

FORM 37A  
*Courts of Justice Act*  
NOTICE OF MOTION

**ONTARIO SUPERIOR COURT OF JUSTICE**

:

AIR PASSENGER RIGHTS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

---

MOTION BY CANADIAN BROADCASTING CORPORATION FOR LEAVE TO INTERVENE

---

The proposed intervener, Canadian Broadcasting Corporation will make a motion to the court as soon as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☒ In writing under subrule 37.12.1 (1) because it is on consent or otherwise unopposed;
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☐ By video conference.

at the following location

THE MOTION IS FOR leave for Canadian Broadcasting Corporation to intervene in the matter as a Friend of the Court, under Rule 13.02.

THE GROUNDS FOR THE MOTION ARE:

1) The *Canada Transportation Act* ("CTA") sets out a procedure under which complaints filed by air passengers are to be decided. These complaints include alleged breaches by airlines of their various obligations under the *Airline Passenger Protection Regulations* ("APPR").

2) Among other issues, the APPR set out obligations of airlines to passengers in cases of flight disruptions (including delay, cancellation, or denial of boarding), while carving out a series of exceptions to those obligations.

3) Since their inception, the obligations created by the APPR and how they have been enforced have been a matter of considerable public interest. In particular, there has been significant public interest in whether the exceptions contained in the regulations are being invoked properly.

4) Section 85.09(1) of the *Canada Transportation Act* states that without the consent of the parties to a complaint, all records relating to the complaint process shall remain confidential. Only the most basic detail - the existence of the complaint, whether it was well-founded, and whether compensation was ordered - is publicized.

5) The Applicant has challenged the constitutionality of section 85.09(1) of the *Canada Transportation Act* alleging it violates the freedom of expression of complainants as guaranteed by s. 2(b) of the *Charter of Rights and Freedoms*. It also asserts that the Open Court Principle applies to the dispute resolution process set out in the *CTA*.

6) As a constitutional question, the outcome of this proceeding is of significant importance to a segment of society beyond just the parties to the dispute. In particular, the answer to the questions now before this Court will affect the Canadian media as well as the public at large.

7) Canadian Broadcasting Corporation ("CBC") is Canada's national public broadcaster. Part of its mandate is to inform Canadians on matters of public interest, including the proper functioning of the APPR complaint process.

8) The ability of the Canadian media to publish information on the proper operations of public agencies, and the ability of the Canadian public to receive such information is grounded in the freedom of expression as guaranteed by s. 2(b) of the *Charter of Rights and Freedoms*.

9) Any rule that interferes with that type of information gathering and sharing significantly impedes CBC's ability to discharge its mandate to Canadians. (And while CBC can only speak for itself, impacts will likely be felt by the media generally who also seek to inform their respective audiences, as well as on members of the public at large who seek out such information). As a result, CBC has a significant interest in the subject matter of the present Application. Furthermore, its submissions will be both unique and useful to the Court in determining the questions that are presently before it.

10) CBC has significant experience in litigating matters in which freedom of expression has been a key issue before the Courts. If granted intervener status in the present instance, CBC will provide useful input for the Court on the following questions:

a) What is the appropriate test to be applied to the present application?

b) Does the confidentiality provision contained in s. 85.09(1) of the *Canada Transportation Act* infringe upon the freedom of expression as guaranteed by s. 2(b) of the *Charter of Rights and Freedoms*?

c) If there is an infringement on the freedom of expression, can it be saved under s. 1 of the *Charter of Rights and Freedoms*?

11) CBC will also provide useful input in the alternative as to how section 85.09(1) of *CTA* may be read in a manner such that the infringement of the rights of complainants, the media, and the Canadian public is limited to the maximum degree possible.

12) The Respondent Attorney General has asked that the present application makes it clear that CBC/Radio-Canada's intervention will not duplicate the arguments of any party, and that its written argument is limited to ten pages, that its oral argument is limited to 10 minutes, and that it not seek costs in the matter. CBC/Radio-Canada is prepared to accept these conditions, provided they also apply to any other proposed intervenor.

13) In the alternative, if this Court finds the present motion cannot be decided in writing, CBC seeks a direction that this motion be heard simultaneously with a similar motion filed by Charter Advocates Canada, presently returnable December 18, 2025.

14) This application is brought pursuant to Rule 37.12.1

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

1) Affidavit of Marie Caloz, affirmed on August 26, 2025

**Dated at** Toronto, Ontario this 5<sup>th</sup> day of October 2025



---

Sean Moreman, PhD (LSUC # 48812W)  
Counsel to Canadian Broadcasting Corporation  
250 Front Street West  
Toronto, ON M5V 3G7  
Tel: 416-988-7729  
Fax: 416-205-2723  
Email: sean.moreman@cbc.ca

TO:

Douglas W. Judson [LSO No. 70019H]  
Judson Howie LLP  
600 Reid Avenue  
Fort Frances, ON P9A 2P3  
Tel: 807 - 861 - 3684  
Email: doug@judsonhowie.ca

Lawyers for the Applicant

AND TO:

The Attorney General of Canada  
Justice Building  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Email: AGC\_PGC\_OTTAWA@justice.gc.ca  
Respondent

AND TO:

The Attorney General of Ontario  
Constitutional Law Branch  
McMurtry - Scott Building  
4th Floor - 720 Bay Street  
Toronto, ON M7A 2S9  
Email: [clbsupport@ontario.ca](mailto:clbsupport@ontario.ca)

Applicant RCP-E 37A (September 1, 2020)

FORM 4C

*Courts of Justice Act*

BACKSHEET

*Motion by Canadian Broadcasting Corporation For Leave to Intervene*

*CV-25-00100065-0000*

*Ontario Superior Court of Justice*

PROCEEDING COMMENCED AT OTTAWA

NOTICE OF MOTION

Sean A. Moreman  
LSUC#: 44812W  
Canadian Broadcasting Corporation  
250 Front Street West  
Toronto, ON M5V 3G5  
Email: sean.moreman@cbc.ca  
Phone: 416-205-6494

Counsel for Canadian Broadcasting Corporation

RCP-E 4C (September 1, 2020)