

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**AIR PASSENGER RIGHTS**

Applicant

-and-

**THE ATTORNEY GENERAL OF CANADA**

Respondent

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

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**NOTICE OF MOTION**

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The moving party, Charter Advocates Canada (“CAC”), will make a motion to the court at 10 am on Thursday, December 18, 2025.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference at the following location: Ottawa Courthouse, 161 Elgin Street, Ottawa, ON, K2P 2K1.

**THE MOTION IS FOR:**

1. an order, pursuant to Rule 13.02 of the *Rules of Civil Procedure*, granting CAC leave to intervene in this application as a friend of the court;
2. an order granting CAC leave to file a factum of up to 12 pages in length;
3. an order granting CAC leave to make oral submissions on the application for up to 15 minutes;

4. an order that no costs be awarded to or against CAC on this motion or on the application;  
and
5. such further and other orders as counsel may request and the Court may consider appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

1. CAC is a federal not-for-profit corporation and a charity registered with the Canada Revenue Agency;
2. CAC is registered with the Law Society of Ontario as a Civil Society Organization to provide *pro bono* legal services to the public;
3. as set out in its Certificate of Amendment, dated December 15, 2023 (a copy of which is attached hereto as **Exhibit “A”**), CAC’s relevant purposes are as follows:

To uphold the enforcement of the Constitution of Canada and other existing laws of Canada and the provinces and territories thereof, as they relate to constitutional freedoms, civil rights, human rights, and other protections under the Constitution of Canada, by facilitating legal advice and representation before government, administrative tribunals, and the courts, where there is need.

4. a primary focus of CAC is to uphold Canadians’ *Charter*-protected fundamental freedoms, including the freedoms of thought, opinion, belief and expression (including freedom of the press and other media of communication) protected under s. 2(b);
5. this application engages the s. 2(b) freedoms of not only air passengers involved in the resolution process set out at ss. 85.02-85.16 of the *Canada Transportation Act*, SC 1996, c. 10 (the “*Act*”), but also of all Canadians who would seek to obtain, share, discuss or criticize decisions made by complaint resolution officers under the *Act*;

6. in furtherance of its mandate, CAC has an interest in intervening in this proceeding to provide submissions on the broader impact of s. 85.09(1) of the *Act* on the s. 2(b) freedoms and interests of Canadians who are not directly involved in the conflict resolution procedure under the *Act*. Section 85.09(1) implicates the freedoms of thought, belief, opinion, and expression which entail the freedom of Canadians to scrutinize, discuss, and potentially criticize decisions of the conflict resolution officers. CAC's perspective is that this negatively impacts transparency, accountability, and hampers political engagement;

7. increasing numbers of disputes in Canada are legislatively required to be determined before administrative decision makers. CAC regularly represents clients who appear before government decision makers. The resolution of disputes before both courts and administrative decision makers in Canada often involve private information which a party may want to keep confidential. However, CAC believes that government rules which generally make decisions by government decision makers confidential undermine transparency, accountability and the rule of law;

8. CAC has an interest in making submissions on the broader considerations engaged in the s. 1 proportionality analysis, namely the importance of transparency, accountability and the rule of law in decisions made by government decision makers. Section 1 of the *Charter* provides that rights are “*subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*” CAC has an interest in contributing to the development of s. 1 jurisprudence to advocate for an analysis which promotes “*a free and democratic society*” by prioritizing transparency and accountability for government actors;

9. CAC receives and reviews hundreds of requests for legal help from citizens across Canada each year, concerned about the violation of their constitutional, civil, and human rights. CAC regularly sends letters to government entities, outlining their legal and constitutional duties;

10. CAC further provides legal representation in dozens of active cases before tribunals and at all levels of court across Canada;
11. CAC's cases seek to uphold the rule of law and the principles underlying Canada's free and democratic society. The majority of CAC's cases involve challenging government infringements of Canadians' rights and freedoms under ss. 2(a), 2(b), 2(c), 2(d), 7, 8 and 15(1) of the *Canadian Charter of Rights and Freedoms*;
12. CAC has eight lawyers and four paralegals who devote the entirety of their practice to working with CAC to defend the constitutional, civil and human rights of Canadians. CAC's lawyers possess decades of experience in constitutional law and litigation, along with significant experience in administrative law. CAC also regularly retains other lawyers and experts on its cases;
13. although CAC has not previously applied for leave to intervene in a case, CAC's lawyers have successfully represented intervenors in more than a dozen cases before courts in Ontario, Saskatchewan, British Columbia, Newfoundland, Nova Scotia and New Brunswick. Further, CAC's cases regularly attract intervenors, granting CAC lawyers additional significant experience in dealing with interventions;
14. CAC will assist the Court with submissions that extend beyond the immediate interests of the parties. CAC's perspective can assist the Court's analysis about the broader impact on freedoms of thought, belief, opinion, and expression caused by s. 85.09(1) of the *Canada Transportation Act*, and considerations to balance under s. 1 of the *Charter*, including transparency and accountability in a free and democratic society;

15. for the reasons set out in its supporting affidavit and factum filed on this motion, CAC has a genuine interest in the appeal, and its submissions would be relevant, useful, and different from those of the parties;

16. if granted leave to intervene as a friend of the Court, CAC would make the following legal submissions:

a) section 85.09(1) of the *Canada Transportation Act* infringes s. 2(b) of the *Charter* by limiting the freedoms of thought, opinion, belief and expression of Canadians by preventing the dissemination, discussion, and potential criticism of conflict resolution decisions; and

b) given that government transparency and accountability are essential to a “*free and democratic society*,” courts should assess the extent to which a government limit on *Charter* rights undermines these goals at the proportionality stage of the *Oakes* test. Limits on *Charter* rights are less demonstrably justifiable to the extent that they undermine transparency and accountability;

17. CAC will take no position on the disposition of the application;

18. CAC’s proposed intervention will not cause any injustice to the parties or otherwise prejudice their interests because CAC:

a) will not file any additional evidence or add to the application record;

b) will not seek costs associated with its intervention;

c) will not expand the issues raised on the application;

d) will not delay the hearing of the application;

e) will work with the parties and any other intervenors to avoid duplicative submissions; and

- f) will comply with any terms and conditions imposed;
19. Rule 13.02 of the *Rules of Civil Procedure*; and
20. such further and other grounds as counsel may advise and the Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Affidavit of Marty Moore sworn September 26, 2025; and
2. the draft factum on which CAC intends to rely if granted leave to intervene.

Dated this 3<sup>rd</sup> day of October, 2025



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**AIR PASSENGER RIGHTS  
APPLICANT**

**-and-**

**THE ATTORNEY GENERAL OF CANADA  
RESPONDENT**

Court File No.: CV-25-00100065-0000

**ONTARIO SUPERIOR COURT OF JUSTICE**  
At Ottawa

**NOTICE OF MOTION**

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