ou à une requête de production de documents. Les intervenants ont également indiqué que le fait de soumettre une requête de production de documents à un moment « suivant la date à laquelle la partie est informée de leur existence » pourrait entraîner une série de délais en cascade pour les parties. En outre, un intervenant a indiqué qu'il n'est pas clair quelles efficiences seraient réalisées si on permettait d'envoyer un avis à tout moment avant la clôture des actes de procédure, et que l'Office devrait considérer d'accorder une étape de demande de renseignements. Un autre intervenant a suggéré d'adopter un principe de proportionnalité à l'égard de ces requêtes.

Les délais pour fournir un avis de question écrite ou de production de documents entre les parties, ainsi que les délais pour répondre à un tel avis, ont été retenus dans la disposition proposée à la suite de la consultation. L'Office considère que le délai pour fournir un avis est juste et que celui pour répondre devrait être approprié dans la plupart des différends d'une complexité faible à moyenne.

Les règles générales n'imposaient aucune limite de temps pour les requêtes de questions ou de production de documents. Cela a entraîné des inefficiences puisque les parties tentaient de prolonger cette étape après la clôture des actes de procédure. Les nouveaux délais ont été introduits pour préciser que le temps accordé pour les requêtes de questions et de production de documents devrait se limiter à la période pendant laquelle les actes de procédure sont ouverts et qu'il ne devrait y avoir aucun échange de documents ou de renseignements après la clôture des actes de procédure et pendant les délibérations de l'Office, sauf dans des circonstances exceptionnelles et avec l'approbation de l'Office.

Should further time be required to provide a response, the party responding always has the opportunity to request an extension of time.

The Agency has included a proportionality provision in a section that applies to all proceedings before the Agency.

Close of pleadings

Two stakeholders commented on the close of pleadings. One stakeholder commented that the close of pleadings might be affected if there are confidentiality claims. The other commented that it would be helpful if the Agency provided a letter stating that pleadings are closed.

The Agency has maintained the close of pleadings time limits. The automatic closure of pleadings includes a cushion of five days to allow for parties to make decisions about whether they will pose questions, request the production of documents or make other requests to the Agency.

The intention is to have the pleadings automatically close within an established time limit. However, the Agency has the power to vary the date for the close of pleadings to allow for outstanding matters to be resolved before the close of pleadings. Parties will be notified once pleadings have closed. In addition, this information will be reflected in the status of cases on the Agency's Web site.

Request for confidentiality

Two stakeholders commented on the confidentiality provision. One expressed concern that the requirement to present "specific direct harm" imposed a standard that is too high and that cannot be met. Concern was also expressed that section 26 of the General Rules, which creates a broad presumption of confidentiality for financial and corporate information, should be retained.

The test set out in the Rules is the same as the test set out and applied by the Agency under the General Rules.

As an economic regulator, the Agency receives a large quantity of confidential financial and corporate information that it uses in its uncontested economic determinations. Section 26 of the General Rules was required to address the confidentiality of this information in light of the fact that the General Rules applied to both dispute proceedings and non-dispute proceedings. Section 26 is not required in rules for dispute adjudication.

In dispute proceedings, each party is entitled to know and test the case being made by the other party, including the evidence being produced by the other party. This entitlement is subject to limited exceptions, for example, where one party can show that disclosure of its confidential information would cause specific direct harm to it that is not outweighed by the public interest in having it disclosed. This is the test currently applied by the Agency in determining claims for confidentiality and this test will continue under the Rules.

Notice of intention to dismiss an application

Three stakeholders commented on this provision, indicating that what is meant by "fundamental defect" is unclear; that the rights of parties to make submissions in respect of a notice of intention to summarily dismiss an application should be clarified; and that the

Si plus de temps est requis pour fournir une réponse, la partie qui répond a toujours la possibilité de demander une prolongation du délai.

L'Office a inclus une disposition sur la proportionnalité dans un article qui s'applique à toutes les instances devant l'Office.

Clôture des actes de procédure

Deux intervenants ont fourni des commentaires sur la clôture des actes de procédure. Un a indiqué que la clôture des actes de procédure pourrait être touchée dans le cas d'une requête de confidentialité. L'autre intervenant a indiqué qu'il serait utile que l'Office fournisse une lettre déclarant que les actes de procédure sont clos.

L'Office a conservé les délais pour la clôture des actes de procédure. La clôture automatique des actes de procédure comporte une disposition pour une réserve de cinq jours pour permettre aux parties de décider si elles poseront des questions, exigeront la production de documents ou présenteront une autre requête à l'Office.

Le but est d'avoir une clôture automatique des actes de procédure en un calendrier établi. Toutefois, l'Office a le pouvoir de modifier la date de clôture des actes de procédure pour permettre de régler les questions en suspens avant la clôture des actes de procédure. Les parties seront avisées de la clôture des actes de procédure. De plus, l'état des instances sur le site Web de l'Office fournira cette information.

Requête de confidentialité

Deux intervenants ont fourni des commentaires sur la disposition sur la confidentialité. Un s'inquiétait de ce que l'exigence de présenter tout « dommage direct particulier » impose une norme trop élevée qui ne peut être respectée. Une préoccupation a également été soulevée voulant que l'article 26 des règles générales, qui crée une présomption de confidentialité pour les renseignements financiers ou d'entreprise, doive être conservé.

Le critère établi dans les règles est le même que celui énoncé dans les règles générales et appliqué par l'Office.

En tant qu'organisme de réglementation économique, l'Office reçoit un volume important de renseignements financiers et d'entreprise confidentiels qu'il utilise dans ses déterminations économiques réglementaires incontestées. L'article 26 des règles générales était nécessaire pour assurer la confidentialité de ces renseignements à la lumière du fait que les règles générales s'appliquaient tant aux instances de règlement des différends qu'à des instances non liées à des différends. L'article 26 n'est pas nécessaire dans les règles pour le règlement des différends.

Dans les instances de règlement des différends, chaque partie a le droit de connaître les allégations formulées à son endroit et d'en débattre, y compris les éléments de preuve produits par l'autre partie. Ce droit comporte des exceptions, par exemple, lorsqu'une partie peut démontrer que la communication de ses renseignements confidentiels lui causerait un préjudice direct précis que ne compenserait pas l'intérêt du public. C'est le critère que l'Office applique actuellement pour se prononcer sur les requêtes de confidentialité et ce critère sera maintenu dans les règles.

Avis d'intention de rejeter une demande

Trois intervenants ont fait des commentaires sur cette disposition et ont indiqué que ce qu'on vise par l'expression « défaut fondamental » n'est pas clair; que les droits des parties de faire des présentations à l'égard d'un avis d'intention de rejeter une demande

provision should be expanded to include cases where the requested remedy is based upon identical or closely similar facts and arguments that have already been extensively litigated before the Agency.

The Agency has maintained this provision following consultation as it supports the efficient use of resources. The Agency acknowledges that there is not an automatic right of participation for other parties, and anticipates that this mechanism may be used before the respondent becomes involved in the proceeding. The Agency will determine, on a case-by-case basis, if a right to participate is appropriate and should be given to other parties.

Rationale

One of the key tools the Agency has used in carrying out its mandate as an independent, quasi-judicial tribunal is the General Rules. The General Rules set out the overall procedures, processes and timelines applied by the Agency.

The Agency is committed to providing high quality services that are timely, efficient and responsive. This is a key corporate strategic plan priority for 2014–2017. In this regard, the Agency has adopted a set of performance targets that are monitored and publicly reported on an annual basis.

The General Rules have been in place since 2005. Through the Agency's experience in applying them, and based on feedback received from clients and stakeholders, it was felt that the time was right to review the dispute adjudication procedures, with a view to modernizing, streamlining and simplifying them.

For example, through feedback provided as part of the Agency's client satisfaction surveys, clients and stakeholders have clearly indicated that they want more information about the Agency's processes and they want these same processes to be faster, simpler, more predictable and transparent. The Rules have been designed to address these objectives.

The Agency has used its General Rules as procedures for both dispute adjudications and economic determinations. The Rules establish specific procedures designed for the adjudication of disputes. These Rules put in place significant improvements to benefit users of the Agency's dispute resolution services. These improvements will make the Rules more understandable, efficient and predictable in their application.

Overall, clients and stakeholders will benefit from the Rules with no anticipated additional cost to industry or Government.

Implementation, enforcement and service standards

The Rules come into force on June 4, 2014, but, if they are published after that day, they come into force on the day on which they are published.

The General Rules will continue to apply to all proceedings before the Agency that were commenced before the coming into force of these Rules, except proceedings in respect of which the application filed before that time was not complete.

The Agency's implementation plan has been tailored to both known clients and stakeholders as well as first-time users of the Agency's dispute resolution services. Relying on various tools and means of communication, the strategy is aimed at promoting early

de façon sommaire doivent être précisés; et que la disposition doit être élargie pour inclure les cas où la réparation demandée est fondée sur des faits identiques ou très semblables et des arguments qui ont déjà été débattus de façon exhaustive devant l'Office.

L'Office a maintenu cette disposition à la suite des consultations puisqu'elle soutient l'utilisation efficace des ressources. L'Office reconnaît qu'il n'y a aucun droit automatique de participation pour d'autres parties et prévoit que ce mécanisme pourra servir avant que le défenseur soit engagé dans l'instance. L'Office déterminera, en fonction de chaque cas, si un droit de participation est approprié et devrait être accordé à d'autres parties.

Justification

Les règles générales constituent un des outils clés que l'Office a utilisés dans le cadre de son mandat de tribunal quasi judiciaire. Les règles générales établissent l'ensemble des procédures, des processus et des délais appliqués par l'Office.

L'Office s'engage à fournir des services de haute qualité, efficaces, adaptés aux besoins et opportuns. Il s'agit d'une priorité ministérielle clé établie dans son plan stratégique pour 2014-2017. À cet égard, l'Office a adopté des cibles de rendement qui sont surveillées et qui font l'objet d'un rapport public sur une base annuelle.

Les règles générales actuelles sont en vigueur depuis 2005. L'expérience de l'Office à l'égard de leur application, de même que les commentaires reçus des clients et des intervenants, ont fait ressortir que le moment était opportun pour réviser les procédures liées au règlement des différends dans l'optique de les moderniser et de les simplifier.

Par exemple, grâce aux commentaires reçus dans le cadre de sondages sur la satisfaction des clients, les clients et les intervenants de l'Office ont clairement indiqué qu'ils veulent obtenir plus de renseignements sur les processus de l'Office et qu'ils souhaitent que ces processus soient plus rapides, simples, prévisibles et transparents. Les règles ont été conçues pour tenir compte de ces objectifs.

L'Office a utilisé ses règles générales comme des procédures tant pour le règlement des différends que pour les décisions d'ordre économique. Les règles établissent des procédures précises conçues pour le règlement des différends. Ces règles donnent lieu à des améliorations marquées qui sont à l'avantage des utilisateurs des services de règlement des différends de l'Office. Ces améliorations aideront à rendre les règles plus faciles à comprendre, efficaces et prévisibles en ce qui a trait à leur application.

De façon générale, les clients et les intervenants tireront profit des règles, sans coût supplémentaire pour l'industrie et le gouvernement.

Mise en œuvre, application et normes de service

Les règles entrent en vigueur le 4 juin 2014, ou, si elles sont publiées après cette date, à la date de leur publication.

Les règles générales continuent de s'appliquer à toutes les instances introduites avant l'entrée en vigueur des présentes règles, sauf aux instances dont les demandes déposées avant ce moment étaient incomplètes.

Le plan de mise en œuvre de l'Office a été adapté aux clients et aux intervenants connus, ainsi qu'aux nouveaux utilisateurs des services de règlement des différends de l'Office. La stratégie, fondée sur divers outils et moyens de communication, vise à favoriser

awareness and understanding of the new procedures and time limits that will apply after the Rules come into force. This will ensure that the Rules are applied as efficiently and effectively as possible following their implementation.

There are no compliance and enforcement strategies that would be specifically applicable to the Rules.

The Agency has set in place an extensive array of time-based service standards to ensure that it provides efficient and transparent services. These standards are based on the Agency's Performance Measurement Framework, first established in 2007, and are adjusted periodically according to client and stakeholder feedback as well as the Agency's strategic objectives. Each year, the Agency publishes its performance results against these standards in its annual report.

The Agency will monitor the implementation of the Rules and how often dispute files meet the service standards established by the Agency.

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une connaissance et une compréhension rapides des nouvelles procédures et des nouveaux délais qui s'appliqueront après l'entrée en vigueur des règles. Cela fera en sorte que les règles seront appliquées de la façon la plus efficiente et efficace possible après leur mise en œuvre.

Il n'y a aucune stratégie de conformité et d'application de la loi qui s'appliquera précisément aux règles.

L'Office a mis en place une vaste gamme de normes temporelles de service pour veiller à ce qu'il offre des services efficients et transparents. Ces normes sont fondées sur le cadre de mesure du rendement de l'Office, établi en 2007, et elles sont modifiées périodiquement à la lumière des commentaires des clients et des intervenants ainsi que des objectifs stratégiques de l'Office. Chaque année, l'Office publie ses résultats en matière de rendement, en fonction de ces normes, dans son rapport annuel.

L'Office surveillera la mise en œuvre des règles et la fréquence à laquelle les dossiers liés aux différends sont conformes aux normes de service établies par l'Office.

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CANADA

CONSOLIDATION

CODIFICATION

Immigration and Refugee Protection Act

Loi sur l'immigration et la protection des réfugiés

S.C. 2001, c. 27

L.C. 2001, ch. 27

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years standing at the Chambre des notaires du Québec.

2001, c. 27, s. 153; 2003, c. 22, s. 173; 2010, c. 8, s. 18; 2012, c. 17, ss. 48, 84.

membres de la Chambre des notaires du Québec.

2001, ch. 27, art. 153; 2003, ch. 22, art. 173; 2010, ch. 8, art. 18; 2012, ch. 17, art. 48 et 84.

Disposition after member ceases to hold office

154. A former member of the Board, within eight weeks after ceasing to be a member, may make or take part in a decision on a matter that they heard as a member, if the Chairperson so requests. For that purpose, the former member is deemed to be a member.

Démissionnaires

154. Le président peut demander à l'ancien commissaire de participer, dans les huit semaines suivant la cessation de ses fonctions, aux décisions à rendre sur les affaires qu'il avait entendues; il conserve alors sa qualité.

Disposition if member unable to take part

155. If a member of a three-member panel is unable to take part in the disposition of a matter that the member has heard, the remaining members may make the disposition and, for that purpose, are deemed to constitute the applicable Division.

Empêchement

155. En cas d'empêchement d'un des membres d'un tribunal de trois commissaires ayant instruit une affaire, les autres peuvent rendre la décision et, à cette fin, sont censés constituer la section en cause.

Immunity and no summons

156. The following rules apply to the Chairperson and the members in respect of the exercise or purported exercise of their functions under this Act:

(*a*) no criminal or civil proceedings lie against them for anything done or omitted to be done in good faith; and

(*b*) they are not competent or compellable to appear as a witness in any civil proceedings.

Immunité et incontraignabilité

156. Dans l'exercice effectif ou censé tel de leurs fonctions, le président et les commissaires bénéficient de l'immunité civile et pénale pour les faits — actes ou omissions — accomplis et des énonciations faites de bonne foi et ne sont, au civil, ni habiles à témoigner ni contraignables.

Head Office and Staff

Siège et personnel

Head office

157. (1) The head office of the Board shall be in the National Capital Region as described in the schedule to the *National Capital Act*.

Siège

157. (1) La Commission a son siège dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale*.

Residence — Chairperson

(2) The Chairperson must live in the National Capital Region or within reasonable commuting distance of it.

Résidence : président

(2) Le président doit résider dans cette région ou dans un lieu suffisamment proche.

Personnel

158. The Executive Director and other personnel necessary for the proper conduct of the business of the Board shall be appointed in accordance with the *Public Service Employment Act*, and the personnel are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

2001, c. 27, s. 158; 2003, c. 22, s. 225(E).

Personnel

158. Le secrétaire général et le personnel nécessaire à l'exécution des travaux de la Commission sont nommés conformément à la *Loi sur l'emploi dans la fonction publique*, ce dernier étant réputé appartenir à la fonction publique fédérale pour l'application de la *Loi sur la pension de la fonction publique*.

2001, ch. 27, art. 158; 2003, ch. 22, art. 225(A).

Duties of Chairperson

Présidence de la Commission

Chairperson

159. (1) The Chairperson is, by virtue of holding that office, a member of each Division of the Board and is the chief executive officer of the Board. In that capacity, the Chairperson

(*a*) has supervision over and direction of the work and staff of the Board;

Fonctions

159. (1) Le président est le premier dirigeant de la Commission ainsi que membre d'office des quatre sections; à ce titre :

a) il assure la direction et contrôle la gestion des activités et du personnel de la Commission;

(*b*) may at any time assign a member appointed under paragraph 153(1)(*a*) to the Refugee Appeal Division or the Immigration Appeal Division;

(*c*) may at any time, despite paragraph 153(1)(*a*), assign a member of the Refugee Appeal Division or the Immigration Appeal Division to work in another regional or district office to satisfy operational requirements, but an assignment may not exceed 120 days without the approval of the Governor in Council;

(*d*) may designate, from among the full-time members appointed under paragraph 153(1)(*a*), coordinating members for the Refugee Appeal Division or the Immigration Appeal Division;

(*e*) assigns administrative functions to the members of the Board;

(*f*) apportions work among the members of the Board and fixes the place, date and time of proceedings;

(*g*) takes any action that may be necessary to ensure that the members of the Board carry out their duties efficiently and without undue delay;

(*h*) may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons, to assist members in carrying out their duties; and

(*i*) may appoint and, subject to the approval of the Treasury Board, fix the remuneration of experts or persons having special knowledge to assist the Divisions in any matter.

Delegation

(2) The Chairperson may delegate any of his or her powers under this Act to a member of the Board, except that

(*a*) powers referred to in subsection 161(1) may not be delegated;

(*b*) powers referred to in paragraphs (1)(*a*) and (*i*) may be delegated to the Executive Director of the Board;

(*c*) powers in relation to the Immigration Appeal Division and the Refugee Appeal Division may only be delegated to the Deputy Chairperson, the Assistant Deputy Chairper-

b) il peut affecter les commissaires nommés au titre de l'alinéa 153(1)*a*) à la Section d'appel des réfugiés et à la Section d'appel de l'immigration;

c) il peut, malgré l'alinéa 153(1)*a*) et s'il l'estime nécessaire pour le fonctionnement de la Commission, affecter les commissaires de la Section d'appel des réfugiés ou de la Section d'appel de l'immigration à tout bureau régional ou de district pour une période maximale — sauf autorisation du gouverneur en conseil — de cent vingt jours;

d) il peut choisir des commissaires coordonnateurs parmi les commissaires à temps plein nommés au titre de l'alinéa 153(1)*a*) et les affecter à la Section d'appel des réfugiés ou la Section d'appel de l'immigration;

e) il confie des fonctions administratives aux commissaires;

f) il répartit les affaires entre les commissaires et fixe les lieux, dates et heures des séances;

g) il prend les mesures nécessaires pour que les commissaires remplissent leurs fonctions avec diligence et efficacité;

h) après consultation des vice-présidents et en vue d'aider les commissaires dans l'exécution de leurs fonctions, il donne des directives écrites aux commissaires et précise les décisions de la Commission qui serviront de guide jurisprudentiel;

i) il engage des experts compétents dans les domaines relevant du champ d'activité des sections et, avec l'agrément du Conseil du Trésor, fixe leur rémunération.

Délégation

(2) Le président peut déléguer ses pouvoirs aux commissaires. Toutefois :

a) il ne peut déléguer les pouvoirs prévus au paragraphe 161(1);

b) il peut déléguer les pouvoirs prévus aux alinéas (1)*a*) et *i*) au secrétaire général de la Commission;

c) il ne peut déléguer ses pouvoirs relatifs à la Section d'appel des réfugiés ou à la Section d'appel de l'immigration qu'au vice-président, aux vice-présidents adjoints, aux commissaires coordonnateurs et aux autres

sons, or other members, including coordinating members, of either of those Divisions; and

(*d*) powers in relation to the Immigration Division or the Refugee Protection Division may only be delegated to the Deputy Chairperson, the Assistant Deputy Chairpersons or other members, including coordinating members, of that Division.

2001, c. 27, s. 159; 2010, c. 8, s. 19.

commissaires de l'une ou l'autre de ces sections;

d) il ne peut déléguer ses pouvoirs relatifs à la Section de la protection des réfugiés ou à la Section de l'immigration qu'au vice-président, aux vice-présidents adjoints, aux commissaires coordonnateurs et aux autres commissaires de la section en question.

2001, ch. 27, art. 159; 2010, ch. 8, art. 19.

Absence, incapacity or vacancy

160. In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the Minister may authorize one of the Deputy Chairpersons or any other member of the Board to act as Chairperson.

Cas d'absence ou d'empêchement

160. En cas d'absence ou d'empêchement du président ou de vacance de son poste, le ministre peut autoriser un des vice-présidents, ou tout autre commissaire qu'il estime indiqué, à exercer la présidence.

FUNCTIONING OF BOARD

FONCTIONNEMENT

Rules

161. (1) Subject to the approval of the Governor in Council, and in consultation with the Deputy Chairpersons, the Chairperson may make rules respecting

(*a*) the referral of a claim for refugee protection to the Refugee Protection Division;

(*a.1*) the factors to be taken into account in fixing or changing the date of the hearing referred to in subsection 100(4.1);

(*a.2*) the activities, practice and procedure of each of the Divisions of the Board, including the periods for appeal, other than in respect of appeals of decisions of the Refugee Protection Division, the priority to be given to proceedings, the notice that is required and the period in which notice must be given;

(*b*) the conduct of persons in proceedings before the Board, as well as the consequences of, and sanctions for, the breach of those rules;

(*c*) the information that may be required and the manner in which, and the time within which, it must be provided with respect to a proceeding before the Board; and

(*d*) any other matter considered by the Chairperson to require rules.

Règles

161. (1) Sous réserve de l'agrément du gouverneur en conseil et en consultation avec les vice-présidents, le président peut prendre des règles visant :

a) le renvoi de la demande d'asile à la Section de la protection des réfugiés;

a.1) les facteurs à prendre en compte pour fixer ou modifier la date de l'audition mentionnée au paragraphe 100(4.1);

a.2) les travaux, la procédure et la pratique des sections, et notamment les délais pour interjeter appel de leurs décisions, à l'exception des décisions de la Section de la protection des réfugiés, l'ordre de priorité pour l'étude des affaires et les préavis à donner, ainsi que les délais afférents;

b) la conduite des personnes dans les affaires devant la Commission, ainsi que les conséquences et sanctions applicables aux manquements aux règles de conduite;

c) la teneur, la forme, le délai de présentation et les modalités d'examen des renseignements à fournir dans le cadre d'une affaire dont la Commission est saisie;

d) toute autre mesure nécessitant, selon lui, la prise de règles.

Distinctions

(1.1) The rules made under paragraph (1)(*c*) may distinguish among claimants for refugee protection who make their claims inside Canada on the basis of whether their claims are made at a port of entry or elsewhere or on the

Variations

(1.1) Les règles visées à l'alinéa (1)*c*) peuvent traiter différemment une demande d'asile faite par un demandeur se trouvant au Canada selon que celle-ci a été soumise à un point d'entrée ou ailleurs ou selon que le de-

CANADA

CONSOLIDATION

CODIFICATION

Statutory Instruments Act

Loi sur les textes réglementaires

R.S.C., 1985, c. S-22

L.R.C. (1985), ch. S-22

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R.S.C., 1985, c. S-22 L.R.C., 1985, ch. S-22

An Act to provide for the examination, publication and scrutiny of regulations and other statutory instruments

Loi prévoyant l'examen, la publication et le contrôle des règlements et autres textes réglementaires

SHORT TITLE

Short title

1. This Act may be cited as the *Statutory Instruments Act*.

1970-71-72, c. 38, s. 1.

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les textes réglementaires*.

1970-71-72, ch. 38, art. 1.

INTERPRETATION

Definitions

2. (1) In this Act,

"prescribed" *Version anglaise seulement*

"prescribed" means prescribed by regulations made pursuant to this Act;

"regulation" «*règlement*»

"regulation" means a statutory instrument

(*a*) made in the exercise of a legislative power conferred by or under an Act of Parliament, or

(*b*) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament,

and includes a rule, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament;

"regulation-making authority" «*autorité réglementante*»

"regulation-making authority" means any authority authorized to make regulations and, with reference to any particular regulation or proposed regulation, means the authority that made or proposes to make the regulation;

"statutory instrument" «*texte réglementaire*»

"statutory instrument"

(*a*) means any rule, order, regulation, ordinance, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

«autorité réglementante» "*regulation-making authority*"

«autorité réglementante» Toute autorité investie du pouvoir de prendre des règlements et, en particulier, l'autorité à l'origine d'un règlement ou projet de règlement donné.

«règlement» "*regulation*"

«règlement» Texte réglementaire :

a) soit pris dans l'exercice d'un pouvoir législatif conféré sous le régime d'une loi fédérale;

b) soit dont la violation est passible d'une pénalité, d'une amende ou d'une peine d'emprisonnement sous le régime d'une loi fédérale.

Sont en outre visés par la présente définition les règlements, décrets, ordonnances, arrêtés ou règles régissant la pratique ou la procédure dans les instances engagées devant un organisme judiciaire ou quasi judiciaire constitué sous le régime d'une loi fédérale, de même que tout autre texte désigné comme règlement par une autre loi fédérale.

«texte réglementaire» "*statutory instrument*"

«texte réglementaire»

a) Règlement, décret, ordonnance, proclamation, arrêté, règle, règlement administratif, résolution, instruction ou directive, formulaire, tarif de droits, de frais ou d'honoraires, lettres patentes, commission, mandat ou autre texte pris :

(i) in the execution of a power conferred by or under an Act of Parliament, by or under which that instrument is expressly authorized to be issued, made or established otherwise than by the conferring on any person or body of powers or functions in relation to a matter to which that instrument relates, or

(ii) by or under the authority of the Governor in Council, otherwise than in the execution of a power conferred by or under an Act of Parliament,

but

(*b*) does not include

(i) any instrument referred to in paragraph (*a*) and issued, made or established by a corporation incorporated by or under an Act of Parliament unless

(A) the instrument is a regulation and the corporation by which it is made is one that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs, or

(B) the instrument is one for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament,

(ii) any instrument referred to in paragraph (*a*) and issued, made or established by a judicial or quasi-judicial body, unless the instrument is a rule, order or regulation governing the practice or procedure in proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament,

(iii) any instrument referred to in paragraph (*a*) and in respect of which, or in respect of the production or other disclosure of which, any privilege exists by law or whose contents are limited to advice or information intended only for use or assistance in the making of a decision or the determination of policy, or in the ascertainment of any matter necessarily incidental thereto, or

(iv) a law made by the Legislature of Yukon, of the Northwest Territories or for Nunavut, a rule made by the Legislative Assembly of Yukon under section 16 of

(i) soit dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale, avec autorisation expresse de prise du texte et non par simple attribution à quiconque — personne ou organisme — de pouvoirs ou fonctions liés à une question qui fait l'objet du texte,

(ii) soit par le gouverneur en conseil ou sous son autorité, mais non dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale;

b) la présente définition exclut :

(i) les textes visés à l'alinéa *a*) et émanant d'une personne morale constituée sous le régime d'une loi fédérale, sauf s'il s'agit :

(A) de règlements pris par une personne morale responsable en fin de compte, par l'intermédiaire d'un ministre, devant le Parlement,

(B) de textes dont la violation est passible d'une pénalité, d'une amende ou d'une peine d'emprisonnement prévue sous le régime d'une loi fédérale,

(ii) les textes visés à l'alinéa *a*) et émanant d'un organisme judiciaire ou quasi judiciaire, sauf s'il s'agit de règlements, ordonnances ou règles qui régissent la pratique ou la procédure dans les instances engagées devant un tel organisme constitué sous le régime d'une loi fédérale,

(iii) les textes visés à l'alinéa *a*) et qui, notamment pour ce qui est de leur production ou de leur communication, sont de droit protégés ou dont le contenu se limite à des avis ou renseignements uniquement destinés à servir ou à contribuer à la prise de décisions, à la fixation d'orientations générales ou à la vérification d'éléments qui y sont nécessairement liés,

(iv) les lois de la Législature du Yukon, de la Législature des Territoires du Nord-Ouest ou de la Législature du Nunavut, les règles établies par l'Assemblée législative du Yukon en vertu de l'article 16 de la *Loi sur le Yukon*, celles établies par l'Assemblée législative des Territoires du Nord-Ouest en vertu de l'article 16 de la *Loi sur les Territoires du Nord-Ouest*, celles établies par l'Assemblée législative du Nuna-

the *Yukon Act*, of the Northwest Territories under section 16 of the *Northwest Territories Act* or of Nunavut under section 21 of the *Nunavut Act* or any instrument issued, made or established under any such law or rule.

vut en vertu de l'article 21 de la *Loi sur le Nunavut*, ainsi que les textes pris sous le régime de ces lois et règles.

Determination of whether certain instruments are regulations

(2) In applying the definition "regulation" in subsection (1) for the purpose of determining whether an instrument described in subparagraph (*b*)(i) of the definition "statutory instrument" in that subsection is a regulation, that instrument shall be deemed to be a statutory instrument, and any instrument accordingly determined to be a regulation shall be deemed to be a regulation for all purposes of this Act.

Présomption

(2) Pour déterminer si les textes visés au sous-alinéa *b*)(i) de la définition de «texte réglementaire» au paragraphe (1) sont des règlements, il faut présumer qu'ils sont des textes réglementaires; s'ils correspondent alors à la définition de «règlement», ils sont réputés être des règlements pour l'application de la présente loi.

R.S., 1985, c. S-22, s. 2; 1993, c. 28, s. 78; 1998, c. 15, s. 38; 2002, c. 7, s. 236; 2014, c. 2, s. 27.

L.R. (1985), ch. S-22, art. 2; 1993, ch. 28, art. 78; 1998, ch. 15, art. 38; 2002, ch. 7, art. 236; 2014, ch. 2, art. 27.

EXAMINATION OF PROPOSED REGULATIONS

EXAMEN DES PROJETS DE RÈGLEMENT

Proposed regulations sent to Clerk of Privy Council

3. (1) Subject to any regulations made pursuant to paragraph 20(*a*), where a regulation-making authority proposes to make a regulation, it shall cause to be forwarded to the Clerk of the Privy Council three copies of the proposed regulation in both official languages.

Envoi au Conseil privé

3. (1) Sous réserve des règlements d'application de l'alinéa 20*a*), l'autorité réglementante envoie chacun de ses projets de règlement en trois exemplaires, dans les deux langues officielles, au greffier du Conseil privé.

Examination

(2) On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

Examen

(2) À la réception du projet de règlement, le greffier du Conseil privé procède, en consultation avec le sous-ministre de la Justice, à l'examen des points suivants :

(*a*) it is authorized by the statute pursuant to which it is to be made;

a) le règlement est pris dans le cadre du pouvoir conféré par sa loi habilitante;

(*b*) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

b) il ne constitue pas un usage inhabituel ou inattendu du pouvoir ainsi conféré;

(*c*) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*; and

c) il n'empiète pas indûment sur les droits et libertés existants et, en tout état de cause, n'est pas incompatible avec les fins et les dispositions de la *Charte canadienne des droits et libertés* et de la *Déclaration canadienne des droits*;

(*d*) the form and draftsmanship of the proposed regulation are in accordance with established standards.

d) sa présentation et sa rédaction sont conformes aux normes établies.

Advise regulation-making authority

(3) When a proposed regulation has been examined as required by subsection (2), the Clerk of the Privy Council shall advise the regulation-making authority that the proposed regulation has been so examined and shall indicate

Avis à l'autorité réglementante

(3) L'examen achevé, le greffier du Conseil privé en avise l'autorité réglementante en lui signalant, parmi les points mentionnés au paragraphe (2), ceux sur lesquels, selon le sous-mi-

any matter referred to in paragraph (2)(*a*), (*b*), (*c*) or (*d*) to which, in the opinion of the Deputy Minister of Justice, based on that examination, the attention of the regulation-making authority should be drawn.

nistre de la Justice, elle devrait porter son attention.

Application

(4) Paragraph (2)(*d*) does not apply to any proposed rule, order or regulation governing the practice or procedure in proceedings before the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court, the Tax Court of Canada or the Court Martial Appeal Court.

R.S., 1985, c. S-22, s. 3; R.S., 1985, c. 31 (1st Supp.), s. 94, c. 51 (4th Supp.), s. 22; 2002, c. 8, s. 174.

Application

(4) L'alinéa (2) *d*) ne s'applique pas aux projets de règlements, décrets, ordonnances, arrêtés ou règles régissant la pratique ou la procédure dans les instances engagées devant la Cour suprême du Canada, la Cour d'appel fédérale, la Cour fédérale, la Cour canadienne de l'impôt ou la Cour d'appel de la cour martiale du Canada.

L.R. (1985), ch. S-22, art. 3; L.R. (1985), ch. 31 (1er suppl.), art. 94, ch. 51 (4e suppl.), art. 22; 2002, ch. 8, art. 174.

Doubt as to nature of proposed statutory instrument

4. Where any regulation-making authority or other authority responsible for the issue, making or establishment of a statutory instrument, or any person acting on behalf of such an authority, is uncertain as to whether a proposed statutory instrument would be a regulation if it were issued, made or established by that authority, it or he shall cause a copy of the proposed statutory instrument to be forwarded to the Deputy Minister of Justice who shall determine whether or not the instrument would be a regulation if it were so issued, made or established.

1970-71-72, c. 38, s. 4.

Détermination du caractère de règlement

4. L'autorité réglementante ou toute autre autorité chargée de prendre des textes réglementaires, ou la personne agissant en son nom, pour qui se pose la question de savoir si un projet de texte réglementaire, une fois pris par elle, constituerait un règlement en envoie un exemplaire au sous-ministre de la Justice, auquel il appartient de trancher la question.

1970-71-72, ch. 38, art. 4.

TRANSMISSION AND REGISTRATION

TRANSMISSION ET ENREGISTREMENT

Transmission of regulations to Clerk of Privy Council

5. (1) Subject to any regulations made pursuant to paragraph 20(*b*), every regulation-making authority shall, within seven days after making a regulation, transmit copies of the regulation in both official languages to the Clerk of the Privy Council for registration pursuant to section 6.

Transmission au greffier du Conseil privé

5. (1) Sous réserve des règlements d'application de l'alinéa 20*b*), l'autorité réglementante, dans les sept jours suivant la prise d'un règlement, en transmet des exemplaires, dans les deux langues officielles, au greffier du Conseil privé pour l'enregistrement prévu à l'article 6.

Copies to be certified

(2) One copy of each of the official language versions of each regulation that is transmitted to the Clerk of the Privy Council pursuant to subsection (1), other than a regulation made or approved by the Governor in Council, shall be certified by the regulation-making authority to be a true copy thereof.

R.S., 1985, c. S-22, s. 5; R.S., 1985, c. 31 (4th Supp.), s. 102.

Certification

(2) L'autorité réglementante certifie la conformité à l'original de la version française et de la version anglaise de l'un des exemplaires ainsi transmis, sauf s'il s'agit d'un règlement pris ou approuvé par le gouverneur en conseil.

L.R. (1985), ch. S-22, art. 5; L.R. (1985), ch. 31 (4e suppl.), art. 102.

Registration of statutory instruments

6. Subject to subsection 7(1), the Clerk of the Privy Council shall register

Enregistrement des textes réglementaires

6. Sous réserve du paragraphe 7(1), le greffier du Conseil privé enregistre :

(*b*) has, since its issue, making or establishment, been determined by the Deputy Minister of Justice pursuant to subsection 7(2) to be a regulation,

the Governor in Council, on the recommendation of the Minister of Justice, may, notwithstanding the provisions of the Act by or under the authority of which the instrument was or purports to have been issued, made or established, revoke the instrument in whole or in part and thereupon cause the regulation-making authority or other authority by which it was issued, made or established to be notified in writing of that action.

1970-71-72, c. 38, s. 8.

b) consulté, dans le cadre du paragraphe 7(2), sur le texte une fois pris, a décidé qu'il constituait un règlement.

Le gouverneur en conseil peut exercer ce pouvoir malgré les dispositions de la loi sous le régime de laquelle le texte a ou est censé avoir été pris. Le cas échéant, il fait adresser un avis écrit de l'abrogation à l'autorité réglementante ou autre qui a pris le texte.

1970-71-72, ch. 38, art. 8.

COMING INTO FORCE OF REGULATIONS

ENTRÉE EN VIGUEUR DES RÈGLEMENTS

Coming into force

9. (1) No regulation shall come into force on a day earlier than the day on which it is registered unless

(*a*) it expressly states that it comes into force on a day earlier than that day and is registered within seven days after it is made, or

(*b*) it is a regulation of a class that, pursuant to paragraph 20(*b*), is exempted from the application of subsection 5(1),

in which case it shall come into force, except as otherwise authorized or provided by or under the Act pursuant to which it is made, on the day on which it is made or on such later day as may be stated in the regulation.

Entrée en vigueur : règle générale

9. (1) L'entrée en vigueur d'un règlement ne peut précéder la date de son enregistrement sauf s'il s'agit :

a) d'un règlement comportant une disposition à cet effet et enregistré dans les sept jours suivant sa prise;

b) d'un règlement appartenant à la catégorie soustraite à l'application du paragraphe 5(1) aux termes de l'alinéa 20*b*).

Sauf autorisation ou disposition contraire figurant dans sa loi habilitante ou édictée sous le régime de celle-ci, il entre alors en vigueur à la date de sa prise ou à la date ultérieure qui y est indiquée.

Where regulation comes into force before registration

(2) Where a regulation is expressed to come into force on a day earlier than the day on which it is registered, the regulation-making authority shall advise the Clerk of the Privy Council in writing of the reasons why it is not practical for the regulation to come into force on the day on which it is registered.

1970-71-72, c. 38, s. 9.

Entrée en vigueur antérieure à l'enregistrement

(2) Dans le cas d'un règlement comportant la disposition visée à l'alinéa (1)*a*), l'autorité réglementante informe par écrit le greffier du Conseil privé des raisons pour lesquelles il serait contre-indiqué de faire entrer en vigueur le règlement à la date de son enregistrement.

1970-71-72, ch. 38, art. 9.

PUBLICATION IN CANADA GAZETTE

PUBLICATION DANS LA GAZETTE DU CANADA

Official gazette of Canada

10. (1) The Queen's Printer shall continue to publish the *Canada Gazette* as the official gazette of Canada.

Journal officiel du Canada

10. (1) L'imprimeur de la Reine assure la continuité de publication de la *Gazette du Canada* à titre de journal officiel du Canada.

Publication

(2) The Governor in Council may determine the form and manner in which the *Canada*

Modalités de publication

(2) Le gouverneur en conseil peut fixer les modalités de publication — notamment la pu-

Gazette, or any part of it, is published, including publication by electronic means.

R.S., 1985, c. S-22, s. 10; 2000, c. 5, s. 58.

blication sur support électronique — de tout ou partie de la *Gazette du Canada*.

L.R. (1985), ch. S-22, art. 10; 2000, ch. 5, art. 58.

Regulations to be published in *Canada Gazette*

11. (1) Subject to any regulations made pursuant to paragraph 20(*c*), every regulation shall be published in the *Canada Gazette* within twenty-three days after copies thereof are registered pursuant to section 6.

Obligation de publier

11. (1) Sous réserve des règlements d'application de l'alinéa 20*c*), chaque règlement est publié dans la *Gazette du Canada* dans les vingt-trois jours suivant son enregistrement conformément à l'article 6.

No conviction under unpublished regulation

(2) No regulation is invalid by reason only that it was not published in the *Canada Gazette*, but no person shall be convicted of an offence consisting of a contravention of any regulation that at the time of the alleged contravention was not published in the *Canada Gazette* unless

(*a*) the regulation was exempted from the application of subsection (1) pursuant to paragraph 20(*c*), or the regulation expressly provides that it shall apply according to its terms before it is published in the *Canada Gazette*; and

(*b*) it is proved that at the date of the alleged contravention reasonable steps had been taken to bring the purport of the regulation to the notice of those persons likely to be affected by it.

R.S., 1985, c. S-22, s. 11; R.S., 1985, c. 31 (4th Supp.), s. 103.

Violation d'un règlement non publié

(2) Un règlement n'est pas invalide au seul motif qu'il n'a pas été publié dans la *Gazette du Canada*. Toutefois personne ne peut être condamné pour violation d'un règlement qui, au moment du fait reproché, n'était pas publié sauf dans le cas suivant :

a) d'une part, le règlement était soustrait à l'application du paragraphe (1), conformément à l'alinéa 20*c*), ou il comporte une disposition prévoyant l'antériorité de sa prise d'effet par rapport à sa publication dans la *Gazette du Canada*;

b) d'autre part, il est prouvé qu'à la date du fait reproché, des mesures raisonnables avaient été prises pour que les intéressés soient informés de la teneur du règlement.

L.R. (1985), ch. S-22, art. 11; L.R. (1985), ch. 31 (4e suppl.), art. 103.

Power to direct or authorize publication in *Canada Gazette*

12. Notwithstanding anything in this Act, the Governor in Council may by regulation direct that any statutory instrument or other document, or any class thereof, be published in the *Canada Gazette* and the Clerk of the Privy Council, where authorized by regulations made by the Governor in Council, may direct or authorize the publication in the *Canada Gazette* of any statutory instrument or other document, the publication of which, in his opinion, is in the public interest.

1970-71-72, c. 38, s. 12.

Ordre ou autorisation de publication

12. Malgré les autres dispositions de la présente loi, le gouverneur en conseil peut, par règlement, ordonner la publication dans la *Gazette du Canada* de tous textes réglementaires ou autres documents ou de telles de leurs catégories. Le greffier du Conseil privé, dans les cas où il y est habilité par règlement du gouverneur en conseil et si lui-même l'estime d'intérêt public, peut ordonner ou autoriser la publication dans la *Gazette du Canada* de tels textes ou documents.

1970-71-72, ch. 38, art. 12.

13. [Repealed, 2012, c. 19, s. 476]

13. [Abrogé, 2012, ch. 19, art. 476]

INDEXES

RÉPERTOIRES

Quarterly consolidated index of regulations

14. (1) The Clerk of the Privy Council shall prepare and the Queen's Printer shall publish quarterly a consolidated index of all regulations and amendments to regulations in force at any time after the end of the preceding calendar year, other than any regulation that is exempted

Répertoire trimestriel des règlements

14. (1) Le greffier du Conseil privé établit et l'imprimeur de la Reine publie trimestriellement un répertoire général des règlements et de leurs modifications en vigueur à un moment donné au cours de l'année civile à laquelle se rapporte le répertoire, à l'exclusion des règle-

from the application of subsection 11(1) as a regulation described in subparagraph 20(*c*)(iii).

Quarterly index of documents other than regulations

(2) The Queen's Printer shall prepare and publish a quarterly index of all documents, other than regulations, that have been published in the *Canada Gazette* during the three month period immediately preceding the month in which the index is published.

1970-71-72, c. 38, s. 14.

ments soustraits à l'application du paragraphe 11(1) conformément au sous-alinéa 20*c*)(iii).

Répertoire trimestriel d'autres documents

(2) L'imprimeur de la Reine établit et publie un répertoire trimestriel de tous les documents, à l'exclusion des règlements, publiés dans la *Gazette du Canada* au cours des trois mois précédant le mois de publication du répertoire.

1970-71-72, ch. 38, art. 14.

REVISIONS AND CONSOLIDATIONS OF REGULATIONS

RÉVISION ET CODIFICATION DES RÈGLEMENTS

Power to request revision or consolidation

15. (1) Where the Clerk of the Privy Council, after consultation with the Deputy Minister of Justice, is of the opinion that any particular regulations should be revised or consolidated, he may request the regulation-making authority or any person acting on behalf of such authority to prepare a revision or consolidation of those regulations.

Demande de révision ou de codification

15. (1) Le greffier du Conseil privé peut demander à l'autorité réglementante ou à la personne agissant en son nom de procéder à la révision ou à la codification des règlements dont il estime, après consultation du sous-ministre de la Justice, qu'ils devraient faire l'objet d'une telle mesure.

Failure to comply with request

(2) Where any authority or person referred to in subsection (1) fails to comply within a reasonable time with a request made pursuant to that subsection, the Governor in Council may, by order, direct that authority or person to comply with the request within such period of time as he may specify in the order.

1970-71-72, c. 38, s. 22.

Décret

(2) Faute par l'autorité ou la personne en cause de donner suite à la demande dans un délai suffisant, le gouverneur en conseil peut, par décret, lui ordonner de le faire dans un délai déterminé.

1970-71-72, ch. 38, art. 22.

JUDICIAL NOTICE OF STATUTORY INSTRUMENTS

PREUVE DES TEXTES RÉGLEMENTAIRES

Judicial notice

16. (1) A statutory instrument that has been published in the *Canada Gazette* shall be judicially noticed.

Admission d'office

16. (1) Les textes réglementaires publiés dans la *Gazette du Canada* sont admis d'office.

Evidence

(2) In addition to any other manner of proving the existence or contents of a statutory instrument, evidence of the existence or contents of a statutory instrument may be given by the production of a copy of the *Canada Gazette* purporting to contain the text of the statutory instrument.

Preuve

(2) L'existence ou la teneur d'un texte réglementaire peuvent être prouvées notamment par la production d'un exemplaire de la *Gazette du Canada* où le texte est censé publié.

Deemed publication in *Canada Gazette*

(3) For the purposes of this section,

(*a*) if a regulation is included in a copy of the Consolidated Regulations of Canada, 1978 purporting to be printed by the Queen's Printer, that regulation is deemed to have been published in the *Canada Gazette*; and

(*b*) if a regulation is included in a copy of a revision of regulations purporting to be pub-

Présomption de publication

(3) Pour l'application du présent article :

a) les règlements qui figurent dans un exemplaire de la Codification des règlements du Canada, 1978, censée imprimée par l'imprimeur de la Reine, sont réputés avoir été publiés dans la *Gazette du Canada*;

b) les règlements qui figurent dans un exemplaire de la révision des règlements, censée

lished by the Queen's Printer, that regulation is deemed to have been published in the *Canada Gazette*.

R.S., 1985, c. S-22, s. 16; 2000, c. 5, s. 59; 2012, c. 19, s. 477.

publiée par l'imprimeur de la Reine, sont réputés avoir été publiés dans la *Gazette du Canada*.

L.R. (1985), ch. S-22, art. 16; 2000, ch. 5, art. 59; 2012, ch. 19, art. 477.

RIGHT OF ACCESS TO STATUTORY INSTRUMENTS

DROIT D'ACCÈS AUX TEXTES RÉGLEMENTAIRES

Inspection of statutory instruments

17. Subject to any other Act of Parliament and to any regulations made pursuant to paragraph 20(*d*), any person may, on payment of the fee prescribed therefor, inspect

(*a*) any statutory instrument that has been registered by the Clerk of the Privy Council, by attending at the office of the Clerk of the Privy Council or at such other place as may be designated by him and requesting that the statutory instrument be produced for inspection; or

(*b*) any statutory instrument that has not been registered by the Clerk of the Privy Council, by attending at the head or central office of the authority that made the statutory instrument or at such other place as may be designated by that authority and requesting that the statutory instrument be produced for inspection.

1970-71-72, c. 38, s. 24.

Consultation des textes réglementaires

17. Sous réserve des autres lois fédérales et des règlements d'application de l'alinéa 20*d*), a droit d'accès pour consultation aux textes réglementaires quiconque en fait la demande et acquitte les droits fixés à cet égard par règlement d'application de la présente loi. La consultation se fait :

a) dans le cas de textes enregistrés par le greffier du Conseil privé, au bureau de celui-ci ou en tout autre lieu qu'il désigne;

b) dans le cas de textes non ainsi enregistrés, au siège ou à l'administration centrale de l'autorité qui les a pris ou en tout autre lieu qu'elle désigne.

1970-71-72, ch. 38, art. 24.

Copies of statutory instruments

18. Subject to any other Act of Parliament and to any regulations made pursuant to paragraph 20(*d*), any person may, on payment of the fee prescribed therefor, obtain copies of

(*a*) any statutory instrument that has been registered by the Clerk of the Privy Council, by writing to the Clerk of the Privy Council or by attending at the office of the Clerk of the Privy Council or at such other place as may be designated by him and requesting that a copy of the statutory instrument be provided; or

(*b*) any statutory instrument that has not been registered by the Clerk of the Privy Council, by writing to the authority that made the statutory instrument or by attending at the head or central office of the authority or at such other place as may be designated by that authority and requesting that a copy of the statutory instrument be provided.

1970-71-72, c. 38, s. 25.

Délivrance d'exemplaires

18. Sous réserve des autres lois fédérales et des règlements d'application de l'alinéa 20*d*), peut se faire délivrer des exemplaires de textes réglementaires quiconque en fait la demande et acquitte les droits fixés à cet égard par règlement d'application de la présente loi. La délivrance se fait :

a) dans le cas de textes enregistrés par le greffier du Conseil privé, soit sur demande écrite adressée à celui-ci, soit à son bureau ou en tout autre lieu qu'il désigne;

b) dans le cas de textes non ainsi enregistrés, soit sur demande écrite adressée à l'autorité qui les a pris, soit au siège ou à l'administration centrale de celle-ci ou en tout autre lieu qu'elle désigne.

1970-71-72, ch. 38, art. 25.

The Ship Capricorn (alias the Ship Alliance) (appellant) (defendant)
v.
Antares Shipping Corporation (respondent) (plaintiff)

[1978] 1 F.C. 116

Action No. A-169-73

Federal Court of Canada
COURT OF APPEAL

RYAN J.

OTTAWA, SEPTEMBER 9, 1977.

Practice -- Rule 1206 -- Appellant requests additions to appeal book -- Registry seeks directions -- Federal Court Rules 1204 and 1206.

APPLICATION in writing under Rule 324.

COUNSEL:

Gilles de Billy, Q.C., for appellant (defendant).
Guy Vaillancourt for respondent (plaintiff).

SOLICITORS:

Gagnon, de Billy, Cantin, Dionne, Martin, Beaudoin & Lesage, Quebec, for appellant (defendant).
Langlois, Drouin, Roy, Fréchette & Gaudreau, Quebec, for respondent (plaintiff).

The following are the reasons for order rendered in English by

1 RYAN J.: The notice of appeal in this case was filed on October 9, 1973. The appeal was brought against the judgment of the Trial Division delivered on October 1, 1973[1], which, as asserted

in the notice of appeal, affirmed the jurisdiction of the Court on a motion for an order striking out the statement of claim and setting aside the arrest of the defendant ship.

2 In accordance with subsection (2) of Rule 1206[2], the Registry prepared the appeal book. Copies of the appeal book were sent to the parties on November 2, 1973.

3 In a letter to the Registry, dated July 4, 1977, counsel for the respondent referred to certain judicial proceedings that had occurred since the appeal book was prepared. It was submitted that materials relevant to these proceedings should be before the Court of Appeal when this appeal is heard. The letter thus requested that some twenty-nine items should be added to the appeal book[3]. The request was made pursuant to subsection (5) of Rule 1206. The Registry has sought directions in respect of the request.

4 Subsection (5) of Rule 1206 provides a means whereby errors in an appeal book may be corrected or whereby materials, which should be in an appeal book by virtue of subsection (2) of Rule 1206, may be added to the appeal book if they are not contained in it. Subsection (5) does not have to do with the composition of the case[4]. It has to do with the contents of an appeal book, which is a copy of materials in a case.

5 I am accordingly directing that the respondent's request to the Registry should be denied.

6 In making this direction, I do not mean to express a view as to whether, in the circumstances, the "case", as determined by Rule 1204, should be varied. If, however, the respondent were to decide to apply for an order to vary the contents of the case, I would suggest that such application might be made to the division of the Court that hears the appeal when the appeal comes on for hearing. The application could be supported by an affidavit to which could be attached, as exhibits, copies of the documents the respondent seeks to have added to the case. Four copies of the notice of motion and the supporting affidavit, with the exhibits, could be filed; a copy could be served on the appellant a substantial time before the hearing. Thus, if the Court were persuaded, after hearing the parties, that the case should be varied, it should be possible to proceed with the hearing without delay.

qp/s/mwk

1 [1973] F.C. 955.

2 Subsections (1), (2), (4) and (5) of Rule 1206 provide:

Rule 1206. (1) This Rule applies to every appeal under section 27 of the

Act except one where the appellant has elected to prepare a printed case in Supreme Court of Canada form as authorized by Rule 1207.

(2) After a notice of appeal has been filed, the Registry shall, unless the Court otherwise directs, forthwith prepare copies of all the material in the case as defined by Rule 1204 other than

(a) the transcript of verbal testimony,

(b) the written or other admissions put before the Court otherwise than by documents that have been filed, and

(c) the physical exhibits;

and shall arrange such materials in sets, each of which shall be indexed and bound in a manner satisfactory to the Court and shall be certified. Each copy of such material shall be labelled "Appeal Book".

(4) As soon as the appeal book prepared under paragraph (2) is ready, the Registry shall send one copy to each of the parties to the appeal.

(5) Any party may, upon receipt of the appeal book, make a request in writing to the Registry, of which a copy shall be served on the other parties to the appeal, requesting any correction or addition to the appeal book, and the Registry shall, if satisfied that the correction or addition should be made, comply with the request and, otherwise, shall place the request before the Chief Justice, or a judge nominated by him for the purpose, for directions. Before acting under this paragraph, the Registry shall give other parties an opportunity to send in written representations on the request.

3 Actually, the first of these items, described in the letter as being "a bail bond on behalf of the defendant, June 22, 1973", was in existence before the judgment appealed from but was not included in a list of items to which, according to the file, the parties had consented for inclusion in the appeal book before it was prepared. The order I am making is not intended to

prevent inclusion of this item if, by agreement of the parties, a further request is made for its inclusion or if, on further request of either party, the Registry is satisfied it was omitted by oversight. All of the other items sought to be included came into being after the judgment appealed from and after the appeal book was sent to the parties.

4 Rule 1204 provides:

> Rule 1204. The appeal shall be upon a case that shall consist (unless, in any case, the parties otherwise agree or the Court otherwise orders) of
>
> (a) the judgment appealed from and any reasons given therefor;
>
> (b) the pleadings;
>
> (c) a transcript of any verbal testimony given during the hearing giving rise to the judgment appealed from;
>
> (d) any affidavits, documentary exhibits or other documents filed during such hearing;
>
> (e) any written or other admissions of the parties otherwise put before the Court during such hearing; and
>
> (f) any physical exhibits filed during such hearing.

Indexed as:

R. v. Schwartz

Arnold Godfried Schwartz, appellant;
v.
Her Majesty The Queen, respondent,
and
The Attorney General of Canada, intervener.

[1988] 2 S.C.R. 443

[1988] S.C.J. No. 84

File No.: 18401.

Supreme Court of Canada

1987: October 14 / 1988: December 8.

Present: Dickson C.J. and Beetz, Estey *, McIntyre, Lamer, La Forest and L'Heureux-Dubé JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

* Estey J. took no part in the judgment.

Constitutional law -- Charter of Rights -- Presumption of innocence -- Gun control -- Reverse onus with respect to proof of registration certificate for restricted weapon -- Whether reverse onus infringing presumption of innocence -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Criminal Code, R.S.C. 1970, c. C-34, ss. 89(1)(a), (b), 106.7(1), (2).

Criminal law -- Gun control -- Registration certificate for restricted weapon -- Owner of weapon required to prove possession of certificate -- Whether reverse onus infringing presumption of innocence guaranteed by Charter -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Criminal Code, R.S.C. 1970, c. C-34, ss. 89(1)(a), (b), 106.7(1), (2).

Courts -- Jurisdiction -- Appeal from summary conviction appeal court -- Jurisdiction of Court of Appeal.

Appellant was convicted in Provincial Court on two counts of unlawful possession of a restricted weapon. The original owner had purchased the weapons in the United States, had registered them in Canada when he moved to Winnipeg, and had given the registration papers, which were in his name, to appellant when appellant bought the weapons. Appellant's application for a firearms acquisition certificate was refused by the Winnipeg Police. The police later searched appellant's home and confiscated the restricted weapons. The convictions [page444] were quashed by the summary conviction appeal court but were restored by the Court of Appeal. The constitutional question before the Court dealt with whether s. 106.7(1) of the Criminal Code contravened s. 11(d) of the Canadian Charter of Rights and Freedoms. Also at issue was whether the Court of Appeal erred in deciding the appeal on a question of fact or, in the alternative, on a question of mixed fact and law.

Held (Dickson C.J. and Lamer J. dissenting): The appeal should be dismissed. The constitutional question should be answered in the negative.

Per McIntyre, La Forest and L'Heureux-Dubé JJ.: A question of law involving the admissibility of evidence was raised here. To set aside an acquittal, the Crown must satisfy the Court that the result would not necessarily have been the same if the error made at trial had not occurred. The Crown met that test.

Parliament in enacting Part II.1 of the Criminal Code intended to prohibit the acquisition and use of weapons except as permitted by the strict controls it prescribed. Only a person possessing a restricted weapon for which he has no registration certificate can be convicted under s. 89(1). If a certificate of registration is not obtained, a criminal offence arises from the mere possession of the restricted firearm. Far from reversing any onus, s. 106.7 provides that a document purporting to be a valid registration certificate is evidence and proof of the statements contained therein and exempts an accused from prosecution.

Although the accused must establish that he falls within the exemption, there is no danger that he could be convicted under s. 89(1), despite the existence of a reasonable doubt as to guilt, because the production of the certificate resolves all doubts in favour of the accused and in the absence of the certificate no defence is possible once possession has been shown.

It was not necessary to consider s. 1 here. The impugned legislation, however, did meet the Oakes test. Firstly, its objective was sufficiently important to warrant overriding a constitutionally protected right. Secondly, the proportionality test was met. The provisions were rational, fair and not arbitrary; they impaired [page445] the protected right as little as possible; and, the measures adopted were carefully tailored to balance the community interest and the interest of those wanting to legally possess weapons.

Per Beetz J.: Given the dates of pre-Charter trial and post-Charter summary conviction appeal, it was assumed without deciding that the Charter applied; the reasons of McIntyre J. were concurred in.

Per Dickson C.J. (dissenting): Any burden on the accused that permits a conviction despite the presence of a reasonable doubt violates the presumption of innocence, regardless of the nature of the point the accused was required to prove. Otherwise, an accused, forced but unable to persuade the finder of fact of his or her innocence on a balance of probabilities, would be convicted of a criminal offence despite the existence of a reasonable doubt as to his or her guilt. The differences between defences which deny the existence of an essential element of an offence and defences that admit the existence of those elements do not affect the review of a provision under s. 11(d). When the facts give rise to the possibility of either type of defence, the Crown should be required to disprove them by proof of guilt beyond a reasonable doubt.

Lack of registration, whether or not it is an "essential element" of s. 89(1) of the Code, is essential to the verdict. Section 106.7(1) relieves the Crown of the onus of proof beyond a reasonable doubt and requires the person charged under s. 89(1) to "prove" possession of a registration certificate on a balance of probabilities. The accused, therefore, is required to raise a more than a reasonable doubt. An accused, unable to meet this persuasive burden, could be convicted of unlawful possession of a restricted weapon notwithstanding the potential existence of a reasonable doubt.

The presumption of innocence guaranteed by s. 11(d) of the Charter is not subject to statutory or common law exceptions and is infringed by any provision requiring that the accused bear a persuasive burden. In some instances, however, the accused may be required to point out some evidential basis to raise a defence which the Crown must then disprove beyond a reasonable doubt. Factors such as ease of proof and a rational connection [page446] go to the justification for an infringement and should be considered in the s. 1 analysis.

The Code contains a comprehensive 'gun control' legislative scheme intended to discourage the use of firearms. The objective behind Part II.1 in general and s. 106.7(1) in particular relates to concerns which are pressing and substantial in a free and democratic society. The proportionality test in Oakes, however, was not met. There was no rational connection between the provision and the objective. The proved fact (possession of a restricted weapon) did not prove the presumed fact (lack of a registration certificate). The presumption of innocence was not impaired "as little as possible" by the challenged provision. To authenticate the certificate, the accused must testify (and so choose between his constitutionally guaranteed rights not to testify or to be presumed innocent) or call the local registrar of firearms as a defence witness. The Crown can disprove the existence of a registration certificate with information from the local registrar of firearms as to whether or not a certificate has been issued and, as a backup, from the central registry of all registration certificates.

Section 106.7(1) is not completely invalid notwithstanding the invalidity of its application here. While the nature of the registration figured highly in the s. 1 analysis here, the justification for s. 106.7(1) in connection with other documents or permits in Part II.1 could likely involve different issues and a different s. 1 analysis.

Per Lamer J. (dissenting): The disposition and the reasons of the Chief Justice, except for the

objective assigned to s. 106.7 under the s. 1 scrutiny, were concurred in.

Section 106.7(1) is neither particular nor essential to weapons legislation. It is a purely evidentiary section intended to relieve the prosecution of the inconvenience of securing a certificate from the appropriate authority attesting to the absence of any record establishing registration. The objective, when the cost of this convenience is expressed in terms of a restriction on an accused's rights, was not sufficiently important to warrant overriding an accused's rights under s. 11(d). [page447]

Cases Cited

By McIntyre J.

Applied: R. v. Oakes, [1986] 1 S.C.R. 103; distinguished: R. v. Appleby, [1972] S.C.R. 303; R. v. Vaillancourt, [1987] 2 S.C.R. 636; R. v. Whyte, [1988] 2 S.C.R. 3; referred to: R. v. Conrad (1983), 8 C.C.C. (3d) 482; R. v. Shelley, [1981] 2 S.C.R. 196; R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713; R. v. Morgentaler, [1988] 1 S.C.R. 30; R. v. Lee's Poultry Ltd. (1985), 17 C.C.C. (3d) 539; Dubois v. The Queen, [1985] 2 S.C.R. 350; R. v. Mannion, [1986] 2 S.C.R. 272.

By Dickson C.J. (dissenting)

R. v. Oakes, [1986] 1 S.C.R. 103, aff'g (1983), 145 D.L.R. (3d) 123; R. v. Appleby, [1972] S.C.R. 303; Sunbeam Corporation (Canada) Ltd. v. The Queen, [1969] S.C.R. 221; Rose v. The Queen, [1959] S.C.R. 441; R. v. Ponsford (1978), 41 C.C.C. (2d) 433; R. v. Colbeck (1978), 42 C.C.C. (2d) 117; Vezeau v. The Queen, [1977] 2 S.C.R. 277; R. v. Vaillancourt, [1987] 2 S.C.R. 636; R. v. Holmes, [1988] 1 S.C.R. 914; R. v. Whyte [1988] 2 S.C.R. 3; R. v. Edwards, [1974] 2 All E.R. 1085; R. v. Lee's Poultry Ltd. (1985), 17 C.C.C. (3d) 539; Latour v. The King, [1951] S.C.R. 19; R. v. Proudlock, [1979] 1 S.C.R. 525; R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295; McGuigan v. The Queen, [1982] 1 S.C.R. 284; R. v. Wilson (1984), 17 C.C.C. (3d) 126; Dubois v. The Queen, [1985] 2 S.C.R. 350.

By Lamer J. (dissenting)

R. v. Oakes, [1986] 1 S.C.R. 103.

Statutes and Regulations Cited

Canada Evidence Act, R.S.C. 1970, c. E-10, ss. 29(2), 30.
Canadian Charter of Rights and Freedoms, ss. 1, 11(c), (d).
Criminal Code, R.S.C. 1970, c. C-34, ss. 83(1), 84, 88(1), 89(1), (2), (3), 90, 91(1), 94(1), 95(3), 104(1), (12), 106.1(1), (3), (6), (7), (8), 106.2(1), (10), 106.4(3), 106.6(1), 106.7(1), (2), 241(1), (6), (7), 605(1)(a), 613(1)(a), 730, 755(1), 771(1), (2).
Criminal Code, S.C. 1892, c. 29, s. 105.
Interpretation Act, R.S.C. 1970, c. I-23, s. 24(1).

Authors Cited

Canada. Solicitor General. Evaluation of the Canadian Gun Control Legislation. First Progress Report. Project team: Elizabeth Scarff, et al. Ottawa: Solicitor General Canada, Research Division, 1981. [page448]
Cross, Sir Rupert. The Golden Thread of the English Criminal Law. Cambridge: Cambridge University Press, 1976.
Delisle, Ronald Joseph. Evidence: Principles and Problems. Toronto: Carswells, 1984.
Ewart, J. Douglas, Michael Lomer and Jeff Casey. Documentary Evidence in Canada. Toronto: Carswells, 1984.
Finley, David. "The Presumption of Innocence and Guilt: Why Carroll Should Prevail Over Oakes" (1984), 39 C.R. (3d) 115.
Friedland, Martin L. A Century of Criminal Justice. Toronto: Carswells, 1984.
Halsbury's Laws of England, vol. 11, 4th ed. London: Butterworths, 1976.
Hawley, Donna Lea. Canadian Firearms Law. Toronto: Butterworths, 1988.
Mahoney, Richard. "The Presumption of Innocence: A New Era" (1988), 67 Can. Bar Rev. 1.
Ratushny, Edward. "The Role of the Accused in the Criminal Process," in Gérald-A. Beaudoin and Walter Surma Tarnopolsky, eds., The Canadian Charter of Rights and Freedoms: Commentary. Toronto: Carswells, 1982.
Stuart, Donald. Canadian Criminal Law, 2nd ed. Toronto: Carswells, 1987.
Wigmore, John Henry. Wigmore on Evidence, vol. 7, 3rd ed. Boston: Little, Brown & Co., 1940.
Williams, Glanville Llewelyn. The Proof of Guilt, 3rd ed. London: Stevens & Sons, 1963.

APPEAL from a judgment of the Manitoba Court of Appeal (1983), 25 Man. R. (2d) 295 (on a rehearing following a preliminary judgment of that Court (1983), 25 Man. R. (2d) 164, 5 D.L.R. (4th) 524) allowing an appeal from a decision of Barkman Co. Ct. J. (1983), 22 Man. R. (2d) 46, allowing an appeal from conviction by Allen Prov. Ct. J. Appeal dismissed, Dickson C.J. and Lamer J. dissenting. The constitutional question should be answered in the negative.

J.J. Gindin, for the appellant.
Bruce Miller, for the respondent.
Julius A. Isaac and Yvon Vanasse, for the intervener the Attorney General of Canada.

Solicitors for the appellant: Gindin, Soronow, Malamud & Gutkin, Winnipeg.
Solicitor for the respondent: The Attorney General of Manitoba, Winnipeg.
Solicitor for the intervener the Attorney General of Canada: Frank Iacobucci, Ottawa.

The following are the reasons delivered by

1 DICKSON C.J. (dissenting):-- Section 106.7(1) of the Criminal Code, R.S.C. 1970, c. [page449] C-34, requires an accused charged with a firearms offence to prove that he or she held the necessary permit or certificate for the firearm. The constitutional validity of this section is the primary question in this case. A secondary question is raised as to the jurisdiction of a provincial court of appeal on an appeal from a summary conviction appeal court. At the outset, I would like to mention that this case has been argued throughout on the basis of s. 106.7(1). Section 730 of the Code has not been in issue.

I

Facts

2 Arnold Godfried Schwartz was charged under s. 89(1) of the Criminal Code (i) that he did unlawfully have in his possession a restricted weapon, to wit: a .44 Magnum revolver for which he did not have a registration certificate issued to him; (ii) that he did unlawfully have in his possession a restricted weapon, to wit: a .38 Special revolver for which he did not have a registration certificate issued to him. The evidence disclosed that Schwartz had bought the two handguns in 1978 from one of his employees, Horst Schimiczek, who had acquired the .38 Special in Texas and the .44 Magnum in North Dakota. Schimiczek had moved to Winnipeg, duly registered the two weapons, and then sold the guns to Schwartz. He gave Schwartz the registration papers, in Schimiczek's name. Later, an application in Schwartz's name for a firearms acquisition certificate, the necessary first step to obtain a registration certificate, was received by the Firearms Section of the City of Winnipeg Police Department. At the time, the Firearms Section was under control of Staff Sergeant Gordon Pilcher, who reviewed the application and determined that a notice of intention to refuse a firearms acquisition certificate should be sent to Schwartz. A notice to this effect was delivered to Schwartz by double registered mail.

3 Approximately nine months after the notice was mailed, members of the Winnipeg Police Department executed a search of Schwartz's home, and [page450] located and confiscated a .44 Magnum and a .38 Special.

4 Schwartz proceeded to trial before Allen Prov. Ct. J. and was convicted on both charges. He was fined $50 on each charge. On appeal, Barkman Co. Ct. J. allowed the appeal and quashed the convictions. The Crown then appealed to the Manitoba Court of Appeal (Hall J.A., Matas J.A. concurring, and Huband J.A. dissenting in part). The acquittals were set aside and convictions restored. Leave was granted by this Court to appeal the judgment of the Manitoba Court of Appeal.

II

Legislative and Constitutional Provisions

5 The relevant legislative and constitutional provisions follow:

Criminal Code

> 89. (1) Every one who has in his possession a restricted weapon for which he does not have a registration certificate
>
> (a) is guilty of an indictable offence and is liable to imprisonment for five years; or
> (b) is guilty of an offence punishable on summary conviction.
>
> 106.7 (1) Where, in any proceedings under any of sections 83 to 106.5, any question arises as to whether a person is or was the holder of a firearms acquisition certificate, registration certificate or permit, the onus is on the accused to prove that that person is or was the holder of such firearms acquisition certificate, registration certificate or permit.
>
> (2) In any proceedings under any of sections 83 to 106.5, a document purporting to be a firearms acquisition certificate, registration certificate or permit is evidence of the statements contained therein.

Canadian Charter of Rights and Freedoms

> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can [page451] be demonstrably justified in a free and democratic society.
>
> 11. Any person charged with an offence has the right
>
> . . .
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

III

Judgments of the Manitoba Courts

Provincial Judges Court

6 Allen Prov. Ct. J. found the appellant guilty on both counts. He stated, in part:

> The fact is there comes a situation in each case where the evidence is so overwhelming and points clearly in one direction that one would have to speculate and resort to pure conjecture to have a reasonable doubt. I do not have a reasonable doubt.

7 Section 106.7(1) of the Code, imposing an onus on the accused, does not appear to have been raised in argument in support of the case for the Crown nor relied upon by Allen Prov. Ct. J. The constitutional validity of the section was not challenged before him.

County Court of Winnipeg

8 There were three major grounds of appeal before Barkman Co. Ct. J. [(1983), 22 Man. R. (2d) 46]. The first was that it was not proved beyond a reasonable doubt that the accused possessed the restricted weapons. The second was that some of the evidence concerning the lack of registration was hearsay and therefore inadmissible. The third ground was that the evidence concerning lack of registration could only be admitted if notice were given under s. 30 of the Canada Evidence Act, R.S.C. 1970, c. E-10.

9 Defence counsel objected to the admission of evidence of Sergeant Pilcher relating to information contained in a file compiled by staff members under his supervision. Counsel also objected to Sgt. Pilcher testifying about any documents that might have been placed in the file after he was [page452] transferred out of the Firearms Section. Barkman Co. Ct. J. held that the trial judge erred by admitting the evidence of Sgt. Pilcher which did not relate specifically to things done by Pilcher himself; Sgt. Pilcher had gone on to other duties; such evidence was hearsay and could only be admitted after giving notice pursuant to s. 30 of the Canada Evidence Act.

10 Barkman Co. Ct. J. considered as properly admitted the evidence of Sgt. Pilcher to the effect that (1) he refused an application by the accused for a firearms acquisition certificate; (2) he wrote a refusal letter; (3) he searched the file of the city of Winnipeg Police regarding the accused in 1979 and did not find a registration certificate for a restricted weapon, and he had the file with him in court; (4) the address of the house of the accused was situated in the city of Winnipeg area for registration of firearms. According to the evidence, no one to whom a certificate had been refused could get a certificate during the five years following. The evidence of Sgt. Pilcher was the only evidence before the judge relating to the registration of the restricted weapons, except for the evidence of the previous owner, Mr. Schimiczek, who testified that he spoke to the accused about registration of the weapons in the early part of 1981 and the accused then told him that he had not yet registered them.

11 Barkman Co. Ct. J. further held [at p. 48] that Sgt. Pilcher could give evidence as to what he did and saw personally, but "his evidence as to what he saw is not evidence of the truth of the information contained in the documents which he saw in the file in question". He held that Allen

Prov. Ct. J. had improperly admitted as an exhibit the application for a firearms acquisition certificate in Schwartz's name as it had not been identified by the person receiving it as having been submitted by Schwartz. He concluded [at p. 49] that the remaining evidence, together with the testimony of Schimiczek, "falls far short of proof beyond a reasonable doubt that the accused did not have [page453] registration certificates issued to him for the restricted weapons ...."

12 Counsel for the Crown, after arguing unsuccessfully against the exclusion of the so-called hearsay evidence, then contended that even if such evidence were not admissible, this would not affect the conviction of the appellant because s. 106.7(1) of the Code placed the onus on the accused to satisfy the Court that the weapons were properly registered. Counsel for Schwartz argued in response that s. 106.7(1) of the Code was either inapplicable to his client or unconstitutional by reason of s. 11(d) of the Charter. Barkman Co. Ct. J. held that s. 106.7(1) was not ambiguous and that it applied to the appellant. He then went on to consider the judgment of the Ontario Court of Appeal in R. v. Oakes (1983), 145 D.L.R. (3d) 123, aff'd [1986] 1 S.C.R. 103. Barkman Co. Ct. J. referred to the three factors mentioned by Martin J.A. in Oakes, underlined in the passage below, at pp. 50-51, to be taken into consideration in determining whether it is reasonable for Parliament to place the burden of proof on the accused in relation to an ingredient of the offences in question:

> (a) the magnitude of the evil sought to be suppressed, it is to my mind a great evil that is sought to be suppressed by the requirement of registration of restricted weapons since registration will not be granted where a person has within the last five years (1) been convicted of an offence on indictment in which violence against another person was used, threatened or attempted; etc (see s. 194(3)(b)); (b) the difficulty of the prosecution making proof of the presumed fact. Since the advent of the computer and in accordance with the evidence of Sergeant Pilcher that records are maintained in Ottawa as to persons who are refused certificates or permits, it would not be difficult for the Crown to prove lack of registration; (c) the relative ease with which the accused may prove or disprove the presumed fact. The accused need only produce the registration certificate or permit to prove the registration (see s. 106.7(2)) in the circumstances of this case, but in other situations it may be more difficult. [Emphasis added.]

[page454]

13 Barkman Co. Ct. J. went on to point out that the circumstances of the case before him were such as to satisfy the threshold question of legitimacy of the reverse onus. However, this provision also applied to ss. 89(3), 91(1), and 94(1). Under these sections it could be very difficult for the accused to prove the fact of registration by another person. He held that (a) there was no rational connection between the proven fact (possession) and the presumed fact (lack of registration), and (b) in applying the reverse onus to all of ss. 83 to 106.5, it may be impossible for an accused to

prove the fact of registration. Section 106.7(1) was therefore constitutionally invalid. He concluded that the trial judge erred by admitting hearsay evidence and that s. 106.7(1) did not apply because it offended s. 11(d) of the Charter. Barkman Co. Ct. J. allowed the appeal and quashed the conviction.

Manitoba Court of Appeal

14 The ground of appeal taken to the Manitoba Court of Appeal was in these terms:

> THAT the learned County Court Judge erred in law in ruling Section 106.7(1) of the Criminal Code of Canada was unconstitutional in that the said section contravened the provisions of Section 11(d) of the Canadian Charter of Rights and Freedoms.

15 It would appear that before the Court of Appeal of Manitoba, counsel agreed to argue only the constitutional question. This was entirely appropriate as appeals to the Court of Appeal from a summary conviction appeal court are limited to questions of law. In a preliminary judgment by the Manitoba Court of Appeal ((1983), 25 Man. R. (2d) 164), Matas J.A. stated, at p. 166:

> ... the decision of Barkman, C.C.C.J., on the constitutional point is inextricably linked to the question of law arising out of the first question [the evidentiary question]. Implicit in the acquittal based on the constitutional question is the decision of the learned Chief County Court judge on the admissibility of evidence given at the trial by Sergeant Pilcher, the officer in charge of the firearms section and applications for firearms acquisitions and permits for restricted weapons in the City of Winnipeg. In my opinion, it is inappropriate for this court to consider constitutional questions in the context [page455] of a prosecution unless all the available material is properly before the court. In order to have a decision of this court, based on all the available material, I would grant leave to the Crown to argue the evidentiary point.

He therefore adjourned the disposition of the appeal pending re-hearing.

16 Upon the re-hearing, the Court of Appeal ((1983), 25 Man. R. (2d) 295), allowed the Crown's appeal (Huband J.A. dissenting in part). Hall J.A. held that Barkman Co. Ct. J. erred in law by ruling inadmissible certain evidence given by Sergeant Pilcher. He further held at p. 297 that "the evidence of Sgt. Pilcher and that of the witness Schimiczek is sufficient to support the implicit finding of the learned trial judge that no registration certificates had ever been issued to the accused for the restricted weapons and that therefore he was not the holder of such certificates...." Though he was of the view that it was unnecessary to decide the issue, Hall J.A. agreed with Huband J.A.'s conclusion, discussed below, that s. 106.7(1) was a reasonable limit on the presumption of innocence. Matas J.A. concurred with Hall J.A. on the evidentiary issue but expressed no opinion on the constitutional point.

17 Huband J.A., dissenting in part, disagreed with Hall J.A.'s conclusion on the evidence and therefore felt it incumbent to rule on the constitutional issue. The appeal to the Court of Appeal, pursuant to s. 771 of the Code, was on a question of law alone. He stated, at p. 299, that "The consideration of Staff Sergeant Pilcher's evidence involves the court in a question of sufficiency of evidence which ... is a question of fact rather than law."

18 Relying on R. v. Appleby, [1972] S.C.R. 303, and refusing to follow the Ontario Court of Appeal's approach in R. v. Oakes, supra, Huband [page456] J.A. held that s. 106.7(1) does not contravene the presumption of innocence according to law. In the alternative, he was of the view that, although it is true that mere possession of a restricted weapon does not logically lead to an inference that the weapon is unregistered, "proof of registration is so easily provided by the accused himself that it becomes reasonable to require an accused to answer an onus upon him at that point". Huband J.A. therefore would have allowed the appeal relying on s. 106.7(1) of the Code.

19 It is difficult to find a common thread in any of the issues in any of the decisions of the Manitoba courts. The court of first instance found the accused guilty on the evidence presented, without recourse to s. 106.7(1) of the Code. On appeal, Barkman Co. Ct. J. held that the evidence of the lack of a registration certificate was inadequate in the absence of s. 106.7(1) and that that section was unconstitutional. He held that the ease of proof concerning possession of a permit was not difficult for the police but utterly impossible for an accused if one looked at all of the offences to which s. 106.7(1) applied. Moving to the Court of Appeal, the picture is less clear. Hall J.A. concluded that the Crown succeeded on the evidential point and although it was therefore unnecessary to consider s. 106.7(1), he would nonetheless have upheld it. Matas J.A. was content to leave the constitutional point to another day and resolved the case simply on the evidentiary point. Finally, Huband J.A., in dissent on this point, would appear to have shared the views of Barkman Co. Ct. J. on the evidentiary point. Although he would have resolved the evidentiary point in favour of the accused, he would uphold s. 106.7(1) and find the accused guilty.

IV

Issues

20 Before this Court, a constitutional question was stated as follows:

[page457]

> Is section 106.7(1) of the Criminal Code of Canada constitutionally invalid in that it contravenes the provisions of s. 11(d) of the Canadian Charter of Rights and Freedoms?

The Attorney General of Canada and the Attorneys General of Alberta, British Columbia and Ontario served notices of intervention. All the provincial Attorneys General subsequently withdrew their interventions.

21 In addition to the constitutional question, the appellant submits that the Court of Appeal erred in deciding the appeal on a question of fact or, in the alternative, on a question of mixed fact and law. I propose first to address this latter issue, and then turn to the constitutional issue in this appeal. I note that although the trial in the Provincial Court occurred before the Charter came into force, no issue was raised as to whether section 11(d) should apply, all subsequent proceedings having taken place after April 17, 1982.

V

The Jurisdiction of the Court of Appeal

22 The appellant submits that the Court of Appeal erred in deciding the appeal on a question of fact or mixed fact and law, namely, the sufficiency of evidence. The respondent Crown submits, however, that the Court of Appeal was faced with a question involving the admissibility, not sufficiency, of evidence; the question before the Court of Appeal was a question of law; as a result that court had jurisdiction to hear the case.

23 The notice of appeal to the Court of Appeal filed by the Deputy Attorney General for Manitoba, reproduced above, alleged that Barkman Co. Ct. J. erred in law in holding s. 106.7(1) unconstitutional. In addition, the appeal was "upon any other point in law the evidence may disclose". The Crown appeal was pursuant to s. 771 of the Code, limiting the jurisdiction of the Court of Appeal to questions of law alone. As stated earlier, the Court of Appeal, per Matas J.A., granted leave to argue "the evidentiary point." It is in relation to the Court of Appeal's reasons given after the rehearing that the appellant alleges that the Court of [page458] Appeal decided the case on a question of fact or, in the alternative, mixed law and fact. Section 771(2) of the Code provides that "Sections 601 to 616 apply mutatis mutandis to an appeal under this section." It is well-settled that the question whether a trial verdict is unreasonable or cannot be supported by the evidence is not a "question of law" under s. 605(1)(a) of the Code. Sufficiency of proof is a question of fact reserved for the trial judge. See Sunbeam Corporation (Canada) Ltd. v. The Queen, [1969] S.C.R. 221, and Rose v. The Queen, [1959] S.C.R. 441.

24 It should be noted, however, that a summary conviction appeal court is not restricted to questions of law alone. Section 755(1) of the Code provides that in appeals from a summary conviction, "sections 610 to 616, with the exception of subsections 610(3) and 613(5), apply mutatis mutandis". Section 613(1)(a) permits a summary conviction appeal court to allow an appeal if the verdict is "unreasonable or cannot be supported by the evidence" or if the trial judge erred "on a question of law" (R. v. Ponsford (1978), 41 C.C.C. (2d) 433 (Alta. C.A.)). This is not to say that a summary conviction appeal court is entitled to retry the case (R. v. Colbeck (1978), 42 C.C.C. (2d) 117 (Ont. C.A.))

25 Counsel for the appellant refers to several passages of the reasons of the Court of Appeal in support of his submission that the court decided the appeal on a question of fact. Hall J.A., for example, stated the first of the two issues in the following terms:

> (1) did the learned judge of appeal err in finding that the evidence fell short of providing beyond a reasonable doubt that the accused did not have registration certificates issued to him for the restricted weapons ...?

Moreover, Hall J.A. stated that "the evidence of Sergeant Pilcher and that of the witness [page459] Schimiczek is sufficient to support the implicit finding of the learned trial judge that no registration certificates had ever been issued to the accused for the restricted weapons...." Matas J.A. concurred with this part of Hall J.A.'s reasons, stating that "on the evidentiary issue the appeal of the Crown should be allowed and the conviction restored". The appellant also relies on Huband J.A.'s statement that "The consideration of Staff Sergeant Pilcher's evidence involves the court in a question of sufficiency of evidence which ... is a question of fact rather than law".

26 It cannot be denied, however, that the examination of the sufficiency of evidence by Hall J.A. occurred in the context of his finding that Barkman Co. Ct. J. erred in law "by ruling inadmissible certain unspecified evidence of Sergeant Pilcher relating to information contained in a file compiled by staff members under his supervision on the ground that it did not relate specifically to things done by him and was therefore hearsay and could only be admitted under s. 30 of the Canada Evidence Act". The majority of the Court of Appeal was correct in assuming, and the Crown correct in submitting, that the absence of legal justification for admitting evidence at trial involves a question of law.

27 Assuming the Court of Appeal to be correct on its disposition of this question of law, however, the court in my view erred by proceeding to reverse the acquittal without relying on s. 106.7(1) of the Code. Although the appeal before Barkman Co. Ct. J. was not de novo, the combined effect of s. 771(1) and (2), s. 755(1), and s. 613(1)(a) is that for purposes of review, the findings of Barkman Co. Ct. J. are to be treated as if they were the findings of a judge at first instance. Before it can set aside the decision of the summary conviction appeal court acquitting the accused, the Court of Appeal must be satisfied that Barkman Co. Ct. J. would have convicted Schwartz but for his decision that the trial judge erred in the admission of hearsay evidence: Vezeau v. The Queen, [1977] 2 S.C.R. 277.

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28 Barkman Co. Ct. J. had before him the bulk of Sgt. Pilcher's evidence. His summary of the evidence which he admitted shows that the only major piece of evidence excluded was the application for a firearms acquisition certificate. Taken as a whole, the evidence is ambivalent whether a firearms acquisition certificate, and later on the registration certificate, might have been

issued to the accused some time after 1979, when Sgt. Pilcher was no longer in charge of the file. To set aside the acquittals the jurisprudence of this Court requires that the Crown satisfy the Court that the verdict would not necessarily have been the same had the trial judge not erred with respect to the evidentiary issue. In my view, the Crown did not satisfy that onus and it cannot be said with any degree of certainty that Barkman Co. Ct. J. would have upheld the convictions but for his decision to exclude some of the evidence. Hall J.A. in my opinion therefore erred by entering a conviction without finding it necessary to resort to the "reverse onus" provision of s. 106.7(1). This Court must consider the application, and hence the constitutionality, of s. 106.7(1).

VI

Constitutional Issues: Section 11(d) and the Presumption of Innocence

29 In R. v. Oakes, supra, R. v. Vaillancourt, [1987], 2 S.C.R. 636, R. v. Holmes, [1988] 1 S.C.R. 914, R. v. Whyte, [1988] 2 S.C.R. 3, this Court had occasion to address in detail the scope of the s. 11(d) Charter right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal", and there is no need to review at length the principles contained in those cases. It suffices to say that Oakes stands for the proposition that "a provision which requires an accused to disprove on a balance of probabilities the evidence of a presumed fact, which is an important element of the offence in question, violates the presumption of innocence in s. 11(d)" (p. 132). Similarly in Vaillancourt, Lamer J. held, for the majority on this point, that the presumption of innocence [page461] requires that the trier of fact be convinced of guilt beyond a reasonable doubt (at p. 655):

> Any provision creating an offence which allows for the conviction of an accused notwithstanding the existence of a reasonable doubt on any essential element infringes ss. 7 and 11(d).
>
> Clearly, this will occur where the provision requires the accused to disprove on a balance of probabilities an essential element of the offence by requiring that he raise more that just a reasonable doubt.

30 In Holmes, two members of the Court took the view that any burden on the accused that permitted a conviction despite the presence of a reasonable doubt violated the presumption of innocence, regardless of the nature of the point the accused was required to prove. In Whyte, this theme was repeated. In response to the argument that the presumption of innocence only requires the Crown to prove the essential elements of an offence, the Chief Justice said at p. 18:

> The short answer to this argument is that the distinction between elements of the offence and other aspects of the charge is irrelevant to the s. 11(d) inquiry. The real concern is not whether the accused must disprove an element or prove an excuse, but that an accused may be convicted while a reasonable doubt exists.

When the possibility exists, there is a breach of the presumption of innocence.

The exact characterization of a factor as an essential element, a collateral factor, an excuse, or a defence should not affect the analysis of the presumption of innocence. It is the final effect of a provision on the verdict that is decisive. If an accused is required to prove some fact on the balance of probabilities to avoid conviction, the provision violates the presumption of innocence because it permits a conviction in spite of a reasonable doubt in the mind of the trier of facts as to the guilt of the accused. The trial of an accused in a criminal matter cannot be divided neatly into stages, with the onus of proof on the accused at an intermediate stage and the ultimate onus on the Crown.

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(See also Donald Stuart, Canadian Criminal Law (2nd ed. 1987), at pp. 388-91; Richard Mahoney, "The Presumption of Innocence: A New Era" (1988), 67 Can. Bar Rev. 1, at pp. 4-13). To hold otherwise would result in the unacceptable situation that an accused, forced but unable to persuade the finder of fact of his or her innocence on a balance of probabilities, will be convicted of a criminal offence despite the existence of a reasonable doubt as to his or her guilt.

31 The cornerstone of our theory of criminal liability is that society should only sanction those people who are personally guilty of breaking the law. Only when guilt is established can society justly impose criminal penalties. This principle permeates the criminal law and is one of the basic premises of the presumption of innocence. It follows that the Crown is required to prove the guilt of the accused and bears this burden for all the issues raised by a charge. In this respect, a criminal prosecution is fundamentally different from a civil suit, which serves different ends and operates on different assumptions. Theories of proof in civil suits, under both common law and civil law, have been strongly influenced by Roman law, which requires the defendant to raise and prove exceptions to a suit. (See David Finley, "The Presumption of Innocence and Guilt" (1984), 39 C.R. (3d) 115.) Shifting the onus of proof is acceptable in civil actions, as the well-known maxim res ipsa loquitur shows.

32 Over the years, some evidentiary rules of private law have crept into the criminal law, notably reversals of the onus of proof. These influences from civil actions are now subject to review under the Charter, particularly the guarantee of the presumption of innocence. In the final result, if a rule of evidence results in the possibility of a conviction in spite of a reasonable doubt, the presumption of innocence is violated. The exact role that a rule of evidence plays in the prosecution does not matter. The Court in Whyte recognized that there are differences between defences which deny the existence [page463] of an essential element of an offence and defences that admit the existence of

those elements, but held that that difference does not affect the review of a provision under s. 11(d). Both types of defences assert innocence; both deny guilt. When the facts give rise to the possibility of either type of defence, the Crown should be required to disprove them. Laws governing criminal liability should not be analyzed in private law terms as rules and exceptions. All substantive issues raised in a criminal prosecution are related to the fundamental issue of guilt and innocence. They should all be decided by the same standard, proof of guilt beyond a reasonable doubt.

33 Viewed in this light, it matters little whether or not the lack of registration is an "essential element" of s. 89(1) of the Code. It is essential to the verdict. If the lack of registration is an essential element of the offence, then s. 106.7(1) relieves the Crown of the onus of proof of part of the offence charged. If a registration certificate is simply a defence to the charge, then the Crown is not required to disprove that defence beyond a reasonable doubt, which it is normally required to do. However the question of registration is characterized, s. 106.7(1) relieves the Crown of the onus of proof beyond a reasonable doubt. The section places the onus on a person charged under s. 89(1) to "prove" that he or she is or was the holder of a registration certificate. This Court in R. v. Appleby, supra, and again in R. v. Whyte, supra, held that statutory provisions requiring the accused to "prove" or "establish" some fact cannot be read as simply imposing an evidential burden on the accused. When a statute requires the accused to establish or prove something, the accused must do more than raise a reasonable doubt. The accused must establish the required fact on a balance of probabilities. Section 106.7(1) must therefore be understood as requiring an accused charged under s. 89(1) to establish on a balance of probabilities that he or she held a registration certificate for the restricted weapon. Thus, s. 106.7(1) embraces the [page464] possibility that an accused unable to meet this persuasive burden will be convicted of unlawful possession of a restricted weapon contrary to s. 89(1), despite the potential existence of a reasonable doubt that the possession was in fact lawful.

34 The Attorney General of Canada argues that the presumption of innocence entrenched by s. 11(d) of the Charter is subject to exceptions that the common law has always recognized. One of these exceptions, it is argued, is that the common law requires an accused to prove that he or she comes within a statutory exception or proviso, especially when licences or other privileges are involved. The Attorney General argues that s. 106.7(1) is nothing more than a statutory version of this common law rule and is therefore consistent with s. 11(d) of the Charter. The Attorney General of Canada referred the court to R. v. Edwards, [1974] 2 All E.R. 1085 (C.A. Cr. Div.), R. v. Lee's Poultry Ltd. (1985), 43 C.R. (3d) 289 (Ont. C.A.), and Halsbury's Laws of England, vol. 11, 4th, para. 357, in support of this proposition.

35 It is worth noting that Professor Glanville Williams has some critical words for Parliaments and courts alike that are too quick to allow exceptions to the basic principle that the Crown bears the onus of proof:

> When it is said that a defendant to a criminal charge is presumed to be innocent, what is really meant is that the burden of proving his guilt is upon the

> prosecution. This golden thread, as Lord Sankey expressed it, runs through the web of the English criminal law. Unhappily, Parliament regards the principle with indifference - one might almost say with contempt. The Statute Book contains many offences in which the burden of proving his innocence is cast on the accused. In addition, the courts have enunciated principles that have the effect of shifting the burden in particular classes of case.
>
> The sad thing is that there has never been any reason of expediency for these departures from the cherished principle; it has been done through carelessness and lack [page465] of subtlety. What lies at the bottom of the various rules shifting the burden of proof is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand, and it is therefore for the accused to give evidence on them if he wishes to escape. This idea is perfectly defensible and needs to be expressed in legal rules, but it is not the same as the burden of proof.

(Glanville Williams, The Proof of Guilt (3rd ed. 1963), pp. 184-85). The author goes on to argue that it is consistent with the presumption of innocence to expect the accused to point out evidence that puts in play a particular defence, but it is neither necessary nor desirable that the accused be required to prove anything. If the evidence suggests a defence, the Crown must disprove it beyond a reasonable doubt. The onus of proof remains on the Crown throughout. Other commentators have made the same argument: Rupert Cross, The Golden Thread of the English Criminal Law (1976), at pp. 11-13; Mahoney, "The Presumption of Innocence", supra, at pp. 18-21; Stuart, Canadian Criminal Law, supra, at pp. 39-45.

36 This Court has long recognized that there is a distinction between the degree of evidence necessary to put an issue into play, requiring the trier of fact to consider it, and the degree necessary to convince beyond a reasonable doubt. In Latour v. The King, [1951] S.C.R. 19, Justice Fauteux for the Court distinguished between the requirement of establishing a case and of introducing evidence. He pointed out that the onus is on the Crown throughout to establish the case against the accused beyond a reasonable doubt, while the accused need do no more than raise a doubt. Fauteux J. noted that the accused is never required to establish a defence, but need only show that the evidence, including Crown evidence, indicates a defence may be available. The jury is then required to acquit if it finds affirmatively that the defence existed or if it is left in doubt on the point.

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37 Sunbeam Corporation (Canada) Ltd., supra, provides another illustration of the principle. The Court was faced with the question whether the sufficiency of evidence could be a question of law;

Justice Ritchie for the majority held that it could not. He recognized that the accused was never required to give evidence (at p. 228):

> I do not think that any authority is needed for the proposition that, when the Crown has proved a prima facie case and no evidence is given on behalf of the accused, the jury may convict, but I know of no authority to the effect that the trier of fact is required to convict under such circumstances. [Emphasis in original.]

The Crown is always required to persuade the trier of fact beyond a reasonable doubt, and the accused can rely on the Crown's own evidence to put a defence in play. This principle was reaffirmed by Justice Pigeon for the majority in R. v. Proudlock, [1979] 1 S.C.R. 525, where he held that the phrase "in the absence of any evidence to the contrary" meant that the accused need only raise a reasonable doubt. Pigeon J. commented that in some cases the accused could do this by reference to the Crown's evidence while in other cases the accused would have to adduce evidence or run the risk of conviction.

38 Judges and academics have used a variety of terms to try to capture the distinction between the two types of burdens. The burden of establishing a case has been referred to as the "major burden," the "primary burden," the "legal burden" and the "persuasive burden." The burden of putting an issue in play has been called the "minor burden," the "secondary burden," the "evidential burden," the "burden of going forward," and the "burden of adducing evidence." While any combination of phrases has its advantages and drawbacks, I prefer to use the terms "persuasive burden" to refer to the requirement of proving a case or disproving defences, and "evidential burden" to mean the requirement of putting an issue into play by reference to evidence before the court. The party who [page467] has the persuasive burden is required to persuade the trier of fact, to convince the trier of fact that a certain set of facts existed. Failure to persuade means that the party loses. The party with an evidential burden is not required to convince the trier of fact of anything, only to point out evidence which suggests that certain facts existed. The phrase "onus of proof" should be restricted to the persuasive burden, since an issue can be put into play without being proven. The phrases "burden of going forward" and "burden of adducing evidence" should not be used, as they imply that the party is required to produce his or her own evidence on an issue. As we have seen, in a criminal case the accused can rely on evidence produced by the Crown to argue for a reasonable doubt.

39 It is important not to identify the evidential burden solely with the accused. The Crown has the evidential burden of leading evidence which, if believed, would prove each element of the offence charged. If the Crown does not even meet this evidential requirement, the case never goes to the trier of fact; the accused has a right to a directed verdict of acquittal.

40 In Oakes, supra, the Court examined and rejected the idea that the presumption of innocence guaranteed by s. 11(d) of the Charter is subject to statutory exceptions. To read the phrase

"according to law" in s. 11(d) as permitting Parliament to alter the normal rule whenever it chose to do so by statute would be completely contrary to the concept of an entrenched constitutional right. Oakes, Vaillancourt and Whyte held that statutory persuasive burdens on the accused infringe the presumption of innocence. The common law is likewise required to conform to s. 11(d). A requirement that the accused bear a persuasive burden, whether in a statute or at common law, will infringe s. 11(d).

41 The Edwards case, supra, makes clear that the common law of England does in some cases place a persuasive burden of proof on the accused, but that [page468] case was decided in a system where both Parliament and the courts can make inroads on the presumption of innocence. It is of limited aid in interpreting the Canadian Charter of Rights and Freedoms. This Court has already rejected English authority that the presumption of innocence is subject to statutory exceptions; it is also necessary to reject English authority that the presumption of innocence is subject to common law exceptions.

42 Having said that, I would not wish to be understood to say that the Crown must lead evidence to anticipate each and every possible defence. One of the underlying ideas of the common law principle set out in Edwards is that it is not possible for the Crown to know in advance what defence the accused will raise. It is up to the accused to point out evidence, in either the Crown's case or in the defence evidence, if any, that will support a defence. Once the accused raises a defence the Crown must disprove it beyond a reasonable doubt.

43 The decision of the Ontario Court of Appeal in R. v. Lee's Poultry Ltd., supra, must now be read in the light of this Court's decisions in Oakes, Vaillancourt, and Whyte. In that case, a provincial statute required the accused to prove that it held the necessary permit. Brooke J.A. for the Ontario Court of Appeal followed Edwards and held that in some circumstances a statutory or common law reversal of the onus of proof will not violate s. 11(d). Brooke J.A. also relied on Martin J.A.'s decision in R. v. Oakes. He held that the provision in question did not create a presumption, but simply expressed in statutory form a well-recognized exception to general rules of pleading and proof. He was also influenced by the ease with which an accused could prove a licence existed and by the fact that it was rationally open to the accused to prove the existence of the licence. He therefore held that the provision did not breach s. 11(d).

44 It is necessary, however, to distinguish the analysis under s. 11(d) from that under s. 1. What is important under s. 11(d) is whether or not a [page469] provision requires the accused to prove some fact, with a possibility of a conviction in spite of a reasonable doubt. Factors such as ease of proof and a rational connection go to the justification for an infringement and should be considered in the s. 1 analysis. Lee's Poultry Ltd. is therefore of little assistance on the meaning of s. 11(d).

45 To sum up, the Charter's guarantee of the presumption of innocence places the onus on the Crown throughout a case to prove guilt beyond a reasonable doubt. Section 11(d) is not qualified by exceptions, whether statutory or at common law, that place the onus of proof on the accused. While

the Crown need not initially disprove every possible defence or exception, it does not necessarily follow that the accused must prove a defence. In some instances, the accused must point out some evidential basis to raise a defence which the Crown must then disprove beyond a reasonable doubt, but any provision which places a persuasive burden on the accused, with the possibility of a conviction despite a reasonable doubt, will infringe s. 11(d). Section 106.7(1) is such a provision.

VII

Constitutional Issues: Section 1

46 The respondent and the Attorney General of Canada submit in the alternative that s. 106.7(1) is demonstrably justified under s. 1 as a reasonable limit in a free and democratic society. To decide this point, it is necessary to refer to the principles of s. 1 analysis set out in this Court's decision in Oakes, supra. Two criteria must be met. First, the objective must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom." Second, the limit must be reasonable and demonstrably justified, which requires it to pass "a form of proportionality test" (R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 at p. 352). This second criterion has three components. The measures must be carefully tailored [page470] and rationally connected to the objective. They must impair the right in question as little as possible. Finally, there must be proportionality between the effects of the measure and the objective of the legislation (Oakes, supra, at p. 139).

47 Part II.1 of the Code, which contains s. 106.7(1), represents the latest attempt by Parliament to strike the proper balance between the interest of Canadian society in protecting its members from violent actions and the freedom of individuals to possess and use guns for legitimate purposes. It embodies wholly legitimate societal concerns for stricter regulation and control of guns and other offensive weapons. The Crown and Attorney General of Canada argue that s. 106.7(1) must be considered in the context of the statutory scheme respecting restricted weapons.

48 The policy of Part II.1 is to limit the ownership of dangerous weapons to those people who will use them in an honest, responsible fashion. Some types of weapons are prohibited altogether. The availability of other types of weapons, notably handguns, is restricted, while long-guns are subject to less strict control. To acquire any type of permitted firearm, a firearms acquisition certificate is required (s. 95(3)). An application for a firearms acquisition certificate will be rejected if the firearms officer has "notice of any matter that may render it desirable in the interest of the safety of the applicant or any other person that the applicant should not acquire a firearm" (s. 104(1)). To possess a restricted weapon, a registration certificate is required in addition to the firearms acquisition certificate. Registration certificates can only be issued to applicants over eighteen who need the restricted weapon to protect life, for use in their occupation, for use in target practice, or for part of a gun collection (s. 106.1(3)). A person who wishes to possess a restricted weapon must apply to the local registrar of firearms for a registration certificate (s. 106.1(1)). The local registrar must examine the weapon and check that the person is [page471] eligible for a

registration certificate. If the person is eligible, the local registrar forwards the application to the Commissioner of the Royal Canadian Mounted Police (s. 106.1(3)). If the local registrar has notice of any matter suggesting that in the interests of safety it would not be advisable for the applicant to have a restricted weapon, the local registrar must inform the Commissioner (s. 106.1(6)). Upon receipt of the application from the local registrar, the Commissioner issues the registration certificate (s. 106.1(7)), unless the Commissioner has notice of any matter suggesting that in the interests of safety it is not desirable that the applicant have a restricted weapon (s. 106.4(3)). The registration certificate only entitles the owner to keep the weapon at his or her residence or place of business (s. 106.1(8)). A carrying permit is required to take the weapon off the premises mentioned in the certificate (ss. 89(2), 106.2(1)).

49 Part II.1 creates a number of offences with respect to the acquisition, possession and use of firearms. Section 83(1) provides that the use of a firearm during the commission of an indictable offence is itself an indictable offence. Section 84 prohibits the careless use of a firearm. Section 88(1) provides that every one who has a prohibited weapon in his or her possession commits an indictable offence. Section 89(1), under which the appellant was charged, prohibits the possession of an unregistered restricted weapon. There are numerous other offences relating to the sale, delivery or acquisition of firearms and other offensive weapons (ss. 91-97).

50 Part II.1 thus expresses a clear legislative intention to prohibit the acquisition, possession and use of all restricted weapons except under the authority of a firearms acquisition certificate and a registration certificate, or under statutory exemptions such as those mentioned in s. 90 with respect to peace officers and police officers. The Code thus contains, as noted in McGuigan v. The Queen, [page472] [1982] 1 S.C.R. 284, "a comprehensive 'gun control' legislative scheme intended to discourage the use of firearms by the criminal element of our society". That the objective behind Part II.1 in general and s. 106.7(1) in particular "relate[s] to concerns which are pressing and substantial in a free and democratic society" is self-evident. The provisions satisfy the first stage of the approach to s. 1 set out in Oakes.

51 It may be wondered whether the specific objective of s. 106.7(1) is simply one of administrative convenience, which is rarely if ever an objective of sufficient importance to warrant overriding a constitutionally protected right. If so, that alone may be enough to decide the s. 1 analysis. Without deciding this point, I prefer to go on to the proportionality analysis, for two reasons. First, the objective of the section must be evaluated in the context of Part II.1, where it is located, and its place in the system of firearm regulation taken into account. Second, for reasons which I hope to make clear later on, the constitutionality of the application of s. 106.7(1) must be considered in relation to the particular offence in question. Because of the variety of offences created in Part II.1 the role played by s. 106.7(1) will vary with the offence. This in turn will affect the factors to be considered in deciding whether the application of the section can be upheld under s. 1. The determining factor may in some cases be found in the interplay between s. 106.7(1) and the offence provision. Consideration of the objective alone does not appear to take this interplay into account; the proportionality analysis is necessary to do so.

52 The next part of the Oakes inquiry is the proportionality between the provision and the infringement. In evaluating the proportionality of s. 106.7(1), it is important to remember how restrictive is the overall system of registering restricted weapons. There is one person in all of Canada who can issue registration certificates, and [page473] that is the Commissioner of the R.C.M.P. (s. 106.1(7)). The Commissioner is required by statute to keep a registry of all registration certificates issued (s. 106.6(1)(a), and that centralized computer registry, the Canadian Police Information Centre Telex, is available for any police force to consult (Martin L. Friedland, "Gun Control in Canada: Politics and Impact," in A Century of Criminal Justice (1984), at pp. 120-21; Evaluation of the Canadian Gun Control Legislation, First Progress Report (1981), at pp. 83 and 91 (hereinafter First Progress Report)). Although the certificates are issued by the Commissioner, all of the preliminary screening is done by the local registrar of firearms, who investigates applicants to be certain they meet the requirements for possession of a restricted weapon and do not pose any threat to safety (Friedland, at pp. 120-21; First Progress Report, at pp. 91-93; Hawley, Canadian Firearms Law (1988), at pp. 23-37). The local registrar is almost always a member of the local police force with jurisdiction over the certain area, or occasionally a civilian employed by the police (First Progress Report, at pp. 76-77). Finally, a person can possess a restricted weapon at only one of two places: the person's residence, or his or her ordinary place of business (s. 106.1(8)). The local registrar has no authority to issue a registration certificate authorizing the owner to keep the weapon at any other place (R. v. Wilson (1984), 17 C.C.C. (3d) 126 (Alta. Q.B.)) It is an offence for the owner to keep the weapon at any place other than that listed on the registration certificate, or even to take it off the listed premises without a carrying permit (s. 89(2)).

53 The combination of the strict limits contained in the registration certificate and the local administration of the application system means that it "should not be at all difficult" for the Crown to prove that the accused does not have a registration certificate for the weapon. In any area, there will be one local registrar who has jurisdiction over the [page474] location of the accused's residence and normal place of business. (In some cases where an accused lives within one police jurisdiction and works in another, there will be two local registrars who could process the application.) If that local registrar has not received an application for a registration certificate, then no one else could have received one.

54 The first stage of the proportionality inquiry is whether there is a rational connection between the provision and the objective. In this case, the Attorney General of Canada argued strongly that there was a rational connection between the objective of the legislation and s. 106.7(1). In Oakes, this Court held that in the case of a statute which reversed the onus of proof, in order to satisfy this branch of s. 1 analysis, there must be a rational connection between the basic or proved fact and the presumed fact. Here, the proved fact, possession of a restricted weapon, in no way tends rationally to prove the presumed fact, that the accused does not have a registration certificate.

55 Even if a less stringent rational connection should be applied to offences prohibiting certain acts in the absence of a permit or licence, in my view the present appeal is governed by the principles set out in R. v. Holmes, supra. As in that case, I do not think that the provision here

challenged impairs "as little as possible" the presumption of innocence (R. v. Big M. Drug Mart Ltd., supra, at p. 352, Oakes, supra, at p. 139). Presumably, the objective behind Part II.1 does not include convicting persons who are able to raise a reasonable doubt as to their guilt but are unable to establish their innocence on a balance of probabilities. The legislative objective behind Part II.1 can just as easily be met, in the absence of s. 106.7(1), by not requiring an accused to prove on a balance of probabilities that the firearm is or was duly registered. The most that should be necessary is that the accused be required to point to evidence suggesting that the weapon is or was registered. Since the fact of non-registration must be proven for a conviction under s. 89(1), the Crown must be able to provide the trier of fact with sufficient [page475] evidence, be it oral or documentary, to justify concluding beyond a reasonable doubt that the firearm in fact is not or was not registered.

56 The Attorney General of Canada argued that even if s. 106.7(1) places the onus of proof on the accused contrary to s. 11(d), the weight of that burden is greatly reduced by the addition of s. 106.7(2), which I set out again for ease of reference:

106.7 ...

> (2) In any proceedings under any of sections 83 to 106.5, a document purporting to be a firearms acquisition certificate, registration certificate or permit is evidence of the statements contained therein.

The Attorney General of Canada argues that this provision, when coupled with s. 24(1) of the Interpretation Act, R.S.C. 1970, c. I-23, provides a means for the accused to meet the burden of proof set out by s. 106.7(1) without any danger of self-crimination.

57 One objection to reverse onus clauses is that they may force the accused into the witness box, sacrificing the right to remain silent to the requirement that he or she prove a fact on a balance of probabilities or risk conviction. The close links between the two rights were recognized before and after the enactment of the Charter, which now guarantees them both in s. 11(c) and (d). (See R. v. Proudlock, supra, at pp. 550-51; Dubois v. The Queen, [1985] 2 S.C.R. 350, at pp. 356-58; Ratushny, "The Role of the Accused in the Criminal Process", in Beaudoin and Tarnopolsky, eds., The Canadian Charter of Rights and Freedoms: Commentary, at pp. 358-59). Even if the reverse onus clause only relates to one issue, as is the case with s. 106.7(1), an accused who testifies to meet the onus on that point is open to cross-examination on the entire case. Had Parliament provided a way for the accused to enter evidence of the certificate without being required to testify, the arguments of [page476] the Attorney General of Canada would be more compelling. I am not, however, satisfied that Parliament has done so in s. 106.7(2).

58 My reason for concluding that Parliament has not so provided is based on the common law relating to the admission of documents into evidence and the interpretation of s. 106.7(2). Before

any document can be admitted into evidence there are two obstacles it must pass. First, it must be authenticated in some way by the party who wishes to rely on it. This authentication requires testimony by some witness; a document cannot simply be placed on the bench in front of the judge. Second, if the document is to be admitted as evidence of the truth of the statements it contains, it must be shown to fall within one of the exceptions to the hearsay rule (Delisle, Evidence: Principles and Problems, at pp. 103-105; Ewart, Documentary Evidence in Canada, at pp. 12, 13, 33; Wigmore on Evidence, vol. 7, 3rd ed., paras. 2128-2135). These are two distinct issues and in my opinion s. 106.7(2) only addresses the latter. A registration certificate, once admitted, is evidence of the statements it contains, namely that the person it names had complied with the registration requirements for a restricted weapon. How does the document get admitted into evidence?

59 One of the hallmarks of the common law of evidence is that it relies on witnesses as the means by which evidence is produced in court. As a general rule, nothing can be admitted as evidence before the court unless it is vouched for viva voce by a witness. Even real evidence, which exists independently of any statement by any witness, cannot be considered by the court unless a witness identifies it and establishes its connection to the events under consideration. Unlike other legal systems, the common law does not usually provide for self-authenticating documentary evidence.

60 Parliament has provided several statutory exceptions to the hearsay rule for documents, but it less [page477] frequently makes exception to the requirement that a witness vouch for a document. For example, the Canada Evidence Act provides for the admission of financial and business records as evidence of the statements they contain, but it is still necessary for a witness to explain to the court how the records were made before the court can conclude that the documents can be admitted under the statutory provisions (see ss. 29(2) and 30(6)). Those explanations can be made by the witness by affidavit, but it is still necessary to have a witness. Exceptionally, s. 241 of the Criminal Code allows for certificates of analysis for breath and blood samples to be evidence of the facts alleged in them without proof of the authenticity of the document (s. 241(1)(e) to (i)), but the prosecution must give notice of the intention to use the certificates and the accused can require that the analyst attend at trial for cross-examination (s. 241(6) and (7)). There are also common law exceptions to this principle, but the certificate now in issue does not fall within them.

61 In light of the common law of evidence relating to documents, I do not think that s. 106.7(2) can be interpreted as anything more than a provision which allows a certificate to be evidence of the truth of the statements it contains, as an exception to the hearsay rule. It does not mean that a registration certificate is a self-authenticating document that can be received as evidence without a witness. The use of the word "purporting" may indicate that if the certificate is admitted and the Crown wishes to challenge its authenticity it must do so by proof beyond a reasonable doubt, but the word "purporting" by itself is not enough to make the document self-authenticating, contrary to the general common law approach to documentary evidence. Section 106.7(2) does not make it possible for the accused to put the certificate before the court without some witness identifying it.

62 There will always be one other person who can testify whether the accused had a registration

certificate, and that is the local registrar of firearms [page478] who processed the application. The accused could avoid testifying by calling this person instead. As soon as this suggestion is made, it undermines the argument that it is more difficult for the Crown to lead evidence on the question of a registration certificate than it would be for the accused: the local registrar of firearms will likely be a police officer, probably a member of the same force that laid the charges.

63 Section 106.7(1) will either force the accused to testify, in effect requiring him or her to choose between the constitutionally guaranteed rights not to testify or to be presumed innocent, or will require the accused to call a police officer as a defence witness to testify about information contained in police files. In either case, it cannot be said that Parliament has impaired the presumption of innocence as little as possible.

64 It is true of course that it would be very easy for the accused in this case to testify whether or not he had a registration certificate, but in almost every case, the accused is one of the people best able to explain what happened. Yet it is a fundamental value in our society that we not force the accused to testify, even when the accused is the only person who can answer the question. When there are other witnesses available, as in the present situation, there is even less reason to expect the accused to explain events.

65 What is the consequence of a conclusion that s. 106.7(1) cannot be salvaged by s. 1 and that the Crown must disprove the existence of a registration certificate when that is in issue? The very comprehensiveness of the gun control scheme of Part II.1 suggests that the prosecution will be able to meet this requirement. A registration certificate for a restricted weapon is issued for a limited territory only. It will be a relatively easy matter for the Crown to determine if the person has a registration certificate, by enquiring with the local registrar for the area where the accused lives or has a place of business. The local registrar, almost always a police officer or employee of the police, will be able to say whether any application from the accused has ever been received; if not, it is [page479] reasonable to conclude the accused did not have a registration certificate, as no other official could have processed the application. As a back-up, there is also the central registry which the Commissioner is required by statute to maintain of all registration certificates issued, revoked, or refused (s. 106.6). This information is entered on the Canadian Police Information Centre Telex, a centralised computer data bank for the entire country. While it may be the case under some regulatory schemes that it is very difficult for the prosecution to find out whether or not an accused has a required permit or licence, that is not the case here. The police have access to the information, since they are almost invariably the persons responsible for the administration of the Part II.1 registry system, and in any event can consult the computer registry.

66 It is not unreasonable to require the Crown to consult information within the knowledge of the police and to be ready if necessary to produce that information in court. If the argument of convenience to the accused is to be available at all to justify the reversal of the onus of proof under s. 1, it can only be where it is very difficult for the Crown to meet that onus. If it is possible as a general matter for the Crown to meet the onus, then it should be required to do so, even if it would

be easier for the accused to prove the matter. When the police actually have the records in question, or access to them, it is hard to argue that it is difficult for them to prove the absence of the necessary certificate. It is worth noting as well, that the Canada Evidence Act, s. 26(2), explicitly provides for proof by affidavit of an officer having charge of such records that a search has been made and that the officer has been unable to find the appropriate licence or document has been issued.

67 That this is not an impossible task is illustrated by the facts of this case: Allen Prov. Ct. J. convicted the appellant at trial without using s. 106.7(1). [page480] The Crown led enough evidence at trial to persuade Allen Prov. Ct. J. beyond a reasonable doubt that the appellant did not have a registration certificate. It is true that Barkman Co. Ct. J. took a different view of the evidence, but that does not mean the Crown will never be able to prove its case. The Crown could have called Sgt. Pilcher's successor to establish that no certificate was issued after 1979. It could have applied under s. 30 of the Canada Evidence Act to enter the contents of the file as evidence. In this case, the Crown simply failed to establish proof beyond a reasonable doubt.

68 I would conclude that the application of s. 106.7(1) to a person charged with an offence under s. 89(1) is constitutionally invalid. This does not mean, however, that s. 106.7(1) is completely invalid. The section 1 analysis in this case has depended heavily on the nature of registration certificates, including the strict limitations on the area of possession of the restricted weapon and the highly localised administration of the registry system. The section 1 analysis of the presumption in connection with other Part II.1 offences, concerning different certificates or permits, may have a different outcome. For example, firearms acquisition certificates are valid throughout Canada (s. 104(12)). Carrying permits and transport permits allow the owner of a restricted weapon to possess it in different areas, possibly crossing from one police jurisdiction to another (s.106.2(10)). The justification for s. 106.7(1) in connection with these documents will likely involve different issues and a different s. 1 analysis. Since this case does not involve these types of permits or certificates, I would limit the holding in this case to the conclusion that the application of s. 106.7(1) to a person charged with an offence under s. 89(1) cannot be justified under s. 1 of the Charter.

[page481]

69 There is a final point. Parliament has provided in other cases for proof by way of documentary evidence, without the necessity for a witness in court. The certificate of a breathalyzer analyst, referred to earlier, is one such example. The Canada Evidence Act provides another way to prove matters by document. There does not seem to be any difficulty for Parliament to allow similar proof of the files of the local registrar, or possibly of the contents of the Commissioner's central registry.

VIII

Conclusion

70 In sum, it is my opinion that s. 106.7(1) of the Criminal Code violates s. 11(d) of the Charter. The application of s. 106.7(1) to a person charged under s. 89(1) cannot be justified under s. 1. I would therefore answer the constitutional question in the affirmative.

71 I would allow the appeal, set aside the judgment of the Court of Appeal of Manitoba and restore the verdict of acquittal on each of the two charges.

The following are the reasons delivered by

72 BEETZ J.:-- Given the dates of the pre-Charter trial and the post-Charter summary conviction appeal, I assume without deciding that the Canadian Charter of Rights and Freedoms applies to this case, and I agree with Justice McIntyre.

The judgment of McIntyre, La Forest and L'Heureux-Dubé JJ. was delivered by

73 McINTYRE J.:-- I have read the reasons of the Chief Justice which have been prepared for delivery in this appeal. With deference, I am unable to agree with the result he has reached and with the reasons which have led to his conclusion. I will accordingly express my views on this appeal. The Chief Justice has set out the facts, outlined the dispositions made in the courts below and the essence of the reasons given by the judges in those courts.

[page482]

74 The issues raised in the appeal were stated by the appellant in these terms. He submitted that the majority of the Court of Appeal erred in deciding the appeal on a question of fact, or in the alternative, on a question of mixed law and fact; also, that the majority of the Court of Appeal erred in deciding that s. 106.7(1) of the Criminal Code of Canada is constitutionally valid and does not contravene the provisions of s. 11(d) of the Canadian Charter of Rights and Freedoms. As to the first ground, I agree with the Chief Justice that a question of law was raised in this appeal before the Court of Appeal. It involved a question of the admissibility of evidence which, as the Chief Justice said, is a clear question of law.

75 I would agree with the Chief Justice that in order to set aside an acquittal, in this case that recorded by Barkman Co. Ct. J. on the first appeal [(1983), 22 Man. R. (2d) 46] the Crown must satisfy the Court that the result would not necessarily have been the same if the error made at trial had not occurred. I do not accept, however, considering the evidence adduced and the nature of the evidence excluded, that the Crown failed to meet that test. This disagreement does not assume great significance here, however, because it is evident from the reasons of Barkman Co. Ct. J. that his acquittal of the appellant depended upon his finding that s. 106.7(1) of the Criminal Code offended s. 11(d) of the Charter. After stating that the evidence called by the Crown (the appellant gave no evidence) was insufficient to establish guilt, he said:

> I am therefore of the opinion that the accused should not have been convicted unless the provisions of s. 106.7(1) are applicable.

Then, after considering the section and the provisions of s. 11(d) of the Charter, he concluded by saying:

> I therefore find the learned provincial court judge erred in admitting hearsay evidence and I find that s. 106.7 (1) does not apply because it offends s. 11(d) of the Canadian Charter of Rights and Freedoms.

[page483]

He had already found that the appellant had possession of the weapons and his acquittal then depended on his finding that s. 106.7(1) was unconstitutional. In other words, he rejected the section on the basis that it reversed the onus of proof. The issue of the constitutionality of the section is therefore vital to a decision in this case.

76 I turn to the constitutional point. Section 89(1) and s. 106.7 of the Criminal Code, the sections with which we are primarily concerned in this appeal, form part of Part II.1 of the Code which deals with firearms and other offensive weapons. The Code has included provisions for the control, use and possession of firearms since the enactment of the 1892 Criminal Code, S.C. 1892, c. 29, s. 105. That section prohibited the possession of pistols and air guns at other than specific places and, as well, provided for exemptions from the operation of the section. Since that time, there have been successive amendments which without exception have strengthened the controls upon possession and use of firearms. The history of this process is summarized by Martin L. Friedland, A Century of Criminal Justice (1984), commencing at p. 125. He concludes, at p. 128, with what may be considered a sober warning:

> Canada has been fortunate in having had a gradual development of control over firearms for the past 100 years. We have never had to face a situation as in the United States today, which appears to many observers to be almost out of control.

This is a consideration which may well be significant in any judicial approach to the construction of Part II.1 of the Code. It is evident that the strict control of handguns has been and remains an essential feature of the Canadian gun control laws.

77 It is clear that the overall intent of Parliament in enacting Part II.1 of the Criminal Code was to prohibit the acquisition and use of weapons save in accordance with the strict controls it prescribed. Section 89(1) under which the appellant was charged gives effect to this intention by providing that:

[page484]

> 89. (1) Every one who has in his possession a restricted weapon for which he does not have a registration certificate
>
> (a) is guilty of an indictable offence and is liable to imprisonment for five years; or
> (b) is guilty of an offence punishable on summary conviction.

It is evident then that only one possessing a restricted weapon for which he has no registration certificate can be convicted under the section. If a certificate of registration is not obtained, a criminal offence arises from the mere possession of the restricted firearm. Section 89(1) does not apply to anyone who has a valid certificate which is a condition precedent to the lawful possession of the weapons.

78 The argument is made that s. 106.7(1) imposes a reverse onus of proof upon the accused in a prosecution under s. 89(1). Section 106.7(1) reads:

> 106.7(1) Where, in any proceedings under any of sections 83 to 106.5, any question arises as to whether a person is or was the holder of a firearms acquisition certificate, registration certificate or permit, the onus is on the accused to prove that that person is or was the holder of such firearms acquisition certificate, registration certificate or permit.

79 In pre-Charter cases the imposition of a reverse onus upon an accused was frequently recognized and accepted as an exception to the general rule requiring proof by the Crown of all elements of an offence beyond a reasonable doubt. It was settled, as well, that where the accused was required to discharge an onus relating to an element of a criminal offence, he had to do so according to the civil standard of proof, that is, he had to establish the matter on a balance of probabilities. A statement of the rule, as then accepted, is to be found in R. v. Appleby, [1972] S.C.R. 303. It must be recognized now, however, that a statutory provision which imposes a burden of proof or disproof of an element of an offence on an accused creates [page485] an impermissible reverse onus under the Charter: see R. v. Vaillancourt, [1987] 2 S.C.R. 636, at p. 655; R. v. Oakes, [1986] 1 S.C.R. 103; and R. v. Whyte, [1988] 2 S.C.R. 3. It has been held that any statutory provision which could have the effect of permitting a conviction, notwithstanding the existence of a reasonable doubt as to guilt, would contravene s. 11(d) of the Charter which guarantees the right to be presumed innocent until proven guilty according to law.

80 In my view, however, these principles cannot be of assistance to the appellant here. There is

no reverse onus imposed upon the accused by s. 106.7(1), despite the words which are employed in the section. The holder of a registration certificate cannot be made subject to a conviction under s. 89(1). He is not required to prove or disprove any element of the offence or for that matter anything related to the offence. At most, he may be required to show by the production of the certificate that s. 89(1) does not apply to him and he is exempt from its provisions. Far from reversing any onus, s. 106.7 provides in subs. (2) that a document purporting to be a valid registration certificate is evidence and, therefore, prima facie proof of the statements contained therein and in the case at bar conclusive proof, as provided in s. 24(1) of the Interpretation Act, R.S.C. 1970, c. I-23, set out hereunder:

> 24. (1) Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact shall be deemed to be established in the absence of any evidence to the contrary.

As Hart J.A. stated in R. v. Conrad (1983), 8 C.C.C. (3d) 482 (N.S.C.A.), at p. 487, dealing with a charge under s. 87 of the Criminal Code:

> The crime is to carry a weapon concealed, and all persons who do so are guilty of the offence. Certain persons are, however, exempted from this prohibition [page486] provided they establish their right to exemption before the court. The requirement that they affirmatively establish their privilege of possessing and carrying a restricted weapon does not, in my opinion, interfere with or impede their right to be presumed innocent. The existence of their privilege is not a fact which must be negatived [sic] by the Crown beyond a reasonable doubt in proving the offence charged. No presumption of guilt arises from the combination of ss. 87 and 106.7(1) of the Criminal Code. This is not a situation where a person is deemed to be guilty of an offence unless he establishes his innocence. He is in fact deemed to be not guilty of an offence under s. 87 if he holds a permit of exemption, but the burden is cast upon him to establish that he falls within the exemption given to him. [Emphasis added.]

Although the accused must establish that he falls within the exemption, there is no danger that he could be convicted under s. 89(1), despite the existence of a reasonable doubt as to guilt, because the production of the certificate resolves all doubts in favour of the accused and in the absence of the certificate no defence is possible once possession has been shown. In such a case, where the only relevant evidence is the certificate itself, it cannot be said that the accused could adduce evidence sufficient to raise doubt without at the same time establishing conclusively that the certificate had been issued. The theory behind any licensing system is that when an issue arises as to the possession of the licence, it is the accused who is in the best position to resolve the issue. Otherwise, the issuance of the certificate or licence would serve no useful purpose. Not only is it

rationally open to the accused to prove he holds a licence (see R. v. Shelley, [1981] 2 S.C.R. 196, at p. 200, per Laskin C.J.), it is the expectation inherent in the system.

81 Therefore, in my view, s. 106.7(1) does not violate s. 11(d) of the Charter. On that basis, I would dismiss the appeal and uphold the conviction.

Section 1 Analysis

82 In view of the conclusion that I have reached on the constitutional question, it is not necessary for [page487] me to consider the application of s. 1 of the Charter. However, since the question has been raised and argued, I will deal with s. 1 for the purposes of this discussion on the assumption that s. 106.7(1) does infringe the s. 11(d) right. In my view, s. 106.7(1) is clearly sustainable as a reasonable limit prescribed by law which can be demonstrably justified in a free and democratic society. The Chief Justice by reference to R. v. Oakes, supra, has set out the general approach to s. 1 which that case dictates. On the basis of the Oakes test, the impugned section is clearly sustainable. The purpose of Part II.1 and its component sections, including s. 89(1), most assuredly aims at an objective "of sufficient importance to warrant overriding a constitutionally protected right or freedom" (see Oakes, p. 138). The private possession of weapons and their frequent misuse has become a grave problem for the law enforcement authorities and a growing threat to the community. The rational control of the possession and use of firearms for the general social benefit is too important an objective to require a defence. Therefore, I agree with the Chief Justice in his conclusion that the provisions of Part II.1, in general, and s. 106.7(1), in particular, satisfy the first test, that is, that they serve an important social objective.

83 The second test in Oakes involves a consideration of proportionality. In my view, s. 106.7(1) meets that test as well. This Court has repeatedly observed that the proportionality test must be flexible to avoid a rigid confinement of the Court's consideration to fixed and unchanging standards. The Chief Justice has said in Oakes, at p. 139:

> Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups.

[page488]

A certain element of common sense must dictate: the Chief Justice observed in Oakes, at p. 138, that:

> ...there may be cases where certain elements of the s. 1 analysis are obvious or self-evident.

In R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713, he stated at pp. 768-69:

> The Court stated that the nature of the proportionality test would vary depending on the circumstances. Both in articulating the standard of proof and in describing the criteria comprising the proportionality requirement the Court has been careful to avoid rigid and inflexible standards.

Again, at pp. 781-82:

> A "reasonable limit" is one which, having regard to the principles enunciated in Oakes, it was reasonable for the legislature to impose. The courts are not called upon to substitute judicial opinions for legislative ones as to the place at which to draw a precise line. [Emphasis added.]

La Forest J. (concurring in the result in Edwards Books, supra) made the following comment, at pp. 794-95:

> Let me first underline what is mentioned in the Chief Justice's judgment, that in describing the criteria comprising the proportionality requirement, the Court has been careful to avoid rigid and inflexible standards. That seems to me to be essential. Given that the objective is of pressing and substantial concern, the Legislature must be allowed adequate scope to achieve that objective. It must be remembered that the business of government is a practical one. The Constitution must be applied on a realistic basis having regard to the nature of the particular area sought to be regulated and not on an abstract theoretical plane....
>
> By the foregoing, I do not mean to suggest that this Court should, as a general rule, defer to legislative judgments when those judgments trench upon rights considered fundamental in a free and democratic society. Quite the contrary, I would have thought the Charter established the opposite regime. On the other hand, having accepted the importance of the legislative objective, one must in the present context recognize that if the legislative goal is to be achieved, it will inevitably be achieved to the detriment of some. Moreover, attempts to protect the rights of one group will also inevitably impose burdens on the rights of other groups. There is [page489] no perfect scenario in which the rights of all can be equally protected.
>
> In seeking to achieve a goal that is demonstrably justified in a free and democratic society, therefore, a legislature must be given reasonable room to manoeuvre to meet these conflicting pressures. Of course, what is reasonable will vary with the context. Regard must be had to the nature of the interest infringed

> and to the legislative scheme sought to be implemented.

And, in R. v. Morgentaler, [1988] 1 S.C.R. 30, the Chief Justice said, at pp. 73-74:

> In Oakes, at p. 139, the Court referred to three considerations which are typically useful in assessing the proportionality of means to ends. First, the means chosen to achieve an important objective should be rational, fair and not arbitrary. Second, the legislative means should impair as little as possible the right or freedom under consideration. Third, the effects of the limitation upon the relevant right or freedom should not be out of proportion to the objective sought to be achieved.

84 In my view, the proportionality test in Oakes is easily satisfied in this case. Before going further, it will be helpful to state in simple terms just what is required of persons who wish to possess and use restricted weapons. They are required to register the weapons. Having done so, they are provided with a certificate which excludes them from the provisions of Part II.1 within the terms of their certificate. If a question arises as to the existence of a permit or certificate, they are required to produce it. That is the burden imposed upon a person lawfully in possession of a restricted weapon. In this way, the legislative purpose implicit in s. 89(1) of the Criminal Code is recognized and given effect. A condition precedent to the lawful possession of a restricted weapon is the obtaining of a valid registration certificate by the possessor. If the certificate is not held, a criminal offence has been committed by the mere fact of possession. Thus, a balance has been struck between the interest of the community in the control of possession and use of firearms and the interest of those who desire to possess and make lawful use of firearms. Considering then the first branch of the proportionality test, it is completely "rational, fair and not arbitrary" that where any question arises as to whether the proper certificate has been [page490] issued the accused be expected to produce it. This is particularly true where, as here, the impugned legislative provisions provide to the lawful weapon holder an absolute defence or immunity from prosecution. It is, in my view, irrelevant that possession of a restricted weapon "in no way tends rationally to prove" any lack of registration certificate, for the possession of the weapon in the absence of the certificate is an offence complete in itself. In addition, as has been pointed out earlier, there is no possibility that a person could be convicted despite the existence of a reasonable doubt as to his guilt. This could not occur. In my view, therefore, it is totally unreasonable to require the Crown to prove the non-occurrence of an event (registration) for which the Criminal Code itself provides the only relevant evidence directly to the affected party. As Brooke J.A. said in R. v. Lee's Poultry Ltd. (1985), 17 C.C.C. (3d) 539 (Ont. C.A.), at p. 544 regarding the comment by Dubin J.A. during the argument on that case:

> "How could it be unfair to ask a person to produce his licence or evidence that he has one? Surely, it is the sensible thing to do".

85 Secondly, s. 106.7(1) should impair as little as possible the right to be presumed innocent. The

Chief Justice objects to an obligation on an accused to produce a licence on the basis that it may force the accused into the witness box. Reference was made to a passage from pp. 184-85, Glanville Williams, The Proof of Guilt (3rd ed. 1963), in support of the argument against making exceptions to the principle that the Crown bear the onus of proof. The words which follow the excerpt referred to by the Chief Justice, however, cast light upon the question of requiring the accused to enter the witness box. The learned author continued his discussion, at p. 185, with the following:

[page491]

> There is a clear if subtle difference between shifting the burden of proof, or risk of non-persuasion of the jury, and shifting the evidential burden, or burden of introducing evidence in proof of one's case. It is not a grave departure from traditional principles to shift the evidential burden, though such a shifting does take away from the accused the right to make a submission that there is no case to go to the jury on the issue in question, and it may in effect force him to go into the witness-box.

In any event, the risk of cross-examination upon going into the witness box would be relatively small, given that the only relevant issue to which it would ordinarily be addressed is as to whether a registration certificate had been properly acquired and, in any event, under s. 13 of the Charter and the judgments of this Court in Dubois v. The Queen, [1985] 2 S.C.R. 350, and R. v. Mannion, [1986] 2 S.C.R. 272, which applied its provisions, the cross-examination could not be used against the accused in any other case and an accused would be exposed to no danger in that respect. Of more importance, however, is the fact that the concern is more academic than real because the mere existence of a valid certificate would ordinarily forestall any criminal proceedings. It becomes improbable, to say the least, that an accused will ever be forced to testify merely to produce his licence. In my view, the fact that an accused might be required to enter the witness box to tender his certificate would not be a matter of great significance and certainly not one which would justify a finding of unconstitutionality of s. 106.7(1). Therefore, in my view, Parliament has impaired very minimally the presumption of innocence by requiring an accused to show his licence as proof of lawful possession.

86 Finally, there is no doubt that the third test of proportionality, as between the limitation of the Charter right and the objectives sought to be achieved, is also amply demonstrated. It has been suggested that it "should not be at all difficult" for the Crown to prove a negative, namely, that no certificate had been issued. This, however, is to [page492] deny the many problems of proof which the licensing system was itself designed to avoid. First is the problem of the number of registrars who could deal with the application for registration. The local registrar can issue a certificate based on the normal place of business even though the accused lives in another city or province. If an

accused carries on several businesses in diverse areas or resides at varying locations, is it reasonable to expect that several local registrars be called to testify that after a search of their records they could find no certificate issued? I am unable to agree with the Chief Justice in his conclusion that:

> If that local registrar had not received an application for a registration certificate, then no one else could have received one.

It is not necessarily an easy matter for the Crown to prove non-registration. The existence of a central computerized registry system offers no complete answer to the problems facing the Crown in meeting the burden the Chief Justice would impose. To authenticate the accuracy of a computer file could involve extensive evidentiary procedures and much would need to be proven in order to verify the completeness of the computer record and the absence of a certificate for an accused. This would be an inordinate burden on the Crown in criminal enforcement when Parliament itself adopted the reasonable alternative of providing the accused with a certificate which would establish his innocence by its mere production.

87 The measures adopted in Part II.1 of the Criminal Code are carefully tailored to effect a balance between the community interest and that of those who desire to possess weapons lawfully and they are clearly appropriate to the objectives sought. Only minimal interference is made with the right of the individual weapon possessor. His rights from a practical point of view are limited to the least extent possible. Even if there is merit in the suggestion that the Crown, using computers and [page493] modern technology, could easily negate the fact of the existence of a permit, Parliament has made a reasonable choice in the matter and, in my view, it is not for the Court, in circumstances where the impugned statutory provision clearly involves, at most, minimal -- or even trivial -- interference with the right guaranteed in the Charter, to postulate some alternative which in its view would offer a better solution to the problem, for to do so is to enter the legislative field, so far at least not entirely removed from Parliament. I would therefore hold that any limits imposed by s. 106.7(1) of the Criminal Code are sustainable under s. 1 of the Charter.

88 A constitutional question was posed in these terms:

> Is section 106.7(1) of the Criminal Code of Canada constitutionally invalid in that it contravenes the provisions of s. 11(d) of the Canadian Charter of Rights and Freedoms?

89 I would answer the question in the negative, dismiss the appeal and restore the conviction.

The following are the reasons delivered by

90 LAMER J. (dissenting):-- I agree with the Chief Justice in all regards except for the objective he assigns to s. 106.7(1) when under the s. 1 scrutiny he takes the section through the Oakes test. While I certainly do agree with him that "to discourage the use of firearms by the criminal element of our society" is an objective which "relate(s) to concerns which are pressing and substantial in a

free and democratic society", and that such an objective "satisfi[es] the first stage of the approach to s. 1 set out in Oakes", I am, with respect of the view that is the object the attainment of which is sought through making it an offence to possess unregistered restricted weapons, under s. 89(1) and the various other sections restricting or prohibiting possession or use of different types of weapons.

[page494]

91 Section 106.7(1) is not particular nor essential to weapons legislation. It is a purely evidentiary section which could be appended or directed to any number of laws requiring the licensing of persons or the registration of certain things, such as in this case guns, but also automobiles under provincial legislation, dogs under municipal by-laws, to name but a few. The objective of a section such as s. 106.7(1) is to relieve the prosecution of the inconvenience -- a slight one in these days of computers and of instant communication facilities -- of securing a certificate from the appropriate authority attesting to the absence of any record establishing registration. It is in no way part of the arsenal in the war against crime involving weapons. Its sole purpose is administrative convenience. When the cost of this convenience is the restriction of an accused's rights under s. 11(d) in the context of the prosecution of a Criminal Code offence, it is clearly not an objective of sufficient importance to warrant overriding such a right. This to me ends the s. 1 enquiry.

92 Before concluding, I should add that this is not to say that, in a setting where imprisonment is not available as a penalty and where conviction does not carry the stigma of a criminal record, administrative convenience could not prevail over the rights of the citizen. But this is not the case here.

93 Subject to these remarks, I concur in the reasons of the Chief Justice and in his disposition of this appeal.

Indexed as:

Teale v. Canada (Attorney General)

Between
Karla Teale, applicant, and
Attorney General of Canada, respondent

[2000] F.C.J. No. 1666

[2000] A.C.F. no 1666

104 A.C.W.S. (3d) 570

49 W.C.B. (2d) 447

Docket No. T-1846-00

Federal Court of Canada - Trial Division
Montréal, Quebec

Blais J.

Heard: October 6, 2000.
Judgment: October 13, 2000.

(17 paras.)

Prisons -- Administration -- Powers re prisoners -- Transfers -- Injunctions -- Interlocutory or interim injunctions -- Requirement of irreparable injury.

Motion by Teale for an interlocutory injunction preventing her involuntary transfer from one custodial facility to another higher security institution. Teale argued that her accessibility to her community and her family would be affected if she were transferred, and her life would be in danger.

HELD: Motion dismissed. Teale failed to demonstrate that she would suffer irreparable harm if she was transferred.

Counsel:

Marc Labelle, for the applicant.
Eric Lafrenière, for the respondent.

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1 **BLAIS J.** (Reasons for Order):-- This is a motion for an interlocutory injunction to prevent the applicant's involuntary transfer from the Joliette custodial facility to the Regional Psychiatric Centre (Prairies) (RPCP).

2 To succeed, the applicant had to persuade the Court that she had a serious issue to be tried, that she might suffer irreparable harm if she were transferred, and that the balance of convenience weighed in her favour.

3 I will first examine the applicant's submissions that she might suffer irreparable harm if she is transferred. In doing so, I shall assess the evidence that is before me.

4 I decided earlier, at the hearing, to reject a document that the applicant's counsel attempted to introduce, which was simply hearsay, in fact, and was not supported by an affidavit.

5 During the hearing, I reserved on an objection by the applicant as to the hearsay content in paragraph 14 of the affidavit of Mr. Daniel Mérineau, the acting head of the Joliette Institution. I am allowing the objection and thereby removing this paragraph from the affidavit, which in all other respects remains valid.

6 It remains for me to assess the irreparable harm, if any, that Ms. Teale, the applicant, will suffer. She states under oath that her accessibility to the community and to her family resources as well as her life will be endangered if she is transferred and, moreover, that she has been the victim of death threats in the past.

7 The applicant was unable to document or submit any additional evidence to support these statements.

8 The applicant states in paragraph 10 of her affidavit that she may suffer the loss of her residual liberty; in fact, she believes that her mobility will be less in her new detention centre and that her contacts with other inmates will be reduced, since the centre to which she will be transferred is a higher security institution.

9 I have difficulty understanding how an environment with increased security and reduced contacts with other inmates can result in a greater threat to her security.

10 In my opinion, the applicant has failed in her attempt to demonstrate that she may suffer irreparable harm if she is transferred.

11 As to the balance of convenience, it clearly favours the respondent, who has a duty to take whatever measures are necessary to comply with the provisions of the Act.

12 The applicant's transfer does not deprive her of any right and the Correctional Service authorities will be in a better position to carry out the assessment of the applicant, even if she announces in advance that she will not cooperate.

13 The applicant's admissions as to her potential refusal of release in no way releases the Correctional Service of its statutory obligations.

14 It is in the public interest that the Correctional Service be able to fulfil its mandate.

15 In R.J.R. MacDonald Inc. v. Canada (A.G.), [1994] 1 S.C.R. 311, the Supreme Court, per Sopinka and Cory JJ., states at paragraph 69:

> [69] Courts have addressed the issue of the harm to the public interest which can be relied upon by a public authority in different ways. On the one hand is the view expressed by the Federal Court of Appeal in Attorney General of Canada v. Fishing Vessel Owners' Association of B.C., [1985] 1 F.C. 791, which overturned the trial judge's issuance of an injunction restraining Fisheries Officers from implementing a fishing plan adopted under the Fisheries Act, R.S.C. 1970, c. F-14, for several reasons, including, at p. 795:
>
> (b) the Judge assumed that the grant of the injunction would not cause any damage to the appellants. This was wrong. When a public authority is prevented from exercising its statutory powers, it can be said, in a case like the present one, that the public interest, of which that authority is the guardian, suffers irreparable harm.
>
> This dictum received the guarded approval of Beetz J. in Metropolitan Stores at p. 139. It was applied by the Trial Division of the Federal Court in Esquimalt Anglers' Association v. Canada (Minister of Fisheries and Oceans) (1988), 21 F.T.R. 304.
>
> ...
>
> [71] In our view, the concept of inconvenience should be widely construed in Charter cases. In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This

> is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

16 Since the applicant has failed on two components of the test -- the irreparable harm and the balance of convenience -- it is unnecessary, in the circumstances, to examine in detail the third component, which is whether there is a serious issue to be tried. I note, however, that the applicant is seeking the intervention of the Federal Court, while her internal remedies are not exhausted, which is apparent on the face of the record.

17 For all these reasons, this motion for an injunction is dismissed.

Certified true translation: Suzanne M. Gauthier, LL.L., Trad. a.

cp/d/qlcvd