

Court File No.:

**FEDERAL COURT OF APPEAL**

BETWEEN:

**RAYMOND PAUL NAWROT and  
KRISTINA MARIE NAWROT and  
KAROLYN THERESA NAWROT**

Moving Parties

– and –

**SUNWING AIRLINES INC. and  
CANADIAN TRANSPORTATION AGENCY**

Respondents

---

**MOTION RECORD OF THE MOVING PARTIES  
VOLUME I  
(Motion for Leave to Appeal, Rule 352)**

---

Dated: December 7, 2013

**LOUIS BÉLIVEAU**

Barrister & Solicitor

530 – 65 Queen Street West

Toronto, Ontario M5H 2M5

LSUC No. 55432B

Telephone: (416) 368-7975

Email: *lbeliveau@loogol.ca*

**Solicitor for the Moving Parties**

TO: **SUNWING AIRLINES INC.**  
27 Fasken Drive  
Toronto, ON M9W 1K6

**Sabah Mirza**  
Email: *smirza@sunwing.ca*

Tel: (416) 679 3770  
Fax: (416) 907 3404

**Vice President Legal & General Counsel for the Respondent,  
Sunwing Airlines Inc.**

AND TO: **CANADIAN TRANSPORTATION AGENCY**  
(by email)  
15 Eddy Street  
Gatineau, Québec J8X 4B3

**Odette Lalumière**  
Email: *odette.lalumiere@otc-cta.gc.ca*

Tel: (819) 9942226  
Fax: (819) 953 9269

**Solicitor for the Respondent,  
Canadian Transportation Agency**

## TABLE OF CONTENTS OF VOLUME I

1	Notice of Motion	1
2	Decision No. 432-C-A-2013 of the Canadian Transportation Agency (with an Appendix)	7
 <b>Complaint and evidence filed by the Nawrots with the Canadian Transportation Agency in March/April 2013</b>		
3	Complaint of the Nawrots, dated March 21, 2013 (with Annexes "A" to "G")	37
4	Affidavit of Raymond Paul Nawrot, sworn on February 28, 2013 (with Exhibits "A" to "Z")	99
5	Declaration of Kristina Marie Nawrot, dated March 4, 2013	200
6	Declaration of Karolyn Theresa Nawrot, dated March 4, 2013	203
7	Productions of the Nawrots, dated April 28, 2013 (with Annexes "A" to "E")	206

Court File No.:

**FEDERAL COURT OF APPEAL**

BETWEEN:

**RAYMOND PAUL NAWROT and  
KRISTINA MARIE NAWROT and  
KAROLYN THERESA NAWROT**

Moving Parties

– and –

**SUNWING AIRLINES INC. and  
CANADIAN TRANSPORTATION AGENCY**

Respondents

**NOTICE OF MOTION**

**TAKE NOTICE THAT THE MOVING PARTIES** will make a motion in writing to the Court under Rules 352 and 369 of the *Federal Court Rules*, S.O.R./98-106.

**THE MOTION IS FOR AN ORDER:**

1. granting the Moving Parties leave, pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10, to appeal a decision made by the Canadian Transportation Agency (the “Agency”) dated November 15, 2013 and bearing decision no. 432-C-A-2013 (the “Decision”);
2. granting the Moving Parties their costs of this motion; and
3. granting such further relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Decision dismissed the complaint of Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot (the “Nawrots”) against Sunwing Airlines in part, and refused to order Sunwing Airlines to:
  - (a) reimburse the Nawrots for out-of-pocket expenses incurred;
  - (b) pay the Nawrots denied boarding compensation;
  - (c) pay the Nawrots their legal costs.

**Failure to order payment of undisputed portion of claim**

2. Sunwing Airlines conceded [Tab 8, P228] that:
  - (a) the Nawrots’ flight was delayed by approximately 14 hours;
  - (b) the *Montreal Convention* applies with respect to the delay of the Nawrots’ flight;
  - (c) pursuant to Article 19 of the *Montreal Convention*, Sunwing Airlines is liable for out-of-pocket expenses caused by the delay;
  - (d) during the 14-hour delay, the Nawrots incurred hotel accommodation expenses and reasonable meal expenses.
3. The Agency erred in law and rendered an unreasonable decision by failing to consider these admissions in its Decision, and failing to order Sunwing Airlines to reimburse the Nawrots for out-of-pocket expenses that Sunwing Airlines explicitly admitted to owing.

**Failure to give adequate reasons and to consider and analyze important relevant evidence**

4. The Agency erred in law by:
  - (a) failing to consider and analyze important relevant evidence in its analysis **[Tab 2, P15, para. 44]**, including the documentary evidence tendered by the Nawrots;
  - (b) failing to provide adequate reasons with respect to the impugned portion of the Decision **[Tab 2, P15, paras. 44-47]**.

**Misstatement of the civil standard of proof**

5. The Agency erred in law by holding **[Tab 2, P14, para. 42]** that the Nawrots:

have a greater burden of proof than simply presenting facts.

**Failure to consider delay and apply the *Montreal Convention***

6. The Nawrots explicitly pleaded delay within the meaning of the *Montreal Convention* as a legal basis for their claim for compensation for out-of-pocket expenses.
7. The Agency erred in law and/or exceeded its jurisdiction by:
  - (a) failing to consider and dispose of the Nawrots' claim for compensation based on the *Montreal Convention*;
  - (b) placing the burden of proof on the Nawrots **[Tab 2, P14, para. 42]**, contrary to Articles 19 and 20 of the *Montreal Convention*.

### **Fettering discretion with respect to costs**

8. In refusing to award costs to the Nawrots, the Agency fettered its discretion by taking into account irrelevant considerations, ignoring relevant considerations, and adhering to the practice **[Tab 2, P31, para. 136]** that:

an award of costs is warranted only in special or exceptional circumstances.

### **Statutes and regulations relied on**

9. Sections 25, 25.1, 78, and 41 of the *Canada Transportation Act*, S.C. 1996, c. 10.
10. Articles 19, 20, and 29 of the *Montreal Convention* (Schedule VI to the *Carriage by Air Act*, R.S.C., 1985, c. C-26).
11. *Air Transportation Regulations*, S.O.R./88-58.
12. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
13. Rules 352 and 369 of the *Federal Court Rules*, S.O.R./98-106.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used for the motion:

1. Affidavit of Raymond Paul Nawrot, sworn on November 29, 2013.
2. Such further and additional materials as counsel may advise and this Honourable Court may allow.

---

**LOUIS BÉLIVEAU**

Barrister & Solicitor  
530–65 Queen Street West  
Toronto, Ontario M5H 2M5

LSUC No. 55432B  
Telephone: (416) 368-7975  
Email: [lbelleveau@loogol.ca](mailto:lbelleveau@loogol.ca)

**Solicitor for the Moving Parties**



TO: **SUNWING AIRLINES INC.**  
27 Fasken Drive  
Toronto, ON M9W 1K6

**Sabah Mirza**  
Email: *smirza@sunwing.ca*

Tel: (416) 679 3770  
Fax: (416) 907 3404

**Vice President Legal & General Counsel for the Respondent,  
Sunwing Airlines Inc.**

AND TO: **CANADIAN TRANSPORTATION AGENCY**  
(by email)  
15 Eddy Street  
Gatineau, Québec J8X 4B3

**Odette Lalumière**  
Email: *odette.lalumiere@otc-cta.gc.ca*

Tel: (819) 9942226  
Fax: (819) 953 9269

**Solicitor for the Respondent,  
Canadian Transportation Agency**

---

---

DECISION NO. 432-C-A-2013

---

---

November 15, 2013

**COMPLAINT by Raymond Paul Nawrot, Kristina Marie Nawrot and  
Karolyne Theresa Nawrot against Sunwing Airlines Inc.**

**File No. M4120-3/13-01696**

**INTRODUCTION**

- [1] Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyne Theresa Nawrot (Nawrots) filed a complaint with the Canadian Transportation Agency (Agency) against Sunwing Airlines Inc. (Sunwing) concerning alleged denied boarding on August 11, 2012 for Sunwing's Flight No. WG201 from London, United Kingdom to Toronto, Ontario, Canada, and the refusal by Sunwing to provide compensation.
- [2] The Nawrots also allege that Existing Tariff Rule 18(g), governing check-in requirements, and Existing Tariff Rule 20, governing denied boarding compensation, of Sunwing's *International Scheduled Services Tariff*, CTA(A) No. 2 (Tariff) are unclear, therefore contrary to paragraph 122(c) of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR), and unreasonable, therefore contrary to subsection 111(1) of the ATR.
- [3] The Nawrots request that the Agency:
- order Sunwing to reimburse them the sum of CAD\$4,963.32 for out-of-pocket expenses, plus interest, occasioned by the denied boarding;
  - order Sunwing to pay them denied boarding compensation in the amount of 1800 euros;
  - order Sunwing to pay them costs on a full indemnity basis; and,
  - disallow Existing Tariff Rules 18(g) and 20 for being unclear and unreasonable.
- [4] In its answer, Sunwing submits, among other things, that it revised Existing Tariff Rule 18, Refunds, and that the revisions resolve the Nawrots' complaint relating to Existing Tariff Rule 18(g). Sunwing also proposed certain revisions to Rule 20 (Proposed Tariff Rule 20) in an effort to respond to the Nawrots' complaint. In their reply, the Nawrots submit, among other things, that Proposed Tariff Rule 20 is unclear, unjust and unreasonable, and therefore should be disallowed, and they address certain revisions in Proposed Tariff Rule 18.

---

---

**PRELIMINARY MATTER**

- [5] In their reply, the Nawrots submit that Proposed Tariff Rules 18(b) and 18(c)(i) are unreasonable. The Agency has considered this matter, and finds that this submission constitutes a new issue.
- [6] A reply represents an opportunity for a party to address additional information or arguments that may have been raised in another party's submission. It should not include arguments contained in previous correspondence with the Agency or new arguments unrelated to those raised in the other party's submissions.
- [7] Accordingly, the Nawrots' submission with respect to Proposed Tariff Rules 18(b) and 18(c)(i) will not be considered in this proceeding.

**ISSUES**

1. Did Sunwing properly apply the terms and conditions relating to check-in time limits specified in its Tariff, as required by subsection 110(4) of the ATR?
  - If not, should the Agency order Sunwing to reimburse the out-of-pocket expenses incurred by the Nawrots, plus interest?
  - If not, should the Agency direct Sunwing to provide the Nawrots with denied boarding compensation?
2. Is Existing Tariff Rule 18(g) unclear, contrary to paragraph 122(c) of the ATR, and unreasonable, contrary to subsection 111(1) of the ATR?
3. Is Existing Tariff Rule 20 unclear, contrary to paragraph 122(c) of the ATR, and unreasonable, contrary to subsection 111(1) of the ATR?
4. If Proposed Tariff Rule 20 were to be filed with the Agency, would it be found to be unclear, contrary to paragraph 122(c) of the ATR, and unreasonable, contrary to subsection 111(1) of the ATR?
5. Should the Nawrots be awarded costs, pursuant to section 25.1 of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended (CTA)?

**RELEVANT STATUTORY AND TARIFF EXTRACTS**

- [8] The legislation, tariff provisions and provisions of the Convention for the Unification of Certain Rules for International Carriage by Air – Montreal Convention (Convention) relevant to this matter are set out in the Appendix.

---

---

## CLARITY AND REASONABLENESS OF TARIFF PROVISIONS

### Clarity

- [9] As recently stated by the Agency in Decision No. 344-C-A-2013 (*Lukács v. Porter Airlines Inc.*), a carrier meets its tariff obligation of clarity when the rights and obligations of both the carrier and the passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning.

### Reasonableness

- [10] To assess whether a term or condition of carriage is “unreasonable,” the Agency has traditionally applied a balancing test, which requires that a balance be struck between the rights of passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier’s statutory, commercial and operational obligations. This test was first established in Decision No. 666-C-A-2001 (*Anderson v. Air Canada*) and was most recently applied in Decision No. 344-C-A-2013.
- [11] The terms and conditions of carriage are set out by an air carrier unilaterally without any input from passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in purely commercial requirements. There is no presumption that a tariff is reasonable.
- [12] When balancing the passengers’ rights against the carrier’s obligations, the Agency must consider the whole of the evidence and the submissions presented by both parties and make a determination on the reasonableness or unreasonableness of the term or condition of carriage based on which party has presented the more compelling and persuasive case.

## ISSUE 1: DID SUNWING PROPERLY APPLY THE TERMS AND CONDITIONS RELATING TO CHECK-IN TIME LIMITS SPECIFIED IN ITS TARIFF, AS REQUIRED BY SUBSECTION 110(4) OF THE ATR?

### Positions of the parties

#### The Nawrots

- [13] The Nawrots submit that the fundamental factual dispute between themselves and Sunwing is whether the Nawrots presented themselves for check in for Flight No. WG201. The Nawrots argue that both they and Sunwing agree that the departure time for that flight was 2:25 a.m. on August 11, 2012, and that the cut-off/check-in deadline is 60 minutes prior to departure. The Nawrots therefore contend that Sunwing was required to keep its check-in counter open until 1:25 a.m. on August 11, 2012. They argue that their account of events is corroborated by both documentary evidence and Sunwing’s subsequent actions. In support of their submissions, the Nawrots filed an affidavit by Mr. Nawrot and declarations by Kristina Marie Nawrot and Karolyne Theresa Nawrot.

- [14] The Nawrots submit that they left their hotel on August 10, 2012 at approximately 11:00 p.m. to head to the Gatwick International Airport (Airport). They advise that they first took the London Underground and then the train from the Victoria Station to the Airport. The Nawrots state that Mr. Nawrot's credit card statement indicates that the purchase of the train tickets at the Victoria Station occurred prior to midnight. They point out that the credit card statement also indicates that they travelled on a train operated by Southern Railway, and that the applicable timetable shows that Southern Railway operated two trains from the Victoria Station to the Airport shortly after midnight on August 11, 2012, on one of which they were passengers. The Nawrots point out that the timetable indicates that the latest departing train was scheduled to arrive at the Airport at 00:59 a.m.
- [15] The Nawrots state that they presented themselves for check in at the Airport at approximately 1:10 a.m. on August 11, 2012, but found all counters to be unattended and the lights were dimmed.
- [16] The Nawrots maintain that Mr. Nawrot spoke on the phone to an airport employee, who advised him that the Captain of Flight No. WG201 would not allow the Nawrots to board the flight. The Nawrots submit that, subsequently, a supervisor attended the check-in area, and the supervisor indicated to them that they were supposed to have checked in three hours prior to their flight. The Nawrots add that they attempted to persuade the supervisor to allow them to check in and board their flight, but without success.
- [17] The Nawrots advise that they left the terminal at the Airport shortly after 1:45 a.m. and headed to the Sofitel London Gatwick Hotel (Sofitel). They add that Mr. Nawrot's credit card was preauthorized at the Sofitel at 2:05 a.m. on August 11, 2012.
- [18] The Nawrots submit that on the morning of August 11, 2012, Mr. Nawrot returned to the Airport and asked that they be transported to Toronto on Sunwing's next flight that day, but his request was refused. They further submit that Mr. Nawrot subsequently sent an e-mail to Sunwing seeking assistance to be transported to Toronto, and that Sunwing, in response, offered to transport them six days later than originally scheduled, i.e., on August 16, 2012. The Nawrots maintain that Sunwing's offer was unreasonable and unacceptable given that Kristina Marie Nawrot and Karolyn Theresa Nawrot were due to attend a sports camp near Toronto from August 12 to 19, 2012. According to the Nawrots, they had no choice but to purchase one-way tickets on an Air Canada flight to return to Toronto. They indicate that they also incurred out-of-pocket expenses with respect to their two-night stay at the Sofitel and meals during their unplanned two-day stay in London.

#### Sunwing

- [19] Sunwing submits that the Nawrots' e-tickets provided information relating to their travel, the conditions of the contract and, by incorporation, the Tariff rules. Sunwing further submits that the e-tickets indicated that passengers were to check in no later than 1:25 a.m. local time on August 11, 2012. The e-tickets also indicated that the check-in counter was to open at 10:25 p.m. local time on August 10, 2012 (four hours prior to scheduled departure), and strongly recommended that passengers arrive at the Airport for check in at 10:25 p.m. local time on

---

---

August 10, 2012. Sunwing points out that the Nawrots admitted that they were aware of this, and that the Tariff rules and terms and conditions required that the cut-off for check in was 60 minutes prior to the scheduled departure time, or 1:25 a.m. local time on August 11, 2012. In support of its submission, Sunwing filed an affidavit by Joanne Dhue, National Director, Customer Relations Sunwing Vacations/Signature Vacations.

- [20] Sunwing states that all of the reports generated pursuant to standard operating procedures indicate that the scheduled departure time for Flight No. WG201 was 2:25 a.m. local time on August 11, 2012. Sunwing submits that the Shift Report states that the check-in counter was in fact closed at 1:25 a.m. local time, one hour prior to the scheduled departure of the flight, i.e., 2:25 a.m. Sunwing asserts that the Passenger Services Supervisor, Vic Tydeman, who completed the Shift Report, recalls the incident and confirms that three passengers arrived at the check-in counter at 1:45 a.m. on August 11, 2012, and a fourth passenger arrived five minutes after that. In support of its submission, Sunwing filed an affidavit by Mr. Tydeman.
- [21] Sunwing contends that prior to the Nawrots' complaint, Sunwing never had any report or complaints that check-in for a flight was closed prior to 60 minutes before the scheduled departure of the flight in question.
- [22] Sunwing argues that the Nawrots have not provided consistent evidence as to when they presented themselves for check in, nor have they provided any independent or objective evidence to support their claim that they arrived at check-in prior to 1:25 a.m. local time on August 11, 2012. Sunwing submits that where there is such independent or objective evidence readily available, the Nawrots have chosen not to proffer this evidence.
- [23] Sunwing argues that to support their contention that they presented themselves for check in at 1:10 a.m. local time on August 11, 2012, the Nawrots have attempted to establish a timeline based on assumptions derived from two documents: a credit card payment summary showing the purchase of a single train ticket from the Victoria Station to the Airport, and a pre-authorization for their hotel at the Airport dated August 11, 2012 at 2:05 a.m.
- [24] Sunwing points out that Southern Railway owns and operates Gatwick Express, and therefore, the schedule for all the Southern Railway and Gatwick Express trains is irrelevant. Sunwing submits that without proof to the contrary, the submission that Mr. Nawrots' credit card was processed by Southern Railway does not exclude tickets purchased for the Gatwick Express trains.
- [25] Sunwing submits that the statements of the Nawrot family members relating to this matter fail to acknowledge that all trains from the Victoria Station to the Airport arrive at the South Terminal. Sunwing adds that the Nawrots had at least three options to get to the Sunwing check-in counter located at the North Terminal: shuttle bus, walk or taxi, but no evidence was filed by the Nawrots to indicate which option they chose.

- [26] Sunwing advises that in an e-mail to Sunwing, Mr. Nawrot stated that he arrived at the airport at 1:15 a.m., and on arrival, the check-in counter was closed. Sunwing submits that this means that the Nawrots arrived at the South Terminal at 1:15 a.m., and then made their way to the North Terminal, which would have taken them approximately 10 minutes, which places the Nawrots at the check-in counter at 1:25 a.m., the cut-off time.
- [27] Sunwing contends that the Nawrots must make assumptions to establish they made the time for check in and, to that extent, they are self-serving. Sunwing adds that there is no evidence that the British rail system runs on time. Sunwing also states that the evidence filed by the Nawrots indicates that only one ticket was purchased.
- [28] Sunwing maintains that the Nawrots have failed to proffer any objective documentary evidence of which train they actually took from the Victoria Station. Sunwing also maintains that, assuming that the Nawrots did leave their hotel between 10:00 p.m. and 11:00 p.m. on August 11, 2012, no explanation was provided for not having taken an earlier train.
- [29] Sunwing submits that in the correspondence to Sunwing dated August 11, 2012; August 27, 2012; October 19, 2012; and January 21, 2013, respectively, the Nawrots repeatedly referred to another passenger who was denied boarding for the same reason the Nawrots allege they were denied boarding, i.e., presenting themselves for check in prior to the 60-minute cut-off. Sunwing contends that it received no claim or complaint from this fourth passenger, and that the Nawrots filed no evidence from that passenger.
- [30] Sunwing asserts that it investigated each and every one of the passengers who did not show up for Flight No. WG201 to determine whether the alleged fourth passenger was indeed denied boarding for failing to be present for check in. Sunwing asserts that its investigation ruled out any such passenger.
- [31] Sunwing states that it relies on complete and accurate reporting in all areas of its operations, and that its evidence reflects and confirms this reporting exists in the circumstances of this matter.

#### The Nawrots

- [32] The Nawrots submit that the affidavit by Ms. Dhue indicates that Swissport, the ground handling agent for Sunwing, had serious staffing problems on the night of the incident, and that those problems may explain why Sunwing closed its check-in counter well before 1:25 a.m.
- [33] The Nawrots point out that some of the staff working for Swissport that night were “borrowed” from another company, so they were likely unfamiliar with Sunwing’s procedures or its updated departure time, while others “stayed on” from the day shift, and were likely very exhausted.
- [34] The Nawrots contend that Mr. Tydeman’s evidence is self-serving and not reliable as he is not an objective, neutral and disinterested witness, but rather an employee who has far more to lose in relation to the Nawrots’ complaint than a few thousand dollars. The Nawrots assert that there are a number of inconsistencies between Mr. Tydeman’s affidavit and the Shift Report, i.e., time of

---

---

arrival of the allegedly late passenger, grouping of allegedly late passengers, alleged state of boarding, and the evidence of reliable and independent third parties. They argue that giving any credence to Mr. Tydeman's recollection of events would amount to accepting claims that are contrary to common sense.

- [35] The Nawrots maintain that, based on the credit card usage history received from Southern Railway, the train tickets for carriage from the Victoria Station to the Airport were purchased on August 10, 2012 at 11:56 p.m. The Nawrots submit that, contrary to Sunwing's submission, the credit card statement clearly identifies the date and postal code of the location where the tickets were purchased. They add that a copy of Southern Railway's transaction logs provides a complete and independent record of that purchase.
- [36] The Nawrots argue that Gatwick Express has an entirely different and substantially higher fare structure than Southern Railway, and that it is not necessary to decide which train they took in order to determine the complaint; it is sufficient to observe that they took one of the two trains as both were on time. The Nawrots submit that there can be no doubt that they arrived at the Airport train stop at or shortly after 1:00 a.m., at the latest, on August 11, 2012, which is more than 25 minutes before Sunwing's check-in cut-off time. They advise that the shuttle between the North and the South Terminals operates 24 hours a day and the journey only takes two minutes. The Nawrots therefore contend that, on a balance of probabilities, they presented themselves for check in at 1:10 a.m. or shortly thereafter, and certainly several minutes before the 1:25 a.m. check-in cut-off time.
- [37] The Nawrots argue that they have discharged their onus of proof, and further claim that according to Decision No. 54-C-A-2006 (*McIntyre v. Air Canada*), the burden of proof is on Sunwing to demonstrate that it was entitled to refuse to transport the Nawrots.

### **Analysis and findings**

- [38] When a complaint such as this one is filed with the Agency, the complainant must, on a balance of probabilities, establish that the air carrier has failed to apply, or has inconsistently applied, terms and conditions of carriage appearing in the applicable tariff.
- [39] In *Smith v. Smith*, [1952] 2 S.C.R. 312, the Supreme Court of Canada discussed the notion of balance of probabilities and the degree of probability required to satisfy the burden of proof. The Supreme Court of Canada indicated, at pages 331 and 332, that:

[...] before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding.



[40] Relying on *Briginshaw v. Briginshaw* (1938) 60 CLR 336, the Supreme Court of Canada went on and indicated that:

The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes [...] But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency.

[41] The Supreme Court of Canada also relied on *George v. George and Logie* [1951] 1 D.L.R. 278, and indicated that:

[...] Evidence that creates only suspicion, surmise or conjecture is, of course, insufficient. It is necessary that the quality and quantity of the evidence must be such as leads the tribunal - be it judge or jury - acting with care and caution, to the fair and reasonable conclusion that the act was committed.

[42] For this case, the onus is on the Nawrots, as they are making the allegations, to convince the Agency, on a balance of probabilities, that they presented themselves at the check-in counter on time. They have a greater burden of proof than simply presenting facts.

[43] The Agency notes that Sunwing’s Tariff provides that check-in counters are open three hours prior to the scheduled departure and will close 60 minutes before scheduled departure, and that passengers arriving for check in after 60 minutes prior to the scheduled departure will not be accepted for travel.

- [44] The Agency notes that the parties' versions of events are contradictory. The Nawrots allege that they arrived at the check-in counter at around 1:10 a.m., only to discover that it was closed. To support their position, the Nawrots provided a copy of their ticket to travel by train from the Victoria Station to the Airport, and a credit card statement showing the purchase of that ticket, as well as an affidavit and written declarations. Sunwing, on the other hand, submits that its check-in counter closed at 1:25 a.m. In support of this submission, Sunwing provided the Shift Report, which indicates that the check in for Flight No. WG201 closed at 1:25 a.m., and affidavits from, respectively, its National Director, Customer Relations, and its Passenger Services Supervisor, who completed the Shift Report.
- [45] The evidence provided by the Nawrots strongly suggests that they bought train tickets, travelled by train from the Victoria Station to the Airport and later paid for accommodations at the Sofitel. While it is normal in such cases that the majority of the evidence is circumstantial, the totality of the evidence must be sufficient for the Agency to conclude, on a balance of probabilities, that the Nawrots presented themselves on time at the check-in counter at the Airport. This burden rests with the complainant and it has not been met.
- [46] With respect to the Nawrots' claim relating to Decision No. 54-C-A-2006, that Decision can be distinguished from this case. In that Decision, the Agency concluded that the applicant had met its burden of proving that he was at the check-in counter in time. Therefore, the burden was then on Air Canada to prove that it was entitled to cancel the reservation.
- [47] In this case, the Nawrots failed to provide evidence that would lead the Agency to the fair and reasonable conclusion that they arrived at the check-in counter 60 minutes before the scheduled departure of the flight. Therefore, the Agency finds that Sunwing has not contravened subsection 110(4) of the ATR in relation to this matter. Consequently, Sunwing is not required to reimburse the Nawrots for the out-of-pocket expenses they incurred or tender denied boarding compensation.

**ISSUE 2: IS EXISTING TARIFF RULE 18(G) UNCLEAR, CONTRARY TO PARAGRAPH 122(c) OF THE ATR, AND UNREASONABLE, CONTRARY TO SUBSECTION 111(1) OF THE ATR?**

**Positions of the parties**

The Nawrots

- [48] The Nawrots take exception to the phrase "recommended times," appearing in the following provision of Existing Tariff Rule 18(g):

Passenger(s) who arrive later than the recommended times for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund.

- [49] The Nawrots assert that the phrase “recommended times” is not defined anywhere in the Tariff, and moreover, it is inconsistent with Existing Tariff Rule 19(c), which provides that the passenger is not eligible for compensation if the passenger is present at the boarding gate after the minimum check-in time or gate time.
- [50] The Nawrots also submit that the phrase renders Existing Tariff Rule 18(g) unclear, and ought to be replaced with “cut-off times” or “minimum times.” The Nawrots argue that while it is reasonable to expect passengers to comply with minimum check-in time requirements, it is unreasonable to expect passengers to comply with “recommended times.”

#### Sunwing

- [51] Sunwing advised that it would revise Existing Tariff Rule 18(g) so as to delete the following sentence in its entirety:

Passenger(s) who arrive later than the recommended times for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund.

#### **Analysis and findings**

- [52] Subsequent to its response to the complaint, Sunwing deleted the Tariff provision at issue. This matter, therefore, has been rendered moot.

#### **ISSUE 3: IS EXISTING TARIFF RULE 20 UNCLEAR, CONTRARY TO PARAGRAPH 122(c) OF THE ATR, AND UNREASONABLE, CONTRARY TO SUBSECTION 111(1) OF THE ATR?**

#### **Positions of the parties**

##### The Nawrots

- [53] The Nawrots submit that Existing Tariff Rule 20 is unclear as it fails to specify where the choice lies between the two options of either refunding the total fare paid for each unused segment or arranging to provide reasonable alternate transportation on Sunwing’s own services, when a passenger is denied a reserved seat because of an oversold flight. The Nawrots point out that in Decision No. LET-A-82-2009 (*Air Canada’s Proposed Additional Service Commitments*), the Agency considered a similar provision in Air Canada’s tariff that raised concerns respecting clarity, and that, subsequently, Air Canada amended its tariff to retain the choice, thereby addressing the matter of clarity. The Nawrots refer to Decision No. LET-C-A-80-2011 (*Lukács v. Air Canada*), where the Agency determined that, for the tariff provision at issue to be considered reasonable, the choice of option should lie exclusively with the passenger.
- [54] The Nawrots point out that Existing Tariff Rule 20 states, in part, that “the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.” The Nawrots submit that the term “will try” renders Existing Tariff Rule 20 unclear in that it does not impose a clear

---

---

obligation on Sunwing, and the term ought to be replaced by the word “shall.” The Nawrots further submit that Existing Tariff Rule 20 also purports to limit Sunwing’s obligation to secure alternate transportation on flights “in the same comparable, or lower booking code.” According to the Nawrots, this phrase is unclear because Sunwing’s booking codes may not be comparable to booking codes of other air carriers. They also maintain that this restriction is unreasonable. The Nawrots argue that excluding the possibility of reprotecting victims of denied boarding on a booking class higher than their original booking is inconsistent with the obligations of Sunwing under Article 19 of the Convention and, as such, it is unreasonable.

- [55] The Nawrots assert that while Existing Tariff Rule 20 does not explicitly exonerate Sunwing from liability for damages for delay in connection with denied boarding, that Rule is silent about compensation to victims of denied boarding for damages occasioned by delay, including meals, accommodation and transportation. According to the Nawrots, this omission, when read in conjunction with Existing Tariff Rule 18, creates uncertainty and is not clear about the rights of passengers who are denied boarding, and therefore renders Existing Tariff Rule 20 at least unclear, and possibly also unreasonable.
- [56] The Nawrots contend that although Existing Tariff Rule 20 is labeled as “Denied Boarding Compensation,” it contains no provision for any compensation to passengers who are denied boarding, and is confined to re-protection of passengers who are denied boarding. According to the Nawrots, re-protection for passengers is not a form of compensation. They maintain that compensation has two components:
- reimbursement for out-of-pocket expenses; and,
  - denied boarding compensation.
- [57] In this regard, the Nawrots argue that Existing Tariff Rule 20 is unreasonable because it provides neither for reimbursement of out-of-pocket expenses nor for any monetary compensation for denied boarding.
- [58] The Nawrots assert that the failure to pay any denied boarding compensation to victims of denied boarding is of particular concern in light of the legal obligation to do so both pursuant to Regulation No. 14 CFR 250.5(b) of the Department of Transportation (DoT) of the United States, as amended by Final Ruling No. 76 FR 23110 of the DoT, and Regulation (EC) No. 261/2004 of the European Parliament and of the Council.
- [59] The Nawrots indicate that while other carriers, such as Air Canada, do comply with these legal obligations, and have incorporated them into their tariffs (for example, Rule 89 of Air Canada), it appears that Sunwing refuses to comply with these obligations, and is attempting to benefit from an unfair competitive advantage compared to its main competitors.
- [60] In particular, the Nawrots submit that Sunwing would suffer no competitive disadvantage if it adopted a denied boarding compensation policy similar to that of Air Canada or other major carriers, such as Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines) [Lufthansa] and Société Air France carrying on business as Air France (Air France).

- 
- 
- [61] The Nawrots therefore argue that Existing Tariff Rule 20 is unreasonable, because it fails to impose any obligation of paying denied boarding compensation to passengers, contrary to the Agency's findings in Decision No. 666-C-A-2001.

#### Sunwing

- [62] In response to this part of the complaint, Sunwing filed Proposed Tariff Rule 20 that would replace in its entirety Existing Tariff Rule 20.

#### **Analysis and findings**

##### Choice of options

- [63] As stated by the Nawrots, Existing Tariff Rule 20 is silent with respect to who has the choice between the two options (refund or alternate transportation), i.e., the passenger or the carrier, when a passenger is denied a reserved seat because of an oversold flight.
- [64] As correctly pointed out by the Nawrots, previous Agency Decisions addressed, respectively, the clarity of a tariff provision similar to that currently before the Agency (Decision No. LET-A-82-2009) and whether the passenger or carrier should have the choice of options (Decision No. LET-C-A-80-2011).
- [65] The Agency finds that, by failing to identify who may choose between the options of obtaining a refund or having alternate carriage arranged, Existing Tariff Rule 20 creates reasonable doubt, ambiguity or uncertain meaning as to that Rule's application. As such, Existing Tariff Rule 20 is unclear.
- [66] With respect to the matter of where the choice must rest, the Agency is of the opinion that the passenger is in a better position than the carrier to determine which is most appropriate for the passenger. As such, the Agency finds that to strike a balance between the passenger's right to be subject to reasonable terms and conditions of carriage and the carrier's statutory, commercial and operational obligations, the choice of option must reside with the passenger.

##### Clarity of the phrase "carrier will try"

- [67] The Agency finds that the phrase "carrier will try" creates ambiguity and doubt as to the application of the Tariff provision. The particular undertaking by Sunwing leaves doubt as to the outcome of that undertaking. As such, the Agency finds that the phrase is unclear.

##### Clarity of the phrase "the same comparable, or lower booking code"

- [68] The Agency finds that this phrase is unclear because doubt is created respecting the phrase's application given that the booking codes of carriers may not be at all comparable.

---

---

Reasonableness of the application of the phrase “the same comparable, or lower booking code”

[69] Article 19 of the Convention provides that:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[70] The Agency agrees with the Nawrots that in restricting alternate carriage to a comparable or a lower booking code, Sunwing is not taking all reasonable measures to mitigate delays resulting from overbooking. As such, Existing Tariff Rule 20 is contrary to Article 19 of the Convention, and it is therefore unreasonable.

Clarity and reasonableness given the silence respecting compensation for damages suffered by passengers affected by denied boarding

[71] The Agency agrees with the Nawrots that Existing Tariff Rule 20 creates doubt as to whether passengers who are denied boarding are entitled to damages. As such, the Agency finds that Existing Tariff Rule 20 is unclear. The Agency also agrees with the Nawrots’ argument that the absence of language providing that passengers affected by denied boarding will be eligible for compensation arising from the delay in carriage, including meals, accommodation and transportation, renders Existing Tariff Rule 20 contrary to Article 19 of the Convention. As such, the Agency finds that Existing Tariff Rule 20 is unreasonable.

Reasonableness given the absence of denied boarding compensation

[72] As pointed out by the Nawrots, Existing Tariff Rule 20 does not provide for denied boarding compensation. The Agency determined in Decision No. 666-C-A-2001 that any passenger who is denied boarding is entitled to compensation, and that the non-existence of a tariff provision in this regard is unreasonable. Given the absence of a provision in Existing Tariff Rule 20 requiring Sunwing to tender denied boarding compensation, the Agency finds that such Rule is unreasonable because it fails to strike a balance between Sunwing’s statutory, commercial and operational obligations and the passenger’s right to be subject to reasonable terms and conditions of carriage.

---

---

**ISSUE 4: IF PROPOSED TARIFF RULE 20 WERE TO BE FILED WITH THE AGENCY, WOULD IT BE FOUND TO BE UNCLEAR, CONTRARY TO PARAGRAPH 122(c) OF THE ATR, AND UNREASONABLE, CONTRARY TO SUBSECTION 111(1) OF THE ATR?**

**Positions of the parties – Proposed Tariff Rule 20(a)**

The Nawrots

- [73] The Nawrots submit that Proposed Tariff Rule 20(a), which sets out the options should a passenger be denied a confirmed seat because of an oversold flight, is inconsistent with Existing Tariff Rule 15(1)(f), which requires Sunwing, in the event of flight advancement or cancellation, or overbooking, to offer the passenger not simply the option of a refund of the unused segments, but rather:
- reimbursement of the total price of the ticket at the price at which it was bought, for the part or parts [of] the journey not made, and for the part or parts already made if they no longer serve any purpose in relation to the passengers original travel plan, together with, when relevant, transportation to the passengers point of origin, at the earliest opportunity, at no additional cost.
- [74] The Nawrots therefore maintain that when read together with Existing Tariff Rule 15(1)(f), Proposed Tariff Rule 20(a) is unclear.
- [75] The Nawrots also maintain that Proposed Tariff Rule 20(a) is unreasonable because it defines “denied boarding” too narrowly. They submit that, in purporting to confine the scope of denied boarding compensation to cases where a passenger is denied a confirmed seat because of an oversold flight, Proposed Tariff Rule 20(a) excludes many other cases where passengers may be denied boarding for reasons entirely outside their control, such as substitution of an aircraft with one of a smaller capacity or, as in this case, failure of the carrier to staff its check-in counters. The Nawrots contend that Proposed Tariff Rule 20(c) already exempts Sunwing from the obligation to pay denied boarding compensation to passengers who fail to fully comply with the ticketing or check-in requirements, or who are not acceptable for transportation under the Tariff. The Nawrots therefore argue that the additional limitation in Proposed Tariff Rule 20(a) is unreasonable.
- [76] The Nawrots maintain that the damage to passengers who are denied boarding is identical whether they were denied boarding as a result of an oversold flight, substitution of the aircraft or failure of the carrier to check them in, even though they presented themselves for check in on time. They submit that the words “in the case of an oversold flight of the Carrier” ought to be deleted from Proposed Tariff Rule 20(a).

[77] The Nawrots also assert that Proposed Tariff Rule 20(a) is inconsistent with the principles established by the Agency in five Decisions issued in June 2012 respecting flight cancellation and denied boarding (Decision No. 248-C-A-2012 – *Lukács v. Air Transat*; Decision No. 249-C-A-2012 – *Lukács v. WestJet*; Decision No. 250-C-A-2012 – *Lukács v. Air Canada*; Decision No. 251-C-A-2012 – *Lukács v. Air Canada*; and Decision No. 252-C-A-2012 – *Lukács v. WestJet*). Specifically, the Nawrots submit that Proposed Tariff Rule 20(a) fails to recognize the right of passengers to a full refund even if travel has commenced in certain cases, or their right to transportation to their point of origin at no additional cost.

#### **Analysis and findings – Proposed Tariff Rule 20(a)**

[78] The Agency notes that Existing Tariff Rule 15, to which the Nawrots refer, was filed with the Agency, with an effective date of June 14, 2013, during the course of the proceedings relating to a different case for which the Agency issued Decision No. 313-C-A-2013 (*Lukács v. Sunwing*).

#### Clarity

[79] The Agency agrees with the Nawrots respecting the inconsistency between Proposed Tariff Rule 20(a) and Existing Tariff Rule 15(1)(f)(i)(a). When reading Proposed Tariff Rule 20(a) together with Existing Tariff Rule 15(1)(f)(i)(a), it is not clear as to what remedy is available to a passenger affected by overbooking. Proposed Tariff Rule 20(a) provides the option of choosing a refund of the total fare paid for each unused segment, while Existing Tariff Rule 15(1)(f)(i)(a) provides that if a passenger's journey is interrupted, they will be entitled to a reimbursement of the total price of the ticket, for the part or parts of the journey not made, and for the part or parts already made if they no longer serve any purpose in relation to the original travel plan. Existing Tariff Rule 15 also provides that, when relevant, Sunwing will transport passengers to their point of origin, at the earliest opportunity, at no additional cost. The Agency finds that this inconsistency would make Proposed Tariff Rule 20(a) unclear if it were to be filed with the Agency because it creates reasonable doubt, ambiguity or uncertain meaning as to its application.

#### Reasonableness

[80] The Nawrots submit that Proposed Tariff Rule 20(a) is unreasonable for the following reasons:

- The narrow definition of “denied boarding” is inconsistent with the findings of the Agency in Decision No. 204-C-A-2013 (*Lukács v. Air Canada*) respecting the obligation of the carrier to compensate passengers who are denied boarding due to substitution of aircraft with one of a lower capacity;
- With respect to the Agency's decisions issued in June 2012 relating to flight cancellation and denied boarding, Proposed Tariff Rule 20(a) fails to recognize the right of passengers for a full refund, even if travel has commenced in certain cases, or their right to transportation to their point of origin at no additional cost;
- Proposed Tariff Rule 20(a) deprives passengers with confirmed seats who present themselves for transportation on time, and who comply with all travel requirements, of denied boarding compensation if those passengers are denied boarding for reasons other than an oversold flight.



- [81] With respect to denied boarding arising from substitution of aircraft, in Decision No. 204-C-A-2013, the Agency directed Air Canada to show cause why it should not have a revised tariff provision that provides that in the absence of Air Canada demonstrating that all reasonable measures were taken to avoid substitution to a smaller aircraft, denied boarding compensation will be tendered to affected passengers. In Decision No. 342-C-A-2013 (*Lukács v. Air Canada*), the Agency determined that Air Canada had failed to show cause in respect of that matter, and ordered Air Canada to include the aforesaid provision in its tariff.
- [82] The Agency finds that the absence of a provision in Proposed Tariff Rule 20(a) providing for payment of denied boarding compensation if Sunwing fails to demonstrate that all reasonable measures were taken to avoid substitution to a smaller aircraft, or that it was impossible for Sunwing to take such measures, would render that Rule unreasonable, if it were to be filed with the Agency.
- [83] With respect to the matter of refunds, although Existing Tariff Rule 15(1) provides for full refunds, under certain circumstances, even if travel has commenced, and for return of the passenger to the point of origin, without charge, Proposed Tariff Rule 20(a) fails to do so. If Proposed Tariff Rule 20(a) were filed with the Agency, it would be considered unreasonable because it fails to strike a balance between Sunwing's statutory, commercial and operational obligations and a passenger's right to be subject to reasonable terms and conditions of carriage.
- [84] Where a carrier fails to check in passengers because of the absence of personnel at the counter prior to the cut-off time for check in, the Agency is of the opinion that it is reasonable that compensation be tendered:
- when passengers holding confirmed and ticketed reservations can demonstrate that they presented themselves at the ticket counter prior to the cut-off time for check in; and,
  - when the ticket counter was closed.
- [85] For greater clarity, where such passengers present themselves for boarding before the cut-off time, only to discover that the check-in counter has been closed, the carrier cannot avoid paying denied boarding compensation, regardless of whether or not the flight is fully booked, nor can it avoid liability by closing the check-in counter early.
- [86] The Agency finds that this requirement strikes a balance between Sunwing's statutory, commercial and operational obligations and a passenger's right to be subject to reasonable terms and conditions of carriage.

---

---

**Positions of the parties – Proposed Tariff Rule 20(c)**The Nawrots

[87] The Nawrots note that Proposed Tariff Rule 20(c) provides that:

(c) **Compensation for Involuntary Denied Boarding.** If you are denied boarding involuntarily you are entitled to a payment of denied boarding compensation unless:

[...]

- you are denied boarding because a small capacity aircraft was substituted for safety or operational reasons.

[88] The Nawrots maintain that this portion of Proposed Tariff Rule 20(c) is unreasonable for the same reasons that a virtually identical provision in Air Canada's domestic tariff was held to be unreasonable by the Agency in Decision No. 204-C-A-2013. They submit that in that Decision, the Agency found that to relieve itself from the obligation to pay denied boarding compensation, Air Canada must demonstrate the following, failing which compensation should be due to the affected passengers:

- 1) substitution occurred for operational and safety reasons beyond its control; and,
- 2) it took all reasonable measures to avoid the substitution or that it was impossible for Air Canada to take such measures.

[89] The Nawrots argue that the same finding is applicable to Proposed Tariff Rule 20(c).

**Analysis and findings – Proposed Tariff Rule 20(c)**

[90] The Agency notes that Proposed Tariff Rule 20(c) contains the same language as that appearing in Air Canada's domestic tariff, which was determined to be unreasonable in Decision No. 204-C-A-2013.

[91] As previously mentioned, the Agency is of the opinion that a carrier should not be expected to tender compensation when it has demonstrated that substitution occurred for operational or safety reasons beyond its control, and that it took all reasonable measures to avoid the substitution or that it was impossible to take such measures. In the event that the carrier fails to so demonstrate, compensation should be due to the affected passengers.

[92] In this regard, the Agency is of the opinion that the absence of specific language that establishes context or qualifies Sunwing's exemption from paying compensation would render Proposed Tariff Rule 20(c) unreasonable if it were to be filed with the Agency because it fails to strike a balance between Sunwing's statutory, commercial and operational obligations and a passenger's right to be subject to reasonable terms and conditions of carriage.

---

---

**Positions of the parties – Proposed Tariff Rule 20(d)**The Nawrots

- [93] The Nawrots submit that Proposed Tariff Rule 20(d) is reasonable to the extent that it is identical to the American denied boarding compensation regime. At the same time, they indicate that a difference exists that can turn out to be substantial in some cases, namely, the way Proposed Tariff Rule 20(d) defines the notion of “fare”:

For the purpose of calculating compensation under this Rule 20, the “fare” is the one-way fare for the flight including any surcharges and air transportation tax, minus any applicable discounts. All flights, including connecting flights, to the passenger’s destination or first stopover of four hours or greater are used to calculate the compensation payable.

- [94] The Nawrots point out that in the American denied boarding compensation scheme, the DoT Regulation No. 14 CFR Part 250.1 defines “stopover” as follows:

*Stopover* means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination.

- [95] The Nawrots therefore submit that under the American regime, a mere 5-hour waiting time for a connecting flight would not be considered a “stopover,” because a “stopover” requires a deliberate interruption of the journey.

- [96] The Nawrots argue that for the sake of clarity, this definition ought to be added to Proposed Tariff Rule 20(d), and that without this addition, that Rule would be unreasonable.

- [97] The Nawrots assert that the denied boarding compensation regime proposed by Sunwing fails to address and meet its obligations with respect to passengers who are denied boarding on a flight departing from the European Union. They point out that compensation for denied boarding on such flights, and any flight departing from an airport in the territory of the European Union, is governed by Regulation (EC) 261/2004. The Nawrots also point out that Proposed Tariff Rule 20 makes no reference to Regulation (EC) 261/2004, and purports to apply the American compensation regime even to flights departing from the European Union.

- [98] According to the Nawrots, a tariff provision that clearly ignores and contradicts a carrier’s statutory obligation cannot be reasonable, even if the statute is a foreign legislation. The Nawrots indicate that in their complaint, they asked, among other things, that:

the Agency disallow Sunwing Airlines’ International Tariff Rule 20 as unclear and unreasonable, and **substitute it with a denied boarding compensation policy similar to that of major airlines, such as Air France or Lufthansa.** [Emphasis added]

- [99] The Nawrots point out that Sunwing made no submissions to oppose this relief, nor did Sunwing lead any evidence that granting the relief would adversely affect its ability to meet its statutory, commercial or operational obligations. Thus, the Nawrots submit that the Agency ought to direct Sunwing to implement a denied boarding compensation similar to that of major European carriers, such as Air France or Lufthansa, at least with respect to flights departing from airports located in the European Union.

### **Analysis and findings – Proposed Tariff Rule 20(d)**

#### Clarity

- [100] The Agency notes that Rule 1, Definitions and Interpretation, of the Tariff provides the following definition of the term “stopover”:

Stopover means a **deliberate** interruption of a journey by the passenger, agreed to in advance by the carrier, at a point between the place of departure and the place of destination. [Emphasis added]

- [101] Given the inclusion of the word “deliberate” in Sunwing’s definition of the term “stopover,” the Agency finds that Proposed Tariff Rule 20(d) would be found to be clear if it were to be filed with the Agency because it excludes any reasonable doubt, ambiguity or uncertain meaning as to the Rule’s application, and does not require further clarity to render it reasonable.

#### Reasonableness

- [102] The Nawrots maintain that, with respect to flights originating in the European Union, Proposed Tariff Rule 20 does not reflect Sunwing’s obligations relating to denied boarding as imposed by Regulation (EC) 261/2004. They argue that the Agency should direct Sunwing to apply a denied boarding compensation regime similar to that of major European carriers, at least with respect to flights departing from airports located in the European Union.
- [103] As to the reasonableness of carriers’ tariffs filed with the Agency, the Agency makes determinations on provisions relating to legislation or regulations that the Agency is able to enforce. Legislation or regulations promulgated by a foreign authority, such as the European Union’s Regulation (EC) 261/2004, do not satisfy this criterion. If a carrier feels compelled or has been instructed by a foreign authority to include a reference in its tariff to that authority’s law, the carrier is permitted to do so, but it is not a requirement imposed by the Agency.

### **Positions of the parties – Proposed Tariff Rule 20(e)**

#### Right to bring legal action – The Nawrots

- [104] The Nawrots point out that the last sentence of Proposed Tariff Rule 20(e) provides that:

The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.

- [105] The Nawrots indicate that in Decision No. 227-C-A-2013 (*Lukács v. WestJet*), the Agency considered a similar provision, and held that:

With respect to the clarity of Proposed Tariff Rule 110(G), the Agency agrees with Mr. Lukács' submission that the phrasing of that Rule, without being explicit, suggests that the availability of the option of seeking payment in a court of law is predicated on the passenger first declining payment offered by WestJet. The Agency finds, therefore, that Proposed Tariff Rule 110(G) would be considered unclear if it were to be filed with the Agency given that it is phrased in such a manner as to create reasonable doubt and ambiguity respecting its application.

As to the reasonableness of Proposed Tariff Rule 110(G), the Agency concurs with Mr. Lukács' submission that the Rule seems to indicate that for a person to retain a right to legal redress, that person must first reject any payment offered by WestJet, and that a similar provision was deemed to be unreasonable in Decision No. 249-C-A-2012. The Agency finds that if Proposed Tariff Rule 110(G) were to be filed with the Agency, it would also be determined to be unreasonable.

- [106] The Nawrots accept these Agency findings as their own position, and submit that the second part of the last sentence of Proposed Tariff Rule 20(e) is both unclear and unreasonable.

Form of payment (vouchers) – The Nawrots

- [107] The Nawrots point out that the second last sentence of Proposed Tariff Rule 20(e) provides that:

The Carrier may offer free or discounted transportation vouchers in place of cash or cheque payment.

- [108] The Nawrots maintain that it is unreasonable for Sunwing to offer travel vouchers in lieu of denied boarding compensation. They submit that in Decision No. LET-C-A-83-2011 (*Lukács v. WestJet*), the Agency held that any compensation paid in accordance with the tariff must be paid in the form of cash, cheque, credit to a passenger's credit card, or any other form acceptable to the passenger. The Nawrots point out that that finding was reiterated by the Agency in Decision No. 227-C-A-2013 in the specific context of denied boarding compensation.

- [109] The Nawrots argue that acceptance of other forms of compensation must be an informed decision, based on the passenger being fully advised of the restrictions that those other forms entail. They assert that the requirement that passengers provide a written agreement confirming that they accept compensation in a form other than cash (or equivalent) underscores the principle that the standard form of compensation is by cash and that the passengers' decision to depart from this standard must be an informed one. According to the Nawrots, the vast majority of passengers are not aware of the many restrictions associated with vouchers, and it is very difficult to verify whether passengers are adequately informed by the carrier about their rights. The Nawrots also maintain that passengers should be able to change their minds within a reasonable length of time, and exchange their travel vouchers for cash.

---

---

**Analysis and findings – Proposed Tariff Rule 20(e)****Right to bring legal action**

- [110] The Nawrots point out that in Decision No. 227-C-A-2013, the Agency held that a provision respecting the right to initiate legal action similar to that appearing in Proposed Tariff Rule 20(e) was unclear and unreasonable. The Nawrots accept the Agency's findings as their own position in this matter, and submit that Proposed Tariff Rule 20(e) is unclear and unreasonable.
- [111] The Agency agrees with the Nawrots' submission, and finds that if the provision at issue in Proposed Tariff Rule 20(e) were to be filed with the Agency, it would be found to be unclear and unreasonable for the same reasons set out in Decision No. 227-C-A-2013.

**Form of payment – vouchers**

- [112] The Nawrots point out that in previous decisions, the Agency determined that compensation paid in accordance with the tariff must be paid in the form of cash, cheque, credit to a passenger's credit card, or any other form acceptable to the passenger. They also submit that passengers must be advised of the restrictions associated with vouchers and afforded ample opportunity to determine whether they wish to choose them in lieu of a cash payment as denied boarding compensation.
- [113] The Agency agrees with the Nawrots' submission respecting this particular matter, and finds that if the provision at issue were to be filed with the Agency, it would be found to be unreasonable for the same reasons set out in Decision Nos. LET-C-A-83-2011 and 227-C-A-2013.
- [114] With respect to the length of time to be afforded to passengers to change their minds regarding the form of compensation to be tendered by the carrier, the Agency notes that in Decision No. 342-C-A-2013, the Agency determined that a period of one month is reasonable.

**ISSUE 5: SHOULD THE NAWROTS BE AWARDED COSTS, PURSUANT TO SECTION 25.1 OF THE CTA?****Positions of the parties****The Nawrots**

- [115] The Nawrots assert that it appears that the Agency has never exercised its powers pursuant to subsection 25.1(4) of the CTA to establish a scale for taxation of costs, and has been reluctant to make cost awards. They submit that in Decision No. 20-C-A-2011 (*Kipper v. WestJet*), the Agency held:

---

---

As a general rule, costs are not awarded, and the Agency's practice has been to award these only in special or exceptional circumstances. In making its determination in a given case, the Agency considers a combination of factors such as the nature of the application, the length and complexity of the proceeding, whether the Agency held an oral hearing, whether parties have acted efficiently and in good faith, or if a party has incurred extraordinary costs to prepare and defend its application.

- [116] The Nawrots contend that the "general rule" to not award costs is inconsistent with the dicta of the Supreme Court of Canada in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71(*Okanagan*). That case is a leading authority on cost awards, and the Supreme Court of Canada described the traditional principles for awarding costs.
- [117] According to the Nawrots, the Agency is bound by the principles laid down in *Okanagan* and, as such, the Agency must exercise the powers and discretion conferred upon it by subsection 25.1(1) of the CTA judicially, and the ordinary rules of costs (namely, that costs follow the event) should be followed unless the circumstances justify a different approach. Therefore, awarding costs to the successful party against the unsuccessful one ought to be the "general rule" for awarding costs by the Agency, and not awarding costs ought to be the exception.
- [118] The Nawrots submit that the preamble of the Convention recognizes "the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution." They add that while Article 22(6) of the Convention explicitly recognizes that costs are to be awarded in accordance with the own law of the court seized with the matter, the aforementioned underlying principles of the Convention strongly militate in favour of awarding costs on a full indemnity basis against carriers who fail to offer compensation to passengers in accordance with the provisions of the Convention.
- [119] The Nawrots maintain that access to justice has been recognized as a consideration in awarding costs, in particular, in the context of public interest litigation, in the landmark decision of the Supreme Court of Canada in *Okanagan*.
- [120] The Nawrots argue that although the Agency's procedures are somewhat simpler than those of a court of law, they nevertheless involve an adversarial process, strict deadlines and complex legal arguments that are clearly beyond the legal knowledge and skill of an average air passenger.
- [121] The Nawrots submit that none of the common cost-reducing methods (such as commencing a class proceeding or a contingency fee agreement) are available to consumers before the Agency. They contend that the Agency has neither jurisdiction nor procedures for adjudicating class proceedings, and the amounts typically involved in individual consumer complaints are too small for contingency fee agreements.

- [122] According to the Nawrots, individual consumers are left with only one avenue to obtain legal representation before the Agency: paying the legal fees from their own resources. These fees significantly exceed the amount of damages sought, and render such complaints economically infeasible if the Agency follows its “general rule” to not award costs to successful consumers.
- [123] The Nawrots therefore argue that awarding costs in favour of consumers who are successful in a proceeding before the Agency is absolutely necessary to ensure that the complaint process remains accessible for the travelling public at large, and not only to the exceptionally wealthy or the legally trained.
- [124] The Nawrots submit that costs should be awarded against an unsuccessful consumer only in cases of vexatious complaints, which are brought in bad faith.
- [125] The Nawrots maintain that it is important to also reflect on the public policy effect of the Agency’s current “general rule” of not awarding costs, which (as this case exemplifies) encourages carriers to ignore consumer complaints that could be settled as hoped for by the drafters of the Convention, without the involvement of the Agency. According to the Nawrots, a significant portion of consumers are deterred from pursuing their claims before the Agency due to the associated legal fees, which they would not be compensated for due to the Agency’s “general rule” on costs.
- [126] Considering this, the Nawrots contend that the current “general rule” provides a disincentive for carriers to settle claims, and encourages them to not take consumer complaints seriously until they are brought before the Agency or a court. The Nawrots argue that the exceptional circumstances of this case therefore warrant an award of costs in favour of the Nawrots and against Sunwing, even under the Agency’s current “general rule.”

### Sunwing

- [127] Sunwing submits that any discussion with respect to costs should follow the determination of the Nawrots’ complaint. Sunwing requests that it be permitted to make costs submissions at that time.

### **Analysis and findings**

- [128] Section 25.1 of the CTA states:
- (1) Subject to subsections (2) to (4), the Agency has all the powers that the Federal Court has to award costs in any proceeding before it.
  - (2) Costs may be fixed in any case at a sum certain or may be taxed.
  - (3) The Agency may direct by whom and to whom costs are to be paid and by whom they are to be taxed and allowed.
  - (4) The Agency may make rules specifying a scale under which costs are to be taxed.



- [129] The Agency has full discretion to award costs and, in the past, has relied on a set of general principles in determining whether to award costs, including whether the applicant for an award of costs has a substantial interest in the proceeding, has participated in the proceeding in a responsible manner, has made a significant contribution that is relevant to the proceeding, and has contributed to a better understanding of the issues by all the parties before the Agency. In addition, the Agency may consider other factors, such as the importance and complexity of the issues, the amount of work and the result of the proceeding in justifying an award of costs.
- [130] The Nawrots rely on the Supreme Court of Canada ruling in *Okanagan*, and argue that the Agency is bound by the principles laid down by that Court. To clarify, the question on appeal before the Supreme Court of Canada in that case related to the inherent jurisdiction of the courts to grant costs to a litigant, in rare and exceptional circumstances, prior to the final disposition of a case and in any event of the cause. Also important in that case is that the Supreme Court of Canada referred to judicial proceedings as opposed to quasi-judicial Agency proceedings. In *Bell Canada v. Consumers' Assoc. of Canada*, [1986] 1 S.C.R. 190, the issue that the Supreme Court of Canada had to decide was whether, in the exercise of the discretion to award costs conferred by section 73 of the *National Transportation Act, 1987*, the Canadian Radio-television and Telecommunications Commission was bound by the principle of indemnification as it is applied in the award of costs by the courts. The Supreme Court of Canada stated:
- On the application of the principle of indemnification to the award of costs by the Commission pursuant to s. 73 of the Act, Urie J. expressed himself as follows: The principal issue in this appeal is whether the meaning to be ascribed to the word ["costs"] as it appears in the Act should be the meaning given it in ordinary judicial proceedings in which, in general terms, costs are awarded to indemnify or compensate a party for the actual expenses to which he has been put by the litigation in which he has been involved and in which he has been adjudged to have been a successful party. In my opinion, this is not the interpretation of the word which must necessarily be given in proceedings before regulatory tribunals.
- [131] What an award of costs means when judicial courts are dealing with judicial proceedings is not necessarily the same as when a quasi-judicial tribunal, such as the Agency, is dealing with quasi-judicial proceedings.
- [132] Another consideration is that in judicial courts, there are always litigation expenses, even if only for judicial fees to be paid for the issuance of, for example, a statement of claim, a statement of defence, a notice of application, a notice of motion, a requisition for a hearing date, a notice of appeal and a subpoena. The Agency, however, does not charge fees for the filing of applications, responses, replies and motions, or other documents.
- [133] The Agency, as a quasi-judicial tribunal, is, by its very nature, a forum in which a party can successfully plead without representation by counsel. For the vast majority of consumer complaints, including successful ones, the complainant is not represented by counsel.

- [134] With respect to the argument that proceedings before the Agency involve an adversarial process, strict deadlines and complex legal arguments that are clearly beyond the legal knowledge and skill of an average air passenger, the Agency reminds the Nawrots of the existence of the *Canadian Transportation Agency General Rules*, SOR/2005-35, as amended (General Rules). The General Rules set out a full procedural code for proceedings before the Agency that can be used by an individual who is self-represented.
- [135] The Nawrots are of the opinion that awarding costs in favour of consumers who are successful in a proceeding before the Agency is absolutely necessary to ensure that the Agency's complaint process remains accessible to the travelling public at large, and not only to the exceptionally wealthy or the legally trained. The Nawrots are also of the opinion that a significant portion of consumers are deterred from pursuing their claims before the Agency due to the associated legal fees, which they would not be compensated for due to the Agency's "general rule" on costs. The Nawrots provide no substantiation for this position. The Agency has been in existence for a long time; the complaint process has been used successfully on many occasions.
- [136] In light of the above, the Agency maintains, as it has in past decisions, that an award of costs is warranted only in special or exceptional circumstances. There are no special or exceptional circumstances in this case.

## **SUMMARY OF CONCLUSIONS**

### **Issue 1**

- [137] Sunwing properly applied the terms and conditions relating to check-in time limits specified in its Tariff.

### **Issue 2**

- [138] Revised Tariff Rule 18(g), now in effect, is clear and reasonable.

### **Issue 3**

- [139] Existing Tariff Rule 20 is unclear and unreasonable.

### **Issue 4**

- [140] The Agency has determined that:
- Proposed Tariff Rule 20(a) would be found to be unclear and unreasonable if it were to be filed with the Agency.
  - Proposed Tariff Rule 20(c) would be found to be unreasonable if it were to be filed with the Agency.
  - Proposed Tariff Rule 20(d) would be found to be clear if it were to be filed with the Agency; however, the Agency is not making a determination as to the reasonableness.

- 
- 
- Proposed Tariff Rule 20(e) would be found to be unclear and unreasonable if it were to be filed with the Agency.

**Issue 5**

[141] The Agency does not order costs against Sunwing.

**ORDER**

- [142] The Agency, pursuant to section 113 of the ATR, disallows Existing Tariff Rule 20 of Sunwing's Tariff.
- [143] The Agency orders Sunwing, by no later than December 16, 2013, to amend its Tariff to conform to this Order and the Agency's findings set out in this Decision.
- [144] Pursuant to paragraph 28(1)(b) of the CTA, the disallowance of Existing Tariff Rule 20 shall come into force when Sunwing complies with the above or on December 16, 2013, whichever is sooner.

(signed)

---

Raymon J. Kaduck  
Member

(signed)

---

Sam Barone  
Member

---

---

APPENDIX TO DECISION NO. 432-C-A-2013

---

---

**Sunwing's International Scheduled Services Tariff CTA(A) No. 2**

**Existing Tariff Rule 18**

RESPONSIBILITY FOR SCHEDULES AND OPERATIONS

[...]

**(g) Cut-Off Times**

[...]

Passenger(s) who arrive later than the recommended times for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund.

**NOTE:** On June 14, 2013, the Tariff was revised and Tariff Rule 18 became Tariff Rule 15

**Existing Tariff Rule 20**

If a passenger has been denied a reserved seat, in case of an oversold flight, the carrier will:

- (a) refund the total fare paid for each unused segment; or
- (b) arrange to provide reasonable alternate transportation on its own services.

If the carrier is unable to provide reasonable alternate transportation acceptable to the passenger on its own services, the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.

**Proposed Tariff Rule 20**

For the purposes of this Rule 20, "alternate transportation" means air transportation with a confirmed reservation at no additional charge (by a scheduled airline licensed by Canada or another appropriate country), or other transportation accepted and used by the passenger in the case of denied boarding.

- (a) **General.** If a passenger has been denied a confirmed seat in the case on an oversold flight of the Carrier, the passenger has a choice between (i) a refund of the total fare paid for the unused portion of the passenger's ticket; or (ii) continuing his/her trip. If the passenger chooses (ii) above, then the Carrier shall:
  - (1) Arrange reasonable alternate transportation on its own services; or
  - (2) If reasonable alternative transportation on its own services is not available, the Carrier will arrange transportation on the services of another carrier.

Where the flight originates in the United States, the Carrier will provide denied boarding compensation as set forth below in this Rule 20.

- (b) **Volunteers and Boarding Priorities.** If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until the Carrier's personnel first ask for volunteers who will give up their reservations willingly, in exchange for a payment of the Carrier's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily, in accordance with the following boarding priority: the last passenger to arrive at the ticket lift point will be the first to be denied boarding, except:
- passengers travelling due to death or illness of a member of the passenger's family, or
  - unaccompanied minors, or
  - passengers who are disabled, or
  - elderly passengers.
- (c) **Compensation for Involuntary Denied Boarding (Applicable only on Flights Originating in the United States).** If you are denied boarding involuntarily on a flight originating from the United States, you are entitled to a payment of denied boarding compensation unless:
- you have not fully complied with the Carrier's ticketing, check-in or reconfirmation requirements, or you are not acceptable for transportation under the Carrier's usual rules or practices; or
  - you are denied boarding because the flight is cancelled; or
  - you are denied boarding because a small capacity aircraft was substituted for safety or operation reasons; or
  - you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or
  - the Carrier is able to place you on another flight or flights that are planned to reach your final destination or your next stopover within one hour of the scheduled arrival of your original flight.
- (d) **Amount of Denied Boarding Compensation.** Passengers travelling from the United States with a reserved seat on an oversold flight of the Carrier who are denied boarding involuntarily from an oversold flight originating at a U.S. airport are entitled to:
- (1) No compensation if the Carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover not later than one hour after the scheduled arrival of the passenger's original flight;

(2) 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650 USD if the Carrier is able to place the passenger on alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the scheduled arrival time of the passenger's original flight; and

(3) 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300 USD, if the Carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the scheduled arrival time.

For the purpose of calculating compensation under this Rule 20, the "fare" is the one-way fare for the flight including any surcharges and air transportation tax, minus any applicable discounts. All flights, including connecting flights, to the passenger's destination or first stopover of four hours or greater are used to calculate the compensation payable.

For flights to or from Canada (except flights from the United States), as the Carrier does not commercially oversell its aircraft, no denied boarding compensation will be provided.

- (e) **Method of Payment.** The Carrier must provide each passenger who qualifies for denied boarding compensation a payment by cheque or draft for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the Carrier arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The Carrier may offer free or discounted transportation vouchers in place of cash or cheque payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.
- (f) **Passenger's Options.** Acceptance of the compensation relieves the Carrier from any further liability to the passenger caused by the failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other matter.

**Air Transportation Regulations, SOR/88-58, as amended**

**111.** (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

**122.** Every tariff shall contain

[...]

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[...]

**Convention for the Unification of Certain Rules for International Carriage by Air – Montreal Convention**

**Article 19 – Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

March 21, 2013

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: The Nawrots v. Sunwing Airlines (our reference: 0575-Nawrot)  
Complaint concerning denied boarding and/or failure to provide transportation  
and/or delay on or around August 10, 2012**

I am counsel for Mr. Raymond Paul Nawrot, Ms. Kristina Marie Nawrot, and Ms. Karolyn Theresa Nawrot (the “Nawrots”) in this matter. Please accept the following formal complaint pursuant to ss. 111(1) and 113.1 of the *Air Transportation Regulations* (“ATR”), S.O.R./88-58 and Rule 40 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

**OVERVIEW**

The Nawrots purchased Toronto-London (Gatwick)-Toronto round trip tickets in Canada in summer 2012 on flights of Sunwing Airlines. Sunwing Airlines notified the Nawrots that their return flight, from London Gatwick to Toronto, was delayed by more than 14 hours, and would depart in the wee hours, at 2:25 am. The Nawrots presented themselves for check-in at or around 1:10 am, that is, more than 75 minutes before the departure of their flight, but found all check-in counters deserted, and the lights dimmed. Their request to check-in and board their flight was denied. Several hours later, Sunwing Airlines offered to transport the Nawrots to Toronto 6 days later. The Nawrots did not accept this unreasonable offer, and purchased one-way tickets on Air Canada.

Sunwing Airlines refuses to compensate the Nawrots for their substantial out-of-pocket expenses incurred as a result of Sunwing Airlines’ failure to transport the Nawrots as contracted, and claims that the Nawrots were simply “no shows”.

The Nawrots are asking the Agency to direct Sunwing Airlines to reimburse them for their out-of-pocket expenses as well as to pay them denied boarding compensation, and to substitute Sunwing Airlines’ denied boarding compensation policy for failing to be just and reasonable, contrary to ss. 111(1) of the *ATR*.



## FACTS

1. On or around January 26, 2012, the Nawrots purchased the following itinerary on Sunwing Airlines:

<b>Flight</b>	<b>Date</b>	<b>Depart</b>	<b>Arrive</b>
WG 200	Jul. 29, 2012	Toronto (YYZ)	11:00 pm London Gatwick (LGW) 11:20 am (+1)
WG 201	Aug. 10, 2012	London Gatwick (LGW)	12:20 pm Toronto (YYZ) 3:35 pm

**Affidavit of Mr. Nawrot (February 28, 2013), para. 1 and Exhibit “A”**

2. The “Important Information” provided by Sunwing Airlines to the Nawrots as part of their electronic ticket states that:

It is strongly recommended that all passengers arrive 4 hours prior to departure to allow check-in and to ensure adequate time to pass through airport security. For all airports within Canada and overseas, the check-in desk will be open 4 hours prior to departure and close 1 hour prior to departure. All passengers arriving after the check-in desk closes will be denied boarding. Remember to check your flight itinerary for your departure airport / terminal and reconfirm your flight(s).

[Emphasis added.]

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “A”**

3. The Nawrots’ outbound journey, from Toronto to London, was eventless.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 2**

4. On August 9 and 10, 2012, the Nawrots received four email messages from Sunwing Airlines informing them about a “change” to the “flight schedule” of Flight WG 201, their return journey from London Gatwick to Toronto. The last of these emails stated that flight WG 201 would depart from London Gatwick at 2:25 am on the following day, that is, it would be delayed by more than 14 hours.

**Affidavit of Mr. Nawrot (February 28, 2013), paras. 3 & 5, Exhibits “B”, “C”, “D”, and “E”  
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 4**

5. When Mr. Nawrot received the first of these emails, he contacted a friend in Toronto, who inquired on his behalf about the departure time of Flight WG 201, and confirmed the accuracy of the information contained in the email.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 4**

6. Given that Flight WG 201 was delayed by more than 14 hours, the Nawrots stayed at the Holiday Inn Express in North Acton during the day of August 10, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 6 and Exhibit "F"**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 5**

7. The Nawrots left the Holiday Inn Express on August 10, 2012 at approximately 11:00 pm, and headed to the Gatwick Airport. They first took the Underground, and then the train from Victoria Station.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 7**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 6**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 5**

8. According to the credit card statement of Mr. Nawrot, their train tickets were purchased on August 10, 2012, and in particular, before midnight.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "G"**

9. The Nawrots' train ride to the airport lasted approximately 50 minutes, and they arrived at the Gatwick Airport shortly after 1:00 am on August 11, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 8**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 5**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 6**

10. On August 11, 2013, at approximately 1:10 am, the Nawrots presented themselves for check-in at the London Gatwick Airport (North Terminal), but found all counters to be unattended and the lights dimmed.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 9**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 7**

11. Mr. Nawrot sought the assistance of a flight attendant for another airline, who was passing through the departures hall, to speak to a supervisor.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 9**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6**

12. Mr. Nawrot first spoke on the phone to an airport staff, who advised him that the captain of Flight WG 201 would not allow the Nawrots to board the flight.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 9**

13. Subsequently, a supervisor attended the check-in area, and advised Mr. Nawrot that his family was supposed to check in three hours before the flight, and they would not be allowed to board the flight. The supervisor advised Mr. Nawrot that no representatives of Sunwing Airlines were present at the airport at that time.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 10  
Declaration of Kristina Marie Nawrot (March 4, 2013), paras. 6-7**

14. After the supervisor spoke to other travellers who were present, Mr. Nawrot made another attempt to persuade the supervisor to allow the Nawrot family to check in and board their flight. The supervisor, however, turned around and left.

**Affidavit of Mr. Nawrot (February 28, 2013), paras. 11-12**

15. After the supervisor left, Mr. Nawrot was informed by a caretaker that Sunwing Airlines had closed its check-in counters much earlier, and that in the caretaker's experience, the plane would remain at the gate for at least another 45 minutes.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 12**

16. The Nawrots left the airport terminal shortly after 1:45 am, and headed to the London Gatwick Sofitel hotel on foot, which took them approximately 10 minutes.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 13**

17. The Nawrots reached the London Gatwick Sofitel hotel at approximately 2:00 am on August 11, 2013. Mr. Nawrot's credit card was pre-authorized at the London Gatwick Sofitel at 2:05 am on August 11, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 14 and Exhibit "H"**

18. On the morning of August 11, 2012, Mr. Nawrot returned to the terminal by himself to ask that the Nawrots be transported back to Toronto on Sunwing Airlines' next flight that day. His request was refused.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 15**

19. On August 11, 2012, Mr. Nawrot sent an email to advise Sunwing Airlines that the Nawrots were stranded in London, and to seek assistance to be transported back to Toronto.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 16 and Exhibit "I"**

20. On August 11, 2012, Sunwing Airlines offered to transport the Nawrots to Toronto six days later than originally scheduled, that is, on August 16, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 17 and Exhibit "J"**

21. This offer was unreasonable and unacceptable for the Nawrots, because Ms. Kristina Marie Nawrot and Ms. Karolyn Theresa Nawrot were due to attend a sports camp near Toronto from August 12, 2012 until August 19, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 18  
Declaration of Kristina Marie Nawrot (March 4, 2013), paras. 2-3  
Declaration of Karolyn Theresa Nawrot (March 4, 2013), paras. 2-3**

22. The refusal of Sunwing Airlines to transport the Nawrots back to Toronto as contracted in the first place, and its subsequent failure to offer a reasonable way for the Nawrots to return to Toronto in a timely manner, left the Nawrots with no choice but to purchase one-way tickets on Air Canada from London to Toronto at a substantial cost, and return to Toronto on August 12, 2012 using these tickets.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 19 and Exhibits “K” and “L”**

23. The Nawrots also incurred out-of-pocket expenses with respect to their stay at the London Gatwick Sofitel hotel for two nights, and meals during their unplanned 2-day stay in London.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 20 and Exhibit “M”**

24. The out-of-pocket expenses incurred by the Nawrots in relation to their delay and their being denied boarding on Flight WG 201 are summarized in the following table:

<b>Description</b>	<b>Amount</b>	<b>CAD\$</b>
3 one-way airfares from London (LHR) to Toronto (YYZ)	US\$3,858.93	\$3,941.76
plus travel agent fees/taxes	US\$35.85	\$36.62
1 night at Holiday Inn Express North Acton	GBP 99.00	\$157.99
2 nights at London Gatwick’s Sofitel	GBP 291.60	\$466.95
Meals for 3 people for 2 days (CAD\$60 per person per day)		\$360.00
<b>TOTAL (in CAD\$):</b>		<b>\$4,963.32</b>

25. Since the Nawrots’ return to Toronto on August 12, 2012, Mr. Nawrot has made numerous attempts to seek compensation for these out-of-pocket expenses; however, Sunwing Airlines insists that the Nawrots were “no shows” who are not entitled to any compensation. Sunwing Airlines’ best offer was to refund the Nawrots a total of \$2,200.

**Affidavit of Mr. Nawrot (February 28, 2013), paras. 23–33 and Exhibits “P”–“Y”**

**ISSUES**

I. Did the Nawrots present themselves for check-in on time? . . . . . 8

- (a) Documentary evidence: credit card statement and train schedule . . . . . 8
- (b) Documentary evidence: Pre-authorization slip . . . . . 9
- (c) Sunwing Airlines’ post-incident conduct. . . . . 10
- (d) Sunwing Airlines’ documentation . . . . . 10
- (e) Conclusion: The Nawrots presented themselves for check-in on time, and were denied transportation and denied boarding . . . . . 11

II. Is Sunwing Airlines liable for the Nawrots’ out-of-pocket expenses? . . . . . 12

- A. The law. . . . . 12
  - (a) Section 113.1 of the *Air Transportation Regulations* . . . . . 12
  - (b) The *Montreal Convention* . . . . . 13
  - (c) Caselaw specific to Sunwing Airlines . . . . . 14
- B. Application of the law to the case at bar . . . . . 14
  - (a) Initial delay of over 14 hours . . . . . 14
  - (b) Sunwing Airlines failed to apply the terms and conditions set out in the tariff . . . . . 15
  - (c) Sunwing Airlines failed to take all reasonable measures to mitigate the Nawrots’ delay . . . . . 16

III. Is Sunwing Airlines’ denied boarding compensation policy reasonable and clear? . . . . . 17

- A. Applicable legal principles . . . . . 17
  - (a) Tariff provisions must be just and reasonable: s. 111(1) of the *ATR* . . . . . 17
  - (b) Tariff provisions must be clear: s. 122(c) of the *ATR* . . . . . 18
  - (c) Provisions that are inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable . . . . . 18
- B. Application of the law to the case at bar . . . . . 20
  - (a) Clarity and reasonableness of the third paragraph of Rule 18(g) . . . . . 20
  - (b) Rule 20: where does the choice lie? . . . . . 21
  - (c) Rule 20: “will try” and “in the same comparable, or lower booking code” . . . . . 22
  - (d) Rule 20 fails to incorporate rights stemming from Article 19 . . . . . 22
  - (e) Rule 20 is unreasonable, because it fails to provide for any compensation. . . . . 23

IV. Are the Nawrots entitled to denied boarding compensation? . . . . . 25

V.	Costs.....	26
A.	Applicable law.....	26
	(a) Enabling legislation.....	26
	(b) The Agency’s current practices.....	26
	(c) Binding authority.....	27
B.	Considerations specific to consumer complaints against airlines.....	28
	(a) Costs under the <i>Montreal Convention</i> .....	28
	(b) Public litigation interest and access to justice – costs in favour of successful consumers.....	29
	(c) Chilling effect – costs against unsuccessful consumers.....	30
	(d) Public policy considerations.....	31
C.	Application of the law to the case at bar.....	31
VI.	Relief sought.....	33

**ANNEXES**

A.	Summer train times (19 May to 8 December 2012) between London and Gatwick Airport.....	36
B.	FlightTrack report: Sunwing Airlines 201 on August 11, 2012.....	42
C.	National Joint Council: Travel Directive, Appendix D - Allowances (effective July 1, 2012).....	43
D.	Regulation (EC) 261/2004.....	44
E.	Air Canada Rule 89.....	51
F.	Air France Rule 87 (Part II).....	53
G.	Lufthansa Denied Boarding Compensation Rules for Canada.....	57

## ARGUMENT

### I. Did the Nawrots present themselves for check-in on time?

A fundamental factual dispute between the Nawrots and Sunwing Airlines is whether the Nawrots presented themselves for check-in in time for boarding Flight WG 201. It is a common ground that the new departure time of Flight WG 201 was 2:25 am on August 11, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “E” and “P”**

It is also common ground that Sunwing Airlines’ had a cut-off/check-in deadline of 60 minutes before the departure of its flight.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “P”**

Thus, Sunwing Airlines was required to keep its check-in counters open at the London Gatwick Airport until 1:25 am on August 11, 2012.

The Nawrots’ consistent evidence is that they presented themselves for check-in at approximately 1:10 am on August 11, 2012, but found the check-in counters deserted and the lights dimmed.


**Affidavit of Mr. Nawrot (February 28, 2013), para. 9**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 7**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6**

It is submitted that the Nawrots’ account of the events is corroborated both by documentary evidence and the subsequent actions of Sunwing Airlines.

#### (a) Documentary evidence: credit card statement and train schedule

According to Mr. Nawrot’s credit card statement, the transaction date of the Nawrots’ train ticket purchase at Victoria Station is August 10, 2012:

---

Aug 10	Aug 13	NEW SOUTHERN RAILW	LDN SW1V 5426	 Foreign Currency Transactions	24.26
15.20 GBP @ 1.596052632**					

---

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “G”**

In particular, the transaction occurred *before* midnight. Thus, the Nawrots were at the train station before midnight on August 10, 2012, that is, *no later than* 11:59 pm on August 10, 2012.

As the credit card statement shows, the Nawrots travelled on trains operated by Southern. According to the timetable for summer 2012 for trains between London and Gatwick Airport, there were two trains operated by Southern (marked with the symbol SN) departing from Victoria Station shortly after midnight on Saturday, August 11, 2012:

**Saturdays London to Gatwick Airport**

Operator		GX	SN	FC	SN	FC	GX	SN	FC	SN
Facilities		1	1	1	1	1	1	1	1	1
Notes			A	B		B		C	B	D
London Victoria	10 Z1 ⊖ d	00 02	00 05		00 14		00 30	01 00		02 00
Clapham Junction	Z2 d		00 11		00 20			01 08		02 08
London Blackfriars	Z1 d			00 05		00 35			01 05	
London Bridge	Z1 ⊖ d			00 12		00 42				
East Croydon	Z5 d		00 24	00 27	00 32	00 57		01 22	01 32	02 22
Gatwick Airport	← a	00 37	00 41	00 48	00 59	01 18	01 20	01 46	01 51	02 44

Annex “A”, p. 5 (page 40 of the present complaint)

Thus, the Nawrots took one of the following trains from London Victoria to Gatwick Airport:

1. departing London Victoria at 00:05 am, and arriving at Gatwick Airport at 00:41 am; or
2. departing London Victoria at 00:14 am, and arriving at Gatwick Airport at 00:59 am.

The Nawrots’ evidence that they arrived at Gatwick Airport a few minutes after 1:00 am is corroborated by the train schedule, which confirms that the train departing London Victoria at 00:14 am on August 11, 2012 was expected to arrive at Gatwick Airport at 00:59 am.

**(b) Documentary evidence: Pre-authorization slip**

After the Nawrots were told by two different staff members that they would not be allowed to board Flight WG 201, they headed to the London Gatwick Sofitel hotel on foot. Their evidence that they left the terminal building shortly after 1:45 am and arrived at the hotel at approximately 2:00 am is corroborated by the pre-authorization slip of Mr. Nawrot’s credit card, which displays 11-08-2012 as the date, and 02:05:23 as the time:

Sofitel London Gatwick  
North Terminal -  
Gatwick Airport  
West Sussex RH6 0PH  
01293 567070

MID: 44661693  
TID: 25012711

DATE: 11-08-2012  
TIME: 02:05:23

**PRE-AUTH**

TRANS SEQ: 000007880  
BATCH NUM: 0839  
KEYED

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “H”



**(c) Sunwing Airlines' post-incident conduct**

On August 11, 2012, Mr. Nawrot sent an email to advise Sunwing Airlines that the Nawrots were stranded in London, and to seek assistance to be transported back to Toronto.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "I"**

Sunwing Airlines' response of the same day (August 11, 2012) was to offer the Nawrots transportation to Toronto six days later than originally scheduled, that is, on August 16, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "J"**

At this point, Sunwing Airlines did not allege that the Nawrots were "no shows" or that they were late to check in for Flight WG 201. Even two days later, on August 13, 2012, no such allegations were levelled by Sunwing Airlines.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "N"**

Airlines do not typically offer free flights home to passengers who were "no shows" and did not present themselves for check-in on time. Thus, it is submitted that Sunwing Airlines' offer to transport the Nawrots' to Toronto free of charge at a later date, without any reference to it doing so as a goodwill gesture, demonstrates that Sunwing Airlines was fully aware of its failure to honour the contract of carriage on August 11, 2012. In particular, Sunwing Airlines knew perfectly well that the Nawrots did present themselves for check-in on time, before the 60-minute cut-off, and were nevertheless denied boarding and transportation.

Sunwing Airlines began to allege that the Nawrots failed to present themselves for check-in in time only on October 9, 2012, *in response* to Mr. Nawrot's request that Sunwing Airlines provide reimbursement for the Nawrots' out-of-pocket expenses occasioned by the incident.

Therefore, it is submitted that Sunwing Airlines' theory that the Nawrots did not present themselves for check-in at least 60 minutes before the departure of Flight WG 201 is highly improbable and not credible.

**(d) Sunwing Airlines' documentation**

Sunwing Airlines claims that the Nawrots were "no show" passengers based on a "Destinations QCM" report.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 34 and Exhibit "Z"**

We submit that the reliability of this document is dubious. For example, it states that the Actual Time of Departure (ATD) of Flight WG 201 was 01:30 UTC (that is, 2:30 am local time). However, according to FlightTrack, Flight WG 201 departed only at 2:49 am.

**Annex "B"**

Even if the aircraft was pushed back at 2:30 am as this document claims, it is not probable that taxiing to the runway would take 19 minutes at a relatively small airport, in the middle of the night.

Even if one accepts the information contained in Sunwing Airlines' document as true, it does not prove that the Nawrots did not present themselves for check-in in time; it only proves that they *were not* checked-in, which is not disputed.

Indeed, the Nawrots were not checked in to Flight WG 201 because Sunwing Airlines failed to keep its check-in counters staffed until 01:25 am, that is, 60 minutes before the flight's departure. In other words, Sunwing Airlines prevented the Nawrots from checking in, even after they proactively sought help and called for a supervisor.

We note that according to the "Destinations QCM" report, the last passenger boarded Flight WG 201 at 01:05 UTC, that is, at 2:05 am local time, *precisely* the time that the Nawrots were checking in to the London Gatwick Sofitel hotel, after they were denied boarding.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "H"**

Therefore, it is submitted that there was more than enough time to check in the Nawrots and allow them to board their flight, and the only reason that the Nawrots were stranded was the failure of Sunwing Airlines' staff to remain at the airport and at their stations.

**(e) Conclusion: The Nawrots presented themselves for check-in on time, and were denied transportation and denied boarding**

The documentary evidence demonstrates that the Nawrots were at London Victoria train station before 11:59 pm on August 10, 2012. They took a train operated by Southern to Gatwick Airport. The train departed London Victoria at 00:14 am on August 11, 2012, and arrived at Gatwick Airport at 00:59 am or shortly thereafter.

On a balance of probabilities, the Nawrots did present themselves for check-in for flight WG 201 at approximately 1:10 am on August 11, 2012, that is, 75 minutes before the scheduled departure time of their flight.

Given that Sunwing Airlines' cut-off time for checking in to flights is 60 minutes before departure, Sunwing Airlines had an obligation to allow the Nawrots to check in. Sunwing Airlines failed to fulfill its obligation, and failed to staff its check-in counters up until 60 minutes before the departure.

The Nawrots were proactive, sought assistance, and explicitly requested to be checked in and board Flight WG 201. Their repeated requests were refused.

Therefore, it is submitted that the Nawrots were denied transportation and denied boarding by Sunwing Airlines.

## II. Is Sunwing Airlines liable for the Nawrots' out-of-pocket expenses?

As a result of the initial delay of Flight WG 201 and the subsequent failure of Sunwing Airlines to allow the Nawrots to check in and board Flight WG 201, the Nawrots have incurred out-of-pocket expenses totalling \$4,963.32. With the exception of the meals, these expenses are supported by receipts.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibits "F", "G", "K", "L", and "M"**

As for the meals, since no receipts are available, we have used a conservative estimate of \$20.00 per person per meal, leading to \$60.00 per person per day. We note that, for example, the Travel Directive of the National Joint Council of the Public Service of Canada recognizes that \$83.85 per day (per person) constitutes reasonable expenses for meals in London, and \$67.08 per day is reasonable for meals outside London.

**Annex C**

### A. The law

#### (a) Section 113.1 of the *Air Transportation Regulations*

Section 113.1 allows the Agency to direct a carrier to take corrective measures and to pay compensation for expenses incurred by passengers as a result of the carrier's failure to apply terms and conditions set out in the tariff:

**113.1** If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate; and
- (b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

In *Kirkham v. Air Canada*, 268-C-A-2007 the Agency considered the claim of a passenger with a confirmed reservation on a flight, who was not permitted to travel, nor provided with compensation for denied boarding, out-of-pocket expenses or alternate transportation. The passenger subsequently purchased a one-way ticket from WestJet to complete his travel. The Agency held that Air Canada failed to properly apply terms and conditions of the tariff, and ordered Air Canada to compensate the passenger for the out-of-pocket expenses, including the one-way ticket purchased from WestJet (para. 38).

**(b) The Montreal Convention**

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. The *Montreal Convention* governs the liability limitations for delay of passengers applicable to international carriage by air.

In *Lukács v. Air Canada*, 250-C-A-2012, one of the landmark decisions of the Agency on passenger rights, the Agency held that:

[25] It is clear that Article 19 of the Convention imposes on a carrier liability for damage occasioned by delay in the carriage of, amongst other matters, passengers, but a carrier will not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or it was impossible for them to take such measures. As the Agency stated in the Show Cause Decision, with a presumption of liability for delay against a carrier, there is a concomitant obligation for a carrier to mitigate such liability and address the damage which has or may be suffered by a passenger as a result of delay. [...]

⋮

[65] In both *Mohammad* and *McMurry v. Capitol Intern. Airways*, 102 Misc. 2d 720 at 722, which was also cited by the Agency in the Show Cause Decision, passengers made alternative arrangements themselves and the carrier was found liable to pay for those arrangements. In other words, the Court considered the passenger's own ability to find a flight on another carrier to be a determining factor as to whether or not the carrier had taken all reasonable measures to avoid delay pursuant to Article 19 of the Convention. The Agency finds this aspect of the cases to be relevant to the issue of re-protection.

[Emphasis added.]

Indeed, in *Mohammad c. Air Canada*, 2010 QCCQ 6858, in a case brought against Air Canada and Kuwait Airlines for joint carriage between Canada and Kuwait, it was held that:

[27] The fact that Kuwait Airways airplanes were fully booked does not in anyway, limit its obligation to transport the passengers to their destination. Kuwait Airways should have transferred the unused portion of the passengers' tickets to another carrier and rerouted them to their final destination. It was obliged to do so according to sections 19 and 40 of the Montreal Convention.

Therefore, a carrier cannot avoid liability under Article 19 of the *Montreal Convention* by merely stating that its flights were fully booked. Instead, the carrier must take steps to mitigate the damage suffered by passengers as a result of the delay, and must attempt to secure seats on other carriers.

**(c) Caselaw specific to Sunwing Airlines**

In *Caron c. Vacances Sunwing*, 2012 QCCQ 2050, a passenger sought compensation in relation to the cancellation of his return flight from Haiti to Canada. Sunwing Airlines offered to either transport the passenger seven days later or provide the passenger a full refund. The passenger was unable to accept the offer to postpone his return to Canada by a week due to his obligations in Canada, and he eventually purchased a one-way ticket on American Airlines. The court ordered Sunwing Airlines to compensate the passenger for all his out-of-pocket expenses, including the costs of his alternative transportation.

While this decision was not based on the *Montreal Convention*, it nevertheless demonstrates important principles of consumer protection that are equally applicable to the present case.

**B. Application of the law to the case at bar**

The Nawrots' return flight from London Gatwick to Toronto was first delayed by more than 14 hours. Although the Nawrots presented themselves in time for check-in, they were not allowed to check in and were denied boarding on Flight WG 201. Sunwing Airlines' only offer was to transport the Nawrots six days later than originally contracted.

**(a) Initial delay of over 14 hours**

The Nawrots held a confirmed booking for Flight WG 201 for August 10, 2012, which was supposed to depart at 12:20 pm. Flight WG 2012 was delayed by more than 14 hours, and its departure time was changed by Sunwing Airlines to 2:25 am on August 11, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibits "A" and "E"**

Sunwing Airlines' "Destinations QCM" report states that:

DELAY DUE TO LATE INBOUND AIRCRAFT: 14 hrs 10mins

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "Z" (p. 1 at the bottom)**

Due to this initial delay, the Nawrots checked in to the Holiday Inn Express in North Acton, and incurred out-of-pocket expenses in the amount of \$157.99 (GBP 99.00).

**Affidavit of Mr. Nawrot (February 28, 2013), para. 6, Exhibits "F" and "G"**

Notwithstanding Sunwing Airlines labelling it as a "schedule change," the Nawrots were initially delayed by 14 hours within the meaning of the *Montreal Convention*. It is submitted that pursuant to Article 19 of the *Montreal Convention*, Sunwing Airlines is liable for expenses incurred by the Nawrots as a result of this initial delay.

**(b) Sunwing Airlines failed to apply the terms and conditions set out in the tariff**

Sunwing Airlines' International Tariff Rule 18(g) provides that:

Check-in counters are open 3 hours prior to the schedule departure, and will close 60 minutes before schedule departure. Passenger(s) arriving for check-in after 60 minutes prior to the scheduled departure will not be accepted for travel.

Thus, Sunwing Airlines had an obligation to keep its check-in counter open until 60 minutes before the departure of Flight WG 201, that is, until 1:25 am on August 11, 2012.

The evidence clearly demonstrates that the Nawrots arrived at the Gatwick Airport at most a few minutes after 1:00 am, and presented themselves for check-in at 1:10 am, that is, more than 75 minutes before the scheduled departure of Flight WG 201. Nevertheless, the Nawrots found the check-in counters deserted, the lights dimmed, and their requests to be checked in to the flight and be allowed to board were denied.

Thus, it is submitted that Sunwing Airlines failed to apply the terms and conditions set out in its tariff in denying the Nawrots transportation on Flight WG 201. It is submitted that at that point, the Nawrots had every reason to book one-way flights on another carrier, and seek compensation for their out-of-pocket expenses pursuant to s. 113.1 of the *ATR*.

Nevertheless, the Nawrots gave Sunwing Airlines two more opportunities to transport them to Toronto. First, on August 11, 2012, Mr. Nawrot attended Sunwing Airlines' service counter at the Gatwick Airport, and requested assistance for the Nawrots to be transported back to Toronto as soon as possible. He was not provided with such assistance.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 15**

On August 11, 2012, Mr. Nawrot also requested assistance from Sunwing Airlines by email. Mr. Nawrot clearly conveyed the urgency of the request, asked to have his family flown back to Toronto on the evening of the same day. He also provided his cell phone number to allow Sunwing Airlines to contact him and discuss arrangements for the Nawrots' return to Toronto.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "I"**

In spite of the urgency expressed by Mr. Nawrot, Sunwing Airlines' only offer was to transport the Nawrots to Toronto six days later than originally scheduled, on August 16, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "J"**

The Nawrots had specific reasons for wanting to return to Toronto by August 12, 2012 at the latest.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 18**  
**Declaration of Kristina Marie Nawrot (March 4, 2013), para. 3**  
**Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 3**

Thus, the Nawrots had every reason to find this proposal unreasonable and unacceptable, especially since this was the third time that they were let down by Sunwing Airlines, after first being denied boarding on Flight WG 201, and then being refused assistance in person.

Therefore, the Nawrots had no choice but to purchase one-way tickets on Air Canada for August 12, 2012 and to incur substantial out-of-pocket expenses.

It is submitted that, similarly to *Kirkham v. Air Canada*, 268-C-A-2007, Sunwing Airlines ought to be ordered, pursuant to s. 113.1 of the *ATR*, to pay for these out-of-pocket expenses as well as the Nawrots' accommodation and meal expenses between August 10, 2012 and August 12, 2012.

It is worth noting that Sunwing Airlines' International Tariff Rule 20 requires Sunwing Airlines to also consider flights of other carriers in relation to re-protection of passengers:

If the carrier is unable to provide reasonable alternate transportation acceptable to the passenger on its own services, the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.

It was clear from Mr. Nawrot's request for assistance of August 11, 2012 that he was seeking transportation to Toronto on the same day, or as soon as possible, and that transportation on August 16, 2012 would not be acceptable to the Nawrots.

Hence, it is submitted that Sunwing Airlines not only failed to apply Rule 18(g), but also Rule 20, and that this failure is an additional ground for ordering Sunwing Airlines to reimburse the Nawrots for their out-of-pocket expenses.

**(c) Sunwing Airlines failed to take all reasonable measures to mitigate the Nawrots' delay**

Although Sunwing Airlines offered the Nawrots transportation only on August 16, 2012, the Nawrots were able to book one-way Air Canada tickets from London to Toronto for August 12, 2012. Thus, earlier flights (on other carriers) were available, but Sunwing Airlines failed to transfer the unused portion of the Nawrots' tickets to another carrier, contrary to its obligation under Article 19 of the *Montreal Convention*.

Therefore, based on *Mohammad c. Air Canada*, 2010 QCCQ 6858 and the Agency's findings in *Lukács v. Air Canada*, 250-C-A-2012, Sunwing Airlines is also liable for the Nawrots' out-of-pocket expenses pursuant to Article 19 of the *Montreal Convention*.

### **III. Is Sunwing Airlines' denied boarding compensation policy reasonable and clear?**

The powers of the Agency extend far beyond enforcement of the tariffs. Under s. 111(1) of the *ATR*, tariff provisions must be “just and reasonable”; s. 113 of the *ATR* confers power on the Agency to suspend, disallow, or substitute tariff provisions that fail to be just and reasonable. Section 122(c) of the *ATR* requires that tariff provisions be stated clearly.

The Nawrots challenge Rule 20 and the third paragraph of Rule 18(g) of Sunwing Airlines' International Tariff on the grounds that they fail to be just and reasonable and that they are unclear. The Nawrots wish to proceed with this part of the complaint in any event, even on an “on principle” basis, irrespective of the Agency's findings about other parts of their complaint. In light of the Agency's findings in *Black v. Air Canada*, 746-C-A-2005 (at paras. 7-8), the Agency has jurisdiction to hear such policy-based complaints. The Agency's decision in *Black* was cited with approval in *O'Toole v. Air Canada*, 215-C-A-2006, *Lukács v. Air Canada*, LET-C-A-155-2009, and most recently in *Lukács v. Air Canada*, LET-C-A-47-2012.

#### **A. Applicable legal principles**

##### **(a) Tariff provisions must be just and reasonable: s. 111(1) of the *ATR***

Section 111(1) of the *ATR* provides that:

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Since neither the *Canada Transportation Act*, S.C. 1996, c. 10 (the “*CTA*”) nor the *ATR* define the meaning of the phrase “unreasonable,” a term appearing both in s. 67.2(1) of the *CTA* and in s. 111(1) of the *ATR*, the Agency defined it in *Anderson v. Air Canada*, 666-C-A-2001, as follows:

The Agency is, therefore, of the opinion that, in order to determine whether a term or condition of carriage applied by a domestic carrier is “unreasonable” within the meaning of subsection 67.2(1) of the *CTA*, a balance must be struck between the rights of the passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier's statutory, commercial and operational obligations.

The balancing test was strongly endorsed by the Federal Court of Appeal in *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95. The test was applied in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011.

In *Griffiths v. Air Canada*, 287-C-A-2009, the Agency underscored the importance of applying the balancing test due to the unilateral nature of terms and conditions set by carriers, which often are



based only on the carrier's commercial interests:

[25] The terms and conditions of carriage are set by an air carrier unilaterally without any input from future passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in statutory or purely commercial requirements. There is no presumption that a tariff is reasonable. Therefore, a mere declaration or submission by the carrier that a term or condition of carriage is preferable is not sufficient to lead to a determination that the term or condition of carriage is reasonable.

The Agency applied this principle in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 250-C-A-2012.

**(b) Tariff provisions must be clear: s. 122(c) of the ATR**

Section 122 of the *ATR* states that:

Every tariff shall contain

:

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[Emphasis added.]

The legal test for clarity has been established by the Agency in *H. v. Air Canada*, 2-C-A-2001, and has been applied most recently in *Lukács v. WestJet*, 418-C-A-2011:

[...] the Agency is of the opinion that an air carrier's tariff meets its obligations of clarity when, in the opinion of a reasonable person, the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning.

**(c) Provisions that are inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable**

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. It governs, among other things, the liability of air carriers in the case of delay of passengers and their baggage in international carriage.

Article 26 prevents carriers from contracting out or altering the liability provisions of the *Montreal Convention* to the passengers' detriment:

## Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

In *McCabe v. Air Canada*, 227-C-A-2008, the Agency held (at para. 29) that a tariff provision that is null and void by Article 26 of the *Montreal Convention* is not just and reasonable as required by s. 111(1) of the *ATR*. This principle was applied by the Agency in *Lukács v. Air Canada*, 208-C-A-2009 (at paras. 38-39), in *Lukács v. WestJet*, 477-C-A-2010 (at para. 43; leave to appeal denied by the Federal Court of Appeal; 10-A-41), and most recently in *Lukács v. Porter Airlines*, 16-C-A-2013.

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments in general, and the *Montreal Convention* in particular, are persuasive authorities in interpreting domestic rules and determining their reasonableness. The same reasoning was affirmed by the Agency in *Kipper v. WestJet*, 309-C-A-2010.

In *Lukács v. WestJet*, 483-C-A-2010, the Agency used the *Montreal Convention* as a persuasive authority for determining the reasonableness of WestJet's domestic tariff provisions, and ordered WestJet to revise its tariff to provide for a limit of liability equivalent to that set out in the *Montreal Convention* (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency considered Air Canada's Rule 55(C)(7), which stated that "[s]ubject to the Convention, where applicable, carrier is not liable for loss, damage to, or delay in delivery of...". The Agency held that passengers ought to be afforded the same protection against loss, damage or delay of baggage as in the *Montreal Convention*, regardless of whether the convention applies, and disallowed the provision.

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency explained the dual role of the *Montreal Convention* in determining the reasonableness of a tariff provision:

[23] [...] Past Agency decisions reflect the two distinct ways in which the Convention might be considered: by looking at whether a tariff is in direct contravention of the Convention, thereby rendering the provision null and void and unreasonable [Footnote: See for example: *Balakrishnan v. Aeroflot*, Decision No. 328-C-A-2007 at para. 20 and *Lukács v. WestJet*, Decision No. 477-C-A-2010 at paras. 39-40 (Leave to appeal to Federal Court of Appeal denied, FCA 10-A-41).]; or by referring to the principles of the Convention when considering the reasonableness of a tariff provision. [Footnote: See for example: *Lukács v. WestJet*, Decision No. 313-C-A-2010 and Decision No. LET-C-A-51-2010 .]

Therefore, it is settled law that a tariff provision that is inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable within the meaning of s. 111(1) of the *ATR*.

**B. Application of the law to the case at bar**

**(a) Clarity and reasonableness of the third paragraph of Rule 18(g)**

Sunwing Airlines' International Tariff Rule 18(g) states that:

Cut-Off Times (C)

Check-in counters are open 3 hours prior to the schedule departure, and will close 60 minutes before schedule departure. Passenger(s) arriving for check-in after 60 minutes prior to the scheduled departure will not be accepted for travel.

After passenger(s) have checked in for their flight, they should be available at the gate not later than 30 minutes prior to the scheduled departure for boarding the aircraft. Passengers who arrive at the boarding gate after the gate has closed will not be accepted for travel

Passenger(s) who arrive later than the recommended times for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund.  
(C)

[Emphasis added.]

The Nawrots are taking exception to the phrase “recommended times” in the third paragraph, which is not defined anywhere in the International Tariff, and moreover, it is inconsistent with Rule 19(c), which states that:

(c) A passenger will not be eligible for compensation or refund under the following condition:

(i) The passenger checked-in or presents himself/herself at the boarding gate after the carrier's minimum check-in time or gate time [Rule 18 (g)] for any reason including being delayed in security or customs. (N)

[Emphasis added.]

It is submitted that while Rule 19(c) is both clear and reasonable, the phrase “recommended times” renders Rule 18(g) unclear, and ought to be replaced with “cut-off times” or “minimum times.” It is further submitted that while it is reasonable to expect passengers to comply with minimum check-in times requirements, it is unreasonable to expect passengers to comply with “recommended times.”

**(b) Rule 20: where does the choice lie?**

Sunwing Airlines' Tariff Rule 20 states (in part) that:

If a passenger has been denied a reserved seat, in case of an oversold flight, the carrier will:

- (a) refund the total fare paid for each unused segment; or
- (b) arrange to provide reasonable alternate transportation on its own services.

Rule 20, however, fails to specify where the choice between these two options lies, with the passenger or Sunwing Airlines.

The Agency considered a similar provision in Air Canada's tariff in Decision No. LET-A-82-2009, and raised serious concerns about its clarity. Subsequently, Air Canada amended its tariffs to clarify that it retained the choice between a refund and alternate transportation. In Decision No. 479-A-2009, the Agency accepted this amendment for the limited purpose of its concerns about clarity; however, subsequently, in *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency held that:

[108] Air Canada's Tariff does allow the passenger to opt for a refund of the unused portion of their ticket. However, Air Canada also retains the right to provide a refund if it is unable to fulfill the first two options, consisting of finding alternative transportation on its own aircraft or on a carrier with which Air Canada has an interline agreement, within a reasonable time. This means that the passenger still remains subject to the decision of Air Canada regardless of what might work best for the passenger. In the event that a passenger would not want a refund of the unused portion of their ticket, Air Canada could still opt to provide this instead of securing alternative transportation for the passenger. In other words, Air Canada still retains some discretion over whether the passenger will continue travelling or receive a refund. By retaining some discretion over the selection of the choice of options from its Tariff provision, Air Canada may be limiting or avoiding the actual damage incurred by a passenger as a result of delay. The Agency also notes that with respect to this Issue, Air Canada has not demonstrated to the satisfaction of the Agency why, from an operational and commercial perspective, the choice of option could not lie exclusively with the passenger.

Following this finding of the Agency, Air Canada amended its tariffs to ensure that the choice lies exclusively with the passenger (see *Lukács v. Air Canada*, 250-C-A-2012, paras. 121-124).

Thus, it is submitted that Rule 20 is unclear in its current form, because it fails to specify where the choice lies. Furthermore, it is submitted the choice between a refund and alternate transportation ought to lie exclusively with the passenger.

**(c) Rule 20: “will try” and “in the same comparable, or lower booking code”**

Sunwing Airlines’ Tariff Rule 20 also states that:

If the carrier is unable to provide reasonable alternate transportation acceptable to the passenger on its own services, the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.

[Emphasis added.]

It is submitted that the phrase “will try” renders Rule 20 unclear in that it does not impose a clear obligation upon Sunwing Airlines. It is submitted that “will try” ought to be replaced simply with “shall.”

Rule 20 also purports to limit Sunwing Airlines’ obligation to secure alternate transportation on flights “in the same comparable, or lower booking code.” First, it submitted that this phrase is unclear, because booking codes of Sunwing Airlines may not be comparable to booking codes of other airlines. Second, more importantly, it is submitted that this restriction is unreasonable.

It is a common practice of airlines to reprotect passengers who are denied boarding on booking codes higher than their original reservation (such as reprotecting an economy class passenger on business class), if doing so results in mitigation of the passenger’s delay. Reprotecting passengers, on a higher booking class if necessary, is the normal and ordinary consequence of overselling a flight, and it is consistent with the carrier’s concomitant obligation under Article 19 of the *Montreal Convention* to mitigate the delay of passengers (see *Lukács v. Air Canada*, 250-C-A-2012, paras. 25 and 90).

Therefore, it is submitted that excluding the possibility of reprotecting victims of denied boarding on a booking class higher than their original booking is inconsistent with the obligations of Sunwing Airlines under Article 19 of the *Montreal Convention*, and as such, it is unreasonable.

**(d) Rule 20 fails to incorporate rights stemming from Article 19**

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency held (at para. 34) that denied boarding can be characterized as delay, and thus Article 19 of the *Montreal Convention* is relevant to determining the reasonableness of provisions governing denied boarding. The regime of strict liability for delay imposed upon carriers by Article 19 is one of the cornerstones of the *Montreal Convention*:

**Article 19 - Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures

that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

In particular, carriers are liable for out-of-pocket expenses related to delays, such as meals, accommodation, and transportation. Article 26 protects the liability provisions of the *Montreal Convention* from being contractually altered to the passengers' detriment by rendering any such provision null and void:

**Article 26 - Invalidity of contractual provisions**

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

While Sunwing Airlines' International Tariff Rule 20 does not explicitly exonerate Sunwing Airlines from liability for damages for delay in connection with denied boarding, Rule 20 is silent about compensation of victims of denied boarding for damages occasioned by delay, including meals, accommodation, and transportation.

It is submitted that this omission from Rule 20, especially when read in conjunction with Rule 18, creates uncertainty and unclarity about the rights of passengers who are denied boarding, and renders Rule 20 at least unclear, and (depending on its intended meaning) possibly also unreasonable by purporting to relieve Sunwing Airlines from liability under Article 19 of the *Montreal Convention*.

**(e) Rule 20 is unreasonable, because it fails to provide for any compensation**

Although Rule 20 is labeled as "Denied Boarding Compensation" it contains no provision of any compensation to passengers who are denied boarding, and it is confined to reprotection of passengers who are denied boarding. However, reprotecting passengers who were denied boarding is not a form of compensation, but rather the belated fulfillment of the contract of carriage.

In *Anderson v. Air Canada*, 666-C-A-2001, the Agency considered the principles governing the amount of denied boarding compensation payable to passengers, and held that:

Contrary to an air carrier's policies on refunds for services purchased but not used, whereby the fare paid by a passenger is inherently linked to the design and implementation of the compensation, the fare paid by a passenger is unrelated to the amount of compensation that the passenger is entitled to receive upon being denied boarding. Further, any passenger who is denied boarding is entitled to compensation; evidence of specific damages suffered need not be provided.

[Emphasis added.]

Thus, it is submitted that compensation of victims of denied boarding has two components:

- (1) reimbursement for out-of-pocket expenses, including refunds; and
- (2) denied boarding compensation (lump sum, no evidence of specific damage is required).

This principle is recognized, for example, in *Kirkham v. Air Canada*, 268-C-A-2007, where the Agency ordered Air Canada to both reimburse the passenger for his out-of-pocket expenses, and in addition to pay the passenger denied boarding compensation.

It is submitted that Rule 20 is unreasonable, because it provides neither for reimbursement of out-of-pocket expenses (other than a refund of the fare), nor for any monetary compensation for being denied boarding.

The failure of Sunwing Airlines to pay any denied boarding compensation to victims of denied boarding is of particular concern in light of the legal obligation to do so both pursuant to regulation 14 CFR 250.5(b) of the United States, as amended by final ruling 76 FR 23110 of the Department of Transportation, and *Regulation (EC) No 261/2004* of the European Parliament and of the Council.

While other airlines, such as Air Canada, do comply with these legal obligations, and have incorporated them into their tariffs (for example, Rule 89 of Air Canada), it appears that Sunwing Airlines refuses to comply with these obligations, and is attempting to benefit from an unfair competitive advantage compared to its main competitors.

In particular, it is submitted that Sunwing Airlines would suffer no competitive disadvantage if it adopted a denied boarding compensation policy similar to that of Air Canada or other major carriers (such as Lufthansa and Air France).

Therefore, it is submitted that Rule 20 is unreasonable, because it fails to impose any obligation of paying denied boarding compensation to passengers, contrary to the Agency's findings in *Anderson v. Air Canada*, 666-C-A-2001.

It is further submitted that Rule 20 ought to be substituted with a denied boarding compensation policy similar to that of major airlines, such as Air France or Lufthansa.

#### **IV. Are the Nawrots entitled to denied boarding compensation?**

The Nawrots had reserved seats on Flight WG 201. They presented themselves for check-in well before Sunwing Airlines' 60-minute cut-off time: the evidence clearly demonstrates that they arrived at the airport shortly after 1:00 am on August 11, 2012, and were at the check-in area in the North Terminal by 1:10 am, that is, 75 minutes before the departure of their flight.

Nevertheless, Sunwing Airlines did not check in the Nawrots to Flight WG 201, did not provide them with boarding passes, and prevented them from boarding Flight WG 201.

Thus, it is submitted that the Nawrots were denied boarding on Flight WG 201 by Sunwing Airlines without any justification, and contrary to the terms and conditions in Sunwing Airlines' International Tariff. In particular, according to the Agency's findings in *Anderson v. Air Canada*, 666-C-A-2001, the Nawrots are entitled to denied boarding compensation.

While Sunwing Airlines' current International Tariff provides for no denied boarding compensation, it is submitted that the Tariff is unreasonable in this respect, and that the Nawrots ought to be provided denied boarding compensation as if Sunwing Airlines had a reasonable denied boarding compensation policy.

The Nawrots were departing from an airport in the European Community, and they were delayed by 2 days as a result of their having been denied boarding. The standard compensation in such situations is 600.00 EUR per person (see, for example, Air Canada's Rule 89). This amount is uniform among airlines, and the reason is that the vast majority of airlines comply with *Regulation (EC) No 261/2004* with respect to flights departing from an airport within the European Community.

Therefore, it is submitted that the Nawrots ought to be provided with denied boarding compensation in the amount of 600.00 EUR per person, that is, a total of 1,800.00 EUR.



## V. Costs

### A. Applicable law

#### (a) Enabling legislation

While not every quasi-judicial body has the power to make an order for costs (see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53), s. 25.1 of the enabling legislation of the Agency, the *Canada Transportation Act*, S.C. 1996, c. 10 (the “CTA”), confers very broad powers upon the Agency in relation to costs:

**25.1** (1) Subject to subsections (2) to (4), the Agency has all the powers that the Federal Court has to award costs in any proceeding before it.

(2) Costs may be fixed in any case at a sum certain or may be taxed.

(3) The Agency may direct by whom and to whom costs are to be paid and by whom they are to be taxed and allowed.

(4) The Agency may make rules specifying a scale under which costs are to be taxed.

#### (b) The Agency’s current practices

It appears that the Agency has never exercised its powers pursuant to s. 25.1(4) of the *CTA* to establish a scale for taxation of costs, and has been reluctant to make cost awards. In *Kipper v. WestJet*, 20-C-A-2011, the Agency held (at para. 10):

As a general rule, costs are not awarded, and the Agency’s practice has been to award these only in special or exceptional circumstances. In making its determination in a given case, the Agency considers a combination of factors such as the nature of the application, the length and complexity of the proceeding, whether the Agency held an oral hearing, whether parties have acted efficiently and in good faith, or if a party has incurred extraordinary costs to prepare and defend its application.

The same principle was reiterated and applied by the Agency in *Kouznetchik v. American Airlines*, 99-C-A-2011 (at paras. 72-73).

It is submitted that the aforementioned “general rule” is inconsistent with the dicta of the Supreme Court of Canada on the legal principles applicable for awarding costs. Therefore, in what follows, the Nawrots would like to invite the Agency to revisit and refine this “general rule”.

(c) **Binding authority**

A leading authority on cost awards is the decision of the Supreme Court of Canada in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71. Justice LeBel, writing for the majority, described the traditional principles for awarding costs (at para. 20) as follows:

- They are an award to be made in favour of a successful or deserving litigant, payable by the loser.
- Of necessity, the award must await the conclusion of the proceeding, as success or entitlement cannot be determined before that time.
- They are payable by way of indemnity for allowable expenses and services incurred relevant to the case or proceeding.
- They are not payable for the purpose of assuring participation in the proceedings.

Justice LeBel then went on to explain the contemporary principles of awarding costs:

22 These background principles continue to govern the law of costs in cases where there are no special factors that would warrant a departure from them. The power to order costs is discretionary, but it is a discretion that must be exercised judicially, and accordingly the ordinary rules of costs should be followed unless the circumstances justify a different approach. For some time, however, courts have recognized that indemnity to the successful party is not the sole purpose, and in some cases not even the primary purpose, of a costs award. Orkin, *supra*, at p. 2-24.2, has remarked that:

The principle of indemnification, while paramount, is not the only consideration when the court is called on to make an order of costs; indeed, the principle has been called “outdated” since other functions may be served by a costs order, for example to encourage settlement, to prevent frivolous or vexatious [*sic*] litigation and to discourage unnecessary steps.

:

25 [...] Costs can also be used to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious. In short, it has become a routine matter for courts to employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice.

[Emphasis added.]

It is submitted that the Agency is bound by the aforementioned principles laid down by the Supreme Court of Canada. Thus, the Agency must exercise the powers and discretion conferred upon it by s. 25.1(1) of the *CTA* judicially, and the ordinary rules of costs (namely, that costs follow the event) should be followed unless the circumstances justify a different approach.

Therefore, it is submitted that awarding costs to the successful party against the unsuccessful one ought to be the “general rule” for awarding costs by the Agency, and not awarding costs ought to be the exception.

## **B. Considerations specific to consumer complaints against airlines**

### **(a) Costs under the *Montreal Convention***

The preamble of the *Montreal Convention* recognizes “the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.”

The basic premise of the *Montreal Convention* is to significantly limit carriers’ liability, and at the same time to place strict liability (and in certain cases absolute liability) upon carriers. This results in a calculable (and thus easily incurable) risk, and in easily determined damages, which ideally carriers and passengers ought to be able to settle without the intervention of the courts.

The drafters of the *Montreal Convention* recognized that failure of a carrier to voluntarily comply with the liability provisions may result in costs to the consumer that are significantly higher than the damage award itself (which is capped by virtue of Articles 21 and 22); furthermore, they chose to severely sanction carriers who fail to offer a reasonable settlement by excluding the costs that a court or tribunal may award against them from the liability cap for the damages payable. Indeed, Article 22(6) states that:

The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

This provision is consonant with the principle that only a “well behaved” carrier can avail itself to the liability caps of the *Montreal Convention* (see also Article 22(5)).

While Article 22(6) of the *Montreal Convention* explicitly recognizes that costs are to be awarded in accordance with the own law of the court seized with the matter, it is submitted that the aforementioned underlying principles of the Convention strongly militate in favour of awarding costs on a full indemnity basis against carriers who fail to offer compensation to passengers in accordance with the provisions of the *Montreal Convention*.

**(b) Public litigation interest and access to justice – costs in favour of successful consumers**

The *CTA*, and the *ATR* promulgated pursuant to it, do not merely create a mechanism for enforcing the rights of individual passengers; rather, Parliament intended to establish a regulatory scheme: Carriers must set and publish their tariffs, which must be clear and applied to all passengers. Under the *ATR*, the Agency has a dual role: To review, disallow, suspend, and substitute tariff provisions on the one hand, and to enforce tariff provisions by ordering carriers to take corrective measures.

The purpose of having a regulatory scheme in place is not merely to resolve disputes between passengers and airlines, but rather to assist in achieving the objectives declared in s. 5 of the *CTA*. The statutory obligation to publish, file, and apply tariffs imposed upon carriers becomes meaningless if these obligations are not enforced. Individual complaints against carriers that are brought before the Agency have an important role in enforcing the regulatory scheme that Parliament has put in place by enacting the *CTA*, and consequently such complaints serve not only the interests of the individual consumer, but also the entire travelling public. Thus, consumer complaints brought before the Agency also serve, by their very nature, the public interest.

Access to justice has been recognized as a consideration in awarding costs, in particular in the context of public interest litigation, in the landmark decision of the Supreme Court of Canada in *British Columbia (Minister of Forests) v. Okanagan Indian Band* (at para. 27).

As Chief Justice Beverly McLachlin of the Supreme Court of Canada stated in an address to the Council of the Canadian Bar Association, August 11, 2007:

The cost of legal services limits access to justice for many Canadians. The wealthy, and large corporations who have the means to pay, have access to justice. So do the very poor, who, despite its deficiencies in some areas, have access to legal aid, at least for serious criminal charges where they face the possibility of imprisonment. Middle income Canadians are hard hit, and often left with the very difficult choice that if they want access to justice, they must put a second mortgage on their home, or use funds set aside for a child's education or for retirement. The price of justice should not be so dear.

Since then, Chief Justice McLachlin has pointed out time after time that “[a]ccess to justice is the greatest challenge facing the Canadian justice system.” These concerns particularly apply to consumer complaints before the Agency for a number of reasons. Although the Agency's procedures are somewhat more simple than those of a court of law, they nevertheless involve an adversarial process, strict deadlines, and complex legal arguments that are clearly beyond the legal knowledge and skill of an average air passenger. Consequently, aggrieved passengers face the choice between not pursuing their legitimate claims at all or retaining legal counsel at a significant expense.

None of the common cost-reducing methods (such as commencing a class proceeding or a contingency fee agreement) are available to consumers before the Agency. Indeed, the Agency has neither jurisdiction nor procedures for adjudicating class proceedings, and the amounts typically involved in individual consumer complaints are too small for contingency fee agreements.

Thus, individual consumers are left with only one avenue to obtain legal representation before the Agency: paying the legal fees from their own resources. These fees significantly exceed the amount of damages sought, and render such complaints economically infeasible if the Agency follows its “general rule” to not award costs to successful consumers.

Therefore, it is submitted that awarding costs in favour of consumers who are successful in a proceeding before the Agency is absolutely necessary in order to ensure that the complaint process to the Agency remains accessible for the travelling public at large, and not only to the exceptionally wealthy or the legally trained.

**(c) Chilling effect – costs against unsuccessful consumers**

A shift in the Agency’s approach toward costs naturally requires examining the question of awarding costs against consumers who are unsuccessful before the Agency. In this respect, there is no doubt that the Agency ought to sanction vexatious complaints, which are brought in bad faith. At the same time, it is important to bear in mind the chilling effect that a mechanical application of cost rules will have on consumers, which is not desirable given the public interest nature of such complaints. In *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ON S.C.) it was held that:

[48] In my view, it is appropriate in this case to exercise my discretion in favour of the applicant and to make no order as to costs. The issue raised was novel and certainly involved a matter of public interest. While I decided the jurisdictional point against the applicant, I am satisfied that the application was brought in good faith for the genuine purpose of having a point of law of general public interest resolved. It is true that many of the cases in which an unsuccessful public interest litigant has been relieved of the usual cost order have involved suits against the government and the respondent here is a private entity. However, the respondent does enjoy the substantial benefit and protection of a statutory monopoly in the provision of its services to the public, and this application was brought in relation to an important aspect of the terms on which that monopoly is enjoyed. While the targets of public interest litigation are certainly entitled to the protection of the rules of court, it should not be forgotten that those rules include a discretion to relieve the loser of the burden of *paying* the winner’s party and party costs. As observed by Fox, *supra*, and by the Ontario Law Reform Commission report, *supra*, public interest litigants are in a different position than parties involved in ordinary civil proceedings. The incentives and disincentives created by costs rules assume that the parties are primarily motivated by the pursuit of their own private and financial interests.

[49] An unrelenting application of those rules to public interest litigants will have the result of significantly limiting access to the courts by such litigants. Such a consequence would be undesirable with respect to proceedings such as the present one which was, in my view, brought on a bona fide basis and which raised a genuine issue of law of significance to the public at large.

Another consideration is that the *Montreal Convention* significantly limits the type of damages that are recoverable in international carriage of passengers, and thus passengers may suffer inconvenience that is non-compensable. These circumstances may also warrant not awarding costs against an unsuccessful consumer, as the trial judge did in *Lukács v. United Airlines Inc., et al.*, 2009 MBQB 29 (leave to appeal denied; 2009 MBCA 111) at the conclusion of her decision:

Although the defendants have been substantially successful in opposing the plaintiff's claim, in the circumstances, having considered the inconvenience and lack of consideration suffered by the plaintiff, which is non-compensable, I have determined that each party shall bear his own costs of these proceedings.

Therefore, it is submitted that costs should be awarded against an unsuccessful consumer only in the case of vexatious complaints, which are brought in bad faith.

**(d) Public policy considerations**

It is important to also reflect on the public policy effect of the Agency's current "general rule" of not awarding costs, which (as the present case exemplifies) encourages airlines to ignore consumer complaints that could be settled as hoped for by the drafters of the *Montreal Convention*, without the involvement of the Agency. Indeed, a significant portion of consumers are deterred from pursuing their claims before the Agency due to the associated legal fees, which they would not be compensated for because of the Agency's "general rule" on costs.

Thus, it is submitted that the current "general rule" provides a disincentive for airlines to settle claims, and encourages airlines to not take consumer complaints seriously until they are brought before the Agency or a court.

Therefore, it is further submitted that there is a significant public interest in holding airlines liable for the legal expenses that consumers are forced to incur as a result of the airline's failure to effectively address their valid complaints and claims. It is submitted that costs awarded against carriers should adhere to the principles of indemnification and restitution, enshrined in the preamble of the *Montreal Convention*.

**C. Application of the law to the case at bar**

The Nawrots were not simply denied boarding, but rather Sunwing Airlines failed to fulfill its most basic obligation to staff its check-in counter until up to one hour before their flight, and thus it prevented the Nawrots from checking in and boarding their flight. After the event, the Nawrots made numerous attempts to seek assistance from Sunwing Airlines to be transported back to Toronto as soon as possible; however, Sunwing Airlines' only offer was to transport them six days later than originally scheduled. Sunwing Airlines never offered to transport the Nawrots on another carrier, as required by Rule 20.

Up to this point, the events could be attributed to an unfortunate chain of human errors and miscommunications between various employees of Sunwing Airlines, which could have been settled by Sunwing Airlines compensating the Nawrots for their out-of-pocket expenses.

Mr. Nawrot has made numerous attempts to seek compensation for these out-of-pocket expenses; however, Sunwing Airlines insists that the Nawrots were “no shows” who are not entitled to any compensation. Sunwing Airlines’ best offer was to refund the Nawrots a total of \$2,200.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “P”–“Y”**

Sunwing Airlines’ allegations that the Nawrots were “no shows” and failed to present themselves 60 minutes before their flight, however, are no longer a genuine error, but rather an egregious conduct, which constitutes evidence of bad faith and malice on Sunwing Airlines’ part. Indeed, at first, Sunwing Airlines did not allege that the Nawrots were “no shows” or that they were late to check in for Flight WG 201. Even two days after the Nawrots were denied boarding, no such allegations were levelled by Sunwing Airlines.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “J” and “N”**

Sunwing Airlines first made these allegations only on October 9, 2012, as an excuse for refusing Mr. Nawrot’s request that Sunwing Airlines reimburse the Nawrots for out-of-pocket expenses occasioned by the incident.

**Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “Q”**

Thus, it is submitted that Sunwing Airlines has been refusing to compensate the Nawrots even though it knows perfectly well that the Nawrots did present themselves for check-in on time, before the 60-minute cut-off, and were nevertheless denied boarding and transportation.

It is submitted that the high-handedness and lack of consideration displayed by Sunwing Airlines toward the Nawrots is a conduct that ought to be discouraged by the Agency. Passengers should not have to resort to the services of a trained lawyer in order to be compensated by an airline.

Sunwing Airlines’ unreasonable and egregious refusal to compensate the Nawrots in the face of numerous requests and a substantial number of documents provided by Mr. Nawrot to Sunwing Airlines has left the Nawrots with no choice but to retain counsel to enforce their rights. It is submitted that Sunwing Airlines ought to bear the financial consequences of failing to compensate the Nawrots, and forcing them to retain legal representation.

It is submitted that these exceptional circumstances warrant a costs award in favour of the Nawrots, even under the Agency’s current “general rule” with respect to costs.

Hence, it is submitted that the Nawrots ought to be awarded costs on a full indemnity basis.

**VI. Relief sought**

For the aforesaid reasons, the Nawrots pray the Agency that:

- A. the Agency direct Sunwing Airlines to reimburse the Nawrots for the sum of \$4,963.32 of out-of-pocket expenses, plus interest;
- B. the Agency direct Sunwing Airlines to pay the Nawrots denied boarding compensation in the amount of 1,800.00 EUR, plus interest;
- C. the Agency substitute the phrase “recommended times” with “cut-off times” or “minimum times” in Sunwing Airlines’ International Tariff Rule 18(g);
- D. the Agency disallow Sunwing Airlines’ International Tariff Rule 20 as unclear and unreasonable, and substitute it with a denied boarding compensation policy similar to that of major airlines, such as Air France or Lufthansa;
- E. the Agency order Sunwing Airlines to pay costs to the Nawrots on a full indemnity basis.

All of which is most respectfully submitted.

  
Louis Béliveau

Cc: Mr. Ray Nawrot  
Mr. Clay Hunter, counsel for Sunwing Airlines



## LIST OF AUTHORITIES

### Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Carriage by Air Act*, R.S.C. 1985, c. C-26.
3. *Canada Transportation Act*, S.C. 1996, c. 10.
4. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

### International instruments

5. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

### Case law

6. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
7. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
8. *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71.
9. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53.
10. *Caron c. Vacances Sunwing*, 2012 QCCQ 2050.
11. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
12. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
13. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
14. *Kipper v. WestJet*, Canadian Transportation Agency, 20-C-A-2011.
15. *Kirkham v. Air Canada*, Canadian Transportation Agency, 268-C-A-2007.
16. *Kouznetchik v. American Airlines*, Canadian Transportation Agency, 99-C-A-2011.
17. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-155-2009.

18. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
19. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
20. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-47-2012.
21. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
22. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
23. *Lukács v. WestJet*, Canadian Transportation Agency, 418-C-A-2011.
24. *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ON S.C.).
25. *Mohammad c. Air Canada*, 2010 QCCQ 6858.
26. *O'Toole v. Air Canada*, Canadian Transportation Agency, 215-C-A-2006.

#### **Foreign legislation**

27. European Union: *Regulation (EC) No 261/2004* of the European Parliament and of the Council (11 February 2004).
28. United States: 14 CFR 250, as amended by final decision 76 FR 23110 of the Department of Transportation.



# Annex "A" to the complaint of the Nawrots

March 21, 2013  
Page 37 of 62

73

## Saturdays

### Gatwick Airport to London

Operator	Facilities	Notes	GX	FC	GX	GX	GX	SN	FC	GX	SN	FC	SN	FC	GX	FC	GX	SN	FC	GX	SN	SN	FC	GX	GX	SN	FC	GX	SN		
Gatwick Airport	← Z5	d	0005	0015	0020	0035	0050	0105	0130	0135	0205	0230	0305	0330	0405	0430	0435	0500	0520	0505	0527	0550	0538	0553	0602	0605	0620	0626	0632	0635	0638
East Croydon	Z5	a		0035				0127	0149					0247	0327	0347	0427	0447	0517	0529	0547	0602	0610	0616		0640	0646	0646	0653		
London Bridge	Z1	a		0051																											
London Blackfriars	Z1	a		0058				0213				0313		0413		0513		0543				0602		0637				0700		0707	
Clapham Junction	Z2	a						0141		0241		0341		0441		0549		0549				0618	0621				0650		0702		
London Victoria	10 Z1	a	0040	0055	0111	0125	0149	0210	0249	0349	0441	0510	0555	0558	0620	0626	0630	0635	0650	0657	0705	0707									

Operator	Facilities	Notes	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN
Gatwick Airport	← Z5	d	0650	0655	0702	0705	0710	0717	0720	0726	0732	0735	0738	0747	0750	0753	0756	0802	0805	0808	0817	0820	0825	0832	0835	0838	0847	0850	0853	0856	0902
East Croydon	Z5	a		0709	0716	0729	0731	0741	0746	0759	0802	0808	0811	0816	0827	0831	0836	0840	0846	0859	0902	0908	0911	0916	0919	0922	0928	0931	0936	0939	0942
London Bridge	Z1	a		0730	0737	0745	0752	0800	0807	0815	0822	0830	0837	0845	0852	0900	0907	0915	0922	0929	0936	0942	0947	0952	0957	1002	1007	1011	1016	1021	
London Blackfriars	Z1	a		0719	0737	0745	0752	0800	0807	0815	0822	0830	0837	0845	0852	0900	0907	0915	0922	0929	0936	0942	0947	0952	0957	1002	1007	1011	1016	1021	
Clapham Junction	Z2	a		0719	0737	0745	0752	0800	0807	0815	0822	0830	0837	0845	0852	0900	0907	0915	0922	0929	0936	0942	0947	0952	0957	1002	1007	1011	1016	1021	
London Victoria	10 Z1	a	0720	0727	0735	0746	0750	0758	0805	0816	0820	0824	0828	0835	0844	0850	0857	0905	0916	0920	0924	0928									

Operator	Facilities	Notes	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	
Gatwick Airport	← Z5	d	0905	0908	0917	0920	0926	0932	0935	0938	0947	0950	0953	0956	1002	1005	1008	1016	1020	1025	1032	1035	1038	1047	1050	1053	1056	1056	1056	1056	1056	1056
East Croydon	Z5	a		0927	0931	0941	0946	0959	1002	1008	1011	1016	1027	1031	1040	1046	1059	1102	1105	1115	1115	1115	1115	1115	1115	1115	1115	1115	1115	1115	1115	1115
London Bridge	Z1	a		0945	0952	1000	1007	1015	1022	1030	1037	1045	1052	1100	1107	1115	1122	1130	1137	1145	1152	1159	1206	1213	1220	1227	1234	1241	1248	1255	1302	1309
London Blackfriars	Z1	a		0952	1000	1007	1015	1022	1030	1037	1045	1052	1100	1107	1115	1122	1130	1137	1145	1152	1159	1206	1213	1220	1227	1234	1241	1248	1255	1302	1309	
Clapham Junction	Z2	a		0937	0950	1009	1017	1021	1035	1044	1050	1057	1105	1116	1120	1124	1128	1132	1136	1140	1144	1148	1152	1156	1200	1204	1208	1212	1216	1220	1224	1228
London Victoria	10 Z1	a	0935	0944	0950	0958	1005	1016	1020	1024	1028	1035	1044	1050	1057	1105	1116	1120	1124	1128	1132	1136	1140	1144	1148	1152	1156	1200	1204	1208	1212	1216

Operator	Facilities	Notes	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN
Gatwick Airport	← Z5	d	1902	1905	1908	1917	1920	1923	1926	1932	1935	1939	1947	1950	1956	2002	2005	2011	2017	2020	2026	2032	2035	2038	2047	2050	2053	2102	2105	2107	2111	2114
East Croydon	Z5	a		1916	1929	1931	1938	1941	1946	2000	2002	2011	2016	2019	2029	2031	2041	2046	2059	2102	2108	2116	2130	2137	2144	2150	2157	2164	2171	2178	2185	2192
London Bridge	Z1	a		1930	1945	2000	2007	2015	2022	2030	2037	2045	2052	2100	2107	2115	2122	2130	2137	2144	2151	2158	2205	2212	2220	2227	2234	2241	2248	2255	2302	2309
London Blackfriars	Z1	a		1937	1952	2007	2015	2022	2030	2037	2045	2052	2100	2107	2115	2122	2130	2137	2144	2151	2158	2205	2212	2220	2227	2234	2241	2248	2255	2302	2309	
Clapham Junction	Z2	a		1940	1954	2007	2015	2022	2030	2037	2045	2052	2100	2107	2115	2122	2130	2137	2144	2151	2158	2205	2212	2220	2227	2234	2241	2248	2255	2302	2309	
London Victoria	10 Z1	a	1935	1950	1954	1958	2005	2020	2028	2035	2050	2058	2105	2117	2120	2126	2135	2144	2150	2157	2205	2212	2220	2227	2234	2241	2248	2255	2302	2309	2316	2323

Operator	Facilities	Notes	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN	FC	GX	SN
Gatwick Airport	← Z5	d	2117	2120	2127	2135	2138	2147	2150	2153	2205	2217	2220	2225	2235	2238	2247	2250	2305	2313	2317	2320	2335	2343	2343	2350	2353	2355	0007	0015	0015	0015
East Croydon	Z5	a		2131	2141	2159	2202	2208	2224	2230	2232	2240	2259	2302	2329	2332	2346	2352	2400	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401
London Bridge	Z1	a		2145	2152	2202	2208	2224	2230	2232	2240	2259	2302	2329	2332	2346	2352	2400	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401
London Blackfriars	Z1	a		2152	2202	2208	2224	2230	2232	2240	2259	2302	2329	2332	2346	2352	2400	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401
Clapham Junction	Z2	a		2151	2202	2208	2224	2230	2232	2240	2259	2302	2329	2332	2346	2352	2400	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401	2401
London Victoria	10 Z1	a	2150	2158	2202	2220	2220	2225	2235	2244	2250	2250	2257	2305	2320	2320	2325	2335	2352	2355	0010	0018	0020	0020	0029	0037	0042	0042	0042	0042	0042	0042

Operator	Facilities	Notes	GX	GX	GX	SN	GX	SN	SN
Gatwick Airport	← Z5	d	0020	0035	0050	0120	0135	0215	0315
East Croydon	Z5	a		0035		0142	0239	0339	0439
London Bridge	Z1	a		0051					
London Blackfriars	Z1	a		0058					
Clapham Junction	Z2	a				0154	0253	0353	0453
London Victoria	10 Z1	a	0055	0111	0125	0205	0210	0305	0405

## Sundays

### Gatwick Airport to London

20 May to 9 September

Operator	Facilities	Notes	GX	FC	GX	GX	GX	SN	GX	SN	SN	SN	GX	SN	FC	GX	SN	GX	SN	FC	GX	SN	FC	GX	GX	FC	GX	SN	FC	GX	SN
Gatwick Airport	← Z5	d	0007	0015	0020	0035	0050	0120	0135	0215	0315	0415	0503	0517	0520	0536	0550	0605	0617	0632	0620	0635	0647	0650	0653	0705	0658	0717	0720	0723	
East Croydon	Z5	a		0035				0142	0239	0339	0439	0503	0517	0520	0536																

**Sundays Gatwick Airport to London**

16 September to 2 December

Operator	Facilities	GX	FC	GX	GX	GX	SN	GX	SN	SN	SN	GX	SN	FC	GX	SN	GX	GX	FC	GX	GX	FC	GX	SN	GX	SN	FC	GX	SN	
Gatwick Airport	Z5	d	00 07	00 15	00 20	00 35	00 50	01 20	01 35	02 15	03 15	04 15	04 35	05 03	05 17	05 20	05 36	05 50	06 05	06 17	06 20	06 35	06 46	06 50	06 53	07 05	06 58	07 16	07 20	07 25
East Croydon	Z1	a	00 35	00 51	01 11	01 25	01 42	02 05	02 10	02 39	03 39	04 39	05 27	05 32	05 59	06 01	06 14	06 25	06 40	06 32	06 32	06 59	07 01	07 10	07 26	07 31	07 45	07 52	08 12	
London Bridge	Z1	a	00 51	00 58																										
London Blackfriars	Z1	a	00 58																											
Clapham Junction	Z2	a					01 54	02 05	02 10	02 53	03 53	04 53	05 05	05 10	05 47	05 56	06 14	06 25	06 40	06 32	06 32	06 59	07 15	07 22	07 41	07 48	07 55			
London Victoria	Z1	a	00 42	00 55	01 11	01 25	01 54	02 05	02 10	02 53	03 53	04 53	05 05	05 10	05 47	05 56	06 14	06 25	06 40	06 32	06 32	06 59	07 15	07 22	07 41	07 48	07 55			

Operator	Facilities	GX	SN	FC	GX	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX
Gatwick Airport	Z5	a	07 35	07 38	07 46	07 50	07 53			08 05	08 00	08 16	08 20	08 23	08 25	08 35	08 38	08 46	08 50	08 53	08 57										
East Croydon	Z1	a	07 58	08 01	08 15	08 08				08 26	08 31	08 39	08 56	08 58	09 01	09 15	09 15	09 22	09 24	09 27											
London Bridge	Z1	a	08 15	08 22						08 45	08 52																				
London Blackfriars	Z1	a	08 22							08 52																					
Clapham Junction	Z2	a	08 11	08 23						08 37	08 54																				
London Victoria	Z1	a	08 10	08 18	08 25	08 30				08 40	08 46	08 55	09 01	09 10	09 18	09 25	09 31	09 35	19 05	19 00	19 16	19 20	19 23	19 25	19 35						

Operator	Facilities	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	SN	GX	SN	FC	GX	SN	
Gatwick Airport	Z5	a	19 38	19 46	19 50	19 53	19 57	20 05	20 00	20 16	20 20	20 23	20 25	20 35	20 38	20 46	20 50	20 53	20 57	21 05	21 00	21 16	21 20	21 23	21 25	21 35	21 38	21 46	21 50	21 53
East Croydon	Z1	a	19 58	20 01	20 09	20 12	20 05	20 26	20 31	20 31	20 39	20 56	20 59	21 01	21 09	21 12	21 12	21 12	21 12	21 12	21 26	21 31	21 31	21 39	21 56	21 58	22 01	22 09		
London Bridge	Z1	a	20 15	20 22						20 45	20 52	21 12	21 15	21 15	21 22	21 22	21 22	21 22	21 22	21 22	21 31	21 45	21 45	22 12	22 12	22 15	22 15	22 22		
London Blackfriars	Z1	a	20 22							20 52											21 37	21 52	21 52	21 52	22 12	22 15	22 22			
Clapham Junction	Z2	a	20 11	20 24	20 27	20 37				20 54			21 11	21 24	21 27	21 37				21 54	22 11	22 11	22 11	22 11	22 22	22 22	22 24			
London Victoria	Z1	a	20 18	20 25	20 31	20 35	20 40	20 46		20 55	21 01	21 10	21 18	21 25	21 31	21 35	21 40	21 46		21 55	22 01	22 10	22 18	22 25	22 31	22 31	22 31			

Operator	Facilities	GX	SN	FC	GX	GX	SN	SN	FC	GX	GX	SN	FC	GX	GX	SN	FC	GX	SN	GX	FC	GX	GX	GX	SN	FC	GX	SN	FC
Gatwick Airport	Z5	d	22 05	22 00	22 16	22 20	22 35	22 25	22 38	22 46	22 50	23 05	23 00	23 16	23 20	23 35	23 25	23 46	23 50	00 05	00 17	00 20	00 35	00 50	01 05	01 30	01 35	02 05	02 30
East Croydon	Z1	a	22 26	22 31	22 45	22 52	23 01	23 15	23 22	23 31	23 31	23 45	23 52	23 52	23 52	23 52	23 52	23 52	23 52	00 02	00 16	00 36	00 50	01 05	01 27	01 47	02 27	02 47	
London Bridge	Z1	a	22 45	22 52						23 15	23 22	23 45	23 52	23 52	23 52	23 52	23 52	23 52	23 52	00 21	00 27	00 57	01 11	01 25	01 49	02 10	02 49		
London Blackfriars	Z1	a	22 52							23 22	23 45	23 52	23 52	23 52	23 52	23 52	23 52	23 52	23 52	00 27	00 57	01 11	01 25	01 49	02 10	02 49			
Clapham Junction	Z2	a	22 37	22 52	23 07	23 12	23 20	23 25	23 40	23 46	23 55	00 10	00 19	00 25	00 37	00 40	00 40	00 40	00 40	00 55	01 11	01 25	01 49	02 10	02 49				
London Victoria	Z1	a	22 40	22 46	22 55	23 10	23 14	23 20	23 25	23 40	23 46	23 55	00 10	00 19	00 25	00 37	00 40	00 40	00 40	00 55	01 11	01 25	01 49	02 10	02 49				

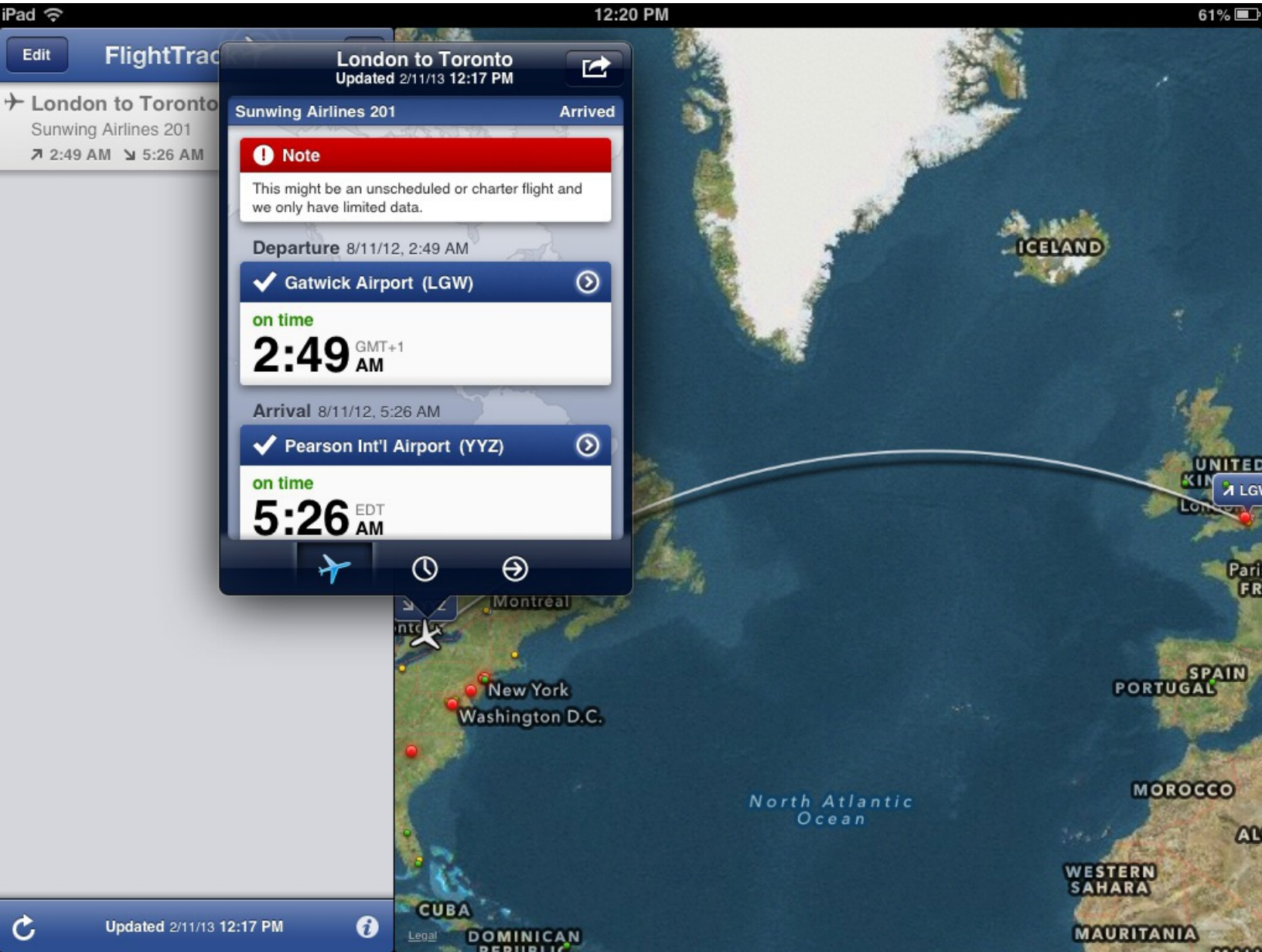
Operator	Facilities	SN	FC	SN	
Gatwick Airport	Z5	d	03 05	03 30	04 04
East Croydon	Z1	a	03 27	03 47	04 31
London Bridge	Z1	a			
London Blackfriars	Z1	a		04 13	
Clapham Junction	Z2	a	03 40	04 51	
London Victoria	Z1	a	03 49	04 58	











**Annex "C" to the complaint  
of the Nawrots**

March 21, 2013  
Page 43 of 62



**National Joint Council**

**Travel Directive, Appendix D - Allowances - Module 4 -  
Effective July 1, 2012**

**Appendix D - Allowances - Module 4**

**Notice to the reader:** This document is no longer in effect. It has been archived online and is kept purely for historical purposes.

Country: <input type="text"/> or City: <input type="text"/> <a href="#">Return to alphabetical list</a> <input type="button" value="Get Rates"/>	<b>Archives</b> July 1, 2012 <input type="button" value="v"/>
---	--

**Table Legend**

- C = Commercial Accommodation
- P = Non-commercial Accommodation
- \* = Reasonable and justifiable expenses. Receipts required.

**United Kingdom (includes Northern Ireland) - Currency: Pound Sterling (GBP)**

Type of Accommodation	City	Meal Rate				Incidental Amount	Grand Total (Taxes Included)
		Breakfast	Lunch	Dinner	Meal Total		
<b>C</b>	London	15.95	29.10	38.80	<b>83.85</b>	<b>26.83</b>	<b>110.68</b>
<b>C-75%</b>	London	11.96	21.83	29.10	<b>62.89</b>	<b>20.12</b>	<b>83.01</b>
<b>P</b>	London	15.95	29.10	38.80	<b>83.85</b>	<b>16.77</b>	<b>100.62</b>
<b>P-75%</b>	London	11.96	21.83	29.10	<b>62.89</b>	<b>12.58</b>	<b>75.47</b>
<b>C</b>	Other	12.76	23.28	31.04	<b>67.08</b>	<b>21.47</b>	<b>88.55</b>
<b>C-75%</b>	Other	9.57	17.46	23.28	<b>50.31</b>	<b>16.10</b>	<b>66.41</b>
<b>P</b>	Other	12.76	23.28	31.04	<b>67.08</b>	<b>13.42</b>	<b>80.50</b>
<b>P-75%</b>	Other	9.57	17.46	23.28	<b>50.31</b>	<b>10.06</b>	<b>60.37</b>

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 261/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 11 February 2004  
establishing common rules on compensation and assistance to passengers in the event of denied  
boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91  
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Economic and  
Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by  
the Conciliation Committee on 1 December 2003,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport <sup>(4)</sup> created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours.

(6) The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight.

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.

<sup>(1)</sup> OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

<sup>(2)</sup> OJ C 241, 7.10.2002, p. 29.

<sup>(3)</sup> Opinion of the European Parliament of 24 October 2002 (OJ C 300 E, 11.12.2003, p. 443), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European Parliament of 3 July 2003. Legislative Resolution of the European Parliament of 18 December 2003 and Council Decision of 26 January 2004.

<sup>(4)</sup> OJ L 36, 8.2.1991, p. 5.

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

- (10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.
- (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.
- (16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.
- (17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.
- (18) Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.
- (19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.
- (20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- (22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.
- (23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.
- (24) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (25) Regulation (EEC) No 295/91 should accordingly be repealed,
- HAVE ADOPTED THIS REGULATION:
- Article 1*
- Subject**
1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:
- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

2. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

*Article 2*

**Definitions**

For the purposes of this Regulation:

- (a) ‘air carrier’ means an air transport undertaking with a valid operating licence;
- (b) ‘operating air carrier’ means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) ‘Community carrier’ means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers <sup>(1)</sup>;
- (d) ‘tour operator’ means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(2)</sup>;
- (e) ‘package’ means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) ‘ticket’ means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (g) ‘reservation’ means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (h) ‘final destination’ means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;
- (i) ‘person with reduced mobility’ means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause

of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

- (j) ‘denied boarding’ means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) ‘volunteer’ means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.
- (l) ‘cancellation’ means the non-operation of a flight which was previously planned and on which at least one place was reserved.

*Article 3*

**Scope**

1. This Regulation shall apply:
  - (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
  - (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
2. Paragraph 1 shall apply on the condition that passengers:
  - (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
    - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,
    - or, if no time is indicated,
    - not later than 45 minutes before the published departure time; or
  - (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

<sup>(2)</sup> OJ L 158, 23.6.1990, p. 59.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

#### Article 4

### Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

#### Article 5

### Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
  - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

- (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

- (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

#### Article 6

### Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- (a) for two hours or more in the case of flights of 1 500 kilometres or less; or
- (b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or
- (c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

- (i) the assistance specified in Article 9(1)(a) and 9(2); and
- (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Article 7

**Right to compensation**

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1 500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

Article 8

**Right to reimbursement or re-routing**

1. Where reference is made to this Article, passengers shall be offered the choice between:

- (a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
  - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

Article 9

**Right to care**

1. Where reference is made to this Article, passengers shall be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation in cases
  - where a stay of one or more nights becomes necessary, or
  - where a stay additional to that intended by the passenger becomes necessary;
- (c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Article 10

**Upgrading and downgrading**

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

- (a) 30 % of the price of the ticket for all flights of 1 500 kilometres or less, or

- (b) 50 % of the price of the ticket for all intra-Community flights of more than 1 500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1 500 and 3 500 kilometres, or
- (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

*Article 11*

**Persons with reduced mobility or special needs**

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

*Article 12*

**Further compensation**

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

*Article 13*

**Right of redress**

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

*Article 14*

**Obligation to inform passengers of their rights**

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance'.
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

*Article 15*

**Exclusion of waiver**

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

*Article 16*

**Infringements**

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.



2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

*Article 17*

**Report**

The Commission shall report to the European Parliament and the Council by 1 January 2007 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a ‘package

tour’ to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,

- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

*Article 18*

**Repeal**

Regulation (EEC) No 295/91 shall be repealed.

*Article 19*

**Entry into force**

This Regulation shall enter into force on 17 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 February 2004.

*For the European Parliament*  
*The President*  
P. COX

*For the Council*  
*The President*  
M. McDOWELL

**Annex "E" to the complaint  
of the Nawrots**

March 21, 2013  
Page 51 of 62

**87**

NTA(A) No. 458 T.C.A.B. No. 696

Airline Tariff Publishing Company, Agent  
**INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
NO. AC-2**

10th Revised Page AC-22-C  
Cancels 9th Revised Page AC-22-C

**RULE** **AIR CANADA  
SECTION I - GENERAL RULES**

**89** DENIED BOARDING COMPENSATION

PART 1

- C** +[X]. When AC is unable to provide previously confirmed space due to there being more passengers holding confirmed reservations and tickets than for which there are available seats on a flight, AC shall implement the provisions of this rule, +[N]unless applicable local law provides otherwise. In particular, for flights departing from the following countries, Air Canada will apply the provisions of the following legislations:  
**C** United States: US 14 CFR part 250;  
 European Union: EC regulation No. 261/2004;  
 An Andean community country: Decision 619;  
 Argentina: Administrative Order PRE-CJU-002-05 (18 November 2004)  
 Israel: Aviation Services Law (Compensation and Assistance for flight cancellation or change of conditions), 5772-2012.
- C** (A) +[CANCELLED]
- (B) REQUEST FOR VOLUNTEERS  
 (1) AC will request volunteers from among the confirmed passengers to relinquish their seats in exchange for compensation as defined in (E).  
 (2) Once a passenger has voluntarily relinquished his seat, he will not later be involuntarily denied boarding unless he was advised at the time he volunteered of such possibility and the amount of compensation to which he would be entitled.  
 (3) The request for volunteers and the selection of passengers to be denied boarding shall be in a manner solely determined by AC.
- (C) BOARDING PRIORITIES  
 (1) If a flight is oversold, no passenger may be involuntarily denied boarding until AC has first requested volunteers to relinquish their seats.  
 (2) In the event there are not enough volunteers, other passengers may be involuntarily denied boarding in accordance with AC boarding priority policy. Passengers with confirmed reservations +[X], will be permitted to board in the following order until all available seats are occupied:  
**C** (a) Disabled passengers, unaccompanied children under 12 years of age and others for whom, in AC'S assessment, failure to carry would cause severe hardship.  
**C** (b) Passengers paying First (F), Executive (J) or full Economy (Y) class fares.  
 (c) All other passengers, +[X] in the order in which they present themselves for check-in and boarding.
- C** +[C](D) TRANSPORTATION FOR PASSENGERS DENIED BOARDING  
 When A passenger has been denied boarding, either voluntarily or involuntarily, carrier will:  
 (1) Carry the passenger on another of its passenger aircraft or class of service on which space is available without additional charge regardless of the class of service; or, at carrier's option;  
 (2) Endorse to another air carrier with which Air Canada has an agreement for such transportation, the unused portion of the ticket for purposes of rerouting; pr at carrier's option;  
 (3) Reroute the passenger to the destination named on the ticket or applicable portion thereof by its own or other transportation services; and if the fare for the revised routing or class of service is higher than the refund value of the ticket or applicable portion thereof as determined from rule 90(D), carrier will require no additional payment from the passenger but will refund the difference if it is lower; or,  
 (4) If the passenger choose to no longer travel or if carrier is unable to perform the option stated in (1) thru (3) above within a reasonable amount of time, make involuntary refund in accordance with Rule 90(D), or upon request, for denied boardings within Air Canada's control, return passenger to point of origin and refund in accordance with Rule 90 (D)(2)(A), as if no portion of the trip had been made (irrespective of applicable fare rules), or subject to passenger's agreement, offer a travel voucher for future travel in the same amount; or, upon passenger's request.  
 (5) For denied boardings within Air Canada's control, if passenger provides credible verbal assurance to Air Canada of certain circumstances that require his/her arrival at destination earlier than options set out in subparagraph (1) thru (3) above, Air Canada will, if it is reasonable to do so, taking all circumstances known to it into account and subject to availability, buy passenger seat on another carrier whose flight is scheduled to arrive appreciably earlier than the options proposed in (1) thru (3) above.

(Continued on next page)

+ - Effective August 16 Decision per CTA decision 250 - C - A - 2012

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

**ISSUED:** August 15, 2012

**EFFECTIVE:** September 29, 2012 (Except as Noted)

Airline Tariff Publishing Company, Agent  
INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
NO. AC-2

7th Revised Page AC-22-D  
Cancels 6th Revised Page AC-22-D

RULE AIR CANADA  
SECTION I - GENERAL RULES

89 DENIED BOARDING COMPENSATION (Continued)  
PART 1 (Continued)

(E) COMPENSATION

In addition to providing transportation in accordance with (D), a passenger who has been denied boarding †[C]involuntarily will be compensated by AC as follows:

(1) Conditions for Payment

- (a) The passenger must present himself for carriage at the appropriate time and place †[N]in accordance with this tariff: having complied fully with AC applicable reservation, ticketing, check-in and †[C]boarding; and, (ii) †[X].

- (b) It must not have been possible to accommodate the passenger on the flight on which he held confirmed reservations and the flight must have departed without him.

EXCEPTION: The passenger will not be eligible for compensation:

- (i) if he is offered accommodation or is seated in a compartment of the aircraft other than that specified on his ticket at no extra charge to him. (Should he be seated in a compartment for which a lower fare applies, he shall be entitled to the appropriate refund); or,  
(ii) when the flight on which he holds a confirmed and ticketed reservation is cancelled or space has been requisitioned by the government; or,  
(iii) (Applicable to AC connector carrier ZX only) if the passenger can be accommodated on another flight which departs within one hour of the scheduled departure of the flight on which boarding has been denied.

(2) Amount of Compensation

Subject to the provisions of (E)(1)(a) AC will tender liquidated damages in the amounts in cash or a credit voucher good for travel on AC as follows: Caribbean/Bermuda to Canada, compensation by cash is equal to the value of coupons remaining to an online or interline destination, or next stopover points, maximum is CAD 200.00. Compensation by MCO (credit voucher), is equal to twice the value of coupons remaining to an online or interline destination or next stopover point, minimum is CAD 100.00, maximum is CAD 500.00. From Venezuela, compensation to passengers must equal 25% of the value of the ticket to be paid by cash, by electronic bank transfer, cheque, or in accordance with an agreement signed with the passenger, with travel vouchers or other services.

	Draft	MCO (credit voucher)
Canada to Mexico/Mexico to Canada	CAD 100.00	CAD 200.00
Canada to all other destinations	CAD 200.00	CAD 500.00
Asia to Canada (excluding Japan and Korea)	CAD 300.00	CAD 600.00
Japan to Canada (compensation is offered in cash only)	JPY 30,000	not applicable
	(paid by bank transfer)	
Seoul to Canada	Y class USD 400.00	not applicable
(compensation is offered in cash only)	J class USD 600.00	not applicable
	not applicable	
South America/South Pacific to Canada	CAD 200.00	CAD 500.00
**exceptions**		
From Sao Paulo to Toronto	USD 750.00	USD 1500.00

(3) Time of Offer of Compensation

- (a) Compensation will be offered to, and if accepted, receipted by the passenger on the day and at the place where the denied boarding occurs.  
(b) In the event the alternate transportation departs before the offer can be made, it shall be made by mail or other means within 24 hours after the time the failure to accommodate has occurred.

(F) NOTICE PROVIDED TO PASSENGERS  
†[CANCELLED]

(Continued on next page)

† - Effective August 16 Decision per CTA decision 250 - C - A - 2012

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: August 15, 2012

EFFECTIVE: September 29, 2012 (Except as Noted)

Airline Tariff Publishing Company, Agent  
INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
AF-1

6th Revised Page 75  
Cancels 5th Revised Page 75

RULE	SECTION I - GENERAL RULES															
C87	<p>†[C]PART II DENIED BOARDING COMPENSATION (Applicable to flights or portions to flight originating in Canada)</p> <p>(A) <u>APPLICABILITY</u> The following rules shall apply:</p> <ol style="list-style-type: none"> <li>(1) In respect of flights departing from an airport in the European Union (EU) and flights departing from an airport in a third country bound to an airport in the EU unless passenger received benefits or compensation and were given assistance in that third country;</li> <li>(2) On condition that passengers have a confirmed reservation on the flight concerned and presents himself/herself for check-in at the time indicated in advance and in writing or electronically; or; if no time is indicated; not later than 60 minutes before the published departure time;</li> <li>(3) Only to the passenger travelling with a valid ticket including tickets issued under a frequent flyer or other commercial programme with confirmed reservations and             <ol style="list-style-type: none"> <li>(a) Presents himself at the appropriate place and has observed published minimum check-in times</li> <li>(b) Has complied with Air France's ticketing and reconfirmation procedures</li> <li>(c) Is acceptable for transportation under the carrier's tariff and the flight for which the passenger holds confirmed reservations is unable to accommodate the passenger and departs without him/her</li> </ol> </li> <li>(4) Where AF is the operating carrier of the flight <u>EXCEPTIONS:</u> The following passengers will not be entitled to compensations;             <ol style="list-style-type: none"> <li>(a) Passengers travelling to EU who have received benefits or compensation in a third country.</li> <li>(b) Passengers travelling between two airports outside the EU unless the sector is part of a flight (same flight number) that originated in the EU.</li> <li>(c) Passengers without confirmed reservation.</li> <li>(d) Passengers who have not presented themselves for check-in on time</li> <li>(e) Passengers on free or reduced fares not directly or indirectly available to the public, e.g. ID and AD tickets</li> </ol> </li> <li>(5) The passenger is accommodated on the flight for which he/she hold's confirmed reservations, but is seated in a compartment of the aircraft other than that reserved, provided that when the passenger is accommodated in a class of service for which a lower fare is charged, the passenger will be entitled to the appropriate refund.</li> </ol> <p>(B) <u>PASSENGER RIGHTS</u></p> <ol style="list-style-type: none"> <li>(1) <u>Denied Boarding</u> <u>Volunteers</u> Volunteers have the right of mutually agreed benefits plus the right to choose between reimbursement and rerouting with the following options:             <ol style="list-style-type: none"> <li>(a) Reimbursement within 7 days of coupons not used or</li> <li>(b) Rerouting to final destination at the earliest opportunity under comparable transport conditions or</li> <li>(c) Rerouting to final destination at a later date according to passenger's convenience but subject to availability of space. Volunteers are not entitled to care, such as phone calls, foods, accommodation etc.</li> </ol> </li> <li>(2) <u>Involuntary Denied Boarding</u> In case of Involuntary Denied Boarding the passengers are entitled to the following:             <ol style="list-style-type: none"> <li>(a) Right to compensation according to paragraph (C) and</li> <li>(b) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and</li> <li>(c) Right to care including                 <ul style="list-style-type: none"> <li>- Meals and refreshments, reasonably related to the waiting time</li> <li>- 2 telephone calls or telex, e-mails, fax</li> <li>- if necessary, hotel accommodation plus transfer between airport and hotel</li> </ul> </li> </ol> </li> <li>(3) <u>Amount of Compensation Payable</u> <ol style="list-style-type: none"> <li>(a) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed. Compensation Amounts in EUR/CAD: Flight KM between And                      Amount in  <table border="0" style="margin-left: 20px;"> <tr> <td></td> <td>EUR</td> <td>CAD</td> </tr> <tr> <td>0-1500</td> <td>250</td> <td>400</td> </tr> <tr> <td>1500-3500</td> <td>400</td> <td>645</td> </tr> <tr> <td>Intra EU flights of more than 1500</td> <td>400</td> <td>645</td> </tr> <tr> <td>greater than 3500</td> <td>600</td> <td>965</td> </tr> </table> </li> </ol> </li> </ol>		EUR	CAD	0-1500	250	400	1500-3500	400	645	Intra EU flights of more than 1500	400	645	greater than 3500	600	965
	EUR	CAD														
0-1500	250	400														
1500-3500	400	645														
Intra EU flights of more than 1500	400	645														
greater than 3500	600	965														

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

ISSUED: April 5, 2007

EFFECTIVE: May 20, 2007

(Except as Noted)

NTA(A) No. 313 I.C.A.B. No. 516

Airline Tariff Publishing Company, Agent  
INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
AF-1

7th Revised Page 76  
Cancels 6th Revised Page 76

RULE

**SECTION I - GENERAL RULES**

C87

†(C) PART II DENIED BOARDING COMPENSATION (Continued)

(B) PASSENGER RIGHTS (Continued)

(3) Amount of Compensation Payable (Continued)

(b) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

Flight KM between And	Amount in	
	EUR	CAD
0-1500	125	200
1500-3500	200	320
Intra EU flights of more than 1500	200	320
greater than 3500	300	485

(c) In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:

- validity is 1 year from the date of issue
- if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2).
- lost vouchers will not be replaced
- a ticket may only be issued in exchange for the voucher in the same name as that on the voucher
- if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference
- if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded.

(4) Cancellation of Flights

(a) In case of cancellation of a flight the passengers will be entitled to the following:

- (1) Right to compensation according to paragraph (C) and
- (2) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and
- (3) Right to care including
  - Meals and refreshments, reasonably related to the waiting time
  - 2 telephone calls or telex, e-mails, fax
  - If necessary, hotel accommodation plus transfer between airport and hotel

(b) Amount of Compensation Payable

(1) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed.

Flight KM between And	Compensation Amounts in EUR/CAD:	
	EUR	CAD
0-1500	250	400
1500-3500	400	645
Intra EU flights of more than 1500	400	645
greater than 3500	600	965

(2) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

Flight KM between And	Amount in	
	EUR	CAD
0-1500	125	200
1500-3500	200	320
Intra EU flights of more than 1500	200	320
greater than 3500	300	485

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

**ISSUED: April 5, 2007**

**EFFECTIVE: May 20, 2007**

(Except as Noted)

NTA(A) No. 313 TC.A.B. No. 516

Airline Tariff Publishing Company, Agent  
**INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
AF-1**

4th Revised Page 77  
Cancels 3rd Revised Page 77

**RULE**

**SECTION I - GENERAL RULES**

C87

**+IC|PART II DENIED BOARDING COMPENSATION (Continued)**

**(B) PASSENGER RIGHTS (Continued)**

**(4) Cancellation of Flights (Continued)**

**(b) Amount of Compensation Payable (Continued)**

- (3)** In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:
- validity is 1 year from the date of issue
  - if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2).
  - lost vouchers will not be replaced
  - a ticket may only be issued in exchange for the voucher in the same name as that on the voucher
  - if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference
  - if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded.

**(C) LONG DELAY**

This rule is only applicable when a flight is delayed at departure, not when a flight leaves on time and is subsequently delayed. A long delay is considered a flight that is delayed according to the following parameters:

- |  |                   |
|--|-------------------|
| Trips less than 1,500 KM   | More than 2 hours |
| Trips between 1,500-3,500 KM and all<br>intra EU flights in excess of 1,500 KM | More than 3 hours |
| Trips more than 3,500 KM (non intra EU)  | More than 4 hours |

In this case the passengers are entitled to the following

- (1) Right to care provided this does not result in a further delay of the flight including
  - Meals and refreshments, reasonably related to the waiting time
  - 2 telephone calls or telex, e-mails, fax
  - If necessary, hotel accommodation plus transfer between airport and hotel; in case the flight is delayed until the next day hotel accommodation and transfer are mandatory.
- (2) If flight is delayed more than 5 hours right to be reimbursed within 7 days:
  - (a) Outbound passenger: Cost of ticket
  - (b) Inbound passenger: Cost of Non-used coupon
  - (c) Transit Passenger: Cost of Non-used coupon, if the flight no longer serves any purpose; also cost of the tickets for parts of the journey already made and if relevant return flight to the first point of departure
  - (d) For package tour passengers the value of reimbursement will have to be assigned to unused flight coupon(s)
- (3) **Downgrading of Passengers**  
In case of involuntary downgrading to a lower class of service passengers will be entitled to the following reimbursement within 7 days
  - (a) 30 percent of the ticket price for trips less than 1,500 KM
  - (b) 50 percent of the ticket price for trips between 1,500 and 3,500 KM and all intra EU flights in excess of 1,500 KM
  - (c) 75 percent of the ticket price for all other trips more than 3,500 KM

**NOTES:** In all cases the relevant distance is understood to be the sector on which the passenger is downgraded. The ticket price is understood to be the one-way coupon value for the sector on which the passenger is downgraded.

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

**ISSUED:** April 5, 2007

**EFFECTIVE:** May 20, 2007

(Except  
as Noted)

Airline Tariff Publishing Company, Agent  
INTERNATIONAL PASSENGER RULES AND FARES TARIFF  
AF-1

6th Revised Page 78  
Cancels 5th Revised Page 78

RULE

SECTION I - GENERAL RULES

87

PART II DENIED BOARDING COMPENSATION (Continued)

(D) BOARDING PRIORITY

- (1) Crew Members positioning in preparation for a flight and ground personnel needed for emergency repairs on an aircraft grounded at a station.
- (2) Transit passengers continuing on the same flight
- (3) Unaccompanied children (under +[15 years of age)
- (4) Stretcher and wheelchair cases
- (5) Hardship cases as determined by the manager on duty
- (6) Transit passengers continuing on the same flight
- (7) Connecting passengers
- (8) Passengers holding confirmed reservations will be boarded before any passengers not holding confirmed reservations or any who are not entitled to confirmed reservations.
- (9) Passengers holding confirmed reservations and a valid ticket for the flight
- (10) Local passengers in the order their boarding card has been issued excluding passengers who volunteered for denied boarding.
- (11) Passengers having volunteered for denied boarding compensation in the order they volunteered.

(E) DEFINITIONS

For the purpose of this rule, except as otherwise specifically provided herein:  
the following definitions shall apply:

Airport means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e. used) by the passenger.

Alternate Transportation is air transportation provided by a carrier or other transportation used by the passenger which, at the time the arrangement are made, will provided for arrival at the passenger's destinations or next point of stopover, within four hours of his originally scheduled arrival time.

Carrier means an carrier, except a helicopter operator, holding a commercial air service licence authorizing the transportation of persons.

Comparable Air Transportation is provided by air carrier to the passengers at no extra cost.

Confirmed Space (reservation) is that which applies to a specific AF flight, date and fare type as requested by the passenger and which is verified in AF reservations system and is so noted on the ticket.

Cancellation means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Ticket means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorized by the air carrier or its authorized agents.

Stopover is a deliberate interruption of a journey requested by the passenger which is scheduled to exceed four hours at a place between the points of origin and destination.

Oversold is that condition which is the result of there being more passengers with confirmed reservations and tickets that there are seats available on a flight.

Volunteer means a person who responds to carrier's request for volunteers and who willingly accepts carrier's offer or compensation, in any amount, in exchange for relinquishing his confirmed reserved space. Any other passenger denied boarding is considered, for the purposes of this rule, to have been denied boarding involuntarily, even if he accepts denied boarding compensation.

For unexplained abbreviations, reference marks and symbols see IPGT1-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: May 5, 2010

EFFECTIVE: June 19, 2010

(Except as Noted)

+ - Effective May 6, 2010 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 56067.

CREDIT FOR FUTURE TRANSPORTATION ON  
LH IN LIEU OF MONETARY COMPENSATION.  
THE AMOUNT OF THE TRANSPORTATION  
CREDIT OFFERED SHALL BE EQUAL TO OR  
GREATER THAN THE MONETARY  
COMPENSATION DUE THE PASSENGER. THE  
CREDIT VOUCHER SHALL BE VALID FOR  
TRAVEL ON LH ONLY WITHIN 365 DAYS  
FROM THE DATE OF ISSUE, AND SHALL BE  
NON-REFUNDABLE AND NON-TRANSFERABLE.

(E) METHOD OF PAYMENT

THE AIRLINE WILL GIVE TO EACH PASSENGER, WHO  
QUALIFIES FOR DENIED BOARDING COMPENSATION, A  
PAYMENT BY CHECK, OR CASH, OR MCO, OR VOUCHER  
FOR THE AMOUNT SPECIFIED, ON THE DAY AND  
PLACE THE INVOLUNTARY DENIED BOARDING OCCURS.  
HOWEVER, IF THE AIRLINE ARRANGES ALTERNATE  
TRANSPORTATION FOR THE PASSENGER'S  
CONVENIENCE THAT DEPARTS BEFORE THE PAYMENT  
CAN BE MADE, THE PAYMENT WILL BE SENT TO THE  
PASSENGER WITHIN 24 HOURS. THE AIR CARRIER  
MAY OFFER FREE TICKETS IN PLACE OF THE CASH  
PAYMENT. THE PASSENGER, MAY, HOWEVER, INSIST  
ON THE CASH PAYMENT, OR REFUSE ALL  
COMPENSATION AND BRING PRIVATE LEGAL ACTION.

(F) PASSENGER'S OPTIONS

ACCEPTANCE OF THE COMPENSATION (BY ENDORSING  
THE CHECK OR DRAFT WITHIN 30 DAYS) RELIEVES  
THE CARRIER FROM ANY FURTHER LIABILITY TO THE  
PASSENGER CAUSED BY ITS FAILURE TO HONOR THE  
CONFIRMED RESERVATIONS. HOWEVER, THE  
PASSENGER MAY DECLINE THE PAYMENT AND SEEK TO  
RECOVER DAMAGES IN A COURT OF LAW OR IN SOME  
OTHER MANNER.

DENIED BOARDING COMPENSATION  
APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS  
ORIGINATING AND/OR TERMINATING IN CANADA

(A) APPLICABILITY

THE FOLLOWING RULES SHALL APPLY:

- (1) IN RESPECT OF FLIGHTS DEPARTING FROM AN AIRPORT IN  
THE EUROPEAN UNION (EU) AND FLIGHTS DEPARTING FROM  
AN AIRPORT IN A THIRD COUNTRY BOUND TO AN AIRPORT  
IN THE EU UNLESS PASSENGER RECEIVED BENEFITS OR  
COMPENSATION AND WERE GIVEN ASSISTANCE IN THAT  
THIRD COUNTRY;
- (2) ON CONDITION THAT PASSENGERS HAVE A CONFIRMED  
RESERVATION ON THE FLIGHT CONCERNED AND PRESENTS  
HIMSELF/HERSELF FOR CHECK-IN AT THE TIME INDICATED  
IN ADVANCE AND IN WRITING OR ELECTRONICALLY; OR;  
IF NO TIME IS INDICATED; NOT LATER THAN 60 MINUTES  
BEFORE THE PUBLISHED DEPARTURE TIME;
- (3) ONLY TO THE PASSENGER TRAVELING WITH A VALID  
TICKET INCLUDING TICKETS ISSUED UNDER A FREQUENT  
FLYER OR OTHER COMMERCIAL PROGRAMME WITH CONFIRMED



AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0089

---

TITLE/APPLICATION - 70 (CONT)

RESERVATIONS AND

- (A) PRESENTS HIMSELF AT THE APPROPRIATE PLACE AND HAS OBSERVED PUBLISHED MINIMUM CHECK-IN TIMES
  - (B) HAS COMPLIED WITH LUFTHANSA'S TICKETING AND RECONFIRMATION PROCEDURES
  - (C) IS ACCEPTABLE FOR TRANSPORTATION UNDER THE CARRIER'S TARIFF AND THE FLIGHT FOR WHICH THE PASSENGER HOLDS CONFIRMED RESERVATIONS IS UNABLE TO ACCOMMODATE THE PASSENGER AND DEPARTS WITHOUT HIM/HER
- (4) WHERE LH IS THE OPERATING CARRIER OF THE FLIGHT EXCEPTIONS:  
THE FOLLOWING PASSENGERS WILL NOT BE ENTITLED TO COMPENSATION:
- (A) PASSENGERS TRAVELLING TO EU WHO HAVE RECEIVED BENEFITS OR COMPENSATION IN A THIRD COUNTRY
  - (B) PASSENGERS TRAVELLING BETWEEN TWO AIRPORTS OUTSIDE THE EU UNLESS THE SECTOR IS PART OF A FLIGHT (SAME FLIGHT NUMBER) THAT ORIGINATED IN THE EU
  - (C) PASSENGERS WITHOUT CONFIRMED RESERVATIONS
  - (D) PASSENGERS WHO HAVE NOT PRESENTED THEMSELVES FOR CHECK-IN ON TIME
  - (E) PASSENGERS ON FREE OR REDUCED FARES NOT DIRECTLY OR INDIRECTLY AVAILABLE TO THE PUBLIC, E.G. ID AND AD TICKETS
- (5) THE PASSENGER IS ACCOMMODATED ON THE FLIGHT FOR WHICH HE/SHE HOLD'S CONFIRMED RESERVATIONS, BUT IS SEATED IN A COMPARTMENT OF THE AIRCRAFT OTHER THAN THAT RESERVED, PROVIDED THAT WHEN THE PASSENGER IS ACCOMMODATED IN A CLASS OF SERVICE FOR WHICH A LOWER FARE IS CHARGED, THE PASSENGER WILL BE ENTITLED TO THE APPROPRIATE REFUND.
- (B) PASSENGER RIGHTS
- (1) DENIED BOARDING  
VOLUNTEERS  
VOLUNTEERS HAVE THE RIGHT OF MUTUALLY AGREED BENEFITS PLUS THE RIGHT TO CHOOSE BETWEEN REIMBURSEMENT AND REROUTING WITH THE FOLLOWING OPTIONS:
    - (A) REIMBURSEMENT WITHIN 7 DAYS OF COUPONS NOT USED OR
    - (B) REROUTING TO FINAL DESTINATION AT THE EARLIEST OPPORTUNITY UNDER COMPARABLE TRANSPORT CONDITIONS OR
    - (C) REROUTING TO FINAL DESTINATION AT A LATER DATE ACCORDING TO PASSENGER'S CONVENIENCE BUT SUBJECT TO AVAILABILITY OF SPACE. VOLUNTEERS ARE NOT ENTITLED TO CARE, SUCH AS PHONE CALLS, FOOD, ACCOMMODATION ETC.
  - (2) INVOLUNTARY DENIED BOARDING  
IN CASE OF INVOLUNTARY DENIED BOARDING THE PASSENGERS ARE ENTITLED TO THE FOLLOWING:

- (A) RIGHT TO COMPENSATION ACCORDING TO PARAGRAOH (C) AND
- (B) RIGHT TO CHOOSE BETWEEN REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS AS MENTIONED UNDER (A)(1) ABOVE AND
- (C) RIGHT TO CARE INCLUDING
- MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
  - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
  - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL
- (3) AMOUNT OF COMPENSATION PAYABLE
- (A) THE AMOUNT OF COMPENSATION DEPENDS ON THE DISTANCE OF THE SCHEDULED FLIGHT OR THE ALTERNATIVE FLIGHT PROPOSED.  
COMPENSATION AMOUNTS IN EUR/CAD:
- | FLIGHT KM BETWEEN AND | AMOUNT IN |     |
|-----------------------|-----------|-----|
| EUR                   | CAD       |     |
| 0-1500                | 250       | 400 |
| 1500 - 3500           | 400       | 645 |
| INTRA EU FLIGHTS OF   |           |     |
| MORE THAN 1500        | 400       | 645 |
| GREATER THAN 3500     | 600       | 965 |
- (B) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2 HOURS VERSUS THE ORIGINALLY PLANNED, THE COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE CAN BE REDUCED BY 50 PERCENT:
- | FLIGHT KM BETWEEN AND | AMOUNT IN |     |
|-----------------------|-----------|-----|
| EUR                   | CAD       |     |
| 0-1500                | 125       | 200 |
| 1500-3500             | 200       | 320 |
| INTRA EU FLIGHTS OF   |           |     |
| MORE THAN 1500        | 200       | 320 |
| GREATER THAN 3500     | 300       | 485 |
- (C) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED IN (B)(1) AND (B)(2) THE PASSENGER MAY CHOOSE COMPENSATION IN THE FORM OF A VOUCHER VALID FOR FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE AMOUNT MENTIONED IN (B)(1) AND (B)(2). FOLLOWING CONDITIONS SHALL APPLY TO SUCH VOUCHERS:
- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
  - IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN USED, IT WILL BE REFUNDED BUT ONLY AT THE CASH VALUES AS APPLICABLE IN (B)(1) AND (B)(2).
  - LOST VOUCHERS WILL NOT BE REPLACED
  - A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR THE VOUCHER IN THE SAME NAME AS THAT ON THE VOUCHER
  - IF THE VALUE OF A DESIRED TICKET EXCEEDS THE VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY THE APPLICABLE DIFFERENCE
  - IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE OF A DESIRED TICKET, THE DIFFERENCE WILL NOT

- BE REFUNDED.
- (4) CANCELLATION OF FLIGHTS
- (A) IN CASE OF CANCELLATION OF A FLIGHT THE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING:
- (1) RIGHT TO COMPENSATION ACCORDING TO PARAGRAPH (C) AND
- (2) RIGHT TO CHOOSE BETWEEN REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS AS MENTIONED UNDER (A)(1) ABOVE AND
- (3) RIGHT TO CARE INCLUDING
- MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
  - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
  - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL
- (B) AMOUNT OF COMPENSATION PAYABLE
- (1) THE AMOUNT OF COMPENSATION DEPENDS ON THE DISTANCE OF THE SCHEDULED FLIGHT OR THE ALTERNATIVE FLIGHT PROPOSED.
- COMPENSATION AMOUNTS IN EUR/CAD:
- | FLIGHT KM BETWEEN AND              | AMOUNT IN |     |
|------------------------------------|-----------|-----|
|                                    | EUR       | CAD |
| 0-1500                             | 250       | 400 |
| 1500 - 3500                        | 400       | 645 |
| INTRA EU FLIGHTS OF MORE THAN 1500 | 400       | 645 |
| GREATER THAN 3500                  | 600       | 965 |
- (2) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2 HOURS VERSUS THE ORIGINALLY PLANNED, THE COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE CAN BE REDUCED BY 50 PERCENT:
- | FLIGHT KM BETWEEN AND              | AMOUNT IN |     |
|------------------------------------|-----------|-----|
|                                    | EUR       | CAD |
| 0-1500                             | 125       | 200 |
| 1500-3500                          | 200       | 320 |
| INTRA EU FLIGHTS OF MORE THAN 1500 | 200       | 320 |
| GREATER THAN 3500                  | 300       | 485 |
- (3) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED IN (B)(1) AND (B)(2) THE PASSENGER MAY CHOOSE COMPENSATION IN THE FORM OF A VOUCHER VALID FOR FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE AMOUNT MENTIONED IN (B)(1) AND (B)(2). FOLLOWING CONDITIONS SHALL APPLY TO SUCH VOUCHERS:
- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
  - IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN USED, IT WILL BE REFUNDED BUT ONLY AT THE CASH VALUES AS APPLICABLE IN (B)(1) AND (B)(2).
  - LOST VOUCHERS WILL NOT BE REPLACED
  - A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR THE VOUCHER IN THE SAME NAME AS THAT ON THE VOUCHER
  - IF THE VALUE OF A DESIRED TICKET EXCEEDS THE VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY

THE APPLICABLE DIFFERENCE

- IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE OF A DESIRED TICKET, THE DIFFERENCE WILL NOT BE REFUNDED.

(C) LONG DELAY

THIS RULE IS ONLY APPLICABLE WHEN A FLIGHT IS DELAYED AT DEPARTURE, NOT WHEN A FLIGHT LEAVES ON TIME AND IS SUBSEQUENTLY DELAYED. A LONG DELAY IS CONSIDERED A FLIGHT THAT IS DELAYED ACCORDING TO THE FOLLOWING PARAMETERS:

TRIPS LESS THAN 1,500 KM MORE THAN 2 HOURS

TRIPS BETWEEN 1,500-3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM MORE THAN 3 HOURS

TRIPS MORE THAN 3,500 KM (NON INTRA EU) MORE THAN 4 HOURS

IN THIS CASE THE PASSENGERS ARE ENTITLED TO THE FOLLOWING

- (1) RIGHT TO CARE PROVIDED THIS DOES NOT RESULT IN A FURTHER DELAY OF THE FLIGHT INCLUDING
  - MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
  - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
  - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL; IN CASE THE FLIGHT IS DELAYED UNTIL THE NEXT DAY HOTEL ACCOMMODATION AND TRANSFER ARE MANDATORY.
- (2) IF FLIGHT IS DELAYED MORE THAN 5 HOURS RIGHT TO BE REIMBURSED WITHIN 7 DAYS:
  - (A) OUTBOUND PASSENGER: COST OF TICKET
  - (B) INBOUND PASSENGER: COST OF NON-USED COUPON
  - (C) TRANSIT PASSENGER: COST OF NON-USED COUPON, IF THE FLIGHT NO LONGER SERVES ANY PURPOSE; ALSO COST OF THE TICKETS FOR PARTS OF THE JOURNEY ALREADY MADE AND IF RELEVANT RETURN FLIGHT TO THE FIRST POINT OF DEPARTURE
  - (D) FOR PACKAGE TOUR PASSENGERS THE VALUE OF REIMBURSEMENT WILL HAVE TO BE ASSIGNED TO UNUSED FLIGHT COUPON(S)
- (3) DOWNGRADING OF PASSENGERS  
IN CASE OF INVOLUNTARY DOWNGRADING TO A LOWER CLASS OF SERVICE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING REIMBURSEMENT WITHIN 7 DAYS
  - (A) 30 PERCENT OF THE TICKET PRICE FOR TRIPS LESS THAN 1,500 KM
  - (B) 50 PERCENT OF THE TICKET PRICE FOR TRIPS BETWEEN 1,500 AND 3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM
  - (C) 75 PERCENT OF THE TICKET PRICE FOR ALL OTHER TRIPS MORE THAN 3,500 KM

NOTE:

IN ALL CASES THE RELEVANT DISTANCE IS UNDERSTOOD TO BE THE SECTOR ON WHICH THE PASSENGER IS DOWNGRADED. THE TICKET PRICE IS UNDERSTOOD TO BE THE ONEWAY COUPON VALUE FOR THE SECTOR ON WHICH THE PASSENGER IS

- DOWNGRADED.
- (D) BOARDING PRIORITY  
PASSENGERS HOLDING CONFIRMED RESERVATIONS WILL BE  
BOARDED BEFORE:
- (1) ANY PASSENGERS NOT HOLDING CONFIRMED RESERVATIONS.
  - (2) ANY WHO ARE NOT ENTITLED TO CONFIRMED  
RESERVATIONS.
- PASSENGERS HOLDING CONFIRMED RESERVATIONS AND A VALID  
TICKET FOR THE FLIGHT IN QUESTION WILL BE BOARDED IN  
THE SEQUENCE IN WHICH THEY HAVE PRESENTED THEMSELVES  
FOR CHECK-IN.
- EXCEPTIONS:
- THE FOLLOWING PASSENGERS CANNOT BE LEFT BEHIND:
- LUFTHANSA CREW MEMBERS TRAVELLING WITH CONFIRMED  
RESERVATIONS
  - LUFTHANSA EMPLOYEES ON DUTY TRAVEL HOLDING CONFIRMED  
RESERVATIONS
  - SICK AND/OR HANDICAPPED PASSENGERS
  - UNACCOMPANIED CHILDREN (12 YEARS AND UNDER)
  - HEADS OF STATE AND OTHER LEADING STATESMEN, OFFICIAL  
GOVERNMENT DELEGATIONS, DIPLOMATIC COURIERS
  - HARDSHIP CASES AS DETERMINED BY THE MANAGER ON DUTY

AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0090

-----  
TITLE/APPLICATION - 70

REFUNDS

(A) GENERAL

- (1) IN CASE OF REFUND, WHETHER DUE TO FAILURE OF  
CARRIER TO PROVIDE THE ACCOMMODATION CALLED FOR BY  
THE TICKET, OR TO VOLUNTARY CHANGE OF ARRANGEMENTS  
BY THE PASSENGER, THE CONDITIONS AND AMOUNT OF  
REFUND WILL BE GOVERNED BY CARRIER'S TARIFFS.
- (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (F) OF  
THIS RULE, REFUND BY CARRIER FOR AN UNUSED TICKET  
OR PORTION THEREOF OR MISCELLANEOUS CHARGES ORDER  
WILL BE MADE TO THE PERSON NAMED AS THE PASSENGER  
IN SUCH TICKET OR MISCELLANEOUS CHARGES ORDER  
UNLESS AT THE TIME OF PURCHASE THE PURCHASER  
DESIGNATES ON THE TICKET OR MISCELLANEOUS CHARGES  
ORDER ANOTHER PERSON TO WHOM REFUND SHALL BE MADE  
IN WHICH EVENT REFUND WILL BE MADE TO PERSONS SO  
DESIGNATED, AND ONLY UPON DELIVERY OF THE  
PASSENGER COUPON AND ALL UNUSED FLIGHT COUPONS OF  
THE TICKET OF MISCELLANEOUS CHARGES ORDER. A  
REFUND MADE IN ACCORDANCE WITH THIS PROCEDURE TO A  
PERSON REPRESENTING HIM AS THE PERSON NAMED OR  
DESIGNATED IN THE TICKET OR MISCELLANEOUS CHARGES  
ORDER WILL BE CONSIDERED A VALID REFUND AND  
CARRIER WILL NOT BE LIABLE TO THE TRUE PASSENGER  
FOR ANOTHER REFUND.

EXCEPTION 1: REFUND IN ACCORDANCE WITH PARAGRAPH  
(E) BELOW OF TICKETS FOR  
TRANSPORTATION WHICH HAVE BEEN  
ISSUED AGAINST A CREDIT CARD WILL

---

**AFFIDAVIT OF RAYMOND PAUL NAWROT**

(SWORN: *28 February*, 2013)

---

**Louis Béliveau, LL.B.**

Barrister & Solicitor

530 – 65 Queen Street West

Toronto, ON M5H 2M5

Telephone: (416) 368 7975

Email: lbeliveau@loogol.ca

Counsel for the Nawrot family

**AFFIDAVIT OF RAYMOND PAUL NAWROT**

(Sworn: *28 February*, 2013)

I, **RAYMOND PAUL NAWROT**, of the City of Toronto, in the Province of Ontario,  
MAKE AN OATH AND SAY THAT:

1. On or around January 26, 2012, I purchased the following itinerary on Sunwing Airlines for myself and my daughters Kristina Marie Nawrot and Karolyn Theresa Nawrot.

<b>Flight</b>	<b>Date</b>	<b>Depart</b>	<b>Arrive</b>
WG 200	Jul. 29, 2012	Toronto (YYZ) 11:00 pm	London Gatwick (LGW) 11:20 am (+1)
WG 201	Aug. 10, 2012	London Gatwick (LGW) 12:20 pm	Toronto (YYZ) 3:35 pm

A copy of the electronic ticket is attached and marked as Exhibit "A".

2. Our outbound journey was relatively eventless, with only a minor delay of the departure time.

3. On August 9, 2012, I received three email messages from Sunwing Airlines informing me about a "change" to the "flight schedule" of Flight WG 201, copies of which are attached as Exhibit "B", Exhibit "C", and Exhibit "D", stating that:

- (a) "10-Aug-2012 WG201 departing from London - Gatwick at 23:25 will arrive in Toronto - Pearson at 15:35."
- (b) "10-Aug-2012 WG201 departing from London - Gatwick at 00:55 will arrive in Toronto - Pearson at 15:35."
- (c) "10-Aug-2012 WG201 departing from London - Gatwick at 01:45 will arrive in Toronto - Pearson at 15:35."

The same emails also stated that "This does not require any action on your part."

4. After reading the first of these emails (Exhibit B), the inconsistency between the departure and the arrival times prompted me to attempt to verify the information contained in these emails. Since Sunwing Airlines' customer service department was closed at this point, I asked Ms. Sally Turner, a friend in Toronto, to inquire on my behalf. Ms. Turner advised me and I do verily believe that she was able to reach Sunwing Airlines' Sales Department, and was told that Flight WG 201 on August 10, 2012 would be delayed by 12 hours.

5. On August 10, 2012, I received a fourth email message from Sunwing Airlines informing me about a "change" to the "flight schedule" of Flight WG 201, a copy of which is attached as Exhibit "E", stating that:

- (d) "10-Aug-2012 WG201 departing from London - Gatwick at 02:25 will arrive in Toronto - Pearson at 05:40."

This email also stated that "This does not require any action on your part."

6. Due to the 14 hour delay in the departure of Flight WG 201, my daughters and I stayed at the Holiday Inn Express in North Acton during the day of August 10, 2012, and incurred expenses as a result. A copy of the receipt is attached and marked as Exhibit "F".

7. On August 10, 2012, my daughters and I departed from the Holiday Inn Express in North Acton to London Gatwick Airport between 10:00 pm and 11:00 pm in the evening. We first travelled by the Underground, and then by a train. A copy of my credit card statement, showing the purchase of train tickets on August 10, 2012, is attached and marked as Exhibit "G".

8. The train ride to the airport lasted approximately 50 minutes, and my daughters and I arrived at the London Gatwick Airport on August 11, 2012 shortly after 1:00 am.



9. My daughters and I arrived at the check-in area at the London Gatwick Airport (North Terminal) at approximately 1:10 am, and found all check-in counters to be closed, unattended, with the lights dimmed. A woman who appeared to be a flight attendant for another airline helped me to make a telephone call to an airport staff. The airport staff at the other end of the line said that she would have to ask the captain of our flight whether my family could board, and subsequently told me that the captain refused to allow us to board the aircraft. I asked to speak to a supervisor.

10. Shortly after the aforementioned phone call, a supervisor appeared at the check-in counters. I repeatedly asked the supervisor to allow my family to check in and board Flight WG 201, and the supervisor refused. The supervisor stated that we were supposed to check in 3 hours before the departure time of the flight. The supervisor also advised me that no representatives of Sunwing Airlines were present at the airport at that time.

11. As I was talking to the supervisor, a passenger who said he had arrived on Sunwing Airlines' flight from Toronto and was upset about the delay of his flight also attended the check-in area, and another person, who later on introduced himself as Mr. Asif Tourab, also witnessed my exchange with the supervisor.

12. After the supervisor had spoken to the passenger from Toronto who was upset about his delay, I made another attempt to convince the supervisor to allow my family to check in and board Flight WG 201; however, the supervisor turned around and left. As the supervisor left, a janitorial staff who had observed the incident called me over, told me that Sunwing Airlines had closed their check-in counters much earlier, and that in his experience, the plane would remain at the gate for at least another 45 minutes.

13. My family left the airport terminal shortly after 1:45 am, and headed to the London Gatwick's Sofitel hotel on foot. It took us approximately 10 minutes to get to the hotel.

14. We arrived at the London Gatwick's Sofitel at approximately 2:00 am. A copy of the slip showing that my credit card was pre-authorized at the London Gatwick's Sofitel at 2:05 am on August 11, 2012 is attached and marked as Exhibit "H".

15. On August 11, 2012 at or around 6:45 am in the morning, I returned to the terminal of London Gatwick Airport, visited Sunwing Airlines' service counter there, and requested assistance that my family to be transported back to Toronto as soon as possible. I was informed that my daughters and I would not be able to leave on Sunwing Airlines' next flight, which would depart on the same day at 8:15 pm.

16. A copy of my email of August 11, 2012 to Sunwing Airlines, advising that my family was stranded in London and requesting assistance to be transported back to Toronto, is attached and marked as Exhibit "I".

17. A copy of Sunwing Airlines' response of August 11, 2012, offering transportation to Toronto six days later than scheduled, on August 16, 2012, is attached and marked as Exhibit "J".

18. I found Sunwing Airlines' proposal to transport my family to Toronto only six days later than scheduled unreasonable and unacceptable, especially since my daughters were due to attend a camp in Canada starting August 12, 2012.

19. The conduct of Sunwing Airlines left me with no choice but to purchase one-way tickets for my daughters and myself on an Air Canada flight departing from London to Toronto on August 12, 2012, a copy of which is attached as Exhibit "K". A copy of our boardingpasses is attached and marked as Exhibit "L".

20. Thus, my daughters and I spent a total of two nights at the London Gatwick's Sofitel hotel. A copy of the receipts from the London Gatwick's Sofitel is attached and marked as Exhibit "M".

21. A copy of Sunwing Airlines' email received on August 13, 2012 is attached and marked as Exhibit "N".

22. A copy of my email of August 13, 2012 to Sunwing Airlines is attached and marked as Exhibit "O".

23. A copy of my letter of complaint to Sunwing Airlines, dated August 27, 2012 (with appendices omitted, to avoid duplication), is attached and marked as Exhibit "P".

24. A copy of Sunwing Airlines' response, dated October 9, 2012, is attached and marked as Exhibit "Q".

25. A copy of my second letter of complaint to Sunwing Airlines, dated October 19, 2012, is attached and marked as Exhibit "R".

26. A copy of the email of Ms. Joanne Dhue, National Director of Customer Relations of Sunwing Airlines, dated November 9, 2012, is attached and marked as Exhibit "S".

27. A copy of my follow-up email to Ms. Dhue, dated November 26, 2012, is attached and marked as Exhibit "T".

28. A copy of the email of Ms. Dhue, dated November 26, 2012, is attached and marked as Exhibit "U".

29. On November 26, 2012, I spoke to Ms. Dhue on the telephone, but it did not lead to a resolution of my complaint. A copy of my letter of complaint sent to Mr. Mark Williams, the president of Sunwing Airlines, dated December 3, 2012, is attached and marked Exhibit "V".

30. A copy of Mr. Williams' response, dated January 3, 2013, is attached and marked as Exhibit "W".

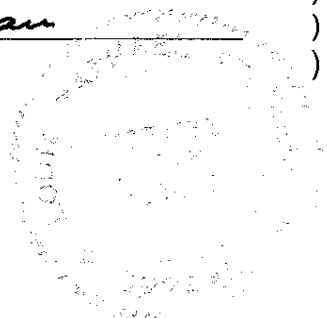
31. A copy of my reply to Mr. Williams, dated January 21, 2013, is attached and marked as Exhibit "X".

32. In light of Sunwing Airlines' failure to address my complaint and compensate me for my out-of-pocket expenses, I had no choice but to retain legal counsel, Mr. Louis Béliveau.

33. Mr. Béliveau advised me and I do verily believe that on February 11, 2013 he sent a letter of complaint on my behalf to Mr. Williams. A copy of the letter is attached and marked as Exhibit "Y".

34. Mr. Béliveau advised me and I do verily believe that he received from the Canadian Transportation Agency a copy of Sunwing Airlines' "Destinations QCM" report for flight WG 201 on August 10, 2012, a copy of which is attached and marked as Exhibit "Z".

SWORN BEFORE me at the )  
City of Toronto )  
in the Province of Ontario )  
this 28<sup>th</sup> day of February , 2013. )  
L. Béliveau )  
Notary Public )



Raymond Paul Nawrot  
RAYMOND PAUL NAWROT

**LIST OF EXHIBITS**

- A. Sunwing eDocument Booking Confirmation and Itinerary
- B. Email notification from Sunwing Airlines about Flight WG 201 departing at 23:25 (with Internet header)
- C. Email notification from Sunwing Airlines about Flight WG 201 departing at 00:55 (with Internet header)
- D. Email notification from Sunwing Airlines about Flight WG 201 departing at 01:45 (with Internet header)
- E. Email notification from Sunwing Airlines about Flight WG 201 departing at 02:25 (with Internet header)
- F. Receipt from the Holiday Inn Express in North Acton
- G. Credit card statement (page 4), dated August 27, 2012
- H. Pre-authorization slip from the London Gatwick's Sofitel, dated August 11, 2012 at 2:05 am
- I. Email sent to Sunwing Airlines on August 11, 2012
- J. Email received from Sunwing Airlines on August 11, 2012, offering transportation on August 16, 2012
- K. Receipt for three one-way London-Toronto Air Canada tickets, booked on August 11, 2012
- L. Three London-Toronto boardingpasses for flight AC 863 on August 12, 2012
- M. Receipts from the London Gatwick's Sofitel
- N. Email received from Sunwing Airlines on August 13, 2012
- O. Email sent to Sunwing Airlines on August 13, 2012
- P. Letter of complaint sent to Sunwing Airlines, dated August 27, 2012
- Q. Response of Sunwing Airlines, dated October 9, 2012
- R. Letter of complaint sent to Sunwing Airlines, dated October 19, 2012
- S. Email received from Ms. Joanne Dhue of Sunwing Airlines on November 9, 2012

- T. Follow-up email sent to Ms. Due on November 26, 2012
- U. Email received from Ms. Dhue of Sunwing Airlines on November 26, 2012
- V. Letter of complaint to Mr. Mark Williams, president of Sunwing Airlines, dated December 3, 2012
- W. Response of Mr. Williams, dated January 3, 2013
- X. Reply to Mr. Williams, dated January 21, 2013
- Y. Complaint sent by Mr. Béliveau to Mr. Williams, dated February 11, 2012
- Z. "Destinations QCM" report for flight WG 201 on August 10, 2012

This is **Exhibit "A"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this *28<sup>th</sup>* day of *February*, 2013.

*J. Beliveau*

---

Notary Public



## Sunwing eDocument Booking Confirmation and Itinerary

**IMPORTANT PASSENGER INFORMATION:** This document along with proper valid identification **MUST** be presented at Airline check-in counter for **ALL FLIGHTS**.

**Booking Number: 58187993**  
**Issued Date: 14FEB2013 9:23 AM**  
**Departure Date: 29JUL2012**

**Agency Information:**  
Number: 4166203380  
Agent: SIREV  
SUNWING.CA  
27 FASKEN DRIVE  
TORONTO, ON

### Flight Itinerary

#### Flight #1: SUNWING AIRLINES 200 on 29JUL2012

**Departs: TORONTO (YYZ) at 11:00 PM from terminal 1**  
**Arrives: LONDON GATWICK (LGW) at 11:20 AM**

✈ **MR RAYMOND PAUL NAWROT** Birth date: 04OCT1959 Seat: 15A  
✈ **MISS KRISTINA MARIE NAWROT** Birth date: 17DEC1995 Seat: 15C  
✈ **MISS KAROLYN THERESA NAWROT** Birth date: 28JUN1997 Seat: 15D

**Airport Information for TORONTO on SUNWING AIRLINES:**  
Recorded flight arrival and departure information: 1-877-978-6946

**Baggage Allowance:**  
Allowable total weight per person is 25KG  
Allowable number of items per person is 2

#### Flight #2: SUNWING AIRLINES 201 on 10AUG2012

**Departs: LONDON GATWICK (LGW) at 12:20 PM from terminal NORTH**  
**Arrives: TORONTO (YYZ) at 3:35 PM**

✈ **MR RAYMOND PAUL NAWROT** Birth date: 04OCT1959 Seat: 16D  
✈ **MISS KRISTINA MARIE NAWROT** Birth date: 17DEC1995 Seat: 16C  
✈ **MISS KAROLYN THERESA NAWROT** Birth date: 28JUN1997 Seat: 16A

**Airport Information for LONDON GATWICK on SUNWING AIRLINES:**  
For flight arrival and departure information please visit  
[www.gatwickairport.com/flights/departures/](http://www.gatwickairport.com/flights/departures/) or dial 00800 7869 9464



**Baggage Allowance:**

Allowable total weight per person is 25KG

Allowable number of items per person is 2

**Important Information****Airline Information Guide****TRAVEL DOCUMENTATION**

It is your responsibility to determine what documentation is required for travel to your destination and for your return to Canada. Sunwing Vacations will assume no responsibility whatsoever for passenger(s) denied carriage by the airline or refused entry into any country. Sunwing Vacations strongly recommends that you carry a valid passport when travelling outside of Canada. Please note that several countries now require that your passport be valid for up to six months after the completion of your travel in order to be accepted by them as a valid travel document. If your passport is damaged in any way, you may be denied boarding and you will be responsible for all costs associated with a new passport and a replacement holiday.

**AIRPORT CHECK-IN**

It is strongly recommended that all passengers arrive 4 hours prior to departure to allow check-in and to ensure adequate time to pass through airport security. For all airports within Canada and overseas, the check-in desk will be open 4 hours prior to departure and close 1 hour prior to departure. All passengers arriving after the check-in desk closes will be denied boarding. Remember to check your flight itinerary for your departure airport / terminal and reconfirm your flight(s).

**RECONFIRMATION NUMBERS**

For both "packaged tours" and "air only" passengers, flight schedules are subject to change with or without notice. As a result, you MUST reconfirm your flight time(s) 12 HOURS prior to your departure and return flights. Air only passengers please provide your Travel Agent with your destination contact telephone number prior to your departure. This will allow us to contact you with any flight changes however, it is still your responsibility to reconfirm your flight time 12 HOURS prior to departure.

**FLIGHT INFO**

For additional flight information such as: check-in, baggage allowance, pets, in-flight services, pregnancy, children and infants and special needs, please visit the airline website.

If you miss your first flight shown on this ticket, you must contact our office at 1.800.668.4224 or 416.620.5999 immediately to avoid cancellation of remaining flights on your ticket. No refund will be issued for unused services.

**TRAVEL TIPS**

Based upon your arrival it is possible that your room may not be ready when you arrive at the hotel. Your hotel voucher will indicate both your check in and checkout dates and times. If your room is not ready upon your arrival, you will be able to enjoy many facilities at your resort, such as the lobby, bar, restaurants or pool. Therefore, pack your bathing suit and shorts in your carry-on bag so that you can enjoy the facilities until your room is ready. If the hotel's checkout time differs than your return flight time, you will be required to check out of your room as indicated on your hotel voucher. Please note that many hotels will offer hospitality areas for passengers however this arrangement is solely at the discretion of the hotel.

**PREBOOKED SEAT SELECTION**

Seat Selection is available at a nominal fee and may be reserved up to 4 HOURS prior to departure. Talk to your Travel Agent or call Sunwing 1.800.668.4224 or 416.620.5999 / Signature 1.800.268.7063 or 905.602.0893 during opening hours. For your convenience, seat selection is also available to be booked on-line at [www.sunwing.ca](http://www.sunwing.ca) / [www.signature.ca](http://www.signature.ca)

**BAGGAGE****Carry-on Baggage**

In accordance with the Transport Canada Carry-on Baggage Program, each customer is permitted only one piece in the cabin and this may be no larger than 9" x 16" x 20" or 23cm x 40cm x 51cm and weigh no more than 5kgs or 11lbs total. Baggage in excess of these specified amounts will be charged at the applicable airline rate per kg for each direction. Bags that are excessively heavy may need to be checked. Please note that due to mandatory passenger security screening or secondary passenger security screening, passengers may not be permitted to carry liquids, lotions or gels purchased as duty free items onboard as carry-on baggage.

**Dangerous goods**

Please note that Sunwing Airlines does not accept the carriage of dangerous goods or live animals.

**Infants**

There is no baggage allowance for infants.

**TERMS AND CONDITIONS**

The complete Terms and Conditions for your holiday can be found online at Sunwing [www.sunwing.ca](http://www.sunwing.ca) / Signature [www.signaturevacations.com](http://www.signaturevacations.com). Please remember that it is your responsibility to read these important terms before travelling.

## Advice to International Passengers on Limitation of Liability

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provision of a treaty known as the Warsaw Convention may be applicable to the entire journey, including any portion entirely within the Country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of certain carriers, parties to such special contracts, for death of, or personal injury to, passengers is limited in most cases to proven damages not to exceed U.S. \$75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the carrier. The limit of liability of U.S. \$75,000 above is inclusive of legal fees and costs except that in the case of a claim brought in a country where provision is made for separate award of legal fees and cost, the limit shall be the sum of U.S. \$58,000 exclusive of legal fees and costs.

For such passengers travelling by carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately U.S. \$10,000 or U.S. \$20,000. The names of carriers, parties to such special contracts, are available at all ticket offices of such carriers and may be examined on request. Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information, please consult your airline or insurance company representative. NOTE: The limit of liability of U.S. \$75,000 above is inclusive of legal fees and costs except that in the case of a claim brought in State where provision is made for separate award of legal fees and costs, the limit shall be the sum of U.S. \$58,000 exclusive of legal fees and costs.

**NOTE OF BAGGAGE LIABILITY LIMITATIONS**

Liability for loss, delay or damage to baggage is limited unless a higher value is declared in advance and additional charges are paid. For most international travel (including domestic portions of international journeys) the liability limit is approximately U.S. \$9.07 per pound (U.S. \$20.00 per kilo) for checked baggage and U.S. \$400 per passenger for unchecked baggage.

For travel wholly between U.S. points, Federal rules require any limit on an airline's baggage liability to be at least U.S. \$1,250 per passenger. Excess valuation may not be declared on certain types of articles. Some carriers assume no liability for fragile, valuable or perishable articles. Further information may be obtained from the carrier.

**NOTICE**

If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs, and in most cases limits the liability of carriers for death or personal injury and in respect of loss of, or damage to, baggage. See also notices headed "Advice to the International Passengers of Limitation of Liability" and "Notice of Baggage Liability Limitations".

**CONDITIONS OF CONTRACT**

1. As used in this contract "ticket" means this passenger ticket and baggage checked, of which these conditions and the notices form part; "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry, or undertake to carry the passenger or his baggage hereunder or perform any other services incidental to such air carriage; "WARSAW CONVENTION" means the Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.
2. Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not "international carriage" as defined by that Convention.
3. To the extent not in conflict with the foregoing, carriage and other services performed by each carrier are subject to (I) provisions contained in this ticket, (II) applicable tariffs, (III) carriers conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.
4. Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables, carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket, the agreed stopping places are those places set forth in this ticket or as shown in the carrier's timetables as scheduled stopping places on the passenger's route; carriage to be performed hereunder by several successive carriers regarded as a single operation.
5. An air carrier issuing a ticket for carriage over the lines of another air carrier does so only as its agent.
6. An exclusion or limitation of liability of carrier shall apply to, and be for, the benefit of agents, servants, and representatives of carrier and any

person whose aircraft is used by carrier for carriage and its agents, servants and representatives.

7. Checked baggage will be delivered to bearer of the baggage check. In case of damage to baggage moving in international transportation, complaint must be made in writing to carrier forthwith after discovery of damage and, at the latest, within 7 days from receipt, in case of delay, complaint must be made within 21 days from date the baggage was delivered. See tariffs or conditions of carriage regarding non-international transportation.

8. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid.

9. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown in timetable or elsewhere are not guaranteed and form no part of this contract. Carrier may, without notice, substitute alternative carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice, Carrier assumes no responsibility for making connections.

10. Passengers shall comply with Government travel requirements, present exit, entry or other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.

11. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

12. Certain Governments impose operational restrictions on charter flights. This means that you may be required to travel both ways with the same party regardless of how many trips your group has booked. The carrier may not be able to entertain requests for changes on return flights and in such case cannot be held responsible for passengers who either miss a return flight or wish to return earlier than planned for any reason whatsoever.

CARRIER RESERVES THE RIGHT TO REFUSE CARRIAGE TO ANY PERSON WHO HAS ACQUIRED A TICKET IN VIOLATION OF APPLICABLE LAW OR CARRIER'S TARIFFS, RULES OR REGULATIONS. SOLD SUBJECT TO TARIFF REGULATIONS.

## Excess Baggage Fees

~~When traveling on Sunwing, the size and number of bags you may check is limited by the free baggage allowance. If your baggage exceeds this free allowance, you will be charged an excess baggage fee as follows:~~

### Baggage and Irregular Items Limitations and Charges

Category	Domestic/Trans-border	International	International (Europe)
Excess Baggage Charge	\$10 per kg Excess charges apply if 20kg (30kg for Elite Plus) weight limit is exceeded	\$20 per kg Excess charges apply if 20kg (30kg for Elite Plus) weight limit is exceeded	\$20 per kg Excess charges apply if 25kg weight limit is exceeded
<b>Sports Equipment</b>			
<b>Golf Clubs</b>			
(Maximum Weight 20 kg) Limited to a regular sized golf bag consisting of: 14 clubs 12 golf balls 1 pair of shoes	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded
<b>Bicycles</b>			
(Maximum weight 20 kg) 1 bicycle per person, not including related equipment such as helmets, pads, spare tires, etc	\$ 30.00 flat rate at Canadian gateway. No charge on return. Excess charges apply if 20 kg weight limit is exceeded	\$ 30.00 flat rate at Canadian gateway. No charge on return. Excess charges apply if 20 kg weight limit is exceeded	\$ 30.00 flat rate at Canadian gateway. No charge on return. Excess charges apply if 20 kg weight limit is exceeded
<b>Scuba</b>			
(Maximum weight 20kg) Limited to scuba equipment only, i.e. mask, weight belt, fins.	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded	<b>Free</b> Excess charges apply if 20 kg weight limit is exceeded
<b>Skis</b>			
	No handling charge. Excess charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	No handling charge. Excess charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	No handling charge. Excess charges apply if 25 kg weight limit is exceeded
<b>Oversized Sports Equipment</b> (kayaks, windsurfers, surfboards)			
	\$100.00 flat rate per item, each way.	\$100.00 flat rate per item each way to be collected for all legs of the flight, at the point of origin (total	\$100.00 flat rate per item each way to be collected for all legs of the flight, at the point of origin (total

<b>1 Kayak</b> , not including separate equipment such as helmets, paddles, life preservers etc.		\$200.00)	\$200.00)
<b>Surfboards</b> may not be more than 12 feet long.			
<b>Windsurf</b> equipment to consist of 1 windsurf board 1 mast boom and/or sail			
<b>Musical instruments</b> which exceed carry-on dimensions of 9"x16"x20" and/or weight limitation of 10 kg	No handling charge. Excess charges apply if 20kg (30kg for Elite Plus) weight limit is exceeded	No handling charge. Excess charges apply if 20kg (30kg for Elite Plus) weight limit is exceeded	No handling charge. Excess charges apply if 25kg weight limit is exceeded
<b>Baby/infant Accessories</b> (stroller, car seat, playpen)	<b>One item per infant free</b> No free allowance is permitted for children under 2 years of age with no paid seat. For infants with paid seats Excess weight charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	<b>One item per infant free</b> No free allowance is permitted for children under 2 years of age with no paid seat. For infants with paid seats Excess weight charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	<b>One item per infant free</b> No free allowance is permitted for children under 2 years of age with no paid seat. For infants with paid seats Excess weight charges apply if 25 kg weight limit is exceeded
<b>Hunting Equipment</b> Firearms can only be admitted in cargo and packed in a rigid case with proper identification. Ammunition is forbidden. The firearms case may only contain the firearm	No handling charge Excess charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	No handling charge Excess charges apply if 20 kg (30 kg for Elite Plus) weight limit is exceeded	No handling charge Excess charges apply if 25 kg weight limit is exceeded

Passengers are required to show their receipt as proof of payment for the return sector when round trip charges have been applied at the outbound Canadian gateway.

# SKYPARK

## AIRPORT PARKING

### TORONTO PEARSON AIRPORT'S BEST KEPT SECRET

#### WHY SKYPARK?

- ★ Only 2 minutes from the airport, SKYPARK's 2 locations provide the most convenient airport parking.
- ★ Free, frequent shuttle service to all terminals 24 hours a day, 7 days a week.
- ★ Pick up and drop off from car to airport terminal
- ★ Express check-in and check-out
- ★ All major credit and debit cards accepted.
- ★ Well-lit paved parking lots with 24 hour security.
- ★ A wide variety of car care services available



WWW.SKYPARK.CA

1-800-969-8032

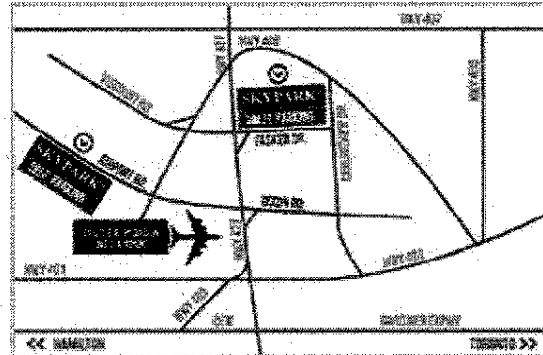
WWW.FACEBOOK.COM/SKYPARKCA



YOUR SKYPARK SAVINGS... YOUR SKYPARK SAVINGS... YOUR SKYPARK SAVINGS... YOUR SKYPARK SAVINGS...

**DAILY SPECIAL**  
**VALET PARKING**  
 FASKEN DRIVE LOCATION  
 EVERY 6TH & 7TH DAY **FREE**

**DAILY SPECIAL**  
**SELF PARKING**  
 AIRPORT ROAD LOCATION  
 EVERY 6TH & 7TH DAY **FREE**



**PARK LONGER AND SAVE MORE**  
 AVAILABLE AT TIME OF CHECK-IN ONLY

**PAY ONLY \$79.60**  
**FREE**  
 UP TO 30 DAYS

**VALET PARKING**  
**60 FASKEN DRIVE**  
 TORONTO, ON M9W 3S5  
 1-800-969-8032

**SELF PARKING**  
**6428 AIRPORT ROAD**  
 MISSISSAUGA ON L4V 1E5  
 1-888-359-0505

**FROM WEST**  
 401E to 427E > East Beaver Cr.  
 Turn right > SKYPARK is first driveway on left.

**FROM NORTH**  
 410 to 434W to 467W or 427E to 404W  
 Left 404W or 427E > Turn left  
 SKYPARK is 2km ahead on left side.

**FROM SOUTH**  
 427E > East Beaver Cr.  
 Turn right > SKYPARK is first driveway on left.

**FROM EAST**  
 402W to 402W > East Beaver Rd.  
 Turn left > SKYPARK is 1km ahead on left side.

**FROM WEST**  
 401E to 427W > East Beaver Rd.  
 Turn left > Turn right > Skypark is 2km ahead on left side.

**FROM NORTH**  
 400 to 427W to 427W or 427E to 400W > East  
 Beaver Rd. > SKYPARK is 1km ahead on left side.

**FROM SOUTH**  
 427W > East Beaver Rd. > Turn left > Skypark is 2km ahead on left side.

**FROM EAST**  
 402W to 402W > East Beaver Rd. > SKYPARK is 2km ahead on left side.

SKYPARK CANNOT BE USED IN CONJUNCTION WITH ANY OTHER DISCOUNTS OR OFFERS.  
 \*Maximum vehicle length 7.0m. This is subject to local laws and regulations.

# Toronto Airport Parking Coupon



## PARKNFLY AIRPORT PARKING

SUN

# \$7<sup>95</sup> DAY

COUPON CODE: 461315

**PLUS - 6<sup>th</sup> & 7<sup>th</sup> Day FREE!**

# \$69<sup>95</sup> WEEK

\$17.95/DAY COUPON CODE: 449633

**SAVE up to \$61<sup>75</sup>**

**4 DAY VALET SPECIAL**

# \$54<sup>95</sup>\*

COUPON CODE: 449637

## Economy

Choose your own spot in our well lit, fenced compounds. Our 24hr shuttle gets you closer to your flight, day or night.

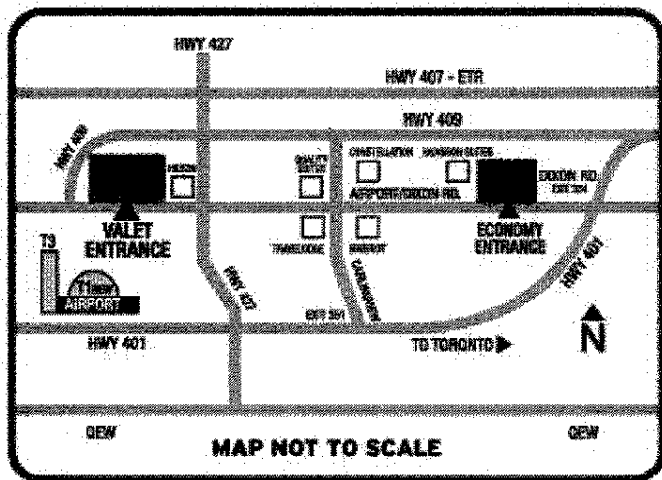
## Valet Drop 'N Go®

Our premium service. Hand us the keys, we do the rest! Dedicated 24hr shuttle departs from Valet every 8 minutes - guaranteed.

**This coupon must be presented at check out to receive this offer.**

**PARKING CONDITIONS:** Charge begins at time of check in and is based on a minimum 24-hour period. One week equals 7 consecutive 24-hour periods. Limit one coupon per parking transaction. Not valid with any other discount or promotion. Parking rates subject to surcharges. All rates and surcharges are subject to applicable taxes. Rates subject to change without notice.

\*Weekend package requires a Saturday night stay. **Expires May 31, 2013.**



## ECONOMY

626 Dixon Road, Etobicoke Tel: 905-677-9143

### DIRECTIONS

- FROM SOUTH: 427 N to Dixon Rd., turn right.
- FROM EAST: 401 W to Dixon Rd., lot on right.
- FROM WEST: 401 E to Dixon Rd., turn left.
- FROM NORTH: 400 S to 401 W to Dixon Rd.

## VALET

5815 Airport Road, Mississauga Tel: 905-677-9143

### DIRECTIONS

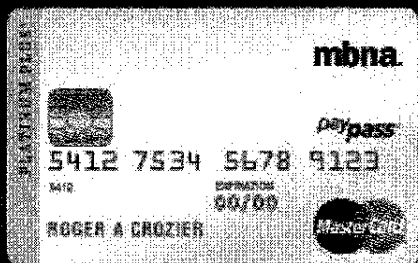
- FROM SOUTH: 427 N to Dixon Rd., turn left.
- FROM EAST: 401 W to 409 W to Airport Rd., turn left.
- FROM WEST: 401 E to 427 N to Dixon Rd., turn left.
- FROM NORTH: 400 S to 401 W to 409 W to Airport Rd., turn left.

[parknfly.ca](http://parknfly.ca)



# TRAVEL NOW. TAKE 10 MONTHS TO PAY.

BE GOOD WITH MONEY.™



The MBNA Platinum Plus® MasterCard® credit card

You've purchased your ticket — why not transfer\* the balance from the credit card you just used to the MBNA Platinum Plus® MasterCard® credit card, and take advantage of a 0%<sup>†</sup> promotional annual interest rate<sup>‡</sup> (AIR) for 10 months?

If, in case you need some extra cash for your trip, you'll also get the same great AIR on access cheques and deposits.

Enjoy these great benefits:

- Around-the-clock fraud protection
- Online access to your credit card account

For more information, visit [www.mbna.ca/sunwing](http://www.mbna.ca/sunwing) or call 1.877.428.6060\*. Please mention priority code CM5M.

**\* The Standard Annual Interest Rates (AIRs) for this product are 17.99% for purchases and 19.99% for Balance Transfers, Cash Advances, Access Cheques and Deposits.**

† By applying to apply for this credit card, you consent to the collection, use and processing of information about yourself by MBNA, its affiliates and any of their respective agents and service providers, and to the sharing of such information with credit reporting agencies, affiliates and service providers. In addition to processing your application and, if approved, administering and servicing your account, "scored" information of this account, if approved, will not be used by any third party other than a third party specifically designated by you, and then only in accordance with MBNA policies and procedures that are in effect.

‡ This promotional rate will only apply to eligible balance transfers, access cheques and deposits that post to your account within 60 days of your account opening. Following the promotional period, the standard annual interest rates for balance transfers, access cheques and deposits will apply to your and then outstanding balances. You will lose the benefit of the promotional rate if your total minimum payments do not reach your total minimum payment due date, or your account balance exceeds your credit limit.

\* As of January 1, 2014.

Information correct as of January 2012, and is subject to change. The Toronto-Dominion Bank is the bank issuer of the credit card. MBNA is a division of The Toronto-Dominion Bank. All trade marks are the property of their respective owners.

MBNA and other trade-marks are the property of The Toronto-Dominion Bank.

AD-01-12-1638-A



**Win Your Next Holiday!**

**Scan this QR code with your smartphone for a chance to win an all inclusive vacation for two. Or you can also visit [www.sunwing.ca](http://www.sunwing.ca) to submit your entry.**



This is **Exhibit "B"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of February, 2013.

*J. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Sunwing Schedule Changes [schedule-changes@sunwing.ca]  
**Sent:** August-09-12 10:27 AM  
**To:** raytech@sympatico.ca  
**Subject:** Flight Schedule Change Notification

**Importance:** High

There has been a change to our flight schedule:

10-Aug-2012 WG201 departing from London - Gatwick at 23:25 will arrive in Toronto - Pearson at 15:35.

This does not require any action on your part.

Based on information at 09-Aug-2012 10:24 AM.

**Note:** We will do everything we can to ensure that notifications are accurate and sent on time, however we cannot be held liable for non-delivery of email messages.

x-store-info:sbevkl2QZR70xo7WID5ZcdV2tiiwGqTnL8LqRHZDp01a6RfqJUB9Bvk56X3BJKAg6cjaVh  
 mE0UEtHLPiBFT8cnf1LZrSPERjUEe8skwDm3KAGvehRwVK6+cJhj4xrCbMETL9MZV6cCY=  
 Authentication-Results: hotmail.com; sender-id=pass (sender IP is 199.26.69.37)  
 header.from=schedule-changes@sunwing.ca; dkim=none header.d=sunwing.ca; x-hmca=pass  
 X-SID-PRA: schedule-changes@sunwing.ca  
 X-SID-Result: Pass  
 X-DKIM-Result: None  
 X-Message-Status: n:0:n  
 X-AUTH-Result: PASS  
 X-Message-Delivery: Vj0xLjE7dXM9MDtsPTA7YT0wo0Q9MTtHRD0x01NDTD0w X-Message-Info:  
 TueCp05BM3qPQaa1wd/nxiB4P62Hsv1Aaqz7Rnv/ObGB9e0Kdwh0td14U18Zv5CwjzEiSZe4DuAqyJsg9OU  
 ono4uZyq8zo7EDCeLj5wxufitfAJhqiH+ZKRI4UNB+Oa4/npZ+XMSJjKtnROEtIAZnZo/VJwcubp  
 Received: from toip42.srvr.bell.ca ([67.69.240.43]) by  
 BAY0-PAMC1-F4.Bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4900);  
 Thu, 9 Aug 2012 07:27:26 -0700  
 X-IronPort-AV: E=Sophos;i="4.77,740,1336363200";  
 d="scan'208,217";a="574002619"  
 Received: from toip15.srvr.bell.ca ([67.69.240.17])  
 by toip42.srvr.bell.ca with ESMTTP; 09 Aug 2012 10:27:17 -0400  
 Received: from rm5.ekkum.com ([199.26.69.37])  
 by toip15.srvr.bell.ca with ESMTTP; 09 Aug 2012 10:27:17 -0400  
 Received: from [206.47.106.107] (hello=mars)  
 by rm5.ekkum.com with esmtp (Exim 4.69 #1 (Debian))  
 id 1SzThh-0004sL-8E  
 for <raytech@sympatico.ca>; Thu, 09 Aug 2012 10:27:13 -0400  
 MIME-Version: 1.0  
 From: "Sunwing Schedule Changes"  
 <schedule-changes@sunwing.ca>  
 To: raytech@sympatico.ca  
 Date: 9 Aug 2012 10:27:13 -0400  
 Subject: Flight Schedule Change Notification  
 Content-Type: text/html; charset=us-ascii  
 Content-Transfer-Encoding: quoted-printable  
 Return-Path: schedule-changes@sunwing.ca  
 Message-ID: <BAY0-PAMC1-F4R4nmE8000a92d2@BAY0-PAMC1-F4.Bay0.hotmail.com>  
 X-OriginalArrivalTime: 09 Aug 2012 14:27:26.0080 (UTC) FILETIME=[1927D000:01CD763B]

This is **Exhibit "C"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Sunwing Schedule Changes [schedule-changes@sunwing.ca]  
**Sent:** August-09-12 11:51 AM  
**To:** raytech@sympatico.ca  
**Subject:** Flight Schedule Change Notification

There has been a change to our flight schedule:

10-Aug-2012 WG201 departing from London - Gatwick at 00:55 will arrive in Toronto - Pearson at 15:35.

This does not require any action on your part.

Based on information at 09-Aug-2012 11:48 AM.

**Note:** We will do everything we can to ensure that notifications are accurate and sent on time, however we cannot be held liable for non-delivery of email messages.

x-store-info:sbevkl2QZR70Xo7WID5ZcdV2tiiwGqTnc8pTkjgSVQYfs3+ce6joAA7if8/k1suZE06Xpq  
 T1dpqeiaA2PIb41LXgCPMnvt5Kjhf6gBJSE/Z5cw598YnV561ir3HkJUkevZzR0ks/fcI=  
 Authentication-Results: hotmail.com; sender-id=pass (sender IP is 199.26.69.37)  
 header.from=schedule-changes@sunwing.ca; dkim=none header.d=sunwing.ca; x-hmca=pass  
 X-SID-PRA: schedule-changes@sunwing.ca  
 X-DKIM-Result: None  
 X-Message-Status: n:0:n  
 X-SID-Result: Pass  
 X-AUTH-Result: PASS  
 X-Message-Delivery: vj0xLjE7dXM9MDtsPTA7YT0wo0Q9MTtHRD0x01NDTD0w X-Message-Info:  
 TueCp05BM3qPQaa1wd/nxkvdhfhSSf4S6f67/SXVJXC3GZaA3H3CK5Or5g6RYf15ABiVL8JfxEUfT3qWKm7  
 idqAqQ+CIW5brZE+ti9Q7BwbDq6fbckpzF2UPqkeT1qJ5BmGZgZTafupV00BB10M+yOCashJumzoC  
 Received: from toip44.srvr.bell.ca ([67.69.240.45]) by  
 BAY0-PAMC2-F9.Bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4900);  
 Thu, 9 Aug 2012 08:51:32 -0700  
 Received: from toip21.srvr.bell.ca ([67.69.240.23])  
 by toip44.srvr.bell.ca with ESMT; 09 Aug 2012 11:51:26 -0400  
 Received: from rm5.ekkum.com ([199.26.69.37])  
 by toip21.srvr.bell.ca with ESMT; 09 Aug 2012 11:51:21 -0400  
 Received: from [206.47.106.107] (helo=mars)  
 by rm5.ekkum.com with esmtp (Exim 4.69 #1 (Debian))  
 id 1szv16-00051G-TO  
 for <raytech@sympatico.ca>; Thu, 09 Aug 2012 11:51:20 -0400  
 MIME-Version: 1.0  
 From: "Sunwing Schedule Changes"  
 <schedule-changes@sunwing.ca>  
 To: raytech@sympatico.ca  
 Date: 9 Aug 2012 11:51:20 -0400  
 Subject: Flight schedule Change Notification  
 Content-Type: text/html; charset=us-ascii  
 Content-Transfer-Encoding: quoted-printable  
 Return-Path: schedule-changes@sunwing.ca  
 Message-ID: <BAY0-PAMC2-F9Y5UNLW000a5057@BAY0-PAMC2-F9.Bay0.hotmail.com>  
 X-OriginalArrivalTime: 09 Aug 2012 15:51:32.0546 (UTC) FILETIME=[D9156A20:01CD7646]

This is **Exhibit "D"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.P. Behrman*

---

Notary Public

**Ray NAWROT**

---

**From:** Sunwing Schedule Changes [schedule-changes@sunwing.ca]  
**Sent:** August-09-12 7:42 PM  
**To:** raytech@sympatico.ca  
**Subject:** Flight Schedule Change Notification

There has been a change to our flight schedule:

10-Aug-2012 WG201 departing from London - Gatwick at 01:45 will arrive in Toronto - Pearson at 15:35.

This does not require any action on your part.

Based on information at 09-Aug-2012 07:39 PM.

**Note:** We will do everything we can to ensure that notifications are accurate and sent on time, however we cannot be held liable for non-delivery of email messages.



x-store-info:sbevkl2QZR70Xo7WID5Zcdv2tiiWgqTnt7zR1YxuDtgt2fXu7kHG6Rbn+/4mqo2LBrs0DK  
 sib1/kwFkdan3bWA/fUb52aAG9iyfez+pYDTCqchdo2pjG7wwiUMSKZP4ix5jsh1CoHYc=  
 Authentication-Results: hotmail.com; sender-id=pass (sender IP is 199.26.69.37)  
 header.from=schedule-changes@sunwing.ca; dkim=none header.d=sunwing.ca; x-hmca=pass  
 X-SID-PRA: schedule-changes@sunwing.ca  
 X-DKIM-Result: None  
 X-Message-Status: n:0:n  
 X-SID-Result: Pass  
 X-AUTH-Result: PASS  
 X-Message-Delivery: vj0xLjE7dXM9MDtsPTE7YT0x00Q9MTtHRD0x01NDTD0w X-Message-Info:  
 TueCp05BM3qPQaa1wd/nxj80tPRbMmOxPpByPvD6RHQnYqPdbcLj8w+wcOCWW4USiok3CB19A6awZDIjUCO  
 5Hna6VJrHv5++oPSguU17DZ1tbYuaL8s9L7Efvnx2Gi36dVzorgUsjOEj09bDmoSdZIF1woioq3E9  
 Received: from toip42.srvr.bell.ca ([67.69.240.43]) by  
 BAY0-PAMC1-F6.Bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4900);  
 Thu, 9 Aug 2012 16:42:23 -0700  
 X-IronPort-AV: E=Sophos;i="4.77,743,1336363200";  
 d="scan'208,217";a="574792069"  
 Received: from toip45.srvr.bell.ca ([67.69.240.46])  
 by toip42.srvr.bell.ca with ESMTTP; 09 Aug 2012 19:42:14 -0400  
 Received: from rm5.ekkum.com ([199.26.69.37])  
 by toip45.srvr.bell.ca with ESMTTP; 09 Aug 2012 19:42:13 -0400  
 Received: from [206.47.106.107] (hello=mars)  
 by rm5.ekkum.com with esmtp (Exim 4.69 #1 (Debian))  
 id 1SzCmM-0005hs-TS  
 for <raytech@sympatico.ca>; Thu, 09 Aug 2012 19:42:12 -0400  
 MIME-Version: 1.0  
 From: "Sunwing Schedule Changes"  
 <schedule-changes@sunwing.ca>  
 To: raytech@sympatico.ca  
 Date: 9 Aug 2012 19:42:12 -0400  
 Subject: Flight Schedule Change Notification  
 Content-Type: text/html; charset=us-ascii  
 Content-Transfer-Encoding: quoted-printable  
 Return-Path: schedule-changes@sunwing.ca  
 Message-ID: <BAY0-PAMC1-F6t1wDFV000ae2a9@BAY0-PAMC1-F6.Bay0.hotmail.com>  
 X-OriginalArrivalTime: 09 Aug 2012 23:42:23.0750 (UTC) FILETIME=[A01D0A60:01CD7688]

This is **Exhibit "E"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of February, 2013.

*J. K. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Sunwing Schedule Changes [schedule-changes@sunwing.ca]  
**Sent:** August-10-12 2:30 PM  
**To:** raytech@sympatico.ca  
**Subject:** Flight Schedule Change Notification

There has been a change to our flight schedule:

10-Aug-2012 WG201 departing from London - Gatwick at 02:25 will arrive in Toronto - Pearson at 05:40.

This does not require any action on your part.

Based on information at 10-Aug-2012 02:27 PM.

**Note:** We will do everything we can to ensure that notifications are accurate and sent on time, however we cannot be held liable for non-delivery of email messages.

x-store-info:sbevkl2QZR70xo7WID5ZcdV2tiiWgqTn6/zfpm8WNia5UmjbcEGg8WT3+zDvdzNsenIrsi  
 ewtv7yafi2YOyKuDEVP7D4K8rpyu04BrHffe8g8kkxhXs/Vpt105u3yZhJVkHEV/12mF0=  
 Authentication-Results: hotmail.com; sender-id=pass (sender IP is 199.26.69.37)  
 header.from=schedule-changes@sunwing.ca; dkim=none header.d=sunwing.ca; x-hmca=pass  
 X-SID-PRA: schedule-changes@sunwing.ca  
 X-DKIM-Result: None  
 X-Message-Status: n:0:n  
 X-SID-Result: Pass  
 X-AUTH-Result: PASS  
 X-Message-Delivery: Vj0xLjE7dXM9MDtsPTE7YT0x00Q9MTtHRD0x01NDTD0w X-Message-Info:  
 TueCp05BM3qPQaa1Wd/nxq2jDVHplpblgaF0ntd+TidR3GQxxBiWS0OCL0HCpZ+OSOFysHb1VB3qB1TGNLf  
 ipnaR8Swfm4ZI6XnyqcbkN+cG9c13L89M/L18fL4FzmkeQra2gRnWT/ypSA0aRKBt6816kzLMZifw  
 Received: from toip27.srvr.bell.ca ([67.69.240.29]) by  
 BAY0-PAMC1-F5.Bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4900);  
 Fri, 10 Aug 2012 11:30:53 -0700  
 Received: from toip15.srvr.bell.ca ([67.69.240.17])  
 by toip27.srvr.bell.ca with ESMTTP; 10 Aug 2012 14:30:49 -0400  
 Received: from unknown (HELO rm5.ekkum.com) ([199.26.69.37])  
 by toip15.srvr.bell.ca with ESMTTP; 10 Aug 2012 14:30:48 -0400  
 Received: from [206.47.106.107] (hello=mars)  
 by rm5.ekkum.com with esmtpp (Exim 4.69 #1 (Debian))  
 id 1SztYX-00079g-Dc  
 for <raytech@sympatico.ca>; Fri, 10 Aug 2012 14:30:21 -0400  
 MIME-Version: 1.0  
 From: "Sunwing Schedule Changes"  
 <schedule-changes@sunwing.ca>  
 To: raytech@sympatico.ca  
 Date: 10 Aug 2012 14:30:21 -0400  
 Subject: Flight Schedule Change Notification  
 Content-Type: text/html; charset=us-ascii  
 Content-Transfer-Encoding: quoted-printable  
 Return-Path: schedule-changes@sunwing.ca  
 Message-ID: <BAY0-PAMC1-F5G88ZxR000b7de4@BAY0-PAMC1-F5.Bay0.hotmail.com>  
 X-OriginalArrivalTime: 10 Aug 2012 18:30:53.0995 (UTC) FILETIME=[46907FB0:01CD7726]

This is **Exhibit "F"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.R. Seline*

---

Notary Public

Ray NAWROT

From: Hotels.com UK [confirmation@mail.hotels.com]  
Sent: August-10-12 3:41 AM  
To: raytech@sympatico.ca  
Subject: Booking confirmation (Hotels.com Confirmation Number 110206904349) - Holiday Inn Express London - Park Royal

[Click here to view this email online](#)  
Don't miss out on great deals - add [info@mail.hotels.com](mailto:info@mail.hotels.com) to your email address book or safe list



Dear Traveller,

**Your reservation is now confirmed and has been paid in full**

Your Hotels.com Confirmation Number is: 110206904349. Thank you for booking with Hotels.com



View or cancel your reservation online



Print this page



Download Hotels.com for mobile



View and print a receipt



Customer Service and FAQs



Book this hotel again

Tell us what you think...

Please take a minute to answer **two questions** to rate your experience booking with Hotels.com

**Take the survey**

**Reservation details**



**Holiday Inn Express London - Park Royal**

★★★★☆ 4.3 from 458 guest ratings

Victoria Road North Acton  
London, W3 6UP  
GB  
44-20-88964460

**Reservation**

**Check-in:** Friday, August 10, 2012  
**Check-out:** Saturday, August 11, 2012  
**Number of nights:** 1 Night(s)  
**Room type:** Standard room, Continental Breakfast, Free Wireless Internet, Breakfast Buffet  
**Number of rooms:** 1 Room(s)

**Room 1 :**

**Guest(s):** ray nawrot  
 1 Adult, 2 Children; Age(s): {15,16}  
**Preferences\*:** Non-Smoking, 1 Bed

\*Please note: Preferences and requests cannot be guaranteed. Special requests are subject to availability upon check-in and may incur additional charges.

**Room charges**

<b>Room 1 :</b>	<b>Standard room</b>	
<b>Number of nights:</b>	1 Night(s)	
<b>Number of guests:</b>	1 Adult, 2 Children; Age(s): {15,16}	
<b>Nightly charges:</b>	Friday, August 10, 2012	<b>£99.00</b>
	Taxes & fees	<b>0.0</b>
	<b>Total</b> (including taxes and fees)	<b>£99.00</b>

**Hotels.com has charged your card for the full payment of this reservation.**

Any additional charges and fees incurred during your stay, will be charged in your hotel's local currency and may be subject to a foreign exchange fee.

**Payment information**

**Billing name** Raymond P Nawrot  
**Card type:** Visa  
**Card number:** XXXX-XXXX-XXXX-5132  
**Billing address:** Raymond P Nawrot  
 12 leland av  
 Toronto  
 Ontario  
 M8Z 2X5  
 Canada

## Additional hotel information

---

If you require further information on this hotel, please contact the hotel directly on 44-20-88964460

Pets not allowed Check-in time starts at 2 PM Check-out time is American Express MasterCard Visa

### Location.

Holiday Inn Express London - Park Royal is a business-friendly hotel located in central London, close to The General Cemetery of All Souls, Portobello Road Market, and Wembley Stadium. Additional points of interest include Wembley Arena and Griffin Park Stadium.

### Hotel Features.

Holiday Inn Express London - Park Royal features a restaurant and a bar/lounge. The hotel serves a complimentary breakfast. This 3-star property has a business center and offers a meeting/conference room. Wireless Internet access (surcharge) is available in public areas. Guest parking is limited, and available on a limited first-come, first-served basis (surcharge). Additional property amenities include laundry facilities, currency exchange, and express check-in.

### Guestrooms.

104 air-conditioned guestrooms at Holiday Inn Express London - Park Royal feature coffee/tea makers and complimentary newspapers. Furnishings include desks and sofa beds. Bathrooms feature hair dryers. Wireless Internet access is complimentary. Guestrooms offer direct-dial phones with voice mail. Televisions have satellite channels and pay movies.

---

## Hotel terms & conditions

Extra-person charges may apply and vary depending on hotel policy. Photo identification and credit card or cash deposit are required at check-in for incidental charges.

---

## Cancellation policy

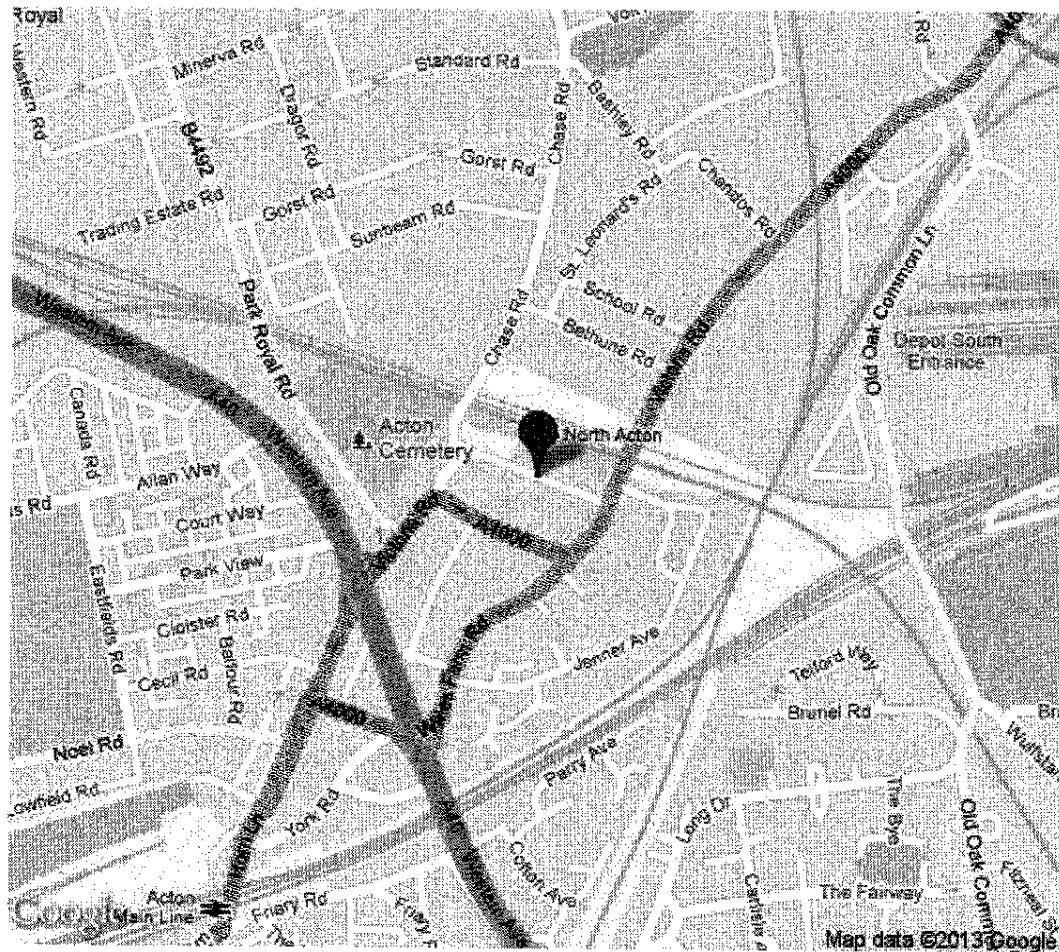
This rate is non-refundable and cannot be changed or cancelled - if you do choose to change or cancel this booking you will not be refunded any of the payment.

[View or cancel your booking online](#)

---

## Map to your hotel





## Directions

The General Cemetery of All Souls - 3 km / 1.9 mi  
 Westfield London Shopping Centre - 3.1 km / 1.9 mi  
 Shepherd's Bush Empire - 3.3 km / 2 mi  
 Ealing Studios - 3.5 km / 2.2 mi  
 Portobello Road Market - 3.8 km / 2.4 mi  
 Wembley Stadium - 4 km / 2.5 mi  
 Wembley Arena - 4.2 km / 2.6 mi  
 Olympia Conference and Exhibition Centre - 4.6 km / 2.9 mi  
 The Tricycle Theatre - 4.7 km / 2.9 mi  
 Griffin Park Stadium - 5 km / 3.1 mi  
 Kew Palace - 5 km / 3.1 mi  
 Kensington Palace - 5.3 km / 3.3 mi  
 Brent Valley Golf Course - 5.6 km / 3.5 mi  
 Kensington Gardens - 5.9 km / 3.7 mi  
 Royal Albert Hall - 6.2 km / 3.8 mi

The closest major airports to Holiday Inn Express London - Park Royal are:

London (LHR-Heathrow) - 14.4 km / 8.9 mi  
 London (LGW-Gatwick) - 41.3 km / 25.7 mi

The preferred airport for Holiday Inn Express London - Park Royal is London (LHR-Heathrow).

Distances are calculated in a straight line from the property's location to the point of interest or airport and may not reflect actual travel distance.

Distances are displayed to the nearest 0.1 mile and kilometre.

Visit [Google Maps](#) for more information on how to get to your hotel

[More information about your hotel](#)

---

## Customer Service

Questions? Check out our [FAQs](#), or call our Customer Service team:

**In United Kingdom:**

020 302 79 500

Please refer to your Hotels.com Confirmation Number 110206904349 when calling.

## Get rewarded for being a customer \_\_\_\_\_

Earn FREE\* nights with  **Welcome Rewards** on your next reservation with Hotels.com [Learn more](#)

Speed up your booking, save your hotels and destinations for easy access, plus much more. Create an account today

---

If you find a lower rate for your hotel stay on another site, let us know and we'll refund the difference to you. [Learn more about our price match guarantee.](#)

Be the first to know about our special offers. Sign up to our newsletter.

[Terms & Conditions](#) | [Privacy](#) | [FAQs](#)

©2002-2012 Hotels.com L.P. All rights reserved. 10440 North Central Expressway, Suite 400, Dallas, Texas 75231 USA. Hotels.com and Hotels.com logo are registered trademarks or trademarks of Hotels.com, L.P. Other product and company names mentioned herein may be the trademarks of their respective owners.

This is **Exhibit "G"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this *28<sup>th</sup>* day of *February*, 2013.

*J. P. Belineau*

---

Notary Public

Your new charges and credits (continued)

Trans Post Description Spend Categories Amount(\$)  
 date date  
 Card number [REDACTED] 5132



Aug 10 Aug 13 Hotels com UK 0871 200 0171 Foreign Currency Transactions 157.99  
 99.00 GBP @ 1.595858586\*\*



Aug 10 Aug 13 NEW SOUTHERN RAILW LDN SW1V 5426 Foreign Currency Transactions 24.26  
 15.20 GBP @ 1.596052632\*\*

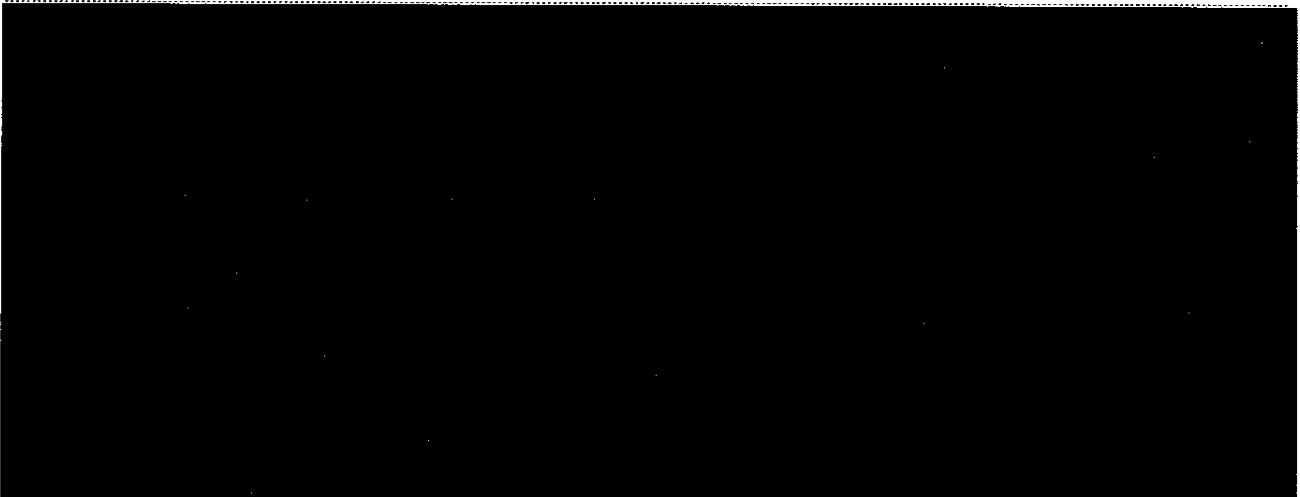


Aug 11 Aug 13 SOFITEL HOTEL GATWICK Hotel, Entertainment and Recreation 234.87

Aug 11 Aug 13 AGENT FEE 8900581902510TORONTO ON Foreign Currency Transactions 3,941.76  
 3,858.93 USD @ 1.021464499\*\*

Aug 12 Aug 13 COA\*AIRLINETAXES&FEES 866-636-9088 NY Foreign Currency Transactions 36.62  
 35.85 USD @ 1.021478382\*\*

Aug 12 Aug 13 S'TELLGW RECEP 0 WEST SUSSEX Foreign Currency Transactions 232.68  
 145.80 GBP @ 1.595884774\*\*



This is **Exhibit "H"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*L. Beliveau*

---

Notary Public

Solihull Landoa Gatwick  
North Terminal -  
Gatwick Airport  
West Sussex RH6 0PH  
01293 567070



MID: 44661693  
TID: 26812711

DATE: 11-08-2012  
TIME: 02:05:23

**PRE-AUTH**

TRANS SEQ: 000007880  
BATCH NUM: 0839  
KEYED

VISA  
EXP DATE: 11/14  
[REDACTED] 5132

PRE AUTH  
LOCAL AMOUNT £200.00  
TRANSACTION CURRENCY AMT  
CAD322.18

INDICATIVE EXCHNG RATE  
1 GBP-CAD 1.6109

**TOTAL**  
CAD322.18

SIGN  
AUTH CODE: 017972

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS

I ACCEPT THAT I HAVE  
BEEN OFFERED A CHOICE  
OF CURRENCIES FOR  
PAYMENT. I ACKNOWLEDGE  
I HAD A CHOICE TO PAY  
IN STERLING. I  
UNDERSTAND THAT THE  
CHOSEN CURRENCY IS  
FINAL CURRENCY  
CONVERSION FOR THIS  
TRANSACTION IS  
PERFORMED BY GLOBAL  
BLUE AND IS BASED ON  
THE ROYAL BANK OF  
SCOTLAND GROUP  
WHOLESALE RATE OF TODAY  
WITH A MARK-UP OF 3.1%.

MERCHANT COPY

This is **Exhibit "I"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.P. Beliveau*

---

Notary Public

## STRANDED IN LONDON GATWICK

From: [raytech@sympatico.ca](mailto:raytech@sympatico.ca)  
Saved: August-11-12 4:21:40 AM  
To: [onlinebookings@sunwing.ca](mailto:onlinebookings@sunwing.ca)

I am here stranded at LGW with my 2 daughters.

I received 4 emails from sunwing indicating departure was delayed..... each notification had the departure later and later with the final notification indicating the departure time being 0225. I arrive at the airport at 0115.

On arrival the checkin counter was all closed..... the plane was at the gate and I was not allowed to board with my 2 young daughters.

The 'supervisor' was not cooperative at all and I was in shock when I was not allowed to board.

I did provide sunwing with my cell number as per a request I received with was meant to notify me of any schedule changes.

So the flight was 13 hours late, the departure time was changed 4 times and now I am stuck here at Gatwick airport, there was another gentleman who was denied boarding as well.

I might also add, that the sunwing and gatwick airports website did not have any updated information... it was not updated. There was so much confusion that after trying to find out what the status of the flight was, I ended up having a friend in Toronto contact sunwing to find out what was going on. My friend eventually got through to a live person 35 minutes later and the contact at sunwing had admitted there were problems with what the status of the flight and what th sunwing website had reflected.

Please, I am stuck here with my 2 young daughters and understand there is another flight departing LGW today around 8pm London time.

This whole situation was clearly not the fault of myself but rather all the different departure times and inconsistencies with the sunwing, and LGW departure information.

I would also like to add that the people working for you her in London were uite uncooperative and almost hostile.... all I want is to go home.

Can I get on the flight wg201 which departs LGW at 2015 with my 2 daughters?

I can be reached on my cell phone ( the one you have on file ) at 416-356-1703.

In all there are 4 of us denied boarding the flight to Toronto although the latest email I received indicated a 0225 departure and we arrive just shortly after 0100.

Please help us out.

Regards,  
Raymond Nawrot



This is **Exhibit "J"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*L. Beliveau*

---

Notary Public

**RE: STRANDED IN LONDON GATWICK**

From: **Online Bookings** (OnlineBookings@sunwing.ca)  
Sent: August-11-12 9:52:20 AM  
To: 'Raymond Nawrot' (raytech@sympatico.ca)

Good morning, I have received your email and am reviewing flight options with our staff in Toronto. Our next flight with over 2 seats available is WG259 departing August 16<sup>th</sup> departing London at 3:20pm, please advise if this schedule is sufficient.

Online Bookings

---

**From:** Raymond Nawrot [mailto:raytech@sympatico.ca]  
**Sent:** August 11, 2012 4:21 AM  
**To:** Online Bookings  
**Subject:** STRANDED IN LONDON GATWICK

I am here stranded at LGW with my 2 daughters.

I received 4 emails from sunwing indicating departure was delayed..... each notification had the departure later and later with the final notification indicating the departure time being 0225. I arrive at the airport at 0115.

On arrival the checkin counter was all closed..... the plane was at the gate and I was not allowed to board with my 2 young daughters.

The 'supervisor' was not cooperative at all and I was in shock when I was not allowed to board.

I did provide sunwing with my cell number as per a request I received which was meant to notify me of any schedule changes.

So the flight was 13 hours late, the departure time was changed 4 times and now I am stuck here at Gatwick airport, there was another gentleman who was denied boarding as well.

I might also add, that the sunwing and gatwick airports website did not have any updated information... it was not updated. There was so much confusion that after trying to find out what the status of the flight was, I ended up having a friend in Toronto contact sunwing to find out what was going on. My friend eventually got through to a live person 35 minutes later and the contact at sunwing had admitted there were problems with what the status of the flight and what the sunwing website had reflected.

Please, I am stuck here with my 2 young daughters and understand there is another flight departing

LGW today around 8pm London time.

This whole situation was clearly not the fault of myself but rather all the different departure times and inconsistencies with the sunwing, and LGW departure information.

I would also like to add that the people working for you her in London were uite uncooperative and almost hostile.... all I want is to go home.

Can I get on the flight wg201 which departs LGW at 2015 with my 2 daughters?

I can be reached on my cell phone ( the one you have on file ) at 416-356-1703.

In all there are 4 of us denied boarding the flight to Toronto although the latest email I received indicated a 0225 depature and we arrive just shortly after 0100.

Please help us out.




Regards,  
Raymond Nawrot

This is **Exhibit "K"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. Beliveau*

---

Notary Public

<b>Booking Status</b>			
<p><b>Flight Booking Status:</b> This reservation has been confirmed and the ticket numbers for this itinerary has been emailed. Thank you for booking with CheapOair.com</p>			
<b>Customer Information</b>			
Traveler : <b>Raymond P Nawrot</b>	Booking Number : <b>12744447</b>	Phone : <b>416-233-8406</b>	
Email : <b>ray.nawrot@gmail.com</b>	Booked On : <b>Sat, Aug 11, 2012</b>		
<b>Trip Summary</b>			
<p><b>For any changes to the itinerary call us 24/7 Toll Free: 800-525-0400</b></p>			
<b>Flight Summary</b>			
<p><b>From:</b> London Heathrow, GB (LHR)</p>	<p><b>Depart:</b> Sun, Aug 12, 2012 <b>11:05 am - 02:05 pm (Nonstop)</b></p>	<p><b>Airline Confirmation:</b> Air Canada : LZ8UNR</p>	
<p><b>To:</b> Toronto Intl, ON , CA (YYZ)</p>			
<b>Traveler Name</b>	<b>Ticket Number</b>	<b>Meal Preference</b>	<b>Special Request</b>
<b>Nawrot, Raymond P (Adult)</b>	0147103700907 E-Ticket	Any meal	—
<b>Nawrot, Kristina P (Adult)</b>	0147103700908 E-Ticket	Any meal	—
<b>Nawrot, Karolyn P (Adult)</b>	0147103700909 E-Ticket	Any meal	—
<p><b>Disclaimer:</b> All special requests, meal preferences, seat requests are not guaranteed. You must contact your airline to reconfirm that they have received this request and confirmed it.</p>			
<b>Flight Booking Details</b>			
<p><b>Booking Number : 12744447</b></p>			
<b>Departing Flight - Sunday, Aug 12, 2012</b>			
 <p><b>Air Canada</b> <b>Flight 863</b> Boeing 767-300 Jet <b>Seats: 29D,29E,29F</b> Airline confirmation: LZ8UNR</p>	<p><b>From</b> London Heathrow (LHR) <b>11:05am - Aug 12, Sun</b></p>	<p><b>To</b> Toronto Intl (YYZ) <b>02:05pm - Aug 12, Sun</b></p>	<p><b>Nonstop</b> Coach</p>
<p><b>Flight Duration:</b> 8hr 00min</p>		<p><b>Total Trip Time:</b> 8hr 00min</p>	
			
<p><b>Baggage Fees:</b> Most airlines now impose baggage fees. Please click the <a href="#">Baggage and Carry On Fees</a> link for complete details and click to check <a href="#">fare rules</a>.</p>			
<p><b>Please Note:</b> As Airlines have frequent schedule changes, please call the Airline 24 hours prior to scheduled departure to reconfirm your flight details.</p>			
<b>Price Details (USD)</b>			
<b>Flight Price Details</b>			

**Please Note:**

- All fares are quoted in USD.
- Your credit card may be billed in multiple charges totaling the above amount.

Traveler Type	Ticket Price	Tax & Fee Breakdown (incl. Enhanced Seat Assignment)	Total
3 Adult/s	\$1136.12	\$167.14	\$3909.78
		<b>Promo Discount:</b>	<b>-\$15.00</b>
<b>Charged on Credit Card - Visa - ****5132</b>			<b>Subtotal:</b>
			\$3894.78
<b>Total Booking Amount:</b>			<b>\$3909.78</b>
<b>Total Discount (Savings):</b>			<b>-\$15.00</b>
<b>Total Cost:</b>			<b>\$3894.78</b>

**Charge Authorization, Your Electronic Signature Copy**

I, Raymond P Nawrot, have read and agree to the Terms and Conditions and I understand that this fare is non-refundable. I agree to pay a total amount of USD **3,894.78** (Credit Card Number:\*\*\*\*5132 ) for this purchase. I understand this is to serve as my legal signature.

**Terms & Conditions**

**Flight Booking Terms & Conditions**

**Notice**

**Ticket Policies, Rules and Restrictions**

- Once purchased, all tickets are considered non-refundable and non-transferable. All service fees are non-refundable.
- Name changes are not permitted. Prices do not include Baggage and Carry-On Fees or other fees charged directly by the airline.
- Fares are not guaranteed until ticketed. All changes are subject to availability, additional fees, airlines rules and regulations.
- All travelers must confirm that their travel documents required are current and valid for your destination.
- Please read important information regarding airlines liability limitations.
- View our terms and conditions.

Thank you for choosing CheapOair.com, we will process your tickets and notify you with your ticket information. If it is an E-ticket, you will receive an email with a ticket number, if it is a Paper ticket we will mail the ticket by courier to the address provided. Our office is open 24 hours a day, 7 days a week. If you need assistance, call us at 800-525-0400 (if you are calling from outside the United States, please call 1-800-525-0400 or 212-478-0335) or contact Customer Care at [Feedback@cheapoair.com](mailto:Feedback@cheapoair.com). Online queries will be responded to in the order in which they are received.

**Advice to Travelers**

**Travel Deals**

If you have signed up for our newsletter, please add [CheapOair@myCheapOair.com](mailto:CheapOair@myCheapOair.com) to your address book to ensure that you receive our latest offers and promotions. If you haven't signed up yet, [sign up](#) to receive our deals and discounts.

**Baggage Rules and Fees**

Additional baggage fees may apply. For more details, click here: [Baggage and Carry-On Fees](#). We recommend that you contact the airline you are traveling on for the latest information regarding airline specific baggage rules, requirements and fees.

**Seats**

All seat assignments are on a request basis. We will do all possible to confirm your seat request, however it cannot be guaranteed. We recommend that you choose our "Enhanced Seat Assignment Program" for specialized seating allocation.

**Voluntary Changes**

Although most itineraries ticketed by CheapOair allow for changes, the majority of these itinerary changes require the issuance of a new ticket, as per airline policy. All changes are subject to availability, airline rules and regulations, penalties and a difference from the original airfare and our service fees. The airline has final authorization regarding itinerary changes and penalties.

**Involuntary Changes (Changes done directly by the airline)**

Airlines may make changes to a scheduled flight itinerary that is beyond our control. In these cases, if the airline notifies us with a viable option, we will send you an e-mail with the changes as well as the option the airline is offering. If the airline does not provide us with a viable option, as a valued customer, your reservation will be reviewed and assisted by one of our Schedule Change Specialists.

**Travel Insurance**

We recommend that you protect your investments by purchasing Travel Insurance. The insurance coverage will become effective only once the insurance premium is received in full. View the [Description of Coverage](#).

**Valid Photo I.D.**

A valid government photo I.D. must be presented by all travelers in order to board domestic flights. Minors traveling domestically with parents generally do not need a photo I.D. If traveling with children less than two (2) years old, a birth certificate may be needed to confirm the infant's age. [More Information](#).

**Passport / Visa**

For international travel, all passengers must be in possession of valid travel documents such as ticket, passport, visas, transit visas, Schengen Visas and all other entry permits. Your passport must be valid for 6 months after your return date. While sometimes we may be able to assist with visa and passport information, it is solely the responsibility of the passenger(s) to arrange for all documents needed to enter the country you are traveling to, or passing through in transit.

[U.S. Passport Holder Information](#)

[Canadian Passport Holder Information](#)

[Other Passport Holder](#)

**Fare Changes**

Prior to ticketing, all fares are subject to change. In these rare cases, we reserve the right to notify you of any rule or fare change within three (3) business days. As a courtesy to our valued customers, CheapOair will absorb the difference of the fare up to \$25.00 per passenger. In the event that the fare difference is higher than \$25.00, you will have the option to not purchase this ticket and your credit card will not be charged.

**Online Check In**

If you prefer to check in for your flights online and print your boarding passes, please click our [Airport Check In](#) link to check in for your upcoming flight.

**Up-to-the-Minute Flight Details**

Check the details of your itinerary, ticket status, seat assignments and more by visiting our [Check My Booking](#) page.

**Frequently Asked Questions**

For additional questions and self service, please visit our [Frequently Asked Questions](#) page.

*For example: How and when should I reconfirm my flights? Or, do I need a Visa to travel internationally?*

**Terms and Conditions:**

Please read our [Terms and Conditions](#) for detailed information.

Thank you for using "**CheapOair.com**".

If you need any assistance, please call us at **800-525-0400** or email us at [feedback@cheapoair.com](mailto:feedback@cheapoair.com).  
Has your experience with CheapOair.com been a positive one? Has any agent provided exceptional customer service? We would enjoy hearing from you [compliment@cheapoair.com](mailto:compliment@cheapoair.com)



This is **Exhibit "L"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*L.R. Beliveau*

---

Notary Public

(REV. 2010-04)

ACFRONT-SD

RR DONNELLEY

**NAWROT KAROLYNP**

ECONOMY CLASS / CLASSE ECONOMIQUE  
ETKTO147103700909

Frequent Flyer/Voyageur assidu

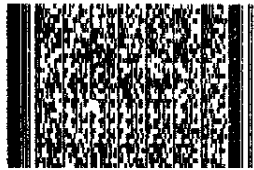
Flight/Vol AC 863 12AUG From/De LONDON-3 Destination TORONTO-T1

Boarding Time/Heure d'embarquement 10:20 Gate/Porte 25 Seat/Place 29F

Departure Time/Heure de depart 11:05

Airline Use/A usage interne 0215 LHR200459

Boarding Pass | Carte d'accès à bord



**NAWROT K**

Cabin/Cabine  
Y

Flight/Vol AC 863 Destination TORONTO-T1

Seat/Place 29F AISLE/COULOIR

Remarks/Observations  
DOK

**AIR CANADA**

A STAR ALLIANCE MEMBER  
MEMBRE DU RESEAU STAR ALLIANCE

(REV. 2010-04)

ACFRONT-SD

RR DONNELLEY

**NAWROT KRISTINAP**

ECONOMY CLASS / CLASSE ECONOMIQUE  
ETKTO147103700908

Frequent Flyer/Voyageur assidu

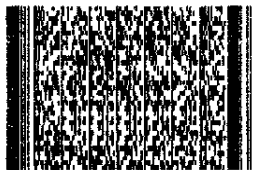
Flight/Vol AC 863 12AUG From/De LONDON-3 Destination TORONTO-T1

Boarding Time/Heure d'embarquement 10:20 Gate/Porte 25 Seat/Place 29E

Departure Time/Heure de depart 11:05

Airline Use/A usage interne 0214 LHR200459

Boarding Pass | Carte d'accès à bord



**NAWROT K**

Cabin/Cabine  
Y

Flight/Vol AC 863 Destination TORONTO-T1

Seat/Place 29E MIDDLE/CENTRE

Remarks/Observations  
DOK

**AIR CANADA**

A STAR ALLIANCE MEMBER  
MEMBRE DU RESEAU STAR ALLIANCE

(REV. 2010-04)

ACFRONT-SD

RR DONNELLEY

**NAWROT RAYMONDP**

ECONOMY CLASS / CLASSE ECONOMIQUE  
ETKTO147103700907

Frequent Flyer/Voyageur assidu

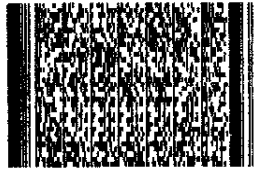
Flight/Vol AC 863 12AUG From/De LONDON-3 Destination TORONTO-T1

Boarding Time/Heure d'embarquement 10:20 Gate/Porte 25 Seat/Place 29D

Departure Time/Heure de depart 11:05

Airline Use/A usage interne 0213 LHR200459

Boarding Pass | Carte d'accès à bord



**NAWROT R**

Cabin/Cabine  
Y

Flight/Vol AC 863 Destination TORONTO-T1

Seat/Place 29D AISLE/COULOIR

Remarks/Observations  
DOK

**AIR CANADA**

A STAR ALLIANCE MEMBER  
MEMBRE DU RESEAU STAR ALLIANCE

This is **Exhibit "M"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.P. Beliveau*

---

Notary Public

**SOFITEL**  
LUXURY HOTELS

LONDON GATWICK

**Mr. Ray Nawrot**  
12 Leland Ave.  
MBZ 2X5 Toronto  
  
CANADA

Room Number : 730  
Arrival Date : 10/08/12  
Departure Date : 12/08/12  
Cashier : 20/KR  
Time : 13:46:00  
No. Guests : 1/0  
Page : 1  
Account No. :  
Agent Ref No. :  
VAT No. : 809823803

Sofitel London Gatwick, 11/08/12

INTERIM 861984/1

Date	Charge Description	Charges	Payments
10/08	Accommodation	109.00	
10/08	Accommodation/Vat	21.80	
11/08	In-room Internet #730	15.00	
11/08	Visa Card XXXXXXXXXXXX5132 11/14		145.80
<b>Balance Due:</b>		<b>£0.00</b>	

**VAT Breakdown:**

Net @ 20%      £ 121.50  
Net @ 4%        £ 0.00  
Non-Vatable    £ 0.00  
Vat 20%        £ 24.30  
Vat 4%         £ 0.00  
Total Bill      £ 145.80

Sofitel London Gatwick  
North Terminal -  
Gatwick Airport -  
West Sussex RH6 0PH  
01293 567070

MID: 44681693  
TID: 26312711

DATE: 11 08-2012  
TIME: 12 10.18

TRANS SEQ: 000009160  
BATCH NUM: 0841  
KEYED

VISA  
XXXX XXXX XXXX 5132

SALE  
LOCAL AMOUNT: 145.80  
TRANSACTION CURRENCY AMT: CAD234.87

EXCHNG RATE  
GBP=CAD 1.8105

**TOTAL**  
CAD234.87

PERMISSION TO DEBIT  
ALL

SIGNATURE VERIFIED  
AUTH CODE 017972

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS

I ACCEPT THAT I HAVE  
BEEN OFFERED A CHOICE



SOFITEL LONDON GATWICK - NORTH TERMINAL - GATWICK AIRPORT - WEST SUSSEX  
TEL +44 (0)1293 567070 - FAX +44 (0)1293 555037 - E-MAIL H6204@SOFITEL.COM  
REGISTERED IN CARDIFF S454977 - ARORA HOTELS LIMITED - THE GROVE - BATH ROAD - WEST

**SOFITEL**  
LUXURY HOTELS

LONDON GATWICK

**Mr. Ray Nawrot**  
12 Leland Ave.  
MBZ 2X5 Toronto

CANADA

Room Number : 730  
Arrival Date : 10/08/12  
Departure Date : 12/08/12  
Cashier : 16/PKS  
Time : 07:49:43  
No. Guests : 1/0  
Page : 1  
Account No. :  
Agent Ref No. :  
VAT No. : 809823803

Sofitel London Gatwick, 12/08/12

**INVOICE 861984/1**

Date	Charge Description	Charges	Payments
10/08	Accommodation	109.00	
10/08	Accommodation/Vat	21.80	
11/08	In-room Internet #730	15.00	
11/08	Visa Card XXXXXXXXXXXX5132 11/14		145.80
11/08	Accommodation/Vat Upgrade	15.00	
11/08	Accommodation	109.00	
11/08	Accommodation/Vat	21.80	
12/08	Visa Card XXXXXXXXXXXX5132 11/14		145.80
		<b>Balance Due:</b>	<b>£0.00</b>

**VAT Breakdown:**

Net @ 20%      £ 243.00  
Net @ 4%        £ 0.00  
Non-Vatable    £ 0.00  
Vat 20%        £ 48.60  
Vat 4%          £ 0.00  
Total Bill      £ 291.60

SOFITEL LONDON GATWICK  
NORTH TERMINAL  
GATWICK AIRPORT  
WEST SUSSEX RH6 0PH  
01293 567070

MID : 39132  
12-08-2012 07 47 43

BATCH NUMBER 00000029  
KEYED

VISA  
XXXX XXXX XXXX 5132  
COMPLETION      £145.80  
**TOTAL**      £145.80

PERMISSION TO DEBIT  
ACCOUNT

SIGNATURE VERIFIED  
AUTH CODE: 027304

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS



SOFITEL LONDON GATWICK - NORTH TERMINAL - GATWICK AIRPORT - WEST SUSSEX -  
TEL +44 (0)1293 567070 - FAX +44 (0)1293 555037 - E-MAIL H6204@SOFITEL.COM W  
REG STERED IN CARDIFF S454977 - ARORA HOTELS LIMITED - THE GROVE - BATH ROAD - WEST DRA

This is **Exhibit "N"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Online Bookings [OnlineBookings@sunwing.ca]  
**Sent:** August-13-12 9:45 AM  
**To:** 'Raymond Nawrot'  
**Subject:** RE: STRANDED IN LONDON GATWICK

Good afternoon, I am emailing to follow up to inquire if you would like the flight on the 16<sup>th</sup> as we have seats available, there will be no charge for this. Please advise if you would like to take this flight.

Regards

Online Bookings

---

**From:** Online Bookings  
**Sent:** August 11, 2012 9:52 AM  
**To:** 'Raymond Nawrot'  
**Subject:** RE: STRANDED IN LONDON GATWICK

Good morning, I have received your email and am reviewing flight options with our staff in Toronto. Our next flight with over 2 seats available is WG259 departing August 16<sup>th</sup> departing London at 3:20pm, please advise if this schedule is sufficient.

Online Bookings

---

**From:** Raymond Nawrot [<mailto:raytech@sympatico.ca>]  
**Sent:** August 11, 2012 4:21 AM  
**To:** Online Bookings  
**Subject:** STRANDED IN LONDON GATWICK

I am here stranded at LGW with my 2 daughters.

I received 4 emails from sunwing indicating departure was delayed..... each notification had the departure later and later with the final notification indicating the departure time being 0225. I arrive at the airport at 0115.

On arrival the checkin counter was all closed..... the plane was at the gate and I was not allowed to board with my 2 young daughters.

The 'supervisor' was not cooperative at all and I was in shock when I was not allowed to board.

I did provide sunwing with my cell number as per a request I received which was meant to notify me of any schedule changes.

So the flight was 13 hours late, the departure time was changed 4 times and now I am stuck here at Gatwick airport, there was another gentleman who was denied boarding as well.

I might also add, that the sunwing and gatwick airports website did not have any updated information... it was not updated. There was so much confusion that after trying to find out what the status of the flight was, I ended up having a friend in Toronto contact sunwing to find out what was going on. My friend eventually got through to a live person 35 minutes later and the contact at sunwing had admitted there were problems with what the status of the flight and what the sunwing website had reflected.

Please, I am stuck here with my 2 young daughters and understand there is another flight departing LGW today around 8pm London time.

This whole situation was clearly not the fault of myself but rather all the different departure times and inconsistencies with the sunwing, and LGW departure information.

I would also like to add that the people working for you her in London were uite uncooperative and almost hostile.... all I want is to go home.

Can I get on the flight wg201 which departs LGW at 2015 with my 2 daughters?

I can be reached on my cell phone ( the one you have on file ) at 416-356-1703.

In all there are 4 of us denied boarding the flight to Toronto although the latest email I received indicated a 0225 depature and we arrive just shortly after 0100.

Please help us out.

Regards,  
Raymond Nawrot



This is **Exhibit "O"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. K. Beliveau*

Notary Public

**Ray NAWROT**

---

**From:** Ray NAWROT [raytech@sympatico.ca]  
**Sent:** August-13-12 11:30 AM  
**To:** 'Online Bookings'  
**Subject:** RE: STRANDED IN LONDON GATWICK

Thanks for your email. I am at home now and have to find out how I proceed with this matter.

---

**From:** Online Bookings [mailto:OnlineBookings@sunwing.ca]  
**Sent:** Monday, August 13, 2012 9:45 AM  
**To:** 'Raymond Nawrot'  
**Subject:** RE: STRANDED IN LONDON GATWICK

Good afternoon, I am emailing to follow up to inquire if you would like the flight on the 16<sup>th</sup> as we have seats available, there will be no charge for this. Please advise if you would like to take this flight.

Regards

Online Bookings

---

**From:** Online Bookings  
**Sent:** August 11, 2012 9:52 AM  
**To:** 'Raymond Nawrot'  
**Subject:** RE: STRANDED IN LONDON GATWICK

Good morning, I have received your email and am reviewing flight options with our staff in Toronto. Our next flight with over 2 seats available is WG259 departing August 16<sup>th</sup> departing London at 3:20pm, please advise if this schedule is sufficient.

Online Bookings

---

**From:** Raymond Nawrot [mailto:raytech@sympatico.ca]  
**Sent:** August 11, 2012 4:21 AM  
**To:** Online Bookings  
**Subject:** STRANDED IN LONDON GATWICK

I am here stranded at LGW with my 2 daughters.

I received 4 emails from sunwing indicating departure was delayed..... each notification had the departure later and later with the final notification indicating the departure time being 0225. I arrive at the airport at 0115.

On arrival the checkin counter was all closed..... the plane was at the gate and I was not allowed to board with my 2 young daughters.

The 'supervisor' was not cooperative at all and I was in shock when I was not allowed to board.

I did provide sunwing with my cell number as per a request I received with was meant to notify me of any schedule changes.

So the flight was 13 hours late, the departure time was changed 4 times and now I am stuck here at Gatwick

airport, there was another gentleman who was denied boarding as well.

I might also add, that the sunwing and gatwick airports website did not have any updated information... it was not updated. There was so much confusion that after trying to find out what the status of the flight was, I ended up having a friend in Toronto contact sunwing to find out what was going on. My friend eventually got through to a live person 35 minutes later and the contact at sunwing had admitted there were problems with what the status of the flight and what th sunwing website had reflected.

Please, I am stuck here with my 2 young daughters and understand there is another flight departing LGW today around 8pm London time.

This whole situation was clearly not the fault of myself but rather all the different departure times and inconsistencies with the sunwing, and LGW departure information.

I would also like to add that the people working for you her in London were uite uncooperative and almost hostile.... all I want is to go home.

Can I get on the flight wg201 which departs LGW at 2015 with my 2 daughters?

I can be reached on my cell phone ( the one you have on file ) at 416-356-1703.

In all there are 4 of us denied boarding the flight to Toronto although the latest email I received indicated a 0225 depature and we arrive just shortly after 0100.

Please help us out.

Regards,  
Raymond Nawrot

This is **Exhibit "P"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.R. Beliveau*

---

Notary Public

**To: Sunwing Airlines Customer Service**  
27 Fasken Drive,  
Toronto, ON,  
M9K 1K6

**From: Raymond Nawrot**  
12 Leland Ave,  
Toronto, ON,  
M8Z 2X5

(416) 233-8406  
[Ray.Nawrot@gmail.com](mailto:Ray.Nawrot@gmail.com)

August 27th, 2012

To Whom It May Concern,

I am writing regarding compensation for the costs I was forced to incur as a result of missing my Sunwing flight on August 10<sup>th</sup>, 2012 from London Gatwick (LGW) to Toronto Pearson (YYZ). The departure time for the flight was changed four times less than 24 hours before we were originally scheduled to depart. Moreover, the departure and arrival times were not accurately portrayed on your website prior to departure, leading to significant confusion. When I arrived at London Gatwick for the flight, which was finally scheduled to depart more than twelve hours delayed, I found the check-in counter to be closed more than one hour prior to departure, and customer service representatives unwilling to help despite there still being more than an hour before departure. The costs I wish to recoup from Sunwing are the cost of a one-way flight from London Heathrow (LHR) to Toronto Pearson (YYZ) for myself and my two minor daughters, and the cost of the hotel room we stayed in for three days as I attempted to resolve the issue. I am not claiming the additional costs I incurred including food, and transportation between Gatwick and Heathrow.

The night before we were scheduled to depart, I consulted the Sunwing Airlines website to double-check our departure time. I also checked the Toronto Pearson (GTAA) arrivals website to check our time of arrival back

home. This was the beginning of a series of events that caused significant confusion. Both sites reported that the time of departure was scheduled for 2325, and that we were scheduled to land in Toronto at 1535. Prior to departure I had given Sunwing my email address and phone number as contact information in case of emergency or change of schedule (see **Appendix 1**). Accordingly, I also received an email at this time confirming these times (see **Appendix 2, Email 1**). I knew this made no sense given that it was an eight hour flight, so tried to contact someone at Sunwing's customer service to clear up whether the departure or arrival time was wrong. Unfortunately it was already past 5pm in Toronto and your customer service department had closed for the evening. Unsure as to what time I needed to be at the airport in the morning, and what time I should ask my friend back home in Toronto to pick me up, I called a friend in Toronto to try and contact anyone at Sunwing to try and clear this up. My friend spent 35 minutes searching your website and trying various numbers to try and reach a live person to discuss the issue with. Finally she spoke with someone from the Sales Department, who spent another 15 minutes clearing up the issue, who was himself confused about the times posted on the website. He did eventually confirm that the flight was 12 hours delayed and it was the arrival time that was incorrectly posted on the website.

Over the next four hours I received an additional two emails informing me that our flight had been rescheduled, twice (see **Appendix 2, Emails 2 and 3**). On Friday (August 10<sup>th</sup>) morning I received a fourth email from Sunwing telling me that our flight had been rescheduled again even later (see **Appendix 2, Email 4**). Our original reservation at our hotel had us scheduled to check out of our hotel the morning of August 10<sup>th</sup>. Having found out that we would not need to leave for the airport until much later than evening (9-10pm), I had to find another hotel to stay at for the day as our hotel in Clapham had no vacancies. We checked in to the Holiday Inn Express in Action North with the intention of staying for the day until our flight took off (see **Appendix 3 for this charge**).

I arrived with my two daughters at Gatwick more than an hour prior to the rescheduled departure time (0235). I was surprised to find the Sunwing Check-In counter closed at this time, and was later informed by janitorial staff that the counter had closed much earlier. I asked to speak with a supervisor who was unwilling to help us board the aircraft, despite there still being an hour before departure, and the aircraft still sitting at the gate. There were

others in the same situation with similar complaints. We were flatly denied entry to the aircraft. After haggling a short while, we saw that boarding the flight was in vein. Being a widower with two minor daughters accompanying me, I had no choice but to make alternative plans. Accordingly, we checked into the Solitel at London Gatwick for one night (**see Appendix 4 for receipt**), and returned to the check-in counter promptly the next morning (6.45am) to try to make our way home. The representative that morning made no eye contact with me during our conversation, despite the gravity and stress of the situation for both myself and my two daughters, and informed us that we would not be leaving on the next flight out that day at 0815 (I believe). I have happily flown with Sunwing on several occasions, and have found the check-in representatives to be in general, helpful and cheerful. However, the representatives that I encountered at London Gatwick were largely unhelpful to me and particularly unfriendly. I feel that they do not have the travellers best interests at heart, and the only response I was given regarding who else I could speak to was that 'Sunwing is an internet airline'. In my opinion this was very rude, particularly in the context of heightened competition between airlines. I sent an email to Sunwing at this point to try and receive assistance from your Customer Service department back in Toronto considering the lack of assistance I had received from the representatives at London Gatwick (**see Appendix 5**). I received a response indicating that the next available flight would be on August 16<sup>th</sup>, almost a week later (**see Appendix 6**). With two children who I had already paid for to go to camp beginning Sunday August 12<sup>th</sup>, and limited financial resources to remain in London, incurring food, transportation, entertainment, and shelter expenses for an additional week, I then had to make alternative arrangements to get myself and my two daughters home. Accordingly I had no choice but to book a flight with Air Canada at an exorbitant cost (**see Appendix 7**).

Having paid to get myself and my daughters home in time for them to get to camp, I received another email from Sunwing on Monday August 13<sup>th</sup> offering me a flight home at no charge (**see Appendix 8**). This, in my mind, is an admission on the part of Sunwing that it played a role in myself and my daughters being denied boarding to our flight. As indicated at the beginning of this letter, I am asking for the cost of three nights in a hotel, and the cost of the flight I had to purchase on Air Canada to get us home. I am not asking for any of the additional costs I incurred as a result of this situation. That the flight was rescheduled four times less than 24 hours before departure, and that the arrival time was incorrectly posted on your website, caused significant

confusion on the part of myself and other passengers I spoke to at the airport. Moreover, despite arriving more than an hour prior to departure, your check-in counter was closed, and staff were unwilling to help me resolve the situation and find another flight home. I have itemized the costs I am politely asking you to reimburse me for below:

<b>Item</b>	<b>Cost</b>	<b>Cost in CAD</b>
1 night at Holiday Inn Express North Acton	£99	\$155.83
2 nights at London Gatwick's Solitel	£291.60	\$459.01
3 one-way tickets from London Heathrow to Toronto Pearson	\$3858.93 (US)	\$3825.55
<b>TOTAL:</b>		<b>\$4400.39</b>

Note: I used [www.xe.com](http://www.xe.com) to convert these figures, which are accurate at time of writing.

Thank you for your consideration. Prior to this incident I was a happy, and loyal customer of Sunwing Airlines and I hope this matter can be resolved promptly.



Yours sincerely

Raymond Nawrot

This is **Exhibit "P"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this *28<sup>th</sup>* day of *February*, 2013.

*J. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Khadean Walker [KWalker@sunwing.ca]  
**Sent:** October-09-12 1:21 PM  
**To:** raytech@sympatico.ca  
**Subject:** SUNWING VACATIONS # 58187993  
**Attachments:** NAWROT x 3.pdf; SWG 201 LGW -YYZ 10AUG12.pdf

Dear Mr. Nawrot,

We have had the opportunity to review your file and would like to respond as follows.

Sincerely,

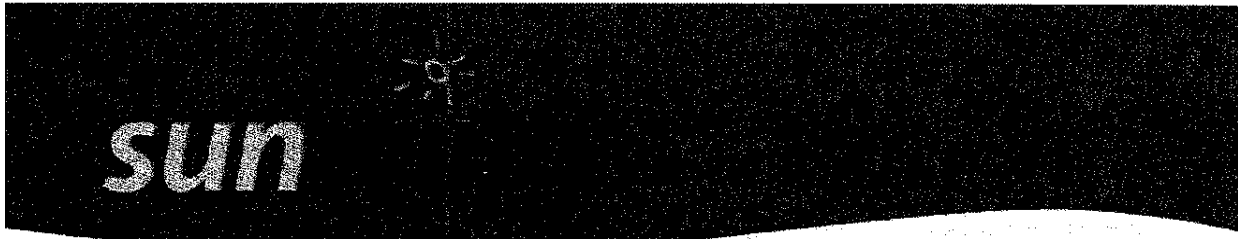
Khadean  
Coordinator, Customer Relations  
Sunwing Vacations Inc.

**Customer Relations Department | Customer Relations  
Sunwing Vacations | Signature Vacations**

Email: kwalker@sunwing.ca

27 Fasken Drive, Toronto, Ontario M9W 1K6

This information is transmitted on a "WITHOUT PREJUDICE" basis. It is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.



10AUG2012

10AUG WG 201 LGW-YYZ

Dear Sunwing Client,

Sunwing is committed to meeting our passengers' expectations in providing on time flight service. We can assure you that every effort is made to avoid disruptions to our flying schedule; however there are times when factors outside of our control influence our flight operations.

We wish to advise that the aircraft scheduled to operate your flight will now operate as follows:

11AUG	WG 201	Estimated Departure out of LONDON/GATWICK is	02:25 local time
		Estimated Arrival into TORONTO is	05:40 local time

We apologize for this late notice of change to your flight schedule and for any inconvenience this new schedule may have caused you. We are making every attempt to minimize the delay to your journey. Your flight would have operated as originally scheduled, had it been at all feasible. As a gesture of goodwill we wish to extend to you a future travel voucher, as we hope to be given a future opportunity of servicing your travel needs.

You may choose not to travel on this flight and apply for reimbursement of this paid and unused part of your ticket. **Should you choose the option to be reimbursed, you will therewith waive your right to any further transportation or care by Sunwing** however you will be permitted to make two brief telephone calls of a maximum of two minutes each.

If you choose not to travel, please advise our Airport Staff. To receive your refund please advise Sunwing Customer Relations that you have not traveled and of your choice of reimbursement - in Sunwing future travel vouchers or please provide address for reimbursement. Any related surcharges are not refundable. If your flight is part of a combination of flight, accommodation and/or other vacation services — then the price of your ticket is part of the package sum you have paid and Sunwing will determine the reimbursable sum. Other parts of your package holiday are not eligible for reimbursement and we advise you to contact your holiday reservations supplier regarding this subject. To contact us, please refer to the address or telephone number mentioned below or by email to [europcustomerservice@sunwing.ca](mailto:europcustomerservice@sunwing.ca)

Our Airport Staff is available to you for any further information with regard to the flight delay.

We thank you for choosing Sunwing and look forward to welcoming you onboard for a most enjoyable in-flight experience.

Sincerely,  
Customer Relations

NAME:	TELEPHONE NO.
ADDRESS:	CITY
POSTAL CODE:	
OLD BOOKING REFERENCE NO.	
NEW BOOKING REFERENCE NO.	
FLIGHT INFO 10AUG	WG 201 LGW-YYZ
	GBP 100.00

This voucher offer is valid for one year from this date. Offer is not redeemable for cash. Offer is non transferable and is not applicable for payment of service charges, taxes and any surcharges which may be applicable at the time of booking. Reservations must be made at least 45 days prior to departure. Only one voucher is applicable per person per booking. Please present this voucher at time of booking. This offer is not combinable with any other discount, promotional offer or group booking. We kindly ask that you email a copy of this letter to the Accounting Department at [\\$collections@sunwing.ca](mailto:$collections@sunwing.ca), when you are ready to redeem your voucher. Subject to availability of flights and hotels. **\*\*\*LOST OR STOLEN VOUCHERS WILL NOT BE REPLACED\*\*\***

<p><b>MONTREAL</b> 7785 Côte-de-Liesse Ouest Ville St-Laurent, Québec H4T 1G3 Canada Tel: 1.866.722.8066</p>	<p><b>TORONTO (HEAD OFFICE)</b> 27 Fasken Drive Toronto, Ontario M5W 1K6 Canada Tel: 416.620.4955 - 1.877.877.1755</p>	<p><b>VANCOUVER</b> 1020-1500 West Georgia St. Vancouver, British Columbia V6G 2Z6 Canada Tel: 1.877.877.1755</p>
--	--	---

The logo for Sunwing Airlines, featuring the word "sun" in a stylized, lowercase font with a sun icon above the letter 'n'. The background is dark and textured.

October 9, 2012

Email sent to: [raytech@sympatico.ca](mailto:raytech@sympatico.ca)

Re: NAWROT x 3      Booking Number: 58187993

---

Dear Mr. Nawrot,

We are in receipt of your correspondence and thank you for allowing us the opportunity of reviewing your concerns. We sincerely appreciate your patience while awaiting our response. We thank you for your placing your concerns in writing for us to review.

We are in receipt of your correspondence and thank you for allowing us the opportunity of reviewing your concerns. We sincerely appreciate your patience while awaiting our response.

We sincerely apologize for any disappointment you may have encountered on your recent trip to London (Gatwick). We can understand how frustrating this delay of your flight must have been and we extend our sincerest apologies for any inconvenience caused. The details of the flight records along with your booking details and documents were reviewed.

It was unfortunate to learn of your dissatisfaction with our representatives. Our reps are usually praised for their courteous and efficient service and we can only apologize that their services failed to meet with your approval.

Accordingly, we sincerely regret that Sunwing Airlines WG 201 operating from London Gatwick to Toronto on August 10, 2012 was not able to depart as originally scheduled. As you are aware, the aircraft scheduled to operate your flight experienced an operational procedures. The details concerning your email were reviewed and the flight information indicates that the flight was rescheduled to 02:25 August 11, 2012. Therefore, passengers are expected to arrive at the check -in counter and present for check -in at least 3 hours prior to departure time. This is recommended as the counter will be closed 1 hour prior to departure. As noted in our Terms and Conditions:

#### **AIRPORT CHECK-IN**

**Check-in commences approximately three hours prior to departure and closes 60 minutes prior to departure. You are required to have obtained your boarding pass and to have presented all checked baggage before the 60 minute cut off/check-in deadline. For security reasons, you will be denied boarding if you have not checked in within that time. Passengers must be available at the boarding gate by the boarding gate deadline time noted on your boarding pass...**

With regards to these details, the record indicates that you were not present for check - in within the time required. As mentioned above the Terms and Conditions will apply. In addition, the offer was provide to you for return on August 16, 2012 as the next available flight with Sunwing from London (Gatwick) to Toronto. As our Online Department advised and noted you had chosen to take another carrier for your return trip. However, according to the EC 261/2004 Regulations as you did not travel on the return portion of your trip. The unused portion of your flight paid will be refunded in the amount of \$ 1,411. 80CAD. This refund will be processed to the credit card in file (VISA # 7077, Exp. 11/14). Please allow for processing through the accounting department within 7 - 10 business days.

Please complete the Full & Final Release below and return it to my attention within 15 business days. You can send it to my attention via fax at 416.798.8760, via e-mail at [customerservice@sunwing.ca](mailto:customerservice@sunwing.ca) or by regular mail to 27 Fasken Drive, Toronto, ONT M9W 1K6. Once we receive your acceptance, we will be more than happy to process your refund at that time to the above-mentioned method.

**Toronto (Head Office):** 27 Fasken Drive Toronto Ontario M9W 1K6 Canada Tel. 416.620.4955 Tel. 1.877.877.1755  
**Montreal:** 7785 Côte-de-Liesse Ouest Ville St-Laurent Québec H4T 1G3 Canada Tel. 1.866.722.8066  
**Western Office:** Unit #305-15957 84th Avenue Surrey British Columbia V4N 0W7 Canada Tel. 1.877.877.1755



SUNWING

In addition, we will also extend to you the \$100.00 GBP/ \$150.00CAD future travel voucher that was issued for each paying fare at the airport during this time. A copy of the voucher is attached for your records. You may re-print or copy the voucher to allow each person on booking a voucher.

Once again, please accept our apologies with regards to this flight delay. Our apology at this time may not undo the inconvenience that you felt, but our regret is sincere and do hope that despite the concerns mentioned, we hope that there were aspects of your visit that you did enjoy. Thank you again for bringing these concerns to our attention. We, at Signature Vacations, certainly welcome all feedback regarding our clients' experiences.

Sincerely,

SUNWING TRAVEL GROUP INC.  
Khadean  
Coordinator, Customer Relations



Full & Final Release Form

October 9, 2012

NAWROT, RAYMOND PAUL MR.  
NAWROT, KRISTINA MARIE MISS.  
NAWROT, KAROLYN THERESA MISS.

BOOKING NO. 58187993

Page 1

**FULL AND FINAL RELEASE**

**IN CONSIDERATION of:**

- the total monetary payment of One Thousand Four hundred and eleven dollars and eighty cents ( \$1,411.80)

in full and final settlement of all claims made by or on behalf of the undersigned, Mr. Paul Raymond (herein the "Releasors") the Releasors do hereby release and forever discharge SUNWING VACATIONS INC. / VACANCES SUNWING INC. AND ITS AFFILIATES, as well as their officers, directors, employees, agents, successors, administrators, assigns and insurers (herein the "Releasees") from any and all actions, causes of action, claims or demands, currently commenced or not, damages or loss, whether direct or indirect, which may have been or may be sustained by reason or in consequence of any event, or occurrence arising in relation to the vacation taken by the Releasors in Toronto to London ( Gatwick), July 29,2012 to August 10,2012, , including but not limited to, all claims identified in Mr. Paul Raymond's letter dated August 13, 2012 and August 27, 2012 (herein the "Incident").

AND FOR THE SAID CONSIDERATION, the Releasors further agree to not assist in making any claim; take any proceedings; provide counsel, assistance or advice to any other person or corporation who might claim; pursuant to the provisions of any applicable statute or otherwise, contribution or indemnity from the Releasees; and to hence forth refrain from any discussion about the Incident or the terms of this Release either privately or professionally unless required to do so by law or at risk of violation of any court or government order.

AND IT IS UNDERSTOOD AND AGREED that the said promise set forth herein is deemed to be no admission of liability on the part of the Releasees.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2012

.....  
Mr. Paul Raymond

.....  
Witness  
Name:

.....  
Witness  
Name:

Refunds can only be applied in the form of the original payment made on your file. If your payment was made by way of a cheque or you are awaiting a future travel voucher, we kindly request that you provide us with your home mailing address:

\_\_\_\_\_  
\_\_\_\_\_

\*\*Credit Card refunds take 5-7 business days. Cheques may take 7-15 business days.  
\*\*This offer is valid for 15 business days. \*\*Please fax to 416.798.8760

**Toronto (Head Office):** 27 Fasken Drive Toronto Ontario M9W 1K6 Canada Tel. 416.620.4955 Tel. 1.877.877.1755  
**Montreal:** 7785 Côte-de-Liesse Ouest Ville St-Laurent Québec H4T 1G3 Canada Tel. 1.866.722.8066  
**Western Office:** Unit #305-15957 84th Avenue Surrey British Columbia V4N 0W7 Canada Tel. 1.877.877.1755

This is **Exhibit "R"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. Belman*

---

Notary Public



**To: Sunwing Airlines Customer Service**  
27 Fasken Drive,  
Toronto, ON,  
M9K 1K6

**From: Raymond Nawrot**  
12 Leland Ave,  
Toronto, ON,  
M8Z 2X5

(416) 233-8406  
[Ray.Nawrot@gmail.com](mailto:Ray.Nawrot@gmail.com)

October 19<sup>th</sup>, 2012

To Khadean,

Thank you for reviewing my file, booking number 58187993. Your correspondence indicates that Sunwing is willing to provide me with compensation for the unused portion of our tickets, and a travel voucher for future bookings based on its policy that travellers are responsible for arriving at the check-in desk between 1-3 hours before the flight's departure.

While I appreciate your commitment to resolving this issue, I find Sunwing's offer to be unsatisfactory as it is premised on the misconception that my daughters and I are in part to blame for being denied boarding to our flight home. In Sunwing's policy that you sent me it states that:

*'Check-in commences approximately three hours prior to departure and closes 60 minutes prior to departure. You are required to have obtained your boarding pass and to have presented all checked baggage before the 60 minute cut off/check-in deadline. For security reasons, you will be denied boarding if you have not checked in within that time.'*

The fact is that my daughters and I did arrive at the check-in desk in good time for the flight, specifically nearly an hour and a half before its scheduled departure. It is my firm belief that on this occasion Sunwing representatives chose to close the check-in desk earlier than company policy, for reasons I can only speculate but perhaps due to the flight being rescheduled to leave very late at night (0235). As I indicated in my first letter of correspondence to you, my daughters and I were not the only passengers who found themselves denied boarding at this time.

My daughters and I complied with your company policy by arriving nearly 90 minutes prior to departure. We did so despite the fact that the flight had been rescheduled on four different occasions. We were diligent in following the itinerary updates and we made sure that we arrived at the airport in sufficient time to check in. We had absolutely no control over the decision made by Sunwing's airport representatives to close the check-in desk early. The Sunwing check-in desk should have remained open until 0135 hours.

Under the circumstances, I am not accepting your offer of compensation.

Sunwing is completely responsible for failing to keep its check-in desk open until 60 minutes prior to departure and, as a result of that failure, Sunwing is completely responsible for reimbursing the entire amount of the additional expenses that I was forced to incur:

Item	Cost	Cost in CAD
1 night at Holiday Inn Express North Acton	£99	\$157.48
2 nights at London Gatwick's Solitel	£291.60	\$463.89
3 one-way tickets from London Heathrow to Toronto Pearson	\$3858.93 (US)	\$3834.40
<b>TOTAL:</b>		<b>\$4455.77</b>

Note: I used [www.xe.com](http://www.xe.com) to convert these figures, which are accurate at time of writing.

If Sunwing is unwilling to fully compensate me for my expenses, then I will be forced to pursue this matter in Small Claims Court. Indeed, I challenge Sunwing to review the check-in records for my flight from LGW to YYZ to see when the last passenger was checked-in.

I thank you for your continued commitment to resolving this issue,

Raymond Nawrot

This is **Exhibit "S"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this *28<sup>th</sup>* day of *February*, 2013.

*JR Belman*

---

Notary Public

**Ray NAWROT**

---

**From:** Joanne Dhue [JDhue@sunwing.ca]  
**Sent:** November-09-12 12:12 PM  
**To:** 'Ray.Nawrot@gmail.com'  
**Subject:** Sunwing Airlines

Good afternoon Mr. Nawrot,

A copy of your most recent correspondence dated October 19th has been forwarded to my attention.

I kindly ask for your continued patience and cooperation while your file is further reviewed with appropriate management.

Sunwing will respond no later than next Friday, November 16 will our final position and offer of compensation.

Sincerely,

**Joanne Dhue | National Director, Customer Relations**  
**Sunwing Vacations | Signature Vacations**  
Tel: 416.620.3381 | Fax: 416.798.8760  
Email: [jdhue@sunwing.ca](mailto:jdhue@sunwing.ca)  
31 Fasken Drive, 2nd Floor  
Toronto, Ontario M9W 1K6

This is **Exhibit "T"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.P. Beliveau*

---

Notary Public

**Ray NAWROT**

---

**From:** Ray NAWROT [ray.nawrot@gmail.com]  
**Sent:** November-26-12 10:38 AM  
**To:** 'Joanne Dhue'  
**Subject:** RE: Sunwing Airlines

**Importance:** High

RE: file # **58187993**

It is with great disappointment that I note your failure to comply with your personal assurance that you would provide me with Sunwing's position by November 16th.

Frankly, I expected a higher standard of customer service from the National Director of Customer Relations. Perhaps this matter is inconsequential to you, but it happens to be quite important to me, as I am out of pocket a substantial amount of money because of Sunwing.

Taken together with the inexcusable situation that my daughters and I experienced at London Heathrow, your neglect in meeting your own deadline gives me little reason to have any confidence in anyone associated with Sunwing.

It has been 3 1/2 months since our trip and Sunwing has had ample time in which to thoroughly investigate the merits of my complaint. This entire affair began with me wanting to provide my daughters with a trip that would be memorable for them. I did not anticipate that the one lasting memory might be the way in which we have been treated by Sunwing.

I am a widower and I have been raising my daughters alone. We have had a lot of sadness and heartache in our family. This entire affair began with me wanting to provide my daughters with a trip that would be memorable for them. I did not anticipate that the one lasting memory might be the way in which we have been treated by Sunwing.

I would like to put this matter behind us. With Christmas quickly approaching, I would really appreciate a full reimbursement of my money so that I can use it to make this Christmas a happy one for my daughters.

Regards ,

Ray Nawrot

---

**From:** Joanne Dhue [mailto:JDhue@sunwing.ca]  
**Sent:** November-09-12 12:12 PM  
**To:** 'Ray.Nawrot@gmail.com'  
**Subject:** Sunwing Airlines

Good afternoon Mr. Nawrot,

A copy of your most recent correspondence dated October 19th has been forwarded to my attention.

I kindly ask for your continued patience and cooperation while your file is further reviewed with appropriate management.

Sunwing will respond no later than next Friday, November 16 will our final position and offer of compensation.

Sincerely,

**Joanne Dhue | National Director, Customer Relations**  
**Sunwing Vacations | Signature Vacations**  
Tel: 416.620.3381 | Fax: 416.798.8760  
Email: [jdhue@sunwing.ca](mailto:jdhue@sunwing.ca)  
31 Fasken Drive, 2nd Floor  
Toronto, Ontario M9W 1K6

This is **Exhibit "U"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of February, 2013.

*JR Beliveau*

---

Notary Public



**Ray NAWROT**

---

**From:** Joanne Dhue [JDhue@sunwing.ca]  
**Sent:** November-26-12 11:09 AM  
**To:** 'Ray NAWROT'  
**Subject:** RE: Sunwing Airlines

Good morning Mr. Nawrot,

My sincere apologies for missing the deadline that I had made promised to you.

Are you available to speak today?

Sincerely,

**Joanne Dhue | National Director, Customer Relations  
Sunwing Vacations | Signature Vacations**

Tel: 416.620.3381 | Fax: 416.798.8760

Email: jdhue@sunwing.ca

31 Fasken Drive, 2nd Floor

Toronto, Ontario M9W 1K6

---

**From:** Ray NAWROT [<mailto:ray.nawrot@gmail.com>]

**Sent:** November 26, 2012 10:38 AM

**To:** Joanne Dhue

**Subject:** RE: Sunwing Airlines

**Importance:** High

**RE: file # 58187993**

It is with great disappointment that I note your failure to comply with your personal assurance that you would provide me with Sunwing's position by November 16th.

Frankly, I expected a higher standard of customer service from the National Director of Customer Relations. Perhaps this matter is inconsequential to you, but it happens to be quite important to me, as I am out of pocket a substantial amount of money because of Sunwing.

Taken together with the inexcusable situation that my daughters and I experienced at London Heathrow, your neglect in meeting your own deadline gives me little reason to have any confidence in anyone associated with Sunwing.

It has been 3 1/2 months since our trip and Sunwing has had ample time in which to thoroughly investigate the merits of my complaint. This entire affair began with me wanting to provide my daughters with a trip that would be memorable for them. I did not anticipate that the one lasting memory might be the way in which we have been treated by Sunwing.

I am a widower and I have been raising my daughters alone. We have had a lot of sadness and heartache in our family. This entire affair began with me wanting to provide my daughters with a trip

that would be memorable for them. I did not anticipate that the one lasting memory might be the way in which we have been treated by Sunwing. 183

I would like to put this matter behind us. With Christmas quickly approaching, I would really appreciate a full reimbursement of my money so that I can use it to make this Christmas a happy one for my daughters.

Regards ,

Ray Nawrot

---

**From:** Joanne Dhue [mailto:JDhue@sunwing.ca]

**Sent:** November-09-12 12:12 PM

**To:** 'Ray.Nawrot@gmail.com'

**Subject:** Sunwing Airlines

Good afternoon Mr. Nawrot,

A copy of your most recent correspondence dated October 19th has been forwarded to my attention.

I kindly ask for your continued patience and cooperation while your file is further reviewed with appropriate management.

Sunwing will respond no later than next Friday, November 16 will our final position and offer of compensation.

Sincerely,

**Joanne Dhue | National Director, Customer Relations**

**Sunwing Vacations | Signature Vacations**

Tel: 416.620.3381 | Fax: 416.798.8760

Email: jdhue@sunwing.ca

31 Fasken Drive, 2nd Floor

Toronto, Ontario M9W 1K6

This is **Exhibit "V"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. Beliveau*

Notary Public

December 3, 2012

Mr. Mark Williams  
President, Sunwing Airlines  
31 Fasken Drive,  
Toronto, Ontario  
M9W 1K6

Dear Mr. Williams:

Re: file #58187993

My name is Raymond Nawrot.

This past summer, I booked a trip to Europe with Sunwing for me and my 2 daughters.

Our trip was a great one, until we had a very unpleasant experience on our return home to Toronto via London Gatwick.

Our originally-scheduled flight from Gatwick to Toronto was scheduled to depart at 12:20 p.m. on Friday, August 10<sup>th</sup>.

That flight ended up being 14 hours late and, as a result, the departure time from Gatwick was changed a total of *4 times*, with the last departure time being set for 02:25 hours – in the middle of the night.

Although my daughters and I arrived more than one hour prior to departure, the Sunwing check-in desk was closed and we were denied boarding.

Because we were not allowed to board our flight, I was forced to incur additional expenses (hotel and additional airfare with another carrier) in the amount of \$4,400.39, so that I could get my daughters home in time for them to attend camp beginning August 12th.

Attached is a copy of an e-mail that I sent to Sunwing at 4:21 a.m. on August 11, 2012 while my 2 daughters and I were stranded at the Gatwick airport.

Sunwing's response to the above e-mail was that the next flight with over 2 seats available was departing 5 days later, on August 16<sup>th</sup>. The seats were offered to me at "no cost".

Since our return home, I have been attempting to be reimbursed by Sunwing for the additional expenses.

If I was upset and frustrated by my experience at London Gatwick, I can tell you that my experience dealing with Sunwing staff since then has been even more frustrating.

I was initially dealing with Khadean Walker of your Customer Service Department. Most recently, I have been dealing with Joanne Dhue, your National Director of Customer Relations.

Ms. Dhue first contacted me by e-mail on November 9, 2012, acknowledging my complaint and promising that she would respond “no later than Friday, November 16” with Sunwing’s offer of compensation.

By November 26<sup>th</sup> – 10 days past Ms. Dhue’s own deadline – since I had not heard anything more from Ms. Dhue, I wrote to her.

I attach a copy of my e-mail dated November 26, 2012 to Ms. Dhue.

I spoke to Ms. Dhue very briefly by telephone later that same day and I can tell you that I was left both upset and dissatisfied at the end of that conversation.

Not only did Ms. Dhue repeatedly ask me why I had not arrived at Gatwick 3 hours before departure, she also indicated that she still needed to obtain further information from your Gatwick staff. I truly do not know why it would take this long to investigate and confirm what happened more than 3 months ago!

In the end, Ms. Dhue said that Sunwing would compensate me for \$2,200 of the entire \$4,400 in unexpected expenses. That proposal suggests that I was 50% to blame for the situation.

Sunwing’s boarding policy, as I am sure you know, states that check-in closes 60 minutes prior to departure. My daughters and I were at the check-in desk more than 60 minutes prior to departure and the check-in desk was already closed. That is not my fault – that is Sunwing’s fault, and I should not have to pay the price because Sunwing did not comply with its own policy.

In the Sunwing in-flight magazine, you are quoted as stating:

***“We hire professional, service-oriented people who are passionate about what they do and are always ready to go that extra mile for our customers. Most of our travellers are on holiday and we want their enjoyment to start from the minute they get to the airport to the end when they leave the airport to go home.”***

Frankly, my experience with Sunwing has been anything but an example of how your staff “go that extra mile”.

I am at a loss to understand why Sunwing refuses to accept full responsibility for this situation.

The in-flight magazine stated that you want “to be personally involved in everything that affects the brand.” I would be grateful if you would become personally involved with this matter and authorize the full reimbursement of my expenses.

Yours truly,

Raymond Nawrot  
12 Leland Avenue  
Toronto, ON M8Z 2X5  
(416) 233-8406  
[Ray.Nawrot@gmail.com](mailto:Ray.Nawrot@gmail.com)

This is **Exhibit "W"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J.P. Bolineau*

---

Notary Public



January 03, 2013

Raymond Nawrot  
12 Leland Avenue  
Toronto, Ontario  
M8Z 2X5

Dear Mr. Nawrot,

Thank you for your patience while allowing me to review your file and your concerns outlined in your letter dated December 03, 2012 with our Customer Relations Department.

It is always a great concern when our customers return from a holiday disappointed.

Please understand that we take great care in selecting the third party companies that we work with throughout the world. Our airport stations follow strict policies and procedures and the cut off time and closure of the counters is one hour prior to departure. All passengers are required to have obtained a boarding pass and to have presented themselves and all checked baggage before the 60 minutes cut off/check-in deadline.

Upon reviewing the Quality Control Manifest (a manifest of which is generated after each departure of a flight by the airport station) your booking (family) were listed as what we refer to as a NO-SHOW. This document provided by our ground handling provider in Gatwick confirms that the counter remained open until one hour prior to departure and we have not been contacted by any other party claiming that the counter was closed upon their arrival at the airport which resulted in them not travelling on the flight on August 10, 2012.

Mr. Nawrot, based on this information provided by the Gatwick Airport, we have no reason to believe that the counter was closed prior to the one hour cut off.



In speaking with Ms. Dhue, the information that you have provided does not substantiate nor support that you had presented yourself at the counter more than one hour prior and the information that we have retrieved from the Gatwick Airport does support that the airport station was following the procedures in place; hence the reason your request of the additional expenses incurred were denied.

Based on compassionate grounds, and due to the fact that your disappointment continued in the responses generated by our Customer Relations Department, Ms. Dhue offered to refund 50% of the additional expenses you incurred as a gesture of goodwill. I do feel that this is fair.

Mr. Nawrot, in closing, I hope my response is received in the intent that it is written. I am sorry that your experience this time with Sunwing was not indicative as what so many travellers experience and I hope that you do accept the refund of \$2,200.00 and allow us the opportunity again in the future to be your next travel provider.

Sincerely,



Mark Williams  
President, Sunwing Airlines  
27 Fasken Drive  
Toronto, Ontario  
M9W 1K6

This is **Exhibit "X"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*JR Beliveau*

Notary Public

January 21, 2013

Mr. Mark Williams  
President, Sunwing Airlines  
31 Fasken Drive,  
Toronto, Ontario  
M9W 1K6

**Re: file #58187993**

Dear Mr. Williams:

Thank you for your response dated January 3, 2013.

Contrary to the information you received, I must insist that myself and my two daughters (ages 17 and 15) who can both collaborate on our arrival time of 01:10.

In addition there was also another traveler who arrived at 01:15 who was also surprised to find the check in counter closed, he too was denied boarding.

Both my family and the other traveler *were* at the check in counter well before the cutoff time. I have been in touch with this traveler since the beginning of our ordeal.

Mr. Williams, if you are not prepared to resolve this matter to our satisfaction, I will have no choice but to file a complaint with the Canadian Transport Agency.

A prompt response to this matter would be greatly appreciated.

Regards,

Raymond Nawrot  
12 Leland Avenue  
Toronto, ON M8Z 2X5  
(416) 233-8406  
ray.nawrot@gmail.com

This is **Exhibit "Y"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of *February*, 2013.

*J. R. Beliveau*

---

Notary Public

February 11, 2013

**VIA EMAIL**

Mr. Mark Williams, President  
Sunwing Airlines

Dear Mr. Williams:

**Re: Request for compensation on behalf of the Nawrot family  
for being denied boarding and/or transportation and/or being delayed  
on or around August 10, 2012  
Your reference: 58187993 / Our reference: 0575-Nawrot**

I have been retained to act on behalf of of the Nawrot family (Mr. Raymond Nawrot, Ms. Kristina Nawrot, and Ms. Karolyn Nawrot) in relation to their claim against Sunwing Airlines for being denied boarding and/or transportation and/or being delayed on or around August 10, 2012 on Flight WG 201. My understanding of the relevant facts is as follows.

1. On or around January 26, 2012, the Nawrot family purchased the following itinerary:

<b>Flight</b>	<b>Date</b>	<b>Depart</b>	<b>Arrive</b>
WG 200	Jul. 29, 2012	Toronto (YYZ) 11:00 pm	London Gatwick (LGW) 11:20 am (+1)
WG 201	Aug. 10, 2012	London Gatwick (LGW) 12:20 pm	Toronto (YYZ) 3:35 pm

2. On August 9 and 10, 2012, Mr. Nawrot received four email messages from Sunwing Airlines informing him about a “change” to the “flight schedule” of Flight WG 201:
- (a) “10-Aug-2012 WG201 departing from London - Gatwick at 23:25 will arrive in Toronto - Pearson at 15:35.”
- (b) “10-Aug-2012 WG201 departing from London - Gatwick at 00:55 will arrive in Toronto - Pearson at 15:35.”

- (c) "10-Aug-2012 WG201 departing from London - Gatwick at 01:45 will arrive in Toronto - Pearson at 15:35."
- (d) "10-Aug-2012 WG201 departing from London - Gatwick at 02:25 will arrive in Toronto - Pearson at 05:40."

The same emails also stated that "This does not require any action on your part."

3. Based on the information that Sunwing Airlines provided to Mr. Nawrot by email, the Nawrot family arrived at the London Gatwick (LGW) airport shortly after 1:00 am on August 11, 2012 in order to present themselves to check in to their flights at least one full hour before the scheduled departure time.
4. Upon arrival at the airport, the Nawrots found Sunwing Airlines' check-in counters closed. A supervisor acting on behalf of Sunwing Airlines explicitly refused to allow the Nawrots to check in and board Flight WG 201, even though there was more than an hour left before the scheduled departure time (2:25 am) of the flight.
5. I note that Flight WG 201 departed only at 2:49 am on August 11, 2012.
6. I also note that the fact that the Nawrots were at the London Gatwick airport well before 1:25 am (i.e., one hour before the scheduled departure time of 2:25 am) on August 11, 2012 is corroborated by the credit card statement of Mr. Nawrot, showing the purchase of train tickets to the Gatwick airport at Victoria Station on August 10, 2012, and a credit card slip of Mr. Nawrot, displaying the time of check-in with the London Gatwick's Sofitel.
7. On August 11, 2012 around 6:45 am, the Nawrots returned to Sunwing Airlines' check-in counter, and sought assistance to return to Toronto on the same day, but were again refused.
8. By email, Sunwing Airlines offered the Nawrots transportation **six days later**, on Flight WG 259 departing on August 16, 2012. This was neither reasonable nor acceptable to the Nawrots given that Sunwing Airlines did not offer to pay for their accommodation and meals, and also because the Nawrots had paid for a camp that was starting on August 12, 2012 in Canada.
9. Thus, the Nawrots were left with no choice but to purchase tickets for Air Canada Flight 863 for August 12, 2012 to return to Toronto.
10. The Nawrots incurred substantial out-of-pocket expenses as a result of the incident: 3 one-way airfares from London to Toronto, accommodation, and meals.

It is my position that the Nawrots were delayed, denied boarding, and denied transportation by Sunwing Airlines without any justification, and as such Sunwing Airlines is liable for the Nawrots' out-of-pocket expenses, and must also pay the Nawrots denied boarding compensation.

The out-of-pocket expenses incurred by the Nawrots is summarized in the following table:

Description	Amount	CAD\$
3 one-way airfares from London (LHR) to Toronto (YYZ)	US\$3,858.93	\$3,941.76
plus travel agent fees/taxes	US\$35.85	\$36.62
1 night at Holiday Inn Express North Acton	GBP 99.00	\$157.99
2 nights at London Gatwick's Sofitel	GBP 291.60	\$466.95
Meals for 3 people for 2 days (CAD\$60 per person per day)		\$360.00
<b>TOTAL (in CAD\$):</b>		<b>\$4,963.32</b>


It is my understanding that Mr. Nawrot provided Sunwing Airlines with supporting documents to establish that the Nawrots did indeed incur these expenses. However, I will be happy to provide you with the receipts once more if necessary.

Since Flight WG 201 was departing from an airport within the European Community, denied boarding compensation is governed by *Regulation (EC) 261/2004*, which prescribes denied boarding compensation in the amount of EUR 600 per passenger for long flights.

Thus, the Nawrots are also entitled to denied boarding compensation from Sunwing Airlines in the amount of EUR 1,800, that is **CAD\$2,410.56**.

Therefore, Sunwing Airlines is hereby respectfully requested to pay compensation to the Nawrots totalling **CAD\$7,373.88** in relation to the incident.

I look forward to hearing from you.

  
Louis Béliveau

Cc: Mr. Ray Nawrot

This is **Exhibit "Z"** to the  
Affidavit of Raymond Paul Nawrot  
sworn this 28<sup>th</sup> day of February, 2013.

*A. Beliveau*

---

Notary Public





DESTINATIONS QCM

STATION	LGW	* ALL TIMES UTC *	SUNWING REP
---------	-----	-------------------	-------------

GROUND HANDS (R/N/O)	RAMP LEAD	EVE	PAX SUP
----------------------	-----------	-----	---------

ARRIVAL

DATE	10 AUG 2012	FLT NUMBER	SWG200	AG REG	CSTFT
STA	09:20	ATA	23:45	FROM	YYZ
PAX	240+3	SPECIALS	1UM 3WCR WCS	Int Transit Pax	-

BAGGAGE DELIVERY	00:09	00:34
------------------	-------	-------

DEPARTURE

DATE	10 AUG 2012	FLT NUMBER	SWG201	AG REG	CSTFT
STD	11:20	ETD	01:25	DESTINATION	YYZ
GATE	51	PAX (including)	289	SPECIALS	3WCR 2WCS

CSTFT	11P N		12P N		21P N		22P N		31 DQF B	32 DQF B	33 DQF B	34 DQF B	41 DQF B	42R N	43R	5
	11R	12R	13R	14R	21R	22R	23R	24R								
Max. Weight/CPT	7,192 Kg				7,192 Kg				7,680 Kg				6,694 Kg		2,926 Kg	

← FWD

AFT →

	HOLD 1	HOLD 2	HOLD 3	HOLD 4	HOLD 5
TRANSIT LOAD	0	0	0	0	0
BAGS	0	0	3528	952	150
CARGO	0	0	0	0	0
FKT WEIGHT	0	0	0	659	0
*ULD WEIGHTS	0	0	552	138	0
OTHER	0	0	0	0	0
TOTAL WEIGHT IN KGS	0	0	4080	1749	150

Grooming		Lavatory		Portable Water		Catering		Fueling		Bag Loading	
Start	End	Start	End	Start	End	Start	End	Start	End	Start	End
00:00	00:20	00:00	00:20	00:00	00:20	00:20	00:35	00:05	00:35	00:10	00:55

BOARDING TIMES						
CREW	33L BOARD	GENERAL	FINAL	SECURE	LAST PAX	DOORS
00:15	00:35	00:40	01:05	01:05	01:05	01:25

BAG PUSH		FINAL PAX COUNTS			ATO
Start	End	In Transit	On Board	Total On Board	
-	-	-	289+6	289+6	01:30

Last Minute Ticket Sales	Delays	2% Pass	4	Man Power	Carroll	Excess
Yes/No	Code	93	-	Ramp Pax	Yes/No	
Arrived	£50.00	Mins	1410	-	-	£225

REMARKS
DELAY DUE TO LATE INBOUND AIRCRAFT: 14hrs 10mins
2x excess: 4kg and 11kg
1x ELITE PLUS sold: PARAMESWARAN



---

**DECLARATION OF KRISTINA MARIE NAWROT**

---

**Louis Béliveau, LL.B.**  
Barrister & Solicitor  
530 – 65 Queen Street West  
Toronto, ON M5H 2M5

Telephone: (416) 368 7975  
Email: lbeliveau@loogol.ca

Counsel for the Nawrot family

**DECLARATION OF KRISTINA MARIE NAWROT**

I, **KRISTINA MARIE NAWROT**, of the City of Toronto, in the Province of Ontario, do hereby declare as follows:

1. In July 2012, I went with my father, Raymond Paul Nawrot, and my sister, Karolyn Theresa Nawrot, on what was planned as a 12-day tour in Europe.
2. We left Toronto on July 29, 2012 on a flight of Sunwing Airlines to London Gatwick. We were scheduled to return to Toronto on August 10, 2012 on a flight of Sunwing Airlines from London Gatwick.
3. The date of our return was chosen so that my sister and I would be able to attend a one-week sports camp near Toronto, starting on August 12, 2012.
4. On August 10, 2012, I remember that my father, my sister, and I had an early supper, after which we returned to our hotel, Holiday Inn Express. I do not remember the exact time, but there was still daylight.
5. We left the Holiday Inn Express a few hours later, although I do not remember the exact time, and we headed to the London Gatwick Airport. We first took the Underground, we transferred once, and then took a train to the airport. The train ride took a little less than an hour. I was very tired, and I do not remember the time that we arrived at the airport.
6. When we arrived at the London Gatwick Airport, we found no one at the check-in counters, and the lights were turned off or dimmed. My father approached a woman who was passing through the departures hall, and she made a telephone call to summon a supervisor. The supervisor said that everything was closed, and we could not board our flight.

7. I remember that I was shocked and upset about not being able to board the plane, because my understanding was that we were on time to check-in.

AND I HAVE SIGNED:

Date: Mar. 4. 2013

KMN  
KRISTINA MARIE NAWROT

---

**DECLARATION OF KAROLYN THERESA NAWROT**

---

**Louis Béliveau, LL.B.**  
Barrister & Solicitor  
530 – 65 Queen Street West  
Toronto, ON M5H 2M5

Telephone: (416) 368 7975  
Email: lbeliveau@loogol.ca

Counsel for the Nawrot family

**DECLARATION OF KAROLYN THERESA NAWROT**

I, **KAROLYN THERESA NAWROT**, of the City of Toronto, in the Province of Ontario, do hereby declare as follows:

1. In July 2012, my father, Raymond Paul Nawrot, took my sister, Kristina Marie Nawrot, and me on a tour in Europe.
2. We left Toronto on July 29, 2012 on a Sunwing flight to London Gatwick, and we were supposed to return to Toronto on August 10, 2012 on a Sunwing flight departing from London Gatwick.
3. It was important for me and my sister to return to Toronto in time, because we wanted to attend Camp Delfin, a sports camp north of Toronto, between August 12, 2012 and August 19, 2012.
4. On August 9, 2012, I learned that our flight from London Gatwick to Toronto was delayed by over 12 hours, while on August 10, 2012 the departure time was updated so as to amount to a delay of more than 14 hours.
5. On August 10, 2012, the hotel where we had spent the last night had no vacant rooms, so we had to leave, and we checked in to the Holiday Inn for the day and the evening. We went shopping in the afternoon, and had supper at around 6:00 pm. After supper, we returned to the hotel to get organized and ready to go to the airport.
6. On August 10, 2012, we departed from the Holiday Inn to the London Gatwick Airport at approximately 11:00 pm; I remember that it was already dark outside. We first took the Underground, and then we transferred at a station called "Victoria". The trip from the hotel to the airport took a little over an hour and a half.

7. I distinctly remember that we arrived at the North Terminal of Gatwick Airport a few minutes past 1 o'clock in the morning, and we found all check-in counters deserted.

AND I HAVE SIGNED:

Date: 03/04/13

  
KAROLYN THERESA NAWROT



April 28, 2013

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Attention: Ms. Sylvie Giroux, Analyst

Dear Madam Secretary:

**Re: The Nawrots v. Sunwing Airlines**  
**File No.: M 4120-3/13-01696 / Our reference: 0575-Nawrot**  
**Complaint concerning denied boarding and/or failure to provide transportation**  
**and/or delay on or around August 10, 2012**  
**Productions and claim of confidentiality (as per Decision No. LET-C-A-67-2013)**  
**Sunwing Airlines' motion to reconsider Decision No. LET-C-A-67-2013**

Please accept the following submissions on behalf of the Nawrot family in relation to the above-noted matter as directed by the Agency in Decision No. LET-C-A-67-2013, and as an answer to Sunwing Airlines' motion that the Agency reconsider Decision No. LET-C-A-67-2013.

**I. Production of documents pursuant to Decision No. LET-C-A-67-2013**

Sunwing Airlines stated on page 7 of its April 17, 2013 answer to the complaint that:

We can see that there are purchases on the credit card payment summary between the time of the purchase of a railway ticket and the hotel at Gatwick which have been redacted. These are relevant and should be revealed and disclosed as well as any supporting invoices/receipts.






On April 23, 2013, the Nawrot family brought a motion seeking, among other things, directions as to whether to interpret these submissions of Sunwing Airlines as a request for production of documents.

On April 26, 2013, in Decision No. LET-C-A-67-2013, the Agency directed the Nawrots to produce the documents in question, or alternatively, to make a claim of confidentiality pursuant to Rule 23 of the Agency's *General Rules*.

The Nawrot family is pleased to produce the documents in question, to the extent that the documents are in their possession and/or control; however, they make a claim of confidentiality with respect to the first 12 digits of Mr. Nawrot's credit card number (see details below).

**(a) Credit card summary between the purchase of railway ticket and the hotel charge**

A copy of the sought credit card payment summary, with the first 12 digits of Mr. Nawrot's credit card number redacted, is attached and marked as Annex "A". Furthermore, for the Agency's convenience, the list of payments between the railway ticket for the Nawrot family and the charge at the hotel are also provided below:

Aug 10	Aug 13	NEW SOUTHERN RAILW LDN SW1V 5426 15.20 GBP @ 1.596052632**	 Foreign Currency Transactions	24.26
Aug 11	Aug 13	PP *FASTSPRING MORTALUN 4029357733 CA	 Home and Office Improvement	10.19
Aug 11	Aug 13 →	MARKS & SPENCER SSPLTD GATWICK NTH A 25.70 GBP @ 1.595719844**	 Foreign Currency Transactions	41.01
Aug 11	Aug 13 →	MARKS & SPENCER SSPLTD GATWICK NTH A 10.98 GBP @ 1.596539162**	 Foreign Currency Transactions	17.53
Aug 11	Aug 13	SOFITEL HOTEL GATWICK	 Hotel, Entertainment and Recreation	234.87

We note that the statement confirms that the train ticket purchase at Victoria Station was the last purchase Mr. Nawrot made on August 10, 2012.

**(b) Supporting invoices/receipts**

**(i) Train ticket**

Unfortunately, the Nawrots did not retain any invoices or receipts with respect to their train ticket, because they were not anticipating any litigation at the time they travelled to Gatwick Airport.

**(ii) Payment of CAD\$10.19 to PayPal / Fastspring Mortal Universe**

The next purchase on Mr. Nawrot's credit card is CAD\$10.19 paid via PayPal to Fastspring Mortal Universe for online purchase of software.

A copy of the invoice is attached and marked as Annex "B".

A copy of the email confirming the order, dated August 11, 2012 at 10:36:53 GMT (06:36:53 EDT / 03:36:53 PDT) is attached and marked as Annex "C".

**(iii) Two purchases at Marks & Spencer at Gatwick North**

The Nawrots did not retain invoices and/or receipts related to these purchases.

**(iv) Payment of \$234.87 to the Sofitel Hotel at Gatwick**

The supporting invoices and receipts were submitted as Exhibits “H” and “M” to the affidavit of Mr. Nawrot sworn on February 28, 2013. For the Agency’s convenience, these documents are also attached to the present submissions:

A copy of the pre-authorization slip from the Sofitel Hotel at Gatwick, dated August 11, 2012 at 2:05 am, with the first 12 digits of Mr. Nawrot’s credit card number redacted, is attached and marked as Annex “D”.

Copies of the invoices and the transaction slips from the Sofitel Hotel at Gatwick, dated August 11, 2012 at 12:10 pm (for CAD\$234.87, charged in Canadian Dollars) and August 12, 2012 at 07:47 am (for 145.80 GBP, charged in GBP) are attached and marked as Annex “E”.

**(c) Claim of confidentiality with respect to the first 12 digits of the credit card number**

Pursuant to Rule 23 of the Agency’s *General Rules*, the Nawrots make a claim of confidentiality with respect to the first 12 digits of the credit card number of Mr. Nawrot that appear on the unredacted copies of Annexes “A” and “D”. Pursuant to Rule 23(4)(b), unredacted copies of these documents are provided to the Agency with a separate cover letter at the of time the filing of the present submissions.

While the Nawrots do not object to the redacted documents being placed on public record, they are asking that the unredacted copies of these documents not be placed on public record. The Nawrots do not object to disclosing unredacted copies of these documents to Sunwing Airlines provided that Sunwing Airlines signs a confidentiality undertaking as per the Agency’s standard procedures.

The Nawrots’ claim of confidentiality is based on the following reasons:

1. Mr. Nawrot’s credit card number is financial information, and Rule 26 of the Agency’s *General Rules* states that:

If financial or corporate information is filed with the Agency, the Agency shall treat the information as confidential unless the person who provides it agrees in writing that the Agency need not treat it as confidential.

2. Public disclosure of Mr. Nawrot’s credit card number will enable anyone to make fraudulent purchases on Mr. Nawrot’s behalf using the credit card number and the expiry date, which appear on these documents.

3. Thus, public disclosure of the unredacted information would expose Mr. Nawrot to specific direct harm, namely, identity theft and fraudulent transactions in his name.
4. Credit card numbers are generally considered to be highly sensitive and confidential information. Indeed, most credit card slips list XXXX XXXX XXXX for the first 12 digits of the credit card number (see, for example, Annex “E”).

## **II. Sunwing Airlines’ motion for reconsideration of Decision No. LET-C-A-67-2013**

Decision No. LET-C-A-67-2013 of the Agency was communicated to the parties by email on April 26, 2013 at 14:35:30 (EDT). The decision concludes with a polite reminder to counsel for both parties that the purpose of proceedings before the Agency is not to litigate matters, but rather to resolve them as expeditiously as possible:

The Agency advises counsel for both parties to adhere to the directions given and to desist from overly litigious conduct in the interests of resolving this matter as expeditiously as possible.

On April 26, 2013, at 17:30:16 (EDT), after normal business hours, Sunwing Airlines sent a letter to the Agency protesting against Decision No. LET-C-A-67-2013, and asking the Agency to reconsider the decision.

The Nawrots oppose Sunwing Airlines’ motion for reconsideration for the reasons below.

### **(a) Sunwing Airlines failed to comply with Rule 11, and did not file its answer properly**

Sunwing Airlines complains that it submitted its “Answer to the Motion by email to Ms. Giroux this morning, April 26, 2013, copy attached.” However, Rules 9 and 11(1) of the Agency’s *General Rules* provide that:

**9.** To communicate with the Agency, a party must contact the Secretary.

**11.** (1) Subject to subsection (2), a document shall be filed with the Agency by forwarding it to the Secretary in accordance with this section.

[Emphasis added.]

Although Sunwing Airlines did send its answer to Ms. Giroux, the Agency’s *General Rules* are clear that this does not constitute filing of the document with the Agency, because Sunwing Airlines failed to provide its answer to the Secretary of the Agency.

Thus, Sunwing Airlines is the maker of its own misfortune, and it can only blame itself for its failure to file the answer in accordance with the *General Rules*.

**(b) The nature of Decision No. LET-C-A-67-2013: directions and timelines**

Decision No. LET-C-A-67-2013 of the Agency accomplishes three things: first, it provides directions to both parties as to the proper procedure to follow with respect to redacted documents; second, it sets timelines for complying with these procedures; and third, it dismisses the Nawrots' motion for production of a sworn affidavit by Mr. Tydeman.

The third issue is moot, because Sunwing Airlines produced the sworn affidavit in question, while the first two are perfectly within the Agency's powers on its own motion. Indeed, Rules 3-5 and 25 of the Agency's *General Rules* provide that:

**3.** (1) When the Agency is given a discretion under these Rules, it shall exercise the discretion in a fair and expeditious manner.

(2) The Agency may, with or without notice,

(a) do whatever is necessary to deal with anything that is not covered by these Rules; or

(b) do anything prescribed in these Rules on its own, even if the Rules state that a party must make a request or motion to the Agency.

**4.** In any proceeding, the Agency may dispense with or vary any of the provisions of these Rules.

**5.** In any proceeding, the Agency may extend or abridge the time limits set by these Rules, or otherwise set by the Agency, either before or after the expiry of the time limits.

**25.** The Agency may make a determination of confidentiality on its own initiative after giving the other parties to the proceeding an opportunity to comment on the issue of confidentiality, in accordance with the procedure set out in section 23, with such modifications as the circumstances or the Agency requires.

Thus, the Agency did not have to wait to hear from Sunwing Airlines before issuing directions about the proper procedure that parties are to follow and setting timelines for complying with these procedures.

**(c) No prejudice to Sunwing Airlines**

Decision No. LET-C-A-67-2013 of the Agency contains no substantive determination that is prejudicial to Sunwing Airlines in any way. It does not impose an obligation upon Sunwing Airlines to produce the unredacted exhibits to the affidavit of Ms. Dhue, but rather provides guidance and choice: Sunwing Airlines must either produce these documents, *or* make a claim of confidentiality.

The Agency provided identical directions to the Nawrots, and thus it is plain and obvious that the Agency's directions were made with respect to *both parties* and were focused on the proper conduct of the proceeding.

Decision No. LET-C-A-67-2013 does not make any determination that would be prejudicial to Sunwing Airlines in any way, and indeed, Sunwing Airlines is provided with a full and fair opportunity to present its arguments about why certain portions of the exhibits to the affidavit of Ms. Dhue should be treated as confidential.

Therefore, the Nawrots submit that even if the Agency finds that its Decision No. LET-C-A-67-2013 was issued prematurely (a conclusion that the Nawrots disagree with), Sunwing Airlines is not prejudiced by the decision in any way, and consequently the decision ought not be reconsidered.

**(d) The Nawrots' right to file a reply pursuant to Rule 32(5)**

It is the Nawrots' submission that Decision No. LET-C-A-67-2013 ought to stand, and the Agency's resources and the parties' efforts would be best spent on dealing with the claims of confidentiality that parties make in response to the decision.

However, should the Agency decide to rescind and/or reconsider Decision No. LET-C-A-67-2013, then the Nawrots ask that they be provided with five business days to file a Reply, pursuant to Rule 32(5), to Sunwing Airlines' Answer of April 26, 2013.

While the Nawrots have numerous submissions to make concerning the state of the law on redaction of exhibits in response to Sunwing Airlines's Answer of April 26, 2013, the undersigned will await the Agency's directions before filing said Reply.

All of which is most respectfully submitted.

  
Louis Béliveau

Cc: Mr. Ray Nawrot  
Mr. Clay Hunter, counsel for Sunwing Airlines

**Annex "A" to the submissions  
of the Nawrots**

April 28, 2013  
Page 7 of 13

**212**

**Your new charges and credits (continued)**

Trans date	Post date	Description	Spend Categories	Amount(\$)
<b>Card number</b>		<b>5132</b>		
Aug 09	Aug 10	→ TESCO STORES 5122 CLAPHAM 20.97 GBP @ 1.597997139**	Foreign Currency Transactions	33.51
Aug 09	Aug 10	PIZZERIA ON THE GREEN LONDON SW4 15.65 GBP @ 1.598083067**	Foreign Currency Transactions	25.01
Aug 09	Aug 10	HERTZ ORBIS RAC WARSZAWA 720.31 PLN @ 0.310172009**	Foreign Currency Transactions	223.42
Aug 09	Aug 10	DESILVA HOTEL WARSZAWA AIWARSZAWA 45.00 PLN @ 0.310222222**	Foreign Currency Transactions	13.96
Aug 10	Aug 13	FIDO *661086769 888-481-3436 ON	Personal and Household Expenses	77.97
Aug 10	Aug 13	A&M ASSOCIATES LTD LONDON 45.99 GBP @ 1.595781692**	Foreign Currency Transactions	73.39
Aug 10	Aug 13	LUL TICKET OFFICE. CLAPHAM SOUTH 14.10 GBP @ 1.595744681**	Foreign Currency Transactions	22.50
Aug 10	Aug 13	BAKER STREET EMPORIUM LONDON 14.97 GBP @ 1.595858383**	Foreign Currency Transactions	23.89
Aug 10	Aug 13	→ ACORN CONVENIENCE STOR LONDON 14.48 GBP @ 1.595303867**	Foreign Currency Transactions	23.10
Aug 10	Aug 13	MADAME TUSSAUDS/EN LONDON NW1 81.60 GBP @ 1.595955882**	Foreign Currency Transactions	130.23
Aug 10	Aug 13	Hotels com UK 0871 200 0171 99.00 GBP @ 1.595858586**	Foreign Currency Transactions	157.99
Aug 10	Aug 13	CASTLE LONDON 41.00 GBP @ 1.595853659**	Foreign Currency Transactions	65.43
Aug 10	Aug 13	CASTLE LONDON 7.00 GBP @ 1.595714286**	Foreign Currency Transactions	11.17
Aug 10	Aug 13	NEW SOUTHERN RAILW LDN SW1V 5426 15.20 GBP @ 1.596052632**	Foreign Currency Transactions	24.26
Aug 11	Aug 13	PP *FASTSPRING MORTALUN 4029357733 CA	Home and Office Improvement	10.19
Aug 11	Aug 13	→ MARKS & SPENCER SSPLTD GATWICK NTH A 25.70 GBP @ 1.595719844**	Foreign Currency Transactions	41.01
Aug 11	Aug 13	→ MARKS & SPENCER SSPLTD GATWICK NTH A 10.98 GBP @ 1.596539162**	Foreign Currency Transactions	17.53
Aug 11	Aug 13	SOFITEL HOTEL GATWICK	Hotel, Entertainment and Recreation	234.87
Aug 11	Aug 13	AGENT FEE 8900581902510TORONTO ON 3,858.93 USD @ 1.021464499**	Foreign Currency Transactions	3,941.76
Aug 12	Aug 13	COA*AIRLINETAXES&FEES 866-636-9088 NY 35.85 USD @ 1.021478382**	Foreign Currency Transactions	36.62
Aug 12	Aug 13	S*TEL LGW RECEP 0 WEST SUSSEX 145.80 GBP @ 1.595884774**	Foreign Currency Transactions	232.68
Aug 12	Aug 13	WDFE HEATHROW 116.65 GBP @ 1.595885126**	Foreign Currency Transactions	186.16
Aug 12	Aug 13	NATIONAL EXPRESS LTD HORLEY 37.50 GBP @ 1.596000000**	Foreign Currency Transactions	59.85
Aug 13	Aug 14	AIR CANADA DUTY FREE MISSISSAUGA ON	Retail and Grocery	35.00
Aug 14	Aug 15	FIDO *664332665 888-764-3771 ON	Personal and Household Expenses	69.20
Aug 14	Aug 15	PRECISE PARKLINK INC EDMONTON AB	Transportation	6.00
Aug 14	Aug 16	PAYPAL *EDOSELLSUPP 4029357733 CA	Personal and Household Expenses	23.99
Aug 15	Aug 17	BURGER KING #11980 ETOBICOKE ON	Restaurants	11.52
Aug 15	Aug 17	LCBO/RAO #0426 ETOBICOKE ON	Retail and Grocery	20.00
Aug 16	Aug 20	LCBO/RAO #0426 ETOBICOKE ON	Retail and Grocery	24.00
Aug 16	Aug 20	LCBO/RAO #0426 ETOBICOKE ON	Retail and Grocery	24.00
Aug 16	Aug 20	PAYPAL *SPREADSHIRT 4029357733 ON	Professional and Financial Services	29.95
Aug 16	Aug 20	PAYPAL *AKANGA60714 4029357733 ON	Professional and Financial Services	22.25
Aug 16	Aug 20	→ ESSO 1000 THE QUEENSWAY TORONTO ON	Transportation	80.00

**Annex "B" to the submissions  
of the Nawrots**

April 28, 2013  
Page 8 of 13

**213**

# INVOICE

Fastspring  
11 W Victoria St  
Suite 207A  
Santa Barbara, CA 93101  
US  
orders@fastspring.com  
VAT Number: EU826012240  
Product Support  
<http://www.mortaluniverse.com>

**Order ID: MOR120811-2838-19114**  
**Paid In Full: 11-Aug-2012**

Raymond Nawrot  
12 Leland Ave  
Etobicoke, Ontario M8Z 2X5  
Canada

Description	Quantity	Amount
POP Peeper Add-on Pack	1	US\$10.00
	Subtotal	US\$10.00
	Sales Tax	US\$0.00
	<b>Total</b>	US\$10.00



Ray NAWROT

---

**From:** Mortal Universe Support <mailer@fastspring.com>  
**Sent:** August-11-12 6:37 AM  
**To:** Raymond Nawrot  
**Subject:** Your Order: POP Peeper Add-on Pack [MOR120811-2838-19114]

Thank you for your order!

Your order is currently processing. You will receive additional information via a separate email.

<https://sites.fastspring.com/mortaluniverse/order/invoice/MOR120811-2838-19114>

Raymond Nawrot  
[ray.nawrot@gmail.com](mailto:ray.nawrot@gmail.com)  
12 Leland Ave  
Etobicoke  
Ontario M8Z 2X5  
CA

Order ID: **MOR120811-2838-19114**

1 POP Peeper Add-on Pack

**Total: US\$10.00**

---

Mortal Universe Support  
[support@mortaluniverse.com](mailto:support@mortaluniverse.com)

Annex "C" to the submissions  
of the Nawrots

April 28, 2013  
Page 10 of 13

215

Delivered-To: ray.nawrot@gmail.com  
Received: by 10.112.86.99 with SMTP id o3csp2189711bz;  
Sat, 11 Aug 2012 03:36:57 -0700 (PDT)  
Received: by 10.66.83.8 with SMTP id m8mr5484036pay.48.1344681417133;  
Sat, 11 Aug 2012 03:36:57 -0700 (PDT)  
Return-Path: <7f7.18.MOR120811-2838-19114.ray.nawrot@gmail.com@mxsp4.email-od.com>  
Received: from mail4.smtprelayserver.com (mail4.smtprelayserver.com.  
[64.151.119.34])  
by mx.google.com with ESMTMP id ot8si2723811pbb.249.2012.08.11.03.36.55;  
Sat, 11 Aug 2012 03:36:57 -0700 (PDT)  
Received-SPF: pass (google.com: domain of  
7f7.18.MOR120811-2838-19114.ray.nawrot@gmail.com@mxsp4.email-od.com designates  
64.151.119.34 as permitted sender) client-ip=64.151.119.34;  
Authentication-Results: mx.google.com; spf=pass (google.com: domain of  
7f7.18.MOR120811-2838-19114.ray.nawrot@gmail.com@mxsp4.email-od.com designates  
64.151.119.34 as permitted sender)  
smtp.mail=7f7.18.MOR120811-2838-19114.ray.nawrot@gmail.com@mxsp4.email-od.com;  
dkim=pass header.i=@email-od.com  
DKIM-Signature: v=1; a=rsa-sha1; d=email-od.com; i=@email-od.com; s=dkim;  
c=relaxed/relaxed; q=dns/txt; t=1344681433; x=1347273433;  
h=date:from:reply-to:to:message-id:subject:mime-version:content-type;  
bh=2VusrQCYQFHxHNbzD/aqofDtWoo=;

b=BnO1GEjR0UwbreIwOom8T7NNKVcpmz9kQdQaL4IvChLMip+0jnuXv9/HF5duOxm9woNCJlOmsbG+O3VRQ  
vuQ3/8qPPKYnJCbAcubglwdu10A60U2iz7p1KQJlqBCskZvycpajB9Oro1XWbWNxys3vr+kET7A0lfvT662  
JADkK9o=  
X-Thread-Info:  
N2Y3LjFhLjF1NjAwMDAwMzY3ZTU2YS5NT1IxMjA4MTEtMjg3OC0xOTExNC5yYXkubmF3cm90PwdtYwlsLmN  
vbQ==  
Received: from r1.rsc.in.socketlabs.com ([184.106.114.173]) by smtp104.email-od.com  
with ESMTMP; Sat, 11 Aug 2012 06:37:10 -0400  
Received: from gmpydbac ([8.12.33.76]) by r1.rsc.in.socketlabs.com  
with ESMTMP; Sat, 11 Aug 2012 06:37:04 -0400  
Date: Sat, 11 Aug 2012 10:36:53 +0000 (GMT)  
From: Mortal Universe Support <mailer@fastspring.com>  
Reply-To: Mortal Universe Support <support@mortaluniverse.com>  
To: Raymond Nawrot <ray.nawrot@gmail.com>  
Message-ID: <30034735.580191344681414184.JavaMail.fastspring@smtp.socketlabs.com>  
Subject: Your Order: POP Peeper Add-on Pack [MOR120811-2838-19114]  
MIME-Version: 1.0  
Content-Type: multipart/alternative;  
boundary="-----\_Part\_25148\_128339.1344681413550"  
X-Notification-Type: AcqNotify:AcceptReceiver

Annex "D" to the submissions  
of the Nawrots

April 28, 2013  
Page 11 of 13

216

Sofitel London Gatwick  
North Terminal  
Gatwick Airport  
West Sussex RH6 0PH  
01293 567070

MID: 44661693  
TID: 25012711

DATE: 11-08-2012  
TIME: 02:05:23

PRE-AUTH

TRANS SEQ: 000007880  
BATCH NUM: 0839  
KEYED

VISA

EXP DATE: 11/14

5132

PRE AUTH

LOCAL AMOUNT £200.00

TRANSACTION CURRENCY AMT  
CAD322.18

INDICATIVE EXCHNG RATE  
1 GBP=CAD 1.6109

TOTAL

CAD322.18

SIGN

AUTH CODE: 017972

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS

I ACCEPT THAT I HAVE  
BEEN OFFERED A CHOICE  
OF CURRENCIES FOR  
PAYMENT. I ACKNOWLEDGE  
I HAD A CHOICE TO PAY  
IN STERLING. I  
UNDERSTAND THAT THE  
CHOSEN CURRENCY IS  
FINAL CURRENCY.  
CONVERSION FOR THIS  
TRANSACTION IS  
PERFORMED BY GLOBAL  
BLUE AND IS BASED ON  
THE ROYAL BANK OF  
SCOTLAND GROUP  
WHOLESALE RATE OF TODAY  
WITH A MARK-UP OF 3.1%.

MERCHANT COPY

**Annex "E" to the submissions  
of the Nawrots**  
**SOFITEL**  
LUXURY HOTELS

April 28, 2013  
Page 12 of 13

**217**

LONDON GATWICK

**Mr. Ray Nawrot**  
12 Leland Ave.  
MBZ 2X5 Toronto  
  
CANADA

Room Number : 730  
Arrival Date : 10/08/12  
Departure Date : 12/08/12  
Cashier : 20/KR  
Time : 13:46:00  
No. Guests : 1/0  
Page : 1  
Account No. :  
Agent Ref No. :  
VAT No. : 809823803

Sofitel London Gatwick, 11/08/12

INTERIM 861984/1

Date	Charge Description	Charges	Payments
10/08	Accommodation	109.00	
10/08	Accommodation/Vat	21.80	
11/08	In-room Internet #730	15.00	
11/08	Visa Card XXXXXXXXXXXX5132 11/14		145.80
<b>Balance Due:</b>		<b>£0.00</b>	

**VAT Breakdown:**

Net @ 20%      £ 121.50  
Net @ 4%        £ 0.00  
Non-Vatable    £ 0.00  
Vat 20%        £ 24.30  
Vat 4%          £ 0.00  
Total Bill      £ 145.80

Sofitel London Gatwick  
North Terminal  
Gatwick Airport  
West Sussex RH6 0PH  
01293 567070

MID: 44661693  
TID: 26312711

DATE: 11 08-2012  
TIME: 12 10:16

TRANS SEQ: 000009150  
BATCH NUM: 0841  
KEYED

VISA  
XXXX XXXX XXXX 5132

SALE  
LOCAL AMOUNT      £ 145.80  
TRANSACTION CURRENCY AMT  
CAD 234.87

EXCHNG RATE  
1 GBP=CAD 1.6105

**TOTAL**  
CAD 234.87

PERMISSION TO DEBIT  
ACC

SIGNATURE VERIFIED  
AUTH CODE: 017972

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS

I ACCEPT THAT I HAVE  
BEEN OFFERED A CHOICE



SOFITEL LONDON GATWICK - NORTH TERMINAL - GATWICK AIRPORT - WEST SUSSEX  
TEL +44 (0)1293 567070 - FAX +44 (0)1293 555037 - E-MAIL H6204@SOFITEL.COM  
REGISTERED IN CARDIFF S454977 - ARORA HOTELS LIMITED - THE GROVE - BATH ROAD - WEST

an Arora Hotel



LONDON GATWICK

Mr. Ray Nawrot  
12 Leland Ave.  
MBZ 2X5 Toronto

CANADA

Room Number : 730  
Arrival Date : 10/08/12  
Departure Date : 12/08/12  
Cashier : 16/PKS  
Time : 07:49:43  
No. Guests : 1/0  
Page : 1  
Account No. :  
Agent Ref No. :  
VAT No. : 809823803

Sofitel London Gatwick, 12/08/12

INVOICE 861984/1

Date	Charge Description	Charges	Payments
10/08	Accommodation	109.00	
10/08	Accommodation/Vat	21.80	
11/08	In-room Internet #730	15.00	
11/08	Visa Card		145.80
	XXXXXXXXXXXX5132 11/14		
11/08	Accommodation/Vat Upgrade	15.00	
11/08	Accommodation	109.00	
11/08	Accommodation/Vat	21.80	
12/08	Visa Card		145.80
	XXXXXXXXXXXX5132 11/14		
<b>Balance Due:</b>		<b>£0.00</b>	

**VAT Breakdown:**

Net @ 20%      £ 243.00  
Net @ 4%        £ 0.00  
Non-Vatable    £ 0.00  
Vat 20%        £ 48.60  
Vat 4%         £ 0.00  
Total Bill      £ 291.60

SOFITEL LONDON GATWICK  
NORTH TERMINAL  
GATWICK AIRPORT  
WEST SUSSEX RH6 0PH  
01293 567070

MID : 39132  
TID : 2757  
12-08-2012      07 47 43

BATCH NUMBER: 00030029  
KEYED

VISA  
XXXX XXXX XXXX 5132  
COMPLETION      £145.80  
**TOTAL**      £145.80

PERMISSION TO DEBIT  
ACCOUNT

SIGNATURE VERIFIED  
AUTH CODE: 027304

PLEASE KEEP RECEIPT FOR  
YOUR OWN RECORDS

CUSTOMER COPY

