

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN

JUNE FRANCIS

Complainant

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

AIR CANADA

Respondent

NOTICE OF MOTION

(Application for leave for Interested Person status pursuant to Rule 27 of the *Canadian Human Rights Tribunal Rules of Procedure*)

TAKE NOTICE that the B.C. Civil Liberties Association (the "BCCLA") hereby applies to the Canadian Human Rights Tribunal at 240 Sparks Street, 6th Floor West, Ottawa, Ontario, for an order that:

1. The BCCLA be granted leave to intervene as an Interested Person in Tribunal File No. T2736/11221 (the "Complaint") on the following terms, or such other terms as the Tribunal deems just:
 - a. The BCCLA's participation shall be limited to arguments relating to: 1) the question of whether the *Montreal Convention* operates to deny the Tribunal the ability to grant remedies under the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (*"the Act"*); and 2) the constitutional questions raised by the Complainant's Notice of Constitutional Question dated May 23, 2025;

- b. The BCCLA shall be permitted to file a written submission of no more than 20 pages in length at a time to be fixed by the Tribunal;
 - c. The BCCLA shall be permitted to present oral argument, as and when appropriate;
 - d. The BCCLA's attendance shall be limited to the hearing of the Complaint and case conferences relevant to the BCCLA's participation. The BCCLA shall not participate in mediation, negotiation, or other dispute resolution processes in respect of the Complaint;
 - e. No costs shall be awarded for or against the BCCLA; and
2. Such further and other relief as the Tribunal may deem just.

The BCCLA proposes that this motion be heard in writing.

AND TAKE NOTICE THAT the following documents will be referred to in support of the present application:

- 1. The Affidavit of Veronica Martisius affirmed on July 4, 2025.

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

- 1. The BCCLA is a non-profit, non-partisan advocacy group with a mandate to promote, defend, sustain, and extend civil liberties and human rights in British Columbia and Canada. The BCCLA works to further its objectives in a variety of ways including through strategic litigation, advocacy and law reform, public legal education and providing direct assistance to individuals who experience violations of their civil liberties or human rights;
- 2. The BCCLA has extensive experience intervening before courts and tribunals on issues which affect the protection and enjoyment of rights and liberties enshrined in the *Canadian Charter of Rights and Freedoms* ("the Charter") and reflected in human rights legislation, and in this respect, the BCCLA has contributed to human rights and civil liberties jurisprudence in British Columbia and Canada;
- 3. The determination of the Complaint, including the question of remedy, will involve the interpretation of the *Carriage by Air Act*, R.S.C. 1985, c. C-26 and the *Montreal Convention* and consideration of whether they pre-empt the Tribunal's ability to award remedies set out in *Act*.
- 4. Issues raised in the Complainant's amended statement of particulars and the Notice of Constitutional Question may also require the Tribunal to grapple with the

Montreal Convention's impact (if any) on equality rights under section 15 of the *Charter* and mobility rights under section 6 of the *Charter*.

5. The BCCLA has expertise, knowledge, and experience concerning legislative or policy implications bearing upon the fundamental freedoms embodied in Canada's human rights laws and the *Charter*, and the BCCLA's perspective and expertise will be of assistance to the Tribunal in determining the Complaint;
6. The BCCLA's interests are engaged by the issues in the Complaint because:
 - (a) The Complaint raises issues concerning the scope of human rights protections in international air travel;
 - (b) Specifically, the Tribunal will be called upon to determine whether and to what extent the exclusivity principle under Article 29 of the *Montreal Convention* applies to limit the Tribunal's remedial power with respect to complaints of discrimination brought against an air carrier;
 - (c) The Notice of Constitutional Question further raises issues regarding the application of the *Charter* to the *Carriage by Air Act* and the *Montreal Convention*;
 - (d) Air travel is a prominent mode of transport for many in Canada, particularly Canada's diasporas. The Tribunal's determination on the above questions will have a broad impact on the ability of air passengers to ensure protection of their human rights and civil liberties;
 - (e) Any curtailment of human rights and civil liberties is of key interest to the BCCLA as an advocacy group which works to ensure meaningful and substantive enjoyment, protection, and enhancement of human rights;
7. If granted leave to intervene as an Interested Person, the BCCLA intends to develop submissions along the following lines:
 - (a) There is a heightened need for human rights protections and remedies in the context of international aviation in light of the quasi-policing powers granted to air carriers under the *Canadian Aviation Regulations*, SOR/96-433 and the *Aeronautics Act*, R.S.C. 1985, c.A-2;
 - (b) In particular, under section 602.46 of the *Canadian Aviation Regulations*, air carriers are prescribed the power to deny boarding in situations where the air carrier considers there is a risk to the safety of the aircraft, persons or property. Section 7.41 of the *Aeronautics Act* also makes it a criminal offence for any person to interfere with the duties of a crew member or anyone following their instructions;

- (c) The quasi-policing powers of air-carriers bear upon an air passenger's *Charter*-protected rights and civil liberties, such as the rights to mobility, liberty and equality. Such powers are susceptible to abuse, particularly if air carriers and their agents are permitted to discriminate unlawfully;
 - (d) Absent the protections and remedies afforded under the *Act*, there is no other legislation or administrative regime which provides an effective check against an air carrier's exercise of quasi-policing powers, thereby heightening the need for the Tribunal to retain full remedial jurisdiction under the *Act* in order to ensure meaningful and substantive protection of human rights, and to prevent infringement of *Charter*-protected rights such as the rights to mobility, liberty and equality.
8. The BCCLA's proposed submissions will focus on arguments not addressed by the parties. As a long-standing advocacy group committed to the advancement of human rights and civil liberties, the BCCLA will bring a unique and relevant perspective to the legal issues in the Complaint and will add to the legal positions of the other parties;
 9. If granted leave to intervene, the BCCLA does not intend to repeat or duplicate the submissions of the parties, to raise new issues or to supplement the evidentiary record before the Tribunal; and
 10. If granted leave to intervene, the BCCLA will comply with any terms and conditions respecting its participation that may be imposed by the Tribunal.

Dated: July 4, 2025



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