

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 II
(Motion for Leave to Appeal, Rule 352)**

Dated: December 7, 2013

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April 17, 2013

Via E-mail: sylvie.giroux@otc-cta.gc.ca

Canadian Transportation Agency
Air and Accessible Transportation Branch
Air & Marine Investigation Division
Ottawa, Ontario
K1A 0N9

Attention: Sylvie Giroux, Analyst

Dear Sirs/Mesdames:

**RE: File No. M4120-3/13-01696
Complaint by the Nawrots Family against
Sunwing Airlines
Our File No. 213062**

Submissions by Sunwing Airlines Inc.

The Nawrots' Complaint involves two separate and distinct issues and seeks two separate and distinct remedies.

The first being the Nawrots' complaint challenging the determination that they failed to present for check-in prior to the stipulated cut-off time for check-in and that therefore, they were improperly denied boarding of Sunwing Airlines Flight WG201.

The second being a challenge to the clarity and reasonableness of Sunwing Airlines' International Tariff rules with respect to denied boarding compensation where a passenger is denied boarding for reasons of the carrier overselling its flight.

Sunwing Airlines will be responding directly and separately to that part of the Complaint challenging its International Tariff rules.

We have been retained by Sunwing Airlines to respond to the Nawrots' allegations with respect to their having been improperly denied boarding of Sunwing Flight WG201.

Overview

The circumstances of the Nawrots' Complaint arise from their contracting with Sunwing Airlines for a journey of international carriage by air, departing Toronto, Canada July 29, 2012 and returning to Toronto, Canada August 10, 2012 with an agreed

stopping place at London's Gatwick International Airport, UK. The Nawrots booked and purchased their carriage on line by way of the Sunwing website.

The return portion of the Nawrots' journey by air was originally scheduled to depart Gatwick at 12:20 local time August 10, 2012 on an aircraft operated as Sunwing Airlines Flight WG201. However, as a result of delays encountered by the inbound aircraft arriving from Pearson, the scheduled departure of Flight WG201 was delayed and ultimately rescheduled to depart Gatwick at 02:25 local time August 11, 2012.

The cut-off for passenger check-in for Flight WG201 was 01:25 local time August 11, 2012.

The essence of the Nawrots' Complaint is their allegation that they arrived for check-in prior to 01:25 local time August 11, 2012 and at which time they allege the check-in for Flight WG201 had already been closed.

A determination of the Nawrots' Complaint is solely dependent on whether, on a balance of probabilities, the Nawrots can prove they arrived for check-in prior to 01:25 local time August 11, 2012 *and* that the check-in counter was closed by Sunwing Airlines prior to the cut-off time of 01:25 local time August 11, 2012.

If the Nawrots simply failed to present for check-in prior to cut-off for check-in, they breached their contract for carriage and there is no entitlement to compensation.

Were the Nawrots aware of the cut-off time for check in and the recommended time for arrival at check-in for Flight WG201?

As the Nawrots booked and purchased their contracts of carriage on-line; in order to complete their booking, they were obligated to positively accept the terms and conditions of carriage, which incorporate Sunwing Airlines' International Tariff for Scheduled Service.

Affidavit of Joanne Dhue, sworn April 17, 2013

Subsequent to completing their booking, the Nawrots received by email from Sunwing Airlines an E-ticket which provided information for travel, the conditions of the contract and, by incorporation, the Tariff rules.

Exhibit "A" to the Affidavit of Raymond Nawrot, sworn February 28, 2013

Exhibit "C" to the Affidavit of Joanne Dhue, sworn April 17, 2013

In their submissions, the Nawrots admit, and the Tariff Rules and Terms and Conditions required, that check-in for Flight WG201 be left open until no later than 01:25 local time August 11, 2012. Alternatively worded, it was required that the Nawrots check-in for Flight WG201 no later than 01:25 local time August 11, 2012.

The Nawrots' E-ticket as well as Sunwing Airlines' Terms and Conditions stipulates that check-in for Flight WG201 was to be open at 22:25 local time August 10,

2012 (four (4) hours prior to its scheduled departure) and strongly recommended that the Nawrots arrive at Gatwick for check-in at 22:25 local time August 10, 2012.

As Mr. Nawrot has further admitted, the Nawrots were aware as of 14:30 local time August 10, 2012 (the time and date of the last email notification of schedule changes Mr. Nawrot received from Sunwing Airlines) that the recommended time that they arrive at Gatwick for check-in was 22:25 local time August 10, 2012 and that the cut-off time for check-in was 01:25 local time August 11, 2012.

Exhibit "E" to the Affidavit of Raymond Nawrot, sworn February 28, 2013

When did the Nawrots present for Check-in?

Evidence of Sunwing Airlines

All of the reports generated pursuant to standard operating procedures record that the scheduled departure time for Flight WG201 was 02:25 local time/01:25 UTC August 11, 2012.

Exhibit "H" to the Affidavit of Joanne Dhue, sworn April 17, 2013

Exhibit "K" to the Affidavit of Joanne Dhue, sworn April 17, 2013

The Nawrots admit in their submissions, and the Tariff Rules and Terms and Conditions required, that the cut-off for check-in for Flight WG201 was 60 minutes prior to the scheduled time of departure or 01:25 local time/00:25 UTC August 11, 2012.

Complaint of the Nawrots, Argument, page 8, paragraph 3

The Passenger Services Supervisor for Swissport, Sunwing Airlines' ground handling agent at Gatwick International Airport (Gatwick) completed the Shift Report at the time of Flight WG201. This report states that check-in was in fact closed at 01:25 local time, one hour prior to the scheduled departure of Flight WG201. Further, it specifically states that four passengers turned up fifteen (15) minutes after check-in had closed and that the Supervisor checked with the dispatcher at that time who denied them travel.

Exhibit "I" to the Affidavit of Joanne Dhue, sworn April 17, 2013

Vic Tydeman, the Passenger Services Supervisor who completed the Shift Report, recalls this incident and confirms that three (3) passengers arrived at check-in at 01:45 August 11, 2012 and that a fourth passenger arrived approximately 5 minutes after they did.

We are awaiting receipt of a signed Declaration from Mr. Tydeman but will not receive it until the morning of April 18, 2013. At which time we will immediately forward it to the Agency and the parties. In the meantime, we attach to these submissions a copy of the unsigned Declaration of Vic Tydeman. We are also awaiting receipt of a sworn Affidavit from Mr. Tydeman. We understand that Mr. Tydeman has been off shift for some time only returning to work recently. This and the time difference between

Toronto and London, UK have caused the late arrival of the signed Declaration and Affidavit.

Unsigned Declaration of Vic Tydeman

The airline industry in general and Sunwing Airlines in particular, follows strict policies and procedures with respect to all aspects of its operations. Following those policies and procedures is not left to the whim of individuals. Prior to the Nawrots' complaint, never in the history of Sunwing Airlines has there been any report or complaint of check-in for a flight being closed prior to 60 minutes before the scheduled departure of the flight in question.

Affidavit of Mark Williams, sworn April 17, 2013

Evidence of the Nawrots

Contrary to the submissions of the Nawrots, they have not provided consistent evidence of when they presented for check-in nor have they provided any independent or objective evidence to support their claim that they arrived at check-in prior to 01:25 local time August 11, 2012. Where there is such independent or objective evidence readily available, they have chosen not to proffer this evidence.

The Nawrots contend that they presented for check-in at 01:10 local time August 11, 2012. In order to support this they have attempted to establish a timeline based on assumptions derived from two documents; a redacted credit card payment summary showing the purchase of a single train ticket from Victoria Station to Gatwick and a pre-authorization for their hotel at Gatwick dated 02:05:23 August 11, 2012.

The Nawrots' evidence that they presented for check-in at 01:10 August 11, 2012 has not been consistent.

Raymond Nawrot's sworn Affidavit simply states his recollection that they "*arrived at the London Gatwick Airport on August 11, 2012 shortly after 1:00 am.*" and subsequently arrived "*at the check-in area at London Gatwick Airport (North Terminal) at approximately 1:10 am*". Importantly, it establishes that it took the Nawrots some time (approximately 10 minutes by Mr. Nawrot's recollection) to get from the train to the Sunwing Airlines check-in counter.

The unsworn Declaration of Karolyn Theresa Nawrot, who was 15 years old at the time, states that she "*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 closed.*"

The unsworn Declaration of Kristina Marie Nawrot, who was 17 ½ years old at the time, states "*I was very tired, and I do not remember the time that we arrived at the airport.*"

Each of these statements fail to acknowledge that all trains from Victoria Station to Gatwick arrive at the South Terminal. Accordingly, the Nawrots had at least three options to get to the Sunwing Airlines check-in counter located at the North Terminal; a

shuttle bus, walk or taxi. We have no evidence of what mode the Nawrots chose. Only Raymond Nawrot's Affidavit identifies that in his recollection it took approximately 10 minutes to get from the South Terminal to the check-in counter at the North Terminal.

Appendix "A" to the Submissions of Sunwing Airlines

In his email to Sunwing Airlines immediately following the incident and dated August 11, 2012 at 4:21 a.m. Mr. Nawrot states that he "*arrived at the airport at 0115.*" and "*On arrival the checkin (sic) counter was closed...*" This suggests that his immediate and contemporaneous recollection, which is to be preferred, was that he arrived at the South Terminal at 01:15 and then had to make his way to the North Terminal. Even if Mr. Nawrot's sworn testimony is accepted on this point, this would have taken approximately 10 minutes and placed the Nawrots at the check-in counter at approximately 01:25 local time, the time for cut-off.

The Train to Gatwick from Victoria Station

The Nawrots have attempted to establish that their arrival at check-in at 01:10 makes sense based on their time of arrival by train at Gatwick. However, they have not provided the train ticket. Rather, they have assumed that it must have been the Southern Railway train marked SN scheduled to depart Victoria Station at 00:14 and arrive at Gatwick at 00:59 August 11, 2012. Further, they have assumed that the trains run exactly on schedule. These assumptions are based a) on their position that they arrived at check-in at approximately 01:10 August 11, 2012 and b) the credit card payment summary.

There are several problems with the Nawrots assumptions.

They must make these assumptions in order to establish they made the time for check-in and to that extent they are self serving.

The Nawrots have provided no evidence that the British rail system runs on time. In fact, in the absence of any such evidence, it is submitted the British rail system is notorious for not running on time. In any event, any times set out in the train schedule can only be approximate.

Appendix "B" to the Submissions of Sunwing Airlines

The Southern Railway owns and operates the Gatwick Express (GX). Accordingly, the schedule for all SN and GX trains is relevant. Without proof to the contrary, the submission that the credit card was processed by Southern Railway does not exclude tickets purchased for the Gatwick Express trains.

Appendix "C" to the Submissions of Sunwing Airlines

The redacted credit card payment summary reveals at most that only one ticket was purchased. There is no record of for which train (SN or GX/time of departure) the ticket was purchased nor is there any record of a ticket being purchased for two adults and one child. Further, there is no record of when or where the ticket was purchased. That is, was it purchased on-line prior to arriving at Victoria Station or once they arrived at Victoria Station?

There is a real issue as to when the Nawrots arrived at Victoria Station and therefore, when they departed for and arrived at Gatwick.

The Nawrots proposed timeline begins with when they checked out of their hotel. And yet, they have failed to provide any documentary evidence of when they checked out; notwithstanding that it should be easily obtainable from the hotel. Instead, we have:

- Raymond Nawrot's affidavit evidence that they "*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 train.*"
- Karolyn Theresa Nawrot's declaration that "*we departed from the Holiday Inn to the London Gatwick Airport at approximately 11:00 pm... 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.*"
- Kristina Marie Nawrot's declaration that "*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.*"

Sunwing Airlines submits that the Underground station closest to the Nawrots' hotel was North Acton Station located immediately behind their hotel and, according to the Transport for London website, 24 minutes is the average journey time from North Acton to Victoria station. Based on Raymond Nawrot's evidence this would place the Nawrots at Victoria Station between 22:30 and 23:30 August 10, 2012.

Appendix "D" to the Submissions of Sunwing Airlines

The train schedule for all Southern Railway trains to Gatwick discloses that there were 17 trains departing Victoria Station from 22:30 August 10, 2012, and 10 trains departing from 23:30 August 10, 2012, up to and including the 00:14 August 11, 2012 train the Nawrots have assumed was actually taken.

Annex "A" to the Complaint of the Nawrots, page 39 and 40.

The Nawrots have failed to proffer any objective documentary evidence of which train they actually took from Victoria Station. However, on any reading of the evidence that has been proffered, it is submitted that the Nawrots have failed to explain why it is they chose to wait until 00:14 to take the train to Gatwick. Assuming that they did leave the hotel between 22:00 and 23:00 August 11, 2012, there is no explanation for not having taken an earlier train from Victoria Station. Rather, it begs the question, given that time was known to be of the essence to the Nawrots with the fast approaching cut-off time for check-in, why they would not take the earliest train available.

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.

Exhibit “G” to the Affidavit of Raymond Nawrot, sworn February 28, 2013

On the Nawrots theory of their case, they went directly from their hotel to Victoria Station and then directly from Victoria Station to Gatwick Airport and the Sunwing Airlines check-in. They have suggested that the purchase of the train ticket occurred at Victoria Station. This does not leave any time for the redacted purchases to have been made.

Taken as a whole, the many gaps in the Nawrots timeline suggest alternative and equally viable explanations for the Nawrots arriving at the check-in counter after 01:25 August 11, 2012. Which include, they simply took a later train; they purchased a railway ticket for a specific train but for some reason failed to make that train resulting in purchasing another train ticket; or, they simply arrived at Victoria Station much later than they submit and purchased tickets on a train that arrived at Gatwick too late for them to make the time for cut-off of check-in. Even this assumes all purchases were made by credit card.

According to the train schedule, there is a Gatwick Express (GX) train scheduled to depart Victoria Station at 00:30 and arrive at Gatwick at 01:20 August 11, 2012, as well as a Southern (SN) train scheduled to depart at 01:00 and arrive at Gatwick at 01:47. Each of these trains was scheduled to take approximately 50 minutes to arrive at Gatwick.

The 4th passenger “denied boarding” of WG201

In his correspondence to Sunwing Airlines dated August 11, 2012; August 27, 2012; October 19, 2012 and January 21, 2013, Mr. Nawrot repeatedly refers to another passenger who was denied boarding of Flight WG201 for the same reasons the Nawrots allege they were denied boarding; presenting for check-in prior to the 60 minute cut-off only to find the check-in counter closed.

Exhibits “I”, “P”, “R” and “X” to the Affidavit of Raymond Nawrot, sworn February 28, 2013

In his January 21, 2013 letter, Mr. Nawrot states that he has *“been in touch with this traveller since the beginning of our ordeal.”*

The Swissport Shift Report states that four (4) passengers “turned up 15 minutes after closure time checked with dispatcher who advised most pax boarded so denied them travel.” The Supervisor and report’s author, Vic Tydeman, has declared that a fourth passenger arrived at the check-in counter approximately 5 minutes after the first three passengers who had arrived at the check-in counter at 01:45 local time August 11, 2012.

Exhibit “I” to the Affidavit of Joanne Dhue, sworn April 17, 2013

Unsigned Declaration of Vic Tydeman

Sunwing Airlines subsequently investigated each and every one of the passengers that did not show up for Flight WG201 (“no-shows”) to determine whether the “4th passenger” was indeed denied boarding for failing to present for check-in. The result of that investigation ruled out any such passenger.

Affidavit of Joanne Dhue, sworn April 17, 2013

Logically, if a passenger was indeed denied boarding as alleged by the Nawrots, a claim or at least a complaint would be expected. However, there has been no complaint or report by or of any such passenger.

Affidavit of Joanne Dhue, sworn April 17, 2013**Affidavit of Mark Williams, sworn April 17, 2013**

While Mr. Nawrot contended that he had spoken to this “4th passenger”, the Nawrots have failed to proffer any affidavit or statement from this passenger in support of their Complaint.

Interestingly, despite his repeated allegations, Mr. Nawrot’s sworn Affidavit makes no reference to a “4th passenger” that was denied boarding for the same reasons the Nawrots allege. Rather, there is only reference to a passenger complaining with respect to being delayed on the inbound Sunwing Airlines flight from Toronto to Gatwick and to a passerby.

Affidavit of Raymond Nawrot, sworn February 28, 2013

In light of Mr. Nawrot’s own Affidavit, the Nawrots’ failure to proffer any evidence from the “4th passenger”, and the investigation by Sunwing Airlines, we submit there is little if any merit to there having been any passenger other than the Nawrots denied boarding for failing to present for check-in within the time for cut-off of Flight WG201.

Other credibility issues

Mr. Nawrot states in his Affidavit that he spoke on the telephone with a member of Gatwick Airport staff and that this person contacted the Captain of Flight WG201. We submit that this is not credible. Such action is not within the standard procedures of carriers or airport authorities and it would only be the rarest of cases where the airport authority would contact the Captain directly to discuss the denied boarding of a passenger. Further, in the event of such a rare case, there would be a record of the communication reported in the Captain’s Report. There is no such record.

Affidavit of Joanne Dhue, sworn April 17, 2013

It is our submission, the airport never contacted the Captain of Flight WG201.

Mr. Nawrot in his Affidavit and elsewhere has relied on his allegedly having spoken to a janitor. Obviously, we do not have this janitor’s evidence and any such

evidence is therefore merely hearsay not to mention lacking any credibility. Without such evidence, it is more than difficult to give any credence to a janitorial staff member's knowledge of flight departures generally and for Flight WG201 in particular.

Summary

Essentially and overarching this entire complaint is the Nawrots' suggestion that Sunwing Airlines would randomly and capriciously close its check-in counters early for no other reason than its agents were working the night shift.

Such a suggestion is illogical and runs counter to Sunwing Airlines' very business of carrying its passengers to destination.

Affidavit of Mark Williams, sworn April 17, 2013

The airline industry generally and Sunwing Airlines in particular is a highly regulated industry that follows strict procedures and policy in order to operate safely and efficiently. Accordingly, Sunwing Airlines relies on complete and accurate reporting in all areas of its operations. The evidence of Sunwing Airlines reflects and confirms this reporting exists in the circumstances of this matter.

Further, given its reporting procedures and the nature of its business, it was reasonable for Sunwing Airlines to rely on its reports throughout the history of the Nawrots' complaint.

Another fact that colours the entirety of the Nawrots' Complaint is that by their own admission the Nawrots were fully aware as of 14:30 August 10, 2012 (the time of the final rescheduling notification received from Sunwing Airlines) that the recommended time for arrival for check in was 22:25 local time August 10, 2012, four (4) hours prior to the 02:25 local time scheduled departure of Flight WG201. And yet, the Nawrots submit that they did not actually leave their hotel until between 22:00 and 23:00 August 10, 2012 and did not board a train to Gatwick until 00:14 August 11, 2012.

There can be no doubt that the Nawrots alone chose to allow very little room to arrive in time for check-in for Flight WG201 and this should be a factor in determining the credibility of and weighing the evidence.

This case would benefit from cross-examination on the evidence as credibility is squarely in issue. Unfortunately, cross-examination is not available in this forum. However, without clear, strong and uncontroverted evidence on the part of the Nawrots, it is submitted the evidence of Sunwing Airlines should be preferred.

The evidence proffered by the Nawrots is comprised solely of their own recollection and derivative assumptions and is essentially self serving. Where there has been opportunity to provide objective, independent evidence, they have failed to provide it.

The Law

Denied Boarding

All of the Nawrots submissions with respect to the law assume that they arrived in time for check-in. Sunwing Airlines submits on a balance of probabilities the available evidence establishes the Nawrots were late for check-in for Flight WG201.

Sunwing Airlines submits in the circumstances of this case the denial of boarding of the Nawrots was a result of their own conduct and not that of the carrier. Accordingly, this is not a case where the Nawrots were “bumped” or denied boarding by the carrier’s overselling of the flight or delay on the part of the carrier.

The *Montreal Convention, 1999*, incorporated into the laws of Canada by the *Carriage by Air Act, R.S.C. 1985, Chapter C-26* as amended (the “*Convention*”) does not apply in the case of complete non-performance of the contract for carriage. Rather, where there is non-performance as opposed to delay, the contract governs.

Carriage by Air Act, R.S.C. 1985, c. C-26, Schedule VI

Khan v. KLM Royal Dutch Airlines et al., unreported, Court File No. 07-CV-339072 PD3, September 30, 2009 (Ont. Sup. Ct.)

Ratnaswamy v. Air Afrique, 1998 U.S. Dist. LEXIS 2683 (N.D. Ill, 1998)

Paradis v. Ghana Airways Ltd., 30 Avi 15,806 (S.D.N.Y., 2004)

In these circumstances, the Nawrots have accepted that the terms of the contract of carriage apply (both in their submissions and as a matter of law by positively accepting them in order to complete their online booking). In particular, they were obligated to present themselves for check-in 60 minutes prior to the scheduled departure of Flight WG201.

Accordingly, pursuant to the terms of the contract, Sunwing Airlines’ Tariff rules, and fundamental principles of contract, the Nawrots failed to present themselves in time for check-in and thereby breached the contract of carriage. Accordingly, Sunwing Airlines was justified in refusing to carry the Nawrots and they are precluded in law from any recovery.

Delay

With respect to the approximate 14 hour delay in departure of Flight WG201, Sunwing Airlines acknowledges that the *Convention* applies and Sunwing Airlines would be liable pursuant to Article 19 for the proven out of pocket expenses incurred by the Nawrots caused by that delay. In which case, the Nawrots are relegated to compensation for the expense of their hotel accommodation August 10, 2012 in the amount of \$157.99 as well as a reasonable amount for food expense. For which, in the absence of proof, Sunwing Airlines takes no exception to calculating at \$20 per person, per meal but only for the two meals affected by the 14 hour delay – lunch and dinner; or, \$120.00 total.

Lukacs v. United Airlines Inc., 2009 MBQB 29 affirmed 2009 MBCA 111

Chau v. Delta Airlines Inc. (2003), 67 O.R. (3d) 108 (S.C.J.)

Subsequent Conduct of Sunwing Airlines/Settlement Discussions/Costs

As with their submissions with respect to the law, the Nawrots' submissions on the subsequent conduct of Sunwing Airlines assume that the Nawrots' arrived in time for check-in. It is Sunwing Airlines' submission the Nawrots did not.

It is improper and there is no basis for any offers to settle this matter being relied upon by the Nawrots to establish liability on the part of Sunwing Airlines simply because they were made. Settlement discussions, whether or not they specifically state they are made on a without prejudice basis, are not properly part of the determination of liability and should not be placed before the Agency at this time.

Their disclosure and the fact that they have not been taken up are properly considered when it comes time to speak to costs.

Nonetheless, the correspondence of Sunwing Airlines attempting to resolve the Nawrots' complaint, which should not properly be before the Agency, speaks for itself and makes no mention of any admission of liability on the part of Sunwing Airlines.

In fact, the position of Sunwing Airlines has been consistent throughout the history of the Nawrots' complaint. At no point in time has Sunwing Airlines ever admitted that the Nawrots' were improperly denied boarding of Flight WG201.

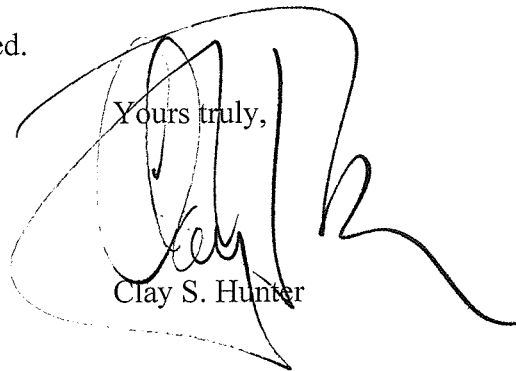
Rather, any and all offers by Sunwing Airlines to resolve this matter were made on the basis of good will and compassionate grounds alone.

Any discussion with respect to costs should follow the determination of the Nawrots' complaint and, accordingly, Sunwing Airlines requests that it be permitted to make costs submissions at that time.

All of which is respectfully submitted.

Yours truly,

Clay S. Hunter



CSH
Enclosures

cc The Nawrots Family c/o Louis Béliveau
(by email: lbeliveau@loogol.ca)

APPENDIX "A"

YOUR LONDON AIRPORT
Gatwick

Home > Parking & Transport > Trains

Trains

Gatwick parking

Gatwick hotels

Journey Planner

Taxis

Car rental

Trains

Driving to Gatwick

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Gatwick Airport is 30 minutes from Victoria in central London via the non-stop Gatwick Express. There are also direct services to London Bridge, City Thameslink, London Farringdon and Clapham Junction and rail links to destinations all around the UK.

The railway station is located at the South Terminal and is also just a few minutes from the North Terminal by a free shuttle. You can buy tickets at the station or at the rail information desks located in arrivals at both terminals.

If you are travelling by train you can buy tickets in advance from www.thetrainline.com, an independent retailer of train tickets online. Book in advance and save on average 43%.

Trains to London

Gatwick Express is the fastest rail link between the airport and central London. Non-stop trains run to and from London Victoria every 15 minutes and take 30 minutes (35 minutes on Sundays).

For details of prices and and to book in advance, visit the Gatwick Express website.

First Capital Connect runs services to London Bridge, St Pancras International and Luton Airport. firstcapitalconnect.co.uk.
Southern operates services to London Victoria via Clapham Junction and East Croydon. southernrailway.com

Trains to other UK destinations

Frequent services operate direct to Brighton, Eastbourne, Southampton and Portsmouth with Southern.

Stopping services to Brighton, Bedford and St Pancras (for onwards connections to Peterborough, Kings Lynn and Cambridge) are operated by First Capital Connect.

Services to Redhill, Guildford and Reading are operated by First Great Western firstgreatwestern.co.uk

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APPENDIX "B"

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Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR
Web Site: www.dft.gov.uk

02 February 2012
Ref: FOI: P0008537

██████████
Dear ██████████,

Freedom of Information request – Southern Railway and Gatwick Express

I refer to your request under the Freedom of Information Act 2000 for information regarding a number of questions in relation to Southern Railways and Gatwick Express.

Thank you for your information request dated 17 January 2012 in which you requested the following information:

- 1) *What are the punctuality figures for the months from November to February for Southern Railway and Gatwick Express services in each of the last three years?*

The Southern Railway Franchise started on 20/09/2009 and so the information for Southern and Gatwick Express since this date can be found at;
<http://www.southernrailway.com/your-journey/performance-results/>

- 2) *What discussions, meetings or correspondence have taken place between Transport Ministers and the Chief Executive of Southern Railway regarding the performance (punctuality and reliability) of its service since April 2010?*

Since April 2010 records show that the following meetings have taken place. Please note that this is a regular rail industry meeting and is not Southern specific.

The dates below have been identified as Southern performance having been mentioned in either a positive or negative way

04 March 2010	27 May 2010	24 June 2010	22 July 2010
16 December 2010	13 January 2011	03 February 2011	03 March 2011
05 April 2011	28 April 2011	10 November 2011	12 January 2012

Records show that there has been one stand alone meeting where Chris Burchell (MD) attended a meeting on 14 February 2011 with the Transport Minister and other TOC Managing Directors from the Go-Ahead group.

- 3) *Whether the franchise with Southern Railway specifies a minimal service level for passengers (punctuality and reliability) of the service to Sussex coast; what are the penalties for falling below this service and whether Ministers have set any expected service levels for Southern in the last 12 months?*

Within the Southern Railway Franchise Agreement there are performance benchmarks which Southern have to achieve. There are two measures specifically that monitor performance and these are cancellations and Service Delivery (Delay Minutes). These can also be found in the Southern Railway Franchise Agreement (page 96 of the

Franchise Agreement) on the DfT website. The link is <http://www.dft.gov.uk/publications/rail-passenger-franchise-agreement-southern/>

If Southern Railways do meet these thresholds, then the necessary action will be taken by the Department as laid out in the contract.

- 4) *Whether Ministers have had any discussions with Southern Railway or passenger groups since April 2010 about reinstating discounts on season tickets to compensate for continued under performance against levels of service for passengers on the Sussex coast line? And if they will publish the relevant correspondence*

Ministers have not had any discussions with Southern Railway or Passenger Groups regarding the reinstatement of discounts on season tickets.

- 5) *What level of public subsidy Southern Railway will receive for operating the Sussex coast service in the financial years 2010-11, 2011-12, 2012-13?*

Southern Railway does not receive any public subsidy, they pay premia to the Department. The details on this amount can be found at <http://www.wired-gov.net/wg/wg-news-1.nsf/0/AC03DEE182E0FBB0802575D000218F72?OpenDocument> in an article called, "More frequent and more secure rail services for London and the South East" DEPARTMENT FOR TRANSPORT News Release (071) issued by COI News Distribution Service on 9 June 2009

- 6) *Which Members of Parliament have written to Transport Ministers since 01 April 2010 about the service provided by Southern Railway and the Gatwick Express (a list will suffice)*

The table below lists all the MPs whom have written to Transport Ministers about Southern, including performance and other issues.

Henry Smith MP	Tim Loughton MP	Hon Nicholas Soames MP
Rt Hon Francis Maude MP	Rt Hon Joan Ruddock MP	Sam Gyimah MP
Rt Hon Sir John Stanley MP	Rt Hon Chris Grayling MP	David Anderson MP
Gregory Barker MP	Peter Bottomley MP	Dr Caroline Lucas MP
Hugh Bayley MP	Ms Justine Greening MP	Amber Rudd MP
Charles Hendry MP	Sarah Teather MP	Stephen Lloyd MP
Andrew Tyrie MP		

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's Information Rights Unit at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely,



Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

APPENDIX "C"

[Skip navigation](#)

Hello screen reader user. To ensure our website is continually improved and meets the needs of its visitors, we would like to hear your views about our website whilst using your screen reader. Please email your feedback to access@gatwickexpress.com. For more information please read our [Accessibility statement](#). Thank you. [Skip navigation](#)

[Check out our interactive map:](#) Sample the tracks that inspired our artists - then book online to get your Express Track.

[Show more](#)

Jobs with us

A career with Gatwick Express or Southern Railway

Visit Gatwick Express's recruitment website to look for your Career with Gatwick Express or Southern Railway.

[Apply here](#)

We pride ourselves on delivering outstanding customer service and going the extra mile to ensure we exceed our customers' expectations. Our team has delivered excellent customer service that has consistently put us above 90% overall customer satisfaction rating in the National Passenger Survey for the past five years!

A bit about us...

The first rail link to Gatwick Airport opened in 1959. However, it was not until 1984 that the Gatwick Express operation was established. In June 2008, the Gatwick Express service came under the stewardship of Southern Railway.

Our excellent service...

Gatwick Express offers the only non-stop train service between London Victoria and Gatwick Airport stations - with trains running every 15 minutes with a journey time of just half an hour. Our modern fleet provides passengers with a comfortable journey, offering both First Class and Express Class seating, with an on-board trolley service of light refreshments. We offer a free porter service at both stations too.

What we are looking for

We want to recruit people with a passion for customer service who are able to work on their own initiative to make every journey better for our passengers.

We are an equal opportunities employer looking to recruit smart, customer facing staff based at London Victoria or Gatwick Airport. Please follow the link below for current vacancies.

Why join us?

One of our principle aims is to make our company a great place to work. Our recent company-wide survey reveals a fantastic employee satisfaction score of 85%. This result is an increase on the previous year, demonstrating that we have listened to and acted on much of the employee feedback the management team receives.

Results in both this and the National Passenger Survey we think highlight Gatwick Express as an exceptional employer. We want to attract new employees at every level who committed to helping us maintain and improve on these high standards.

**GATWICK
EXPRESS**

wards alcohol and drugs in the workplace.

creening as a condition of any offer of employment. All
enings over the course of their employment.

© **Gatwick Express** is operated by [Southern](#)

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Designed and developed by [imagnet](#)

APPENDIX "D"



Journey Planner 1 2 **3**

English

[Journey details \(Edit \)](#)

[Travel preferences \(Edit \)](#)



From North Acton

To Victoria

Leaving on Fri 05 Apr 2013 at 23:00

Route 2 details

Time	Route details	Information	Maps
23:01 	<p>start North Acton Underground Station</p> <p>Take the Central Line towards Hainault Underground Station or Central Line towards Epping Underground Station</p>	<p>Av journey time: 19 mins Zone(s): 2, 1</p> <p></p>	
23:20			
23:24 	<p>Oxford Circus Underground Station</p> <p>Take the Victoria Line towards Brixton Underground Station</p> <p>VICTORIA STATION: The Wilton Road stairs are now closed and work starts to enlarge the Victoria line ticket hall. Walking routes to and from the Underground and National Rail stations have changed. Please follow the signs at surface level. You may find it easier to follow a new route. At peak times the area will be busy. If you are</p>	<p>Av journey time: 4 mins Zone(s): 1</p> <p></p>	



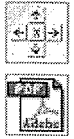
travelling to London on National Rail services, please purchase your Underground travel at your station of origin. Alternatively use the Travel Information Centre located in the National Rail concourse opposite platform seven. This work is part of the Tube Upgrade and is scheduled to be complete in 2018. For more information visit www.tfl.gov.uk/vsu Reported: 17/09/12 12:52 Last updated: 03/10/12 10:58

OXFORD CIRCUS STATION: A ramp is provided at this station providing step-free interchange between northbound Bakerloo and northbound Victoria line trains, and between southbound Bakerloo and southbound Victoria line trains. Please ask staff in the ticket hall for assistance. Reported: 12/06/12 22:24 Last updated: 12/11/12 16:06

23:28



Victoria Underground Station



Check fare prices and ticket options

Max. journey time: 00:27

Interchanges: 1

Print route

Send by email

Send by SMS



Address **North Acton**
London Borough of Ealing,
London W3, UK



IN THE MATTER BETWEEN:

Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot

- and -

Sunwing Airlines Inc.

**AFFIDAVIT OF MARK WILLIAMS
(sworn April 17, 2013)**

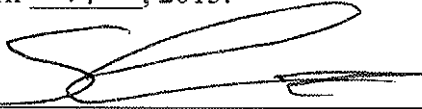
I, Mark Williams, of the Town of Oakville, in the Regional Municipality of Halton, in the Province of Ontario, MAKE OATH AND SAY:

1. I am and was, at all material times, in the employ of Sunwing Airlines Inc. ("Sunwing Airlines") as its President, and as such have knowledge of the matters hereinafter deposed.
2. I have been the President of Sunwing Airlines from its inception in 2004 and its inaugural flight on November 17, 2005 through to and including the present date.
3. Sunwing Airlines is in the business of flying its passengers to their destinations.
4. Prior to becoming aware of Mr. Nawrot's complaint, in the entire history of Sunwing Airlines I had never experienced, been made aware of, or otherwise had any knowledge of the check-in for a Sunwing Airlines' flight being closed early and prior to the deadline for check-in stipulated both in its Tariff Rules and its Terms and Conditions.
5. Based on the information provided by Sunwing Airlines' ground handling agent at London's Gatwick International Airport and as set out in my letter to Mr. Nawrot dated January 3, 2013, to my knowledge, check-in was not closed prior to 60 minutes before the scheduled departure of Flight WG201. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the letter from Mark Williams to Raymond Nawrot, dated January 3, 2013.

6. In my experience, it would not make any commercial sense to close check-in for a flight prior to the 60 minute deadline for check-in, particularly where all passengers with confirmed bookings on that flight had not yet checked-in.

7. This Affidavit is sworn in response to the complaint brought by the Nawrot family to the Canadian Transportation Agency and for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
April 17, 2013.




Commissioner for Taking Affidavits

STEPHEN J. WHITE


Mark Williams

This is Exhibit "A" referred to in the affidavit of Mark Williams sworn before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits

STEPHEN J. WHITE



SUNWING
AIRLINES

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

CTA File No. M4120-3/13-01696

IN THE MATTER BETWEEN:

Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot

- and -

Sunwing Airlines Inc.

**AFFIDAVIT OF JOANNE DHUE
(sworn April 17, 2013)**

I, Joanne Dhue, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am and was, at all material times, in the employ of Sunwing Airlines Inc. ("Sunwing Airlines") as the National Director, Customer Relations Sunwing Vacations / Signature Vacations, and as such have knowledge of the matters hereinafter deposed.
2. All passengers must present themselves for check-in for Sunwing Airlines flights no later than 60 minutes prior to the scheduled departure time of the relevant flight. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of Rule 18(g) of the Sunwing Airlines International Tariff Applicable to Scheduled Services, Sunwing's Terms and Conditions and Sunwing Airlines' Conditions of Carriage.
3. Check-in for all Sunwing Airlines flights is open 3 hours prior to the scheduled departure of the flight and Sunwing Airlines recommends to its passengers that they arrive for check-in 3 hours prior to the scheduled departure of their flight. Attached hereto and marked as Exhibit "B" to this my Affidavit is a true copy of the Sunwing Airlines website Travel Information Airport & Flight Reconfirmation & Check-in incorporated into the passenger's e-ticket Booking Confirmation and Itinerary.
4. Sunwing Airlines recommends for all of its passengers travelling on European itineraries to arrive at check-in four (4) hours prior to the scheduled departure of their flight. Attached hereto and marked as Exhibit "C" to this my Affidavit is a true copy of the Sunwing E-Ticket "eDocument Booking Confirmation and Itinerary" issued to

Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot (the Nawrots).

5. In addition to physically checking in at Gatwick International Airport, on-line Web Check-in for Flight WG201 was also available to the Nawrots. Attached hereto and marked as Exhibit "D" to this my Affidavit is a true copy of the Sunwing Airlines Terms & Conditions for "Web Check-in".

6. The Nawrots were passengers with confirmed bookings on Sunwing Airlines Flight WG201 originally scheduled to depart Gatwick International Airport, United Kingdom at 12:20 local time, August 10, 2012 bound for Toronto's Pearson International Airport. Attached hereto and marked as Exhibit "E" to this my Affidavit is a true copy of a computer screen shot of the Nawrots' reservation taken from the Sunwing Airlines booking system.

7. In order to complete their online booking, the Nawrots had to positively accept Sunwing's and Sunwing Airlines' Terms and Conditions.

8. Flight WG201 was operated as a scheduled services flight of Sunwing Airlines.

9. Kristina Marie Nawrot's date of birth is December 17, 1995 and Karolyn Theresa Nawrot's date of birth is June 28, 1997. Attached hereto and marked as Exhibit "F" to this my Affidavit is a true copy of a screen shot of the Nawrots' reservation taken from the Sunwing Airlines booking system.

10. Sunwing Airlines Flight WG201, originally scheduled to depart Gatwick International Airport at 12:20 local time August 10, 2012, was delayed and passengers with confirmed bookings on Flight WG201, including the Nawrots, were notified each time the scheduled departure was changed. The scheduled departure time of Flight WG201 was ultimately changed to 02:25 local time August 11, 2012. Mr. Nawrot was informed of this last and final change to the scheduled departure time of Flight WG201 at 14:30 local time August 10, 2012. I have not been able to recover copies of the emails actually sent to Mr. Nawrot. However, I have reviewed Exhibits "B", "C", "D" and "E" of the Affidavit of Raymond Paul Nawrot, sworn February 28, 2013 and confirm that

they are indeed true copies of email notifications Sunwing Airlines sent to Mr. Nawrot August 9 and 10, 2012. Attached hereto and marked as Exhibit "G" to this my Affidavit is a true copy of Sunwing Airlines' email notifications with respect to the rescheduling of Flight WG201 sent to Mr. Nawrot August 9 and 10, 2012.

11. The Destinations Quality Control Manifest (QCM) generated for Flight WG201 at Gatwick International Airport reports that the aircraft operated as Flight WG201 was secured for take-off at 00:05 (UTC)/01:05 (local time) August 11, 2012 with its doors closed and it being ready for push back from the gate at 01:25 (UTC)/02:25 (local time) August 11, 2012. Attached hereto and marked as Exhibit "H" to this my Affidavit is a true copy of the Destinations Quality Control Manifest for Flight WG201.

12. The Shift Report for the night shift beginning August 10, 2012 generated by Swissport, Sunwing Airlines' ground handling agent at Gatwick International Airport, and completed by the Swissport Passenger Services Supervisor, reports that check-in for Flight WG201 was closed at 01:25 (local time) August 11, 2012 and that four (4) passengers turned up fifteen (15) minutes after check-in had closed. It further reports that the dispatcher denied these passengers travel. Attached hereto and marked as Exhibit "I" to this my Affidavit is a true copy of the Swissport Passenger Services Supervisor Shift Report – North Terminal dated August 10, 2012.

13. Mr. Nawrot's email to Sunwing Airlines dated August 11, 2012 and his letters to Sunwing Airlines dated October 19, 2012 and January 21, 2013 refer to an additional passenger(s) of Flight WG201, other than the Nawrots, that was/were denied boarding as a result of the check-in for Flight WG201 being closed early. Attached hereto and marked as Exhibit "J" to this my Affidavit is a true copy of the email from Raymond Nawrot to Sunwing Airlines Online Bookings dated August 11, 2012, the letter from Raymond Nawrot to Sunwing Airlines Customer Service dated October 19, 2012 and the letter from Raymond Nawrot to Mark Williams dated January 21, 2013.

14. The QCM reports that there were nine (9) passengers who were "no-shows" for Flight WG201 in addition to the Nawrots. I investigated into whether any of these nine passengers that did not present themselves for check-in for Flight WG201 could possibly

be the passenger(s) referred to by Mr. Nawrot or in the Swissport Shift Report as also being denied boarding of Flight WG201. The results of my investigation are as follows:

- Party of 3 (three) passengers did not travel because of the Flight's delay and informed their travel agent;
- Party of 1 (one) chose not to travel because of the Flight's delay and informed their travel agent;
- Party of 1 (one) cancelled their booking with Sunwing Airlines directly because of the Flight's delay;
- Party of 3 (three) cancelled their booking with Sunwing Airlines because of the Flight's delay; and
- Party of 1 (one) advised Sunwing Airlines directly on August 9, 2012 that they did not have the required visa to travel and they did not travel.

15. As of the date of this my Affidavit, Sunwing Airlines has not received any complaint from or otherwise become aware of a passenger of its Flight WG201 departing Gatwick International Airport on August 11, 2012, other than the Nawrots, being denied boarding as a result of check-in being closed early, or at all.

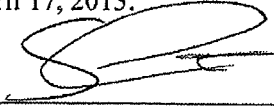
16. Sunwing Airlines has no record of any passenger other than the Nawrots being denied boarding for Flight WG201 departing Gatwick International Airport on August 11, 2012.

17. The airport authority at Gatwick International Airport specifically, or any airport generally, does not, as a matter of standard operating procedures intercede to communicate directly with the Captain of the flight crew of a carrier's aircraft with respect to allowing a passenger to board that aircraft.

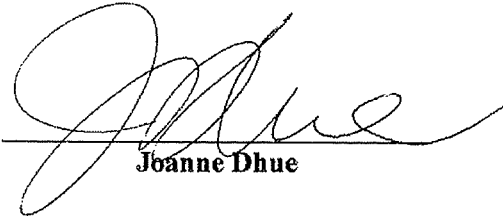
18. The standard operating procedure in such circumstances is for the airport authority to contact the carrier's gate agents.

19. In the highly unlikely and unusual event that such a communication were to be made directly to the Captain, the Captain would make a notation in the Captain's Report for the flight.
20. Neither the Captain's Trip Report nor the Cabin Crew Reports for Flight WG201 make any mention of any communication from the airport or anyone with respect to the denied boarding of a passenger or of any request to allow boarding of a passenger presenting late for check-in. Attached hereto and marked as Exhibit "K" to this my Affidavit is a true copy of the Captain's Trip Report, Euro Atlantic Airways Cabin Crew Report and Sunwing Airlines Transatlantic Cabin Crew Flight Report dated August 11, 2012.
21. Further, neither the Captain nor his crew has any recollection of such an incident. Attached hereto and marked as Exhibit "L" to this my Affidavit is a true copy of the exchange of emails between John Murphy of Sunwing Airlines and Pedro Pissarra of Euro Atlantic Airways dated April 11 and 12, 2012.
22. Finally, the Captain's Trip Report confirms that the aircraft operated as Flight WG201 took off from Gatwick International Airport at 01:48 local time August 11, 2012.
23. Following the delay of Flight WG201 and prior to the cut-off for check-in, Sunwing provided all passengers with confirmed bookings for Flight WG201, including the Nawrots, their options with respect to a refund should they choose not to travel on Flight WG201. Attached hereto and marked as Exhibit "M" to this my Affidavit is a true copy of the letter from Sunwing to all passengers of Flight WG201 dated August 10, 2012.
24. The Nawrots did not inform Sunwing that they chose not to travel on Flight WG201 and did not apply for a refund as stipulated in Sunwing's letter dated August 10, 2012.
25. This Affidavit is sworn in response to the complaint brought by the Nawrot family to the Canadian Transportation Agency and for no other or improper purpose.

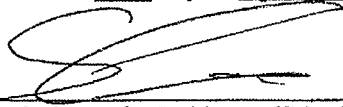
SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
April 17, 2013.



Commissioner for Taking Affidavits
STEPHEN J. WHITE


Joanne Dhue

This is Exhibit "A" referred to in the affidavit of Joanne Dhue sworn before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits

SUNWING AIRLINE INC. carrying on business as SUNWING

TARIFF CONTAINING RULES
APPLICABLE TO SCHEDULED SERVICES
FOR THE TRANSPORTATION OF
PASSENGERS AND BAGGAGE OR GOODS
BETWEEN
POINTS IN CANADA ON THE ONE HAND
AND
POINTS OUTSIDE CANADA ON THE OTHER HAND

ISSUED DATE December 04, 2006	ISSUED BY Mark Williams President <i>SUNWING AIRLINE INC</i> 27 Fasken Drive Toronto, Ontario M9W1K6 Canada	EFFECTIVE DATE December 05, 2006 *per CTA Special Permission # 19492
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For example of abbreviations, reference marks and symbols used but not explained hereon, see page 2.

ISSUE DATE
December 04, 2006

EFFECTIVE DATE
December 05, 2006
Per CTA SP#19492

SUNWING AIRLINES INC.

CTA (A) No. 2
1st Revised Page 37
Replaces Original Page 37

(xvii) Any other causes beyond the reasonable control of the carrier and any other event not reasonably to be foreseen, anticipated or predicted, whether actual, threatened or reported, which may interfere with the operations of the Carrier.

Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terms for a period of one year from the date of termination. No refund will be available.

(g) 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)

For example of abbreviations, reference marks and symbols used but not explained hereon, see page 2.

ISSUE DATE
October 3, 2012

EFFECTIVE DATE
October 5, 2012
Per CTA SP#77428



Sunwing Terms and Conditions

When you book with Sunwing Vacations, Sunwing, or Vacances Sunwing (hereafter "Sunwing") the following Terms and Conditions become part of your contract.

By accessing, browsing or making a reservation through this website, you expressly accept these Terms and Conditions, without modification, and intend to be legally bound by them. To the extent any travel products and/or services are booked through your Travel Agent or the Sunwing Sales Centre, you agree that these Terms and Conditions apply to all transactions. Please read these Terms and Conditions carefully. If you do not accept all of these Terms and Conditions, please do not use the website or make any reservations through your Travel Agent or the Sunwing Sales Centre.

ACCURACY OF INFORMATION

Sunwing makes every effort to ensure the accuracy of the information contained herein and to the best of its knowledge all information is accurate at the time of publication. We try to ensure that the prices on the website are accurate, however errors do occur and we reserve the right to refuse to accept bookings at any price published in error. Updates are published on our website when new information is made available, however Sunwing cannot be responsible for any inaccuracies or omissions contained herein or for any third party publications or postings. Information contained should be verified directly with other available sources. We strongly recommend that you visit our website at www.sunwing.ca for our most up-to-date Terms & Conditions.

PRICING

These prices are dependent on a variety of variable factors including, but not limited to, fuel costs, rates of exchange and other factors. Should these costs increase Sunwing reserves the right to increase the price of any of our holiday products. In the event that any such increase is in excess of 7% (unless it is the result of an increase in government tax), you will be entitled to cancel your travel arrangements and receive a full refund. Commercially reasonable efforts will be made to advise you of any price increase at least 15 days prior to your departure date. All price increases may reflect administrative costs incurred. For competitive reasons, Sunwing reserves the right to deny a price match guarantee. Sunwing sets its prices based on our costs, as well as anticipated demand. Sunwing constantly reviews its prices throughout the season in accordance with availability and demand. We reserve the right to increase or decrease our prices accordingly. To check our current pricing please consult your Travel Agent, contact the Sunwing Sales Centre or visit our website: www.sunwing.ca where the most up-to-date price is shown in Step 4 of the booking process.

PROMOTIONS

From time to time Sunwing advertises promotional offers which may be available nationally or may be limited to selected departure gateways, destinations, ships or hotels. All of these promotions are time sensitive and therefore have a commencement and termination date. They are not combinable with any other promotion that may be advertised and available at the same time. All published prices and promotions advertised and offered by Sunwing have limited space availability and may be withdrawn at any time, with or without prior notice.

CHILDREN & INFANTS

Ages for children's and infant's fares vary from airline to airline, hotel to hotel and cruise line to line cruise. Sunwing recommends that you consult with your Travel Agent or the Sunwing Sales Centre to determine what the applicable age(s) and/or respective rate(s) are for children and infants. Upon check-in, hotels may require proof of age for passengers with a reservation made at a "child price". If a child's age does not comply with the hotel's policy (e.g. 2-12 years on the last day of travel) the hotel may charge the child as an adult and require immediate payment for the difference between the child rate and the adult rate. Infants under two years of age at the completion of travel fly free of charge (one infant per adult) but still require a reservation in order to appear on the passenger manifest although the infant is not allocated an aircraft seat or any baggage allowance. If you require a crib at the hotel, it must be requested at the time of booking and, if available, the hotel may assess a charge. All cruise lines require that passengers under the age of 21 years must be accompanied by a passenger who is 21 years or older. For most cruise lines infants must be 6 months or older to travel in the Caribbean. Age restrictions vary by cruise line for family

groups booking multiple staterooms – please inquire at time of booking. Under certain circumstances Sunwing will permit the sale of air tickets to Unaccompanied Minors. For full information on our Unaccompanied Minors policy please visit our website www.sunwing.ca.

PREGNANCY

Cruise lines cannot accept expectant mothers who will have entered a specific week/trimester of their pregnancy by the beginning of or at any time during their cruise. All pregnant women are required to produce a doctor's or midwife's letter stating that the mother and baby are in good health, fit to travel and the pregnancy is not high-risk. The letter must also include the Estimated Date of Delivery (EDD). Please check with your Travel Agent for specific cruise line policies.

CLIENTS WITH SPECIAL NEEDS

Clients with special needs who will require special services or assistance while traveling, including handicap adapted rooms and/or wheelchair accessible rooms and/or private transfers, must contact the Sunwing Special Services Department at the time of booking or at least 10 business days prior to departure. In order to ensure that you are properly assisted, we request that you advise of any and all specific needs that you may have. This will help us to ensure that the proper travel arrangements are made for you to obtain the maximum enjoyment from your Sunwing holiday. Please note that additional costs may be applicable for some or all of the services requested. Please note that some foreign destinations may not define or provide for wheelchair access in the same fashion that we are accustomed to in Canada and that some hotels may not be able to guarantee or confirm handicap adapted or wheelchair accessible rooms prior to departure. Cruise ships have limited wheelchair accessible staterooms for which a medical certificate is required. Passengers with special needs must be self sufficient and accompanied by a least one other passenger who assumes full responsibility for their well being at all times. Under certain circumstances, passengers in a wheelchair may be precluded from going ashore due to docking facilities. AMAWATERWAYS river cruise vessels are not equipped with wheelchair ramps, and hallways and doors may not be wide enough to accommodate wheelchairs or scooters and overall have limited or nonexistent facilities throughout the ship, transfer and shore excursion coaches and minibuses. Reconfirm dietary requirements with the maitre d' on embarkation day. Please contact specialservices@sunwing.ca for further assistance. Please visit www.flysunwing.com/travelinfo/specialassistance.asp to download Sunwing's Special Services request form.

PACKAGE HOLIDAY INCLUSIONS

Unless otherwise noted, the price of your package holiday includes round-trip airfare, hotel and/or cruise accommodation, meals as described (excluding specialty restaurants on cruise lines) and one (1) round-trip transfer in destination to and from the airport and hotel or pier as selected and cruise port charges and government fees. The features and the bonus features that are provided by each hotel or cruise line (whether on a complimentary basis or not) are clearly described on each hotel page. Any features that are temporarily unavailable or that have been permanently withdrawn for whatever reason do not have any cash value and are therefore non-refundable. These features can be changed by the hotel, cruise line or Sunwing with or without prior notice. If your package includes a car rental, the lead name on the booking must hold a valid driver's license.

COSTS NOT INCLUDED IN YOUR HOLIDAY PURCHASE

All costs for entry visas, passports, health certificates and items of a personal nature, e.g. laundry, meals not mentioned in itineraries, telephone calls, tips, alcoholic beverages and excess baggage charges, etc. are not included in the price of your holiday package. If your holiday relates to a cruise holiday, some a la carte restaurants, casino, medical services, shore excursions, internet access, spa and salon services, telephone calls, faxes, onboard gratuities/tips, alcoholic/specialty beverages (a mandatory gratuity is added to all beverages purchased onboard), excess baggage charges and other costs as described on each cruise line page, etc. are not included in the price of your holiday.

SUNWING PREMIUM PACKAGE PLAN

The Sunwing's Premium Package Plan is only available on flights operated by Sunwing Airlines. The plan is not transferable and is not redeemable for cash (including unused coupons or features). For optimum choice, advance seat selection should be made as soon as your plan is purchased, but no later than 48 hours prior to departure. Seat selection is subject to availability at all times and once your selection is made, the entire fee is non-refundable nor are any changes permitted to your selection. Priority Express Check-in is only available at Canadian airports at the designated counter and does not provide for later check-in than is normally recommended in Sunwing's Terms and Conditions. The "No Administration Fee" offer is restricted to name changes, name-spelling corrections or changes to accommodation type as defined in these Terms and Conditions and does not include trip cancellation, modifications to the dates of travel or to the number of persons travelling. The "No Administration Fee" is only applicable to the changes defined above and said changes exclude departures during Christmas, New Year's, Spring/March Breaks and Easter. Any change to the original booking as well as the replacement of lost or stolen ticket/hotel vouchers is limited to one change per Premium Package Plan purchased. The \$50 Sunwing's Future Travel Voucher may be used for any departure for travel up to 12

months from original departure date. There is a limit of one voucher per booking upon redemption and vouchers may not be applied to group bookings. The Future Travel Voucher is only redeemable for reservations made a minimum of 45 days prior to departure. No refunds or credits will be issued for any unused portions. Premium Package Plan prices and inclusions are subject to change with or without notice.

WORRY FREE VACATION SECURITY PLAN

Sunwing strongly recommends that you purchase our Worry Free Vacation Security Plan at the time of booking, or other sufficient traveler's insurance to provide you with security and protection against unexpected events that could disrupt your holiday plans. Please visit www.sunwing.ca/worryfree.asp for more information about our Worry Free plan.

HOTEL AND/OR CRUISE SHIP PREFERENCE REQUESTS

Any hotel preferences such as room location, bed preferences, cruise line dining times, etc. that are not associated with special needs must be requested at the time of booking. While Sunwing will attempt to accommodate special requests Sunwing will not be held responsible if such requests cannot be fulfilled. Please see "CLIENTS WITH SPECIAL NEEDS" for additional information.

CREDIT CARD POLICY

Sunwing accepts MasterCard, Visa and American Express credit cards as forms of payment. If your payment is made using American Express, Visa or MasterCard, please be advised that Sunwing and/or Signature Vacations Inc. will appear as the vendor on your credit card statement, not your travel agency. Your authorization to use your credit card number to pay for travel services provided by Sunwing indicates your acceptance of our Terms and Conditions, whether or not you have actually signed credit card forms. Therefore, by providing your Travel Agent or Sunwing with authorization to use your credit card to pay for your Sunwing travel services you are confirming that you will pay the total amount charged for those services to the card issuer according to your cardholder agreement. Simultaneously you are also acknowledging your acceptance of Sunwing's Terms and Conditions.

BALANCE OF PAYMENT

Full and final payment must be received by Sunwing 45 days prior to departure, or immediately for reservations made 45 days or less before departure with the exception of a cruise holiday package. If booking a cruise holiday, full and final payment must be received by Sunwing 85 days prior to departure, or immediately for reservations made 85 days or less before departure.

TRAVEL VOUCHERS

All Sunwing's travel vouchers must be applied on new package holiday bookings reserved and paid in full at least 45 days prior to departure. If applying to a cruise holiday the voucher must be applied at least 85 days prior to departure. Stipulations may apply. Please refer to the terms and conditions stated on the travel voucher.

GIFT CERTIFICATES

Gift certificates can be purchased online at www.sunwing.ca in increments of \$100 and are redeemable through your Travel Agent or the Sunwing Sales Centre. All Sunwing gift certificates can be applied on any vacation bookings made but they can only be used towards the full or final payment of your vacation. Gift certificates cannot be used as a deposit on your holiday.

TRAVEL DOCUMENTS

Travel documents for all Sunwing's programs will not be released until Sunwing has received your full and final payment as per the requirements described elsewhere in these Terms & Conditions. For programs that have been designated as "electronic ticket" programs, your electronic ticket and voucher will be available for printing 28 days or less prior to the departure date. No electronic tickets and vouchers will be issued prior to 28 days before the departure date. Visit our website www.sunwing.ca/etix to print your electronic ticket and electronic voucher. For all other programs a ticket wallet along with your airline ticket(s), flight schedule(s), hotel voucher(s) and any other applicable exchange voucher(s) will be forwarded to your Travel Agent approximately 14 days prior to your scheduled departure. Your airline ticket(s) will contain conditions as well as the terms of carriage. Please read these conditions carefully, as they are important to you and affect your legal rights. Carriage and service performed and tickets issued are subject to the terms and conditions referred to on such tickets, the rules under the Warsaw or Montreal Conventions (as applicable), and other applicable laws and regulations.

CRUISE - ONLINE CHECK-IN

Most cruise lines require guests to pre-register and complete mandatory immigration information online. Ensure your name appears exactly as shown on your passport. If the name does not match, contact your Travel Agent. You will need your cruise line booking number to access your record. Failure to provide this information will result in delayed check-in and possibly, denied boarding. If you do not have online access, please contact your Travel Agent to assist.

DISNEY CRUISE LINE - MY ONLINE CHECK-IN/CRUISE DOCUMENTS

Guests are required to register in advance online at www.disneycruise.com by going to the 'Planning Center' tab and clicking on My Online Check-In. Once the online check-in process has been completed, print and bring your signed cruise documents with you. The registration

process can be done up to two days prior to sailing. Disney encourages all guests to complete online checkin prior to embarkation for faster, easier boarding. If you're not able to do so, forms can still be completed at the port terminal.

MSC EXPRESS WEB CHECK IN / GUEST DECLARATION FORM

MSC Express web check in can be completed online at www.msccruisesusa.com under Already Booked. Once you have accurately completed the required information you can print the Embarkation form which you must present at check in along with the cruise ticket. MSC Express web check in is available up to 24 hours prior to sailing – within 24 hours the system will automatically reject permission to print the final document required for the completion of this registration. You will, therefore, be obliged to follow the normal procedures for embarkation at the pier. Please note that MSC Cruises requires your Date of Birth, Nationality and Passport Number to release your cruise e-tickets. MSC Cruise e-tickets will not be released until this information has been provided. MSC Cruises e-tickets will be sent to your Travel Agent's e-mail address or alternate e-mail address on the booking. You may use MSC Express Web Check-in to input this information or call MSC Cruises (800) 666-9333.

NORWEGIAN CRUISE LINE ONLINE CHECK IN

It is important that you provide NCL with your key personal information (passport numbers, etc) in advance. Within 60 days from the sailing date, you can register at My NCL. My NCL is where you can Log In and access all of your important pre-cruise information, complete your Online Check-In and reserve Shore Excursions. Once you've completed your Online Check-In you can download eDocs, a detailed summary of your cruise vacation that acts as your boarding pass. My NCL can be accessed at www.ncl.com and clicking on the "Log into My NCL" link at the top of the page. All guests need to preregister at least 3 days prior to the sailing.

DOCUMENTATION

It is your responsibility to determine what documentation is required for travel to your destination and including any ports of call on a cruise holiday and for your return to Canada. Sunwing will assume no responsibility whatsoever for passenger(s) denied carriage by the airline or refused entry into any country. Canadian citizens can contact Foreign Affairs Canada at www.travel.gc.ca for assistance in obtaining this information. Citizens of other countries should check with the relative Tourist Board or Consular Office of the destination which they are intending to visit. Sunwing 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 could be denied boarding and you will be responsible for all costs associated with a new passport and a replacement holiday.

CUSTOMS & IMMIGRATION

Customs and/or immigration officials can deny a person, or persons, whether they are residents or visitors, entry (or re-entry) into their country at their own discretion. A previous criminal record could be an obstacle in international travel. Sunwing cannot be held responsible for denied entry under any circumstances.

LAWS & CUSTOMS

In order to familiarize yourself with relevant laws and customs and the necessary documentation for your travel from and return to Canada, we recommend that you refer to the relevant tourist boards, embassies or consulates for the countries that you will be visiting. Sunwing encourages all travelers to visit www.travel.gc.ca prior to travel for valuable and informative information.

BAGGAGE ALLOWANCE

You must consult with your Travel Agent or the specific airline on which you are travelling for weight restrictions on both chartered and scheduled air service. Lost or damaged baggage is the responsibility of the airline, which may have limited liability. We strongly recommend that you purchase Sunwing's Worry-Free Vacation Security Plan to compensate you for loss of, or damage to, your baggage. In the event of damaged, lost or delayed baggage, please contact the airline representative before leaving the airport. Failure to do so will invalidate any potential claim you may have against the airline.

FLIGHT TIMES & RECONFIRMATION

All flight times, airlines and type of aircraft, as well as itineraries, are subject to change with or without prior notice. We reserve the right to substitute alternate airlines or aircraft types and to add en route stops or make any other operational changes at our discretion, with or without prior notice. Operational changes can occur which may result in the need to reschedule or cancel flights. In the event that we need to advise you of any such changes, prior to your departure from Canada, we require that either you or your Travel Agent provide us with your contact telephone number. It is your responsibility to contact the airline shown on your ticket within 12 hours prior to departure (from Canada and destination) to reconfirm flight time. Further, if you have purchased an "air only" holiday from Sunwing it is your responsibility to advise your Travel Agent or the Sunwing Sales Centre of a telephone number at your destination where you may be contacted in the event that Sunwing needs to advise you of any changes in your return travel arrangements. In the event of a flight delay related to weather, traffic or a "force majeure" situation, it may not be possible for the airline to provide

meals and/or accommodations. Sunwing does not accept responsibility for lost wages, missed holiday time or any other additional expenses incurred as a result of changes in flight times. Sunwing Airlines arranges flight times which allow ample time to connect with cruise departures. It is unlikely that a cruise departure will be missed unless a long delay to the flight occurs due to weather or other problems. Should this occur, we will do our best to make alternate arrangements. No refunds or other compensation will be issued for missed cruise departures caused by any flight delay or missed flight connection. Please note that the cruise line reserves the right to charge full cancellation fees for any guest failing to embark. We strongly encourage you to purchase travel insurance to provide you with coverage for unexpected developments of this nature. Please note that in standard travel industry terminology the term "direct flight" refers to a flight that will transport the passengers from their point of origin to their final destination without the journey involving a change of aircraft. However, the term may still be used to describe a journey that involves a stop, provided the same aircraft continues the journey after the stop. Passengers on board a direct flight are not required to claim checked baggage and re-check said baggage during a stop in the journey and are usually not required to be de-planed during any stop(s). A flight from the point of origin to the final destination that does not involve any stops en route is referred to as a "non-stop" flight.

CONNECTING FLIGHT TIMES

All connecting flight reservations are made at your risk and you assume the cost of any loss in the event of a change to the Sunwing flight arrangements that may require you to change your connecting flight(s). Sunwing cannot be held liable for damages or additional fees incurred by passengers due to a missed flight connection for whatever reason.

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. Failure to respect the deadline may result in the reassignment of any pre-reserved seats (refunds not applicable) and the cancellation of your reservations. Please note that Sunwing will not provide refunds or compensation for unused seating upgrades or provide any compensation as a result of a passenger being denied boarding. Should you be denied travel, it is your responsibility to make alternate arrangements. It is your responsibility to arrive at the airport on time and following check-in, to proceed to the correct departure gate by the time specified on your boarding pass. Sunwing cannot be held responsible if you miss your flight by failing to comply with these requirements.

ACCOMMODATION

Please be advised that, while conditions may not always be the same as those at home, particularly with regards to electricity, water supplies and private toilet facilities, Sunwing's staff and/or agents have inspected all of the hotels or cruise ships described on this website to ensure acceptable standards. All hotels undergo routine maintenance and renovation both in the low and high seasons. At brand new hotels, some facilities may not be fully functional and landscaping and other finishing touches may be ongoing during your stay. If we are advised that significant work at your hotel will be in progress during your stay or any major facilities will not be available we will try to advise you prior to your departure. Topless sunbathers may frequent some resorts, the control of whom is beyond the authority of the resort. These resorts and cruise lines cannot accept responsibility for the behavior of other guests/groups or the withdrawal of services or facilities due to cultural and political events or holidays. These circumstances are usually regulated by local governments and as such are beyond the control of Sunwing, the cruise line or the resort. Most hotels offer international satellite TV which differs from Canadian satellite TV. The number of English channels will vary by country and by hotel. Ocean view rooms can consist of a full or partial view of the ocean and can differ by property. Not all rooms designated as "ocean view" will offer a full or direct view of the ocean. Minimum age restriction for passengers can vary per hotel per destination. It is recommended that travelers inquire at time of booking.

STATEROOM OCCUPANCY

Occupancy of any stateroom(s) is limited to the number of berths in that stateroom. The cruise line reserves the right to limit the number of upper berths and single staterooms sold on each sailing.

CRUISE CHECK-IN AND CHECK-OUT CONDITIONS

Your cruise documentation will include information regarding your check-in and embarkation times for your cruise. All guests must be onboard 90 minutes prior to the ship's scheduled departure time. Checkout / disembarkation information will be provided onboard.

HOTEL CHECK-IN AND CHECKOUT CONDITIONS

The check-in time for most hotels is 3:00 pm and check-out time can be as early as 11:00 am, regardless of your arrival or departure times. Please refer to your electronic ticket hotel accommodation voucher for actual check-in and check-out dates as this may differ from your departure and return date. Check-in policies differ by hotel and will therefore vary. Many hotels will offer hospitality areas for passengers who may be without their room for some

time; however this arrangement is solely at the discretion of the hotel. Passengers wishing to make arrangements for a late check-out and baggage storage must negotiate this service directly with the hotel. We do not accept responsibility for any inconvenience or loss arising from these types of arrangements. Some hotels may require you to leave a credit card imprint or cash deposit upon check-in to provide security for miscellaneous charges such as telephone calls.

CRUISE LINE / HOTEL'S RESPONSIBILITY

The accommodation voucher, or electronic confirmation number, furnished by Sunwing shall constitute the sole contract between the hotels/resorts and you, the passenger. The hotels, resorts and cruise line/ship depicted on this website will not be held liable for any act, omission or event during the time passenger(s) are not staying at their establishments or on their ships. Neither Sunwing nor the cruise lines or properties are responsible for payment of any refund for unused accommodations or meals as a result of late arrival or non-arrival by passenger(s), regardless of the cause.

STATE ROOM / HOTEL CHANGES

If the accommodation reserved is not available for any reason, we reserve the right to substitute a hotel of a similar category and/or stateroom on the ship or for land stays. This section does not apply to a change in hotel that is a major change as referred to in the section "Sunwing's Responsibility" or to a change of hotel, which occurs by reason of circumstances that are beyond our reasonable control. For the most up-to-date resort and cruise line/ship descriptions please visit www.sunwing.ca.

MODIFICATION OF CRUISE SERVICES

The sailing days/times indicated in this brochure are correct at the time of going to print and are subject to change with or without notice. Weather conditions, safety considerations or other circumstances beyond our control may mean that the cruise line must change cruise itineraries, facilities and amenities available on the cruise ship before or after a departure, including arrival and departure times in port. The cruise operator also has the right to change one ship for another, change itineraries and destinations. Regional conditions may demand a change to the amount of time spent in a port, or eliminate a port altogether. A short notice change of itinerary, ship or hotel may mean some facilities are not as described. Sunwing cannot be held liable for such changes and compensation as a result thereof.

ASSISTANCE ONBOARD / SERVICE CONCERNS

Sunwing has taken great care in selecting the travel suppliers used and featured in this brochure. If you are concerned with the level of service or have any questions or issues that may arise during your cruise please report these to the local cruise line representative and/or onboard cruise staff as applicable so that they can work to ensure that you have an enjoyable holiday. If you require assistance at one of our U.S. destinations please contact Sunwing toll free at 1-800-668-4224 Mon. – Fri. 8:30 am to 9:00 pm; Sat. 9:00 am to 5:00 pm; Sun. noon – 5:00 pm. All times shown are either Eastern Time or Eastern Daylight Savings Time (Canada) and are subject to change without prior notice. If you require assistance or you are concerned with the level of service in one of our other destinations in the Caribbean which you are staying pre/post your cruise vacation, please contact your destination representative immediately and file a complaint notice with the service provider, ensuring that you obtain a copy of your complaint. It is essential that this procedure be followed since the service provider must be given the opportunity to rectify the problem. Please note that your failure to report your concerns may preclude your right to a claim. Should you remain dissatisfied with the service provided, and wish to comment, please send your written comments to your Travel Agent, within 30 days of your return, together with a copy of the notice of complaint you submitted to the service provider, including their response. Any claim received more than 30 days after your return will not be accepted. Sunwing will not be liable for any claims exceeding the amount paid for the services with respect to which you are claiming. Regretfully, we are unable to accept responsibility for any assurances or guarantees provided by Travel Agents, cruise line employees, hotel employees or suppliers of any kind.

STATE ROOM / HOTEL CHANGES

If the accommodation reserved is not available for any reason, we reserve the right to substitute a hotel of a similar category and/or stateroom on the ship or for land stays. This section does not apply to a change in hotel that is a major change as referred to in the section "Sunwing's Responsibility" or to a change of hotel, which occurs by reason of circumstances that are beyond our reasonable control. For the most up-to-date resort and cruise line/ship descriptions please visit www.sunwing.ca.

REPRESENTATIVE ASSISTANCE

With the exception of U.S. destinations, our representatives are stationed in destinations to offer assistance and liaise with our suppliers to resolve any queries or problems that may arise during your stay. Please bring any problem to their attention immediately so that they can work to ensure that you have an enjoyable holiday. In the event that a complaint cannot be resolved in destination, please contact us in writing immediately upon your return. We do not accept responsibility for any assurances or guarantees provided by Travel Agents, hotel employees or suppliers of any kind. Sunwing's Destination Representatives are available for emergency situations 24 hours a day, 7 days a week to offer assistance. Please note that your failure to report your concerns may preclude your right to a claim. If you require

assistance at one of our U.S. destinations please contact Sunwing toll free at 1-800-668-4224 Mon. – Fri. 8:30 am to 9:00 pm; Sat. 9:00 am to 5:00 pm; Sun. noon – 5:00 pm. All times shown are either Eastern Time or Eastern Daylight Savings Time (Canada) and are subject to change without prior notice.

SERVICE CONCERNS

Sunwing has taken great care in selecting the travel suppliers used and featured in this brochure. If you are concerned with the level of service you received from any of our suppliers, please contact your destination representative immediately and file a complaint notice with the service provider, ensuring that you obtain a copy of your complaint. It is essential that this procedure be followed since the service provider must be given the opportunity to rectify the problem. Should you remain dissatisfied with the service provided, and wish to comment, please send your written comments to your Travel Agent or customerservice@sunwing.ca within 30 days of your return, together with a copy of the notice of complaint you submitted to the service provider, including their response. Any claim received more than 30 days after your return will not be accepted. Sunwing will not be liable for any claims exceeding the amount paid for the services with respect to which you are claiming.

NOTICE TO PASSENGERS

Standards of living and conditions with respect to the provision of utilities, sanitary services and the grading of services such as hotel or cruise accommodation vary considerably from one country to another. In other countries, the uninterrupted supply of water and electricity, local health conditions, levels of security and standards of food and beverages may differ from those enjoyed at home. In tropical climates, insects are commonly found inside and outside of any hotel. Illness or inconvenience resulting from the services provided or omitted at the destination are outside the reasonable control of Sunwing and Sunwing accepts no responsibility for such illness or inconvenience. It is the passenger's responsibility to adhere to the customs, rules and laws of the country he/she is visiting. Should a passenger conduct him/herself in a manner threatening to Sunwing or hotel/cruise line employees and/or other passengers, Sunwing has the right to refuse service or expel him/her from the hotel/cruise line. If this occurs, the passenger is responsible for all costs resulting from said expulsion and no refund will be issued for any unused portion of the passenger's holiday. Sunwing Airlines also reserves the right to off-load belligerent or rowdy passengers from its flights, including if necessary, making intermediate stops to off-load such passengers to the control of local police authorities. In the event of such off-loading, deplaned passengers will not receive any refund for unused air services and will be liable for arranging and paying for their own onward air travel, and liable to the airline for any cost incurred resulting from inappropriate behaviour including, but not limited to, additional landing and fuel charges.

OPTIONAL TOURS, EXCURSIONS AND ACTIVITIES

Release, Waiver, and Indemnity - Any optional and/or physical activity that you choose to undertake at your holiday destination, as a result of your voluntary purchase of an optional tour, excursion or activity inside or outside of your hotel, made either prior to your departure from Canada or in destination, may inherently contain a risk of personal injury, loss or damage to you and/or your personal possessions. You hereby expressly agree to assume the entire risk of any and all such injury, loss or damage which you may suffer during or arising out of your participation in the said optional tour, excursion or activity, howsoever caused. Sunwing makes arrangements with transfer operators, coach companies, destination excursion operators and other independent contractors (hereinafter referred to as the "service providers") to provide services in connection with optional tours, excursions or activities. Sunwing exercises great care in choosing its service providers, but does not have control over them and therefore cannot accept responsibility for, nor can be held liable for, any acts or omissions or negligence of the service providers, their employees, servants, agents, subcontractors or unrelated third parties. Some of these service providers may not be agents or employees of Sunwing, notwithstanding their use of any signage or clothing which may contain the name "Sunwing" or other related trade names or logos. Moreover, these optional tours, excursions and activities are subject to conditions and limitations imposed by the said service providers as well as the laws of the country in which they operate. You hereby release, discharge and indemnify Sunwing from any and all liability or claims of any nature arising out of or in relation to any loss, damage, injury or illness whether physical or mental, resulting from any delay, substitution of equipment, or any act, omission or negligence of service providers, their employees, servants, agents, subcontractors or unrelated third parties resulting from or arising out of any of the optional tours, excursions or activities in which you voluntarily participate and/or any optional tour, excursion or activity arranged at your specific request and/or at your cost, whether booked prior to your departure from Canada or in destination, and you agree to accept all risks associated therewith. You hereby expressly waive any claim against Sunwing for any cause arising out of or related to the actions, omissions, or negligence of any person or party other than Sunwing. Furthermore you understand and agree that before participating in any optional tour, excursion or activity in which you have voluntarily agreed to participate through any request and/or pre-purchase by you for the service, you may be required to sign a written release in destination forever discharging and indemnifying Sunwing from any and all claims of any nature arising out of or

related to any such optional tours, excursions or activities made, and agree to assume all risks associated therewith. You understand and agree that all optional tours, excursions and activities are non-refundable and non-transferable.

REFUNDS FOR UNUSED TRAVEL SERVICES

No refund is made for unused travel services or any portion thereof, nor is the price or value of unused travel services exchangeable for alternative arrangements. The day of departure is excluded when calculating cancellation or change fees. All cancellation fees will be calculated on the total amount of products and services purchased. We strongly encourage you to purchase travel insurance to provide you with coverage for unexpected developments that may cause you to either cancel your holiday entirely or interrupt your vacation unexpectedly. Please visit www.sunwing.ca/worryfree.asp for a full description of Sunwing's Worry-Free Vacation Security Plan. This travel insurance plan can only be purchased at time of booking.

SUNWING VACATIONS' RESPONSIBILITY

On your behalf, Sunwing arranges with airlines, hotels, cruise lines, transfer companies, baggage handlers and other independent suppliers to provide you with the services you have purchased. Sunwing exercises due care in selecting these companies and pays particular attention to their reputation and reliability. However, Sunwing does not control these suppliers and thus we cannot be held responsible for their performance or lack thereof. Therefore, Sunwing shall not be held responsible for any injury, loss or damage whether mental, emotional or physical howsoever sustained, resulting or arising from any error, omission or negligence of any company or person, agent, employee or sub-contractor supplying any of these services as part of your Sunwing holiday. Sunwing as the tour operator and/or its agents do not assume responsibility for any claims, losses, damages, costs or expense arising out of personal injury or death, loss of enjoyment, upset, disappointment, illness, distress or frustration whether physical, emotional or mental, resulting from or arising out of any of the following:

- i) Any negligent act or omission by the airlines, transportation companies, coach tour operators, car rental organizations, hotel/resort properties or other suppliers or their personnel or any company or person.
- ii) Government actions, weather, equipment failure, labour disputes, sickness, theft or any other cause beyond our control.
- iii) Failure of the passenger to obtain the necessary documentation or meet the required health regulations in order to complete their travel arrangements.
- iv) Failure of the passenger to arrive at the airport within the time frame stipulated by Sunwing in these Terms and Conditions on the day of departure whether due to missed connections, adverse weather conditions, mechanical failures or any other reason whatsoever.
- v) The need for us to change itineraries or substitute accommodation or services, provided that efforts are made to supply comparable services and accommodations available.
- vi) Cancellation of a tour by Sunwing, provided that full refund of all monies paid is made to the passenger.

While every effort has been undertaken to ensure accuracy, photographs, artist's rendering and written descriptions appearing in Sunwing's brochure and website or any associated website they are representational only and are not a guarantee that everything at the destinations will be exactly as depicted.

ACT OF GOD/FORCE MAJEURE

Sunwing and/or its suppliers cannot assume liability for any loss, damage or injury of any nature in whole or in part resulting from an Act of God or any other Force Majeure condition including without limitation: fire, volcanic eruption, environmental pollution or contamination, inclement weather, earthquake, flood, water or power shortages or failures, tropical storms or hurricanes, riots or civil commotions or disturbances and any other acts of similar nature, sabotage, arrests, strikes or other labour disruptions, restraints of rulers or peoples, expropriations, acts of terrorism, war, insurrection, quarantine restrictions, government health advisories or warnings or alerts of any kind or nature, government seizures, refusal or cancellation or suspension or delay of any government authority or any license, permit or authorization, damages to its facilities in Canada, United States of America, Mexico, Central America or the Caribbean or any other factor unforeseen by Sunwing that impacts negatively on or hampers its ability to fulfill any of its contractual conditions. In the event that any of these conditions apply, Sunwing shall be excused, discharged or released from its performance to the extent such performance is so limited or prevented, without liability of any kind.

LIMITATION OF SUNWING'S LIABILITY

Sunwing's liability for any loss, damage or injury, whether to property, physical or mental, arising from its own acts, omissions or negligence, is limited to the amount you paid to Sunwing for the services with respect to which you are claiming.

INDEMNIFICATION OF SUNWING

The passenger agrees to indemnify and save harmless Sunwing against any liability, actions (including legal fees), claims, losses, costs and damages, which Sunwing may incur, sustain or pay arising out of or in connection with the passenger's negligent or intentional act or omission, in relation to any incident alleged to have occurred in destination and/or in relation to services provided by Sunwing.

APPLICATION

These Terms and Conditions are binding upon all members of the passenger's family, dependants, estate, heirs, successors and legal personal representatives.

FORUM

Your contract with Sunwing is governed by and is to be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Further, any claim or action arising out of or relating to your vacation may be filed only in the courts of Ontario and you agree to attorn to the exclusive jurisdiction of such courts.

SEVERABILITY

If any term or condition or any portion hereof is held invalid or unenforceable, the remaining portions of these Terms and Conditions will remain in full force and effect, and, if possible, the portion(s) found unenforceable will be construed in a manner consistent with the remaining portions.

ACKNOWLEDGEMENT

By making a reservation to purchase a holiday product from Sunwing you, the passenger, hereby acknowledge that you have read and accept the Terms and Conditions contained herein.

VALIDITY

These Terms and Conditions are valid for bookings made between Sep 2012 and Oct 2013 Sunwing Vacations Inc.

Administration Telephone: 416.620.4955, or Toll-free: 1.800.668.4224

Ontario Registration # 2476582

Schedule of Change and Cancellation Fees

CHANGE FEES*					CANCELLATION FEES PER PERSON*	
Product	Deposit per person	Type of Change	When the Change is Made	Change Fees**	When Cancellation is Made	Cancellation Fees*
Any Package Holiday or Hotel Only Reservation	\$250	Name Correction	45 days or more before departure	\$50 per file	45 days or more before departure	\$250
			44-21 days prior to departure	\$100 per person		
		Date Change, Hotel or room category change	20 days or less before departure	Full cancellation charges	44-21 days before departure	50% of total price (excluding taxes)
			21 days or more before departure	\$100 per person***		
Air Only Charter Flights	\$250	Any change	20 days or less before departure	Full cancellation charges	20 days until after departure	100% of total price (including taxes)
			45 days or more before departure	\$50 per file	45 days or more before departure	\$250
			44-31 days before departure	\$50 per file	44-31 days before departure	30% of total price (excluding taxes)
			44 days until after departure	Full cancellation charges	30-15 days before departure	60% of total price (excluding taxes)
Domestic, Florida, Air Only Scheduled	Full payment at time of	Any change	45 days or more before departure	\$50 per file	45 days or more before departure	\$250
			44 days	Full	44 days until	100% of total

Service Flights booking until after departure cancellation charges after departure price (including taxes)

*Deposit requirements, change & cancellation fees can vary for peak departure dates or by select product. Full payment for all products is due at least 45 days before departure, or immediately if booked with 45 days of departure. **If a change involves a difference in the holiday price, the passenger will pay the higher between the original booking price and the revised booking price, plus any additional tourist card fees if applicable. No refunds are issued for changes that result in a lower holiday price. A name change is treated as a cancellation. Please note that all departure taxes and travel related fees are non-refundable.

CRUISE DEPOSITS / FINAL PAYMENTS / CHANGES / CANCELLATIONS - POLICIES

CRUISE LINE	DEPOSIT AMOUNT	FINAL PAYMENT DUE DATE	CANCELLATION #OF DAYS PRIOR TO SAILING	CANCELLATION CHARGES PER PERSON
MSC CRUISES	\$250.00 per/person at time of booking	85 DAYS PRIOR	85-46 days =	loss of deposit
			45-16 days =	50% of total price
			15 days or less =	100% NON-REFUNDABLE
NORWEGIAN CRUISE LINE * Holiday Sailing=Dec 21/2012 & Dec 29/2012	\$250.00 per/person at time of booking	85 DAYS PRIOR (Holiday Sailings *90 days prior)	*90 - 86 days =	loss of deposit
			85-56 days =	loss of deposit
			55-30 days =	50% of total price
			29-15 days =	75% of total price
DISNEY CRUISE LINE	\$400.00 per/person at time of booking	85 DAYS PRIOR	85 - 45 days =	loss of deposit
			44 - 30 days =	50% of total price
			29 - 15 days =	75% of total price
			14 days or less =	100% NON-REFUNDABLE

Cruise Change Fees: If you wish to make any changes to your confirmed booking before the cancellation period begins, as per Sunwings' payment schedule, we will endeavor to make every reasonable effort to accommodate your request. All changes are subject to availability. Details of the various change fees are available at time of request and may vary depending on the nature of the change and date of your request. Change of name, airline or cruise line departure date, stateroom/suite or hotel subjects the booking to cancellation charges. Any changes that you wish to make to a confirmed booking within the cancellation period set by the relevant cruise line will be treated as a cancellation. Cancellation fees are applicable as outlined above. If the cancellation of one or more passengers alters the stateroom requirements, the passengers still travelling must pay the applicable rate for the accommodation to be occupied & the passenger cancelling must pay the applicable cancellation charge.

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Find your Cheap flight today!

Departing from

Toronto

Going to

Select

 Round trip

Departure date

2013/04/16

Return date

2013/04/23

search

Travel Information

Conditions of Carriage

- As used in this contract, "ticket" means passenger ticket and baggage check, or this itinerary/receipt if applicable, in the case of an electronic ticket of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means Sunwing Airline undertakes to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage. "electronic ticket" means the itinerary/receipt issued by or on behalf of carrier, the electronic coupons and, if applicable, a boarding document. "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.
- 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.
- To the extent not in conflict with the foregoing, carriage and other services performed by Sunwing are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier)
- 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; the agreed stopping places are those places set forth in this ticket
- Any 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.
- 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.
- This ticket is good for carriage only for the as per the dates provided on the ticket, in carrier's tariffs, conditions of carriage, or related regulations.
- Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown on the ticket or elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate 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
- Passengers shall comply with Government travel requirements, present exit, entry and other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.
- No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

Travel Info

Baggage Information

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Conditions of Carriage

[Exit Row Seating](#)[Flight Reconfirmation and Check in](#)[International Travel](#)[New Carry on Luggage Restrictions](#)

Special Assistance

[Traveling With a Medical Condition](#)[Travelling with a Wheelchair](#)[Acceptance of Mobility Aids](#)[Oxygen Service](#)[Travelling with Pets and Service Animals](#)[Children Travelling](#)

Tariffs

As a Canadian carrier Sunwing is required by law to publish its terms and conditions of carriage on this website and make it available for inspection. A tariff is a document that contains published fares, charges and related terms and conditions of carriage applicable to air services.

[Domestic Tariff \(applicable for travel in Canada\)](#)[International Charter Tariff](#)[International Schedule Tariff](#)

[Travelling while Pregnant](#)

[Special Meals](#)

[Obese Passengers](#)

[Travel within Canada](#)

About Us

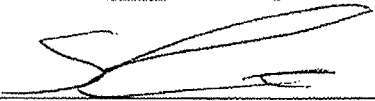
- ▶ [About us](#)
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- ▶ [Site map](#)
- ▶ [Careers](#)
- ▶ [Taxes and fees breakdown](#)

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- ▶ [Press releases](#)
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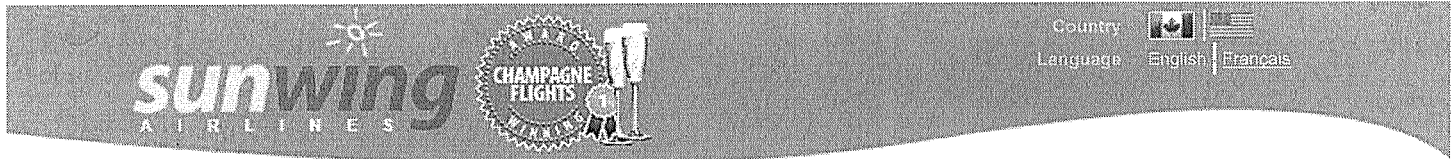
Helpful Links

- ▶ [Web check-in](#)
- ▶ [Advance seat selection](#)
- ▶ [Check your flight](#)
- ▶ [Frequently Asked Questions](#)
- ▶ [E-Documents](#)
- ▶ [Pre-order DUTY FREE](#)
- ▶ [Sunwing Vacations](#)

This is Exhibit "B" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits



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1-877-SUNWING

Find
your Cheap flight today!

Departing from

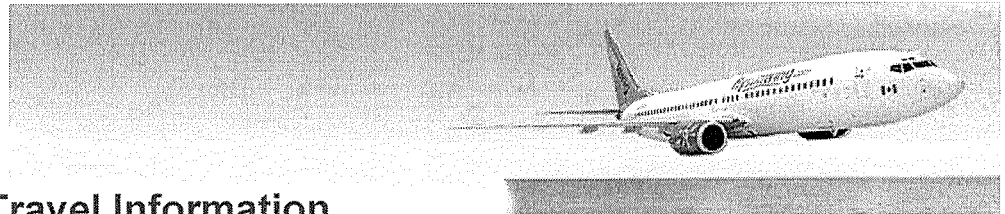
Going to

Round trip

Departure date

Return date

search



Travel Information

Airport & Flight Reconfirmation & Check-in

General Info

To help us provide you better service and on-time departures, we recommend that you check-in at the airline check-in counter by the time shown below prior to your scheduled departure. However, you must also be available for boarding at the boarding gate by the deadline shown below. Failure to meet the applicable deadlines may result in the re-assignment of advance seats, cancellation of reservations and denied boarding and ineligibility for denied boarding compensation.

Check-in times

- Check-in opens 3 hours prior to scheduled departure
- Check-in closes 60 minutes prior to departure for all flights from all airports in all countries.
- Latest time at the gate for boarding is 30 minutes prior to departure

We want to ensure your flight departs on schedule so it is important that you check-in and board the aircraft on time.

Important notes for check-in

Early check-in is recommended to enable you to complete security checks and get to your gate on time. If you are not in possession of a boarding pass by the time indicated, you will not be accepted for the flight. Please make a member of Sunwing Airlines staff aware if you are waiting in line and expect that you will arrive too late to check-in.

Important notes for boarding

Once you have checked-in for your flight, please ensure that you go directly through security to the departure lounge, making sure you arrive at the boarding gate not later than 30 minutes prior to scheduled departure. Passengers who arrive at the boarding gate after the gate has closed will not be accepted for travel.

Reconfirmation

Reconfirmation of your reservation is not required, however we recommend you reconfirm your flight times by visiting one of the following websites:

	AIRPORT WEBSITE
ONTARIO	
Toronto	http://www.gtaa.com/en/home
Ottawa	http://www.ottawa-airport.ca
Sudbury	http://www.city.greatersudbury.on.ca
London	http://www.londonairport.on.ca
Sault Ste. Marie	http://www.saultairport.com
Kitchener/Waterloo	http://www.waterloairport.ca
Hamilton	http://www.flyh.ca
Windsor	http://www.wgq.ca
QUEBEC	AIRPORT WEBSITE
Quebec City	http://www.aerportdequebec.com/Html/en-ca/index.shtml
Montreal	http://www.admf.com/passager/home.aspx
Baggotville	http://www.aerportbagotville.com
Val Dor	http://www.arvo.gc.ca/Ang/index.html
NOVA SCOTIA	AIRPORT WEBSITE
Halifax	http://www.hiaa.ca
Sydney	www.sydnevairport.ca
NEWFOUNDLAND	AIRPORT WEBSITE
St. Johns	http://www.stjohnsairport.com
Gander	www.ganderairport.com
Deer Lake	www.deerlakeairport.com
Stephenville	www.cvt.com
NEW BRUNSWICK	AIRPORT WEBSITE
Moncton	http://www.gmia.ca
Saint John	www.saintjohnairport.com
Fredericton	www.frederictonairport.ca
MANITOBA	AIRPORT WEBSITE
Winnipeg	www.waa.ca

Travel Info

Baggage Information

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- [Travelling while Pregnant](#)
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- [Obese Passengers](#)
- [Travel within Canada](#)

	P.E.I. Charlottetown	AIRPORT WEBSITE www.charlottetownairport.pe.ca	
	BRITISH COLUMBIA Vancouver Kelowna Comox Victoria	AIRPORT WEBSITE www.vvr.ca www.kelownairport.com www.comoxairport.com www.victoriaairport.com	
	SASKATCHEWAN Regina Saskatoon	AIRPORT WEBSITE www.yqr.ca www.vxe.ca	
	ALBERTA Edmonton Calgary	AIRPORT WEBSITE www.edmontonairports.com www.calgaryairport.com	

Sunwing Airlines
 Reconfirmation Number 1 877 978 6946

Flight status

Departure Date: Flight Number: WG

Departure Airport: Arrival Airport:

About Us

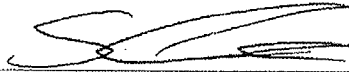
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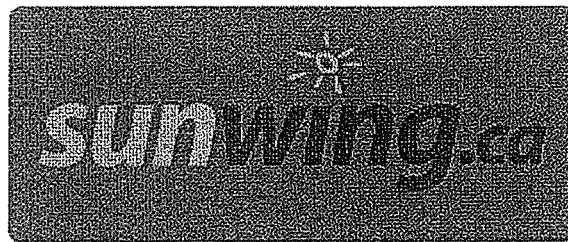
Helpful Links

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- ▶ [Advance seat selection](#)
- ▶ [Check your flight](#)
- ▶ [Frequently Asked Questions](#)
- ▶ [E-Documents](#)
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- ▶ [Sunwing Vacations](#)

This is Exhibit "C" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes.

A Commissioner for Taking Affidavits



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: 15APR2013 12:56 PM
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/ 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 / 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 / Signature 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 travelling 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
Sports Equipment			
Golf Clubs (Maximum Weight 20 kg) Limited to a regular sized golf bag consisting of: 14 clubs 12 golf balls 1 pair of shoes	Free Excess charges apply if 20 kg weight limit is exceeded	Free Excess charges apply if 20 kg weight limit is exceeded	Free Excess charges apply if 20 kg weight limit is exceeded
Bicycles (Maximum weight 20 kg) (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
Scuba (Maximum weight 20kg) Limited to scuba equipment only, i.e. mask, weight belt, fins.	Free Excess charges apply if 20 kg weight limit is exceeded	Free Excess charges apply if 20 kg weight limit is exceeded	Free Excess charges apply if 20 kg weight limit is exceeded
Skis	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
Oversized Sports Equipment (kayaks, windsurfers, surfboards) 1 Kayak, not including separate equipment such as helmets, paddles, life preservers etc. Surfboards may not be	\$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 \$200.00)	\$100.00 flat rate per item each way to be collected for all legs of the flight, at the point of origin (total \$200.00)

more than 12 feet long.
Windsurf equipment to consist of 1 windsurf board 1 mast boom and/or sail

Musical instruments which exceed carry-on dimensions of 9"x16"x20" and/or weight limitation of 10 kg

Baby/infant Accessories (stroller, car seat, playpen)

Hunting Equipment 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 20kg (30kg for Elite Plus) weight limit is exceeded

One item per infant free 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

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 20kg (30kg for Elite Plus) weight limit is exceeded

One item per infant free 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

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 25kg weight limit is exceeded

One item per infant free 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

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.

Toronto Airport Parking Coupon



PARK'N FLY
 AIRPORT PARKING



\$7⁹⁵
 DAY
 COUPON CODE: 461315

PLUS - 6th & 7th Day FREE!

Economy

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

\$69⁹⁵
 WEEK
 \$17.95/DAY COUPON CODE: 449633
 SAVE up to \$617!

4 DAY VALET SPECIAL
\$54⁹⁵*
 COUPON CODE: 449637

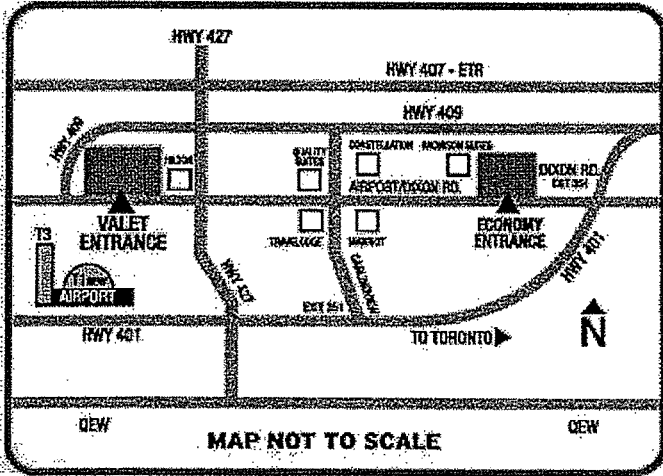
Valet Drop 'N Go®

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

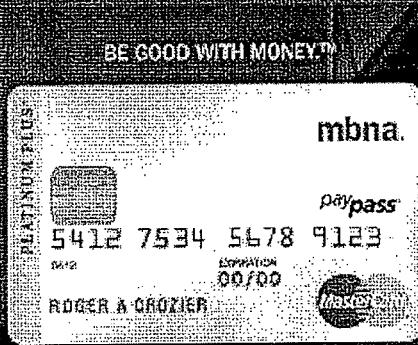
5815 Airport Road, Mississauga Tel: 905-677-9143

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.



TRAVEL NOW. TAKE 10 MONTHS TO PAY.



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%[‡] promotional annual interest rate[†] (AIR) for 10 months?

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 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 electing to apply for the credit card, you consent to the collection, use and processing of information about yourself by MBNA. MBNA uses and agrees to use its respective agents and service providers, and third parties, in exchange of receiving information with third-party agencies, affiliates and service providers in relation to processing your application and, if approved, obtaining, administering and servicing your account. You acknowledge that the account, if approved, will be used by you for the purpose of financing your travel and other expenses, and that you are in agreement with MBNA policies and procedures in relation.

[§] This promotional rate will only apply to eligible balance transfers, access cheques and deposits for post-purchase accounts within 90 days of your account opening. Following the promotional period, the standard annual interest rate(s) for balance transfers, access cheques and deposits will apply to new and then outstanding balances. You will lose the benefit of the promotional rate if you fail to make your payment due on or before the payment due date, or your account balance exceeds your credit limit.

[¶] A transaction fee may apply.

[¶] Information current as of January 31, 2013. Subject to change. The Toronto-Dominion Bank is the exclusive issuer of the credit card. MBNA is a division of The Toronto-Dominion Bank.

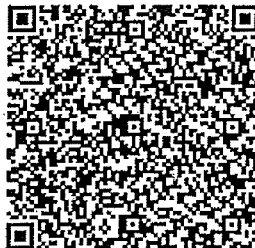
[¶] All trade marks and the priority of related aspects are owned.

[¶] © 2013 MBNA and other trade marks are the property of The Toronto-Dominion Bank.

4675-12-9334-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 to submit your entry.



This is Exhibit "D" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several loops and a horizontal stroke at the end.

A Commissioner for Taking Affidavits



Sunwing Airlines Terms & Conditions for "Web Check-in"

1. Web check-in is available between 4 hours prior to and up to 90 minutes prior to the scheduled departure time of your Sunwing Airlines flight from Toronto (YYZ), Montreal (YUL), Vancouver (YVR), Ottawa (YOW), Winnipeg (YWG), Quebec City (YQB) to all destinations.

2. Sunwing Airlines is pleased to offer "web check-in" to the following passengers:

- Passengers who hold a confirmed reservation prior to 24 hours before flight departure and are in possession of e-ticket documents for your flight operated by Sunwing Airlines. Passengers booked after 24 hours will be accommodated for check-in at the Sunwing Airlines check-in counter.
- Passengers who are travelling with an infant (0 – 24 months old) will receive a web check-in boarding pass for the flight.

For flights to the USA passengers travelling with infants using the web check-in will only receive a web check-in confirmation. This web check-in confirmation must be exchanged at the airport for a boarding pass.

- Passengers departing from Toronto (YYZ), Montreal, Dorval (YUL), Vancouver (YVR), Ottawa (YOW), Winnipeg (YWG), Quebec City (YQB) on a route on which Sunwing currently offers web check-in.

3. Please note, you are required to check-in at the Sunwing Airlines check-in counter if your e-ticket documents contain a special request such as:

- Wheelchair assistance or special assistance to board the flight.
- Unaccompanied Minors assistance.

At this time, all travel documents, specific medical certificates, or travel documents pertaining to the "special need" will be checked and verified. For special needs, please contact specialservices@sunwing.ca

4. Passengers born in Cuba require special "permission" granted and stamped by the Cuban Authorities, regardless of holding Canadian or USA citizenship. These passengers are unable to access the web check-in and must check-in at the Sunwing Airlines check-in counter.

5. Your flight is closed for web check-in 90 minutes prior to scheduled departure time.

6. Your e-ticket documents and travel documents will be checked and verified by the Sunwing Agent at the Sunwing Airlines counter, "Web / Kiosk Baggage Drop" position.

7. We recommend that you arrive at the airport 3 hours prior and no later than 2 hours to the scheduled departure time of your flight.

8. Proceed to the Sunwing Airlines check-in counter, "Web / Kiosk Baggage Drop" position to have your baggage weighed, tagged and checked in and e-documents verified. Check-in closes 1 hour to prior to departure.

9. All check-in and carry-on baggage will be weighed and tagged.

10. Each person traveling must be present at the airport to drop off his/her baggage for the flight.

11. Your free combined baggage allowance for Elite passengers is 25kg, checked and carry-on baggage. 2 checked bags and one carry-on. For Safety reasons, a checked bag must not exceed 32kg.

12. Passengers who have purchased the Elite Plus package are eligible for free combined baggage allowance of 35kg, checked and carry-on baggage. 2 checked bags and one carry-on. For safety reasons, a checked bag must not exceed 32 kg.

13. Excess baggage charges will apply if the free baggage allowance is exceeded. Charges of \$20.00 per kg on International flights and \$10.00 per kg on Domestic and flights to the USA.

Any further information, please refer to [Sunwing Baggage Information](#).

14. Carry-on baggage is restricted to one standard article with maximum dimensions of 23 x 40 x 51 cm (9 x 16 x 20 in). The weight of a Carry-on bag cannot exceed 5kg. Any carry-on bag that exceeds these specified limits must be prepared for check-in and will be charged at the applicable airline rate per kg, for each direction.

15. Sunwing reserves the right to refuse acceptance of baggage if it does not conform to [Sunwing Baggage Policies](#).

16. Sunwing does not allow hazardous material or dangerous goods on flights. If you are unsure of what items are not allowed on the aircraft please check the [Sunwing Baggage Policies/Dangerous Goods Policies](#) and [Canadian Air Transport Security Authority \(CATSA\)](#).

17. Questions regarding any potentially hazardous material or Dangerous Goods in checked or carry-on baggage may be directed to Toronto Sales Centre at 1-800-668-4224 or the Montreal Sales Centre at 1-888-822-2623.

18. Please allow yourself enough time to go through the Airport Security Screening Process. Any further information, please refer to [Canadian Air Transport Security Authority \(CATSA\)](#)

19. If you are traveling without checked baggage and you have used the Sunwing Airlines "Web check-in", proceed to the "Web / Kiosk Baggage Drop" position at the airport, where your carry-on baggage will be tagged and the dimensions verified. Your travel documents will be checked at this time.

20. Arrive at the boarding gate no later than 1 hour to the schedule departure time of your flight. The time to report at the gate is shown on your boarding pass.

21. Sunwing Airlines cannot delay, "hold" flights for passengers arriving late to the airport for their flights.

22. No responsibility can be accepted in such cases where,
- You fail to arrive at the boarding gate in time for your flight.
- You do not check-in your baggage prior to the closure of your flight 1 hour prior to scheduled departure time.
- You do not hold valid travel documents, including visas to enter your destination and valid documents including valid Permanent Residence Cards for your return to Canada if you are a landed immigrant. For further information on documentation, please refer to [International Travel](#) or [Travel within Canada](#)

23. In the event that the designated aircraft operating a particular flight is changed with another aircraft with different seating configuration, Sunwing reserves the right to change the seats selected by the passenger through the web check-in facility.

24. Sunwing may also change the seat selected by a passenger during web check-in or otherwise, for Safety, Security and Regulatory reasons. For more information, please refer to the [Transport Canada](#) and [CATSA](#) websites.

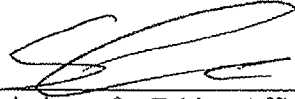
25. Sunwing may also change your seat selected on the web check-in if flights are amalgamated. If your seat has to be changed Sunwing will do the best to assign a seat close to what you originally had selected on the web check-in.

26. A secondary check of your travel documents will be conducted at the boarding gate before you board the aircraft.

27. If you have already checked in on the web check-in and you have to cancel your booking please contact the Toronto Sales Centre at 1-800-668-4224 or the Montreal Sales Centre 1-888-822-2623 in order to be removed from the flight passenger checked in list.

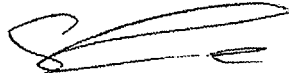
28. Web check-in is not available for group bookings consisting of 10 passengers or more.

This is Exhibit "E" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



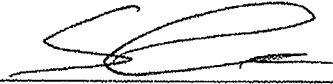
A Commissioner for Taking Affidavits

This is Exhibit "F" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits

This is Exhibit "G" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits

There has been a change to our flight schedule:

29-Jul-2012 WG200 departing from Toronto - Pearson at 22:45 will arrive in London - Gatwick at 12:00.

This does not require any action on your part.

Based on information at 29-Jul-2012 11:21 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.

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.

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.

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.

There has been a change to our flight schedule:

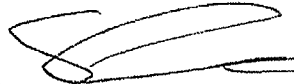
10-Aug-2012 WG201 departing from London - Gatwick at 02:25 will arrive in Toronto - Pearson at 05:40.

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.

This is Exhibit "H" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several loops and a horizontal stroke at the end.

A Commissioner for Taking Affidavits



DESTINATIONS QCM

STATION	LGW
---------	-----

* ALL TIMES UTC *

SUNWING REP	
-------------	--

GROUND HANDLER INFO

RAMP LEAD	
-----------	--

PAX SUP	
---------	--

ARRIVAL

DATE	10 AUG 2012
STA	09:20
PAX	249+3

FLT NUMBER	SWG200
ATA	23:45
SPECIALS	1UM 3WCR WCS

A/C REG	CSTFT
FROM	YYZ
In Transit Pax	-

BAGGAGE DELIVERY	FIRST BAG TIME	00:09	LAST BAG TIME	00:34
------------------	----------------	-------	---------------	-------

DEPARTURE

DATE	10 AUG 2012
STD	11:20
GATE	51

FLT NUMBER	SWG201
ETD	01:25
PAX (estimated)	289

A/C REG	CSTFT
DESTINATION	YYZ
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 FKT	5 6 CREW BAGS
	11R	12R	13R	14R	21R	22R	23R	24R						42L N	43L		
	11L	12L	13L	14L	21L	22L	23L	24L						42L N			
Max. Weight/CPT	7,192 Kg				7,192 Kg				7,680 Kg				6,694 Kg		2,926 Kg		



	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		Potable 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	PRE-BOARDS	GENERAL	FINAL	SECURE	LAST PAX	DOORS
00:15	00:35	00:40	01:05	01:05	01:05	01:25

BAG PULL		FINAL PAX COUNTS			ATD
Start	End	In Transit	Enplaned	Total On Board	
-	-	-	289+6	289+6	01:30

Last Minute Ticket Sales		Delays	1 st	2 nd	3 rd	4 th	Man Power		Comail		Excess
Yes / No	Yes	Code	93	-	-	-	Ramp	Pax	Yes	No	
Amount	£50.00	Mins	1410	-	-	-	-	-	-	-	£225

REMARKS
DELAY DUE TO LATE INBOUND AIRCRAFT: 14hrs 10mins
2x excess: 4kg and 11kg
1x ELITE PLUS sold: [REDACTED]



DESTINATIONS QCM

NO-SHOW PASSENGER LIST AND BOOKING REFERENCE

- [REDACTED] 59131803
- [REDACTED] 59131803
- [REDACTED] 59131803
- [REDACTED] No Sunwings booking ref but has LGW PNR-ref 839190
- [REDACTED] not on pax info website. LGW PNR-ref 914308

However looks to have travelled on SWG259/09AUG – ref 59066993

- [REDACTED] No Sunwings booking ref but has LGW PNR-ref 914254
- [REDACTED] No Sunwings booking ref but has LGW PNR-ref 914254
- [REDACTED] No Sunwings booking ref but has LGW PNR-ref 914254
- NAWROT/KAROLYNTERESA 58187993
- NAWROT/KRISTINAMARIE 58187993
- NAWROT/RAYMONDPAUL 58187993
- [REDACTED] 58560053

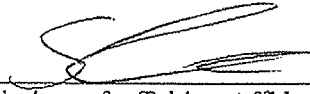
STAND-BY PASSENGER LIST

- nil
-
-

GO-SHOW PASSENGER LIST AND BOOKING REFERENCE

- [REDACTED] 58605623
- [REDACTED] 58878163
- [REDACTED] 59188363
- [REDACTED] 56797863
- [REDACTED] 56797863
- [REDACTED] 56797863
- [REDACTED] 58605623

This is Exhibit "I" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes, positioned above a horizontal line.

A Commissioner for Taking Affidavits

DATE:	10 Aug 12	SHIFT:	Night	PSS:	Vic
--------------	-----------	---------------	-------	-------------	-----

	<u>Flight</u>	<u>Route</u>	<u>STD</u>	<u>ATD</u>	<u>Delay</u>	<u>Delay2</u>	<u>Delay3</u>
1	SWG201	1225	0225				
2							
3							
4							

RESOURCING ISSUES:

STAFFING LEVELS:	2 on night shift 3 staff stayed on as delay to SWG201 also borrowed 2 night shift from TCX 3 staff overslept and one had car trouble early morning.
-------------------------	---

SICKNESS/ ABSENCE:	
---------------------------	--

BELT/ SYSTEM PROBLEMS:	Belt Switch ok at 0150L
-------------------------------	-------------------------

OTHER INFORMATION:

OTHER INFO	Sunwing flight ok most pax checked in by 0030 closed flight at 0125. 4 pax turned up 15 mins after closure time checked with dispatcher who advised most pax boarded so denied them travel. Inbound came in 30 mins early with 1 unmin 13 pax given Taxi to dest as per email from YYZ.		
	<div style="background-color: black; width: 100%; height: 40px; margin-bottom: 10px;"></div> <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 10px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div>		
	<div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div>		
CUSS	TOTAL PAX		TOTAL CUSS

SIGNED

Vic

This is Exhibit "J" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits

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 here in London were quite 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

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

October 19th, 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
TOTAL:		\$4455.77

Note: I used 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

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 "K" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes.

A Commissioner for Taking Affidavits



A/C Registration

Flight Date

Reporting Time

ID No

TFT

11-08-2012

00:25

Scheduled Flight				Flight Time				Delay Codes							
Lg	Flt no	From-To	Depart	Arrival	PF	Off Blocks	Take Off	Land	on Blocks	Flight	Blocks	Delay	1	2	3
#1	SWG201	LGW/YZ	01:25	09:40	B	01:30	01:48	09:23	09:30	07:35	0800	00:05	15PH		

Passengers						Services				Fuel					
Lg	C	Y	Total	Adult	Child	GPU	Air Start	Oil	Transit	Mnt	Remain	off Blocks	On Blocks	Used	Weight
#1			295	261	28	2	N	Y	Y	N	18.200	50.000	9200	40800	168.891

Rank	ID	Name	O/B
#A	CPT	[REDACTED]	CPT
#B	FO	[REDACTED]	FO
	SFA	[REDACTED]	SFA
	SFA	[REDACTED]	SFA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA
	FA	[REDACTED]	FA

Captain Report

DELAY 00:05 - 15PH BOARDING.
 RWK - FUEL UPLIFT PERFORMED BY INITIAL CFP
 THAT HAD A PAYLOAD OF ± 38.000
 FINAL CFP HAD PAYLOAD OF 30.000
 (3 TONS EXTRA FUEL)

Capt Sign: [REDACTED]

EAA/DOV/001

Rev.01 - 07/07/2009

Date: 11-08-12

1/1



CCR. B
1009/06

CABIN CREW REPORT

C/G [REDACTED] CAPTAIN [REDACTED] CS - TFF Date 11/08/12

FL. N.º	SWG	201	From	LEW	To	442	P	C	/	+	Y	289	+	0
FL. N.º			From		To		S	C	/	+	Y		+	
FL. N.º			From		To		G	C	/	+	Y		+	
FL. N.º			From		To		R	C	/	+	Y		+	

P N C

A2	[REDACTED]	B1	[REDACTED]	E1	[REDACTED]
		B2	[REDACTED]	E2	[REDACTED]
				E3	[REDACTED]
				E4	[REDACTED]

C L I N E S	CABIN	<input checked="" type="checkbox"/>	The cleaning was not very good Seat pockets in some seats were dirty.
	W. C.	<input checked="" type="checkbox"/>	
	STOCK	<input checked="" type="checkbox"/>	
	SEAT POCKET	<input checked="" type="checkbox"/>	
C T R I N G	SPEC. MEALS	<input checked="" type="checkbox"/>	7
	PSGR MEALS	<input checked="" type="checkbox"/>	
	CREW MEALS	<input checked="" type="checkbox"/>	
	EQUIPMENT	<input checked="" type="checkbox"/>	
	OTHERS	<input checked="" type="checkbox"/>	
B A R S	DUTY FREE	<input checked="" type="checkbox"/>	7
	DRINK BAR	<input checked="" type="checkbox"/>	
	HEAD SETS	<input checked="" type="checkbox"/>	
	VIDEO	<input checked="" type="checkbox"/>	
	OTHERS	<input checked="" type="checkbox"/>	
I N V E N T O R Y	WINES	<input checked="" type="checkbox"/>	7
	OTHERS DRINKS	<input checked="" type="checkbox"/>	
	NEWSPAPERS	<input checked="" type="checkbox"/>	
	PHARMACIES	<input checked="" type="checkbox"/>	
	FORMALITIES	<input checked="" type="checkbox"/>	
	BLANKETS	<input checked="" type="checkbox"/>	
R E F E R E N C E	CHECK-IN	<input checked="" type="checkbox"/>	2 WELTR 2 WELTS 7
	LOAD/TARMAC	<input checked="" type="checkbox"/>	
	SPEC. ASSIST.	<input checked="" type="checkbox"/>	

REMARKS

Since the flight was delay, they should change the catering, we served a hot meal after take-off and a pizza as a 2nd service, and should be a BKFAST.

C/G SIGNATURE [REDACTED]

CPT SIGNATURE [REDACTED]



TRANSATLANTIC CABIN CREW FLIGHT REPORT

FLIGHT INFORMATION

Date (dd-mm-yy)	A/C Registration	Flight #	Route	Flight Time	Local Departure Time		Pax Load
					Scheduled	Pushback	
11 AUG. 2012	C- BTFT	201	LGW-YYZ	07:30	02:25	02:30	289+6
* delayed from 10g10/12-20pm.							

CREW

Captain:	[Redacted]	First Officer:	[Redacted]
Observer:	[Redacted]	Check/Supervisor:	[Redacted]
SFA :	[Redacted]	A2 (Fwd GFA):	[Redacted]
CSM - B1:	[Redacted]	B2 (GFA Assist):	[Redacted]
E3:	[Redacted]	IO - E4:	[Redacted]
E1(Aft GFA):	[Redacted]	E2:	[Redacted]

REPORTING (forms attached)

Report	Yes	No	Report	Yes	No
OHR (attach non-confidential SMS report only)		X	Employee Incident/Injury Report attached		X
Compensation for Soiled Clothing		X	On Board Meal Request attached		X
Pay Credit Adjustment Form attached		X	Expense Report attached		X
Other:					

ON TIME PERFORMANCE

CREW ACCOMMODATION ISSUES

Timing	Eastbound	Transit	Westbound
Crew Left Building			00:30
Crew Arrival at Aircraft			01:15
Call for Boarding			01:40
Door Closed			02:25

DELAYS Calculate minutes based on scheduled time and pushback time

Flight Sector	Mins	Explanation
LGW-YYZ	05	Due to infant seated in the middle, we had to move them.
-		
-		

COMMENTS

Flight Sector (XXX-XXX)	Comments
WESTBOUND LGW-YYZ	00:45, crew arrived at the gate and waiting for the Gnd Dec.
	02:15, boarding completed, realised they put all infants in the middle seats so we had to relocate them for safety reason.
	02:25, performing headcounts but always one more or less. Announcement is done to ask PAX cooperation by remaining seated while re-doing the headcount.

*Provide details of Non-Satisfactory items in Comments section. Attach page 3 if necessary.



TRANSATLANTIC CABIN CREW FLIGHT REPORT

INFLIGHT SERVICE Completed as per Plan of Action? Yes No (see Comments below)

CSM-FA Briefing Sheet (CFB) Completed & posted in Galley? Yes No (see Comments below)

CATERING & COMMISSARY		S	N/S*	PASSENGER SERVICE		S	N/S*
Casseroles / AM Sandwich or PM Snack		X	N/S	Doc. Pouch/Surveys/Customs Paperwork		X	
Tray Set Up (TSU)		X		Pre-Boarding/Boarding		X	
Special Meals		X		Cabin Baggage		X	
Crew Meals		X		Special Attention Pax/UMs/WCHRs		X	

CATERING		S	N/S*	HOLLOWWARE (tick off for shortage only)		How many missing?
Entree Ratio		X		Entrée Container (2/2)		
Entrees Quality		X		Coffee/Tea Pot (6/6)		
Duty Free Discrepancy		X		Small Silver Tray (4/4)		
Bar Discrepancy		X		Large Silver Tray (4/4)		
Dry Stores / Dalry / Chocolates /		X		Creamers (4/4)		
Headsets / Kiddie Kits / Lav & Amenity		X		Sugar Bowls (4/4)		
Catering Rep present prior to door close		X		Ice Buckets + Ice Scoops (2/2)		
Arr/Dep Time of Catering Truck		X		Water Pitchers + Lids (4/4)		1

INFLIGHT SALES		\$ or # Collected	INFLIGHT ENTERTAINMENT		
Bar Deposit <i>(All Sunwing Sales- total from HHC Sales Print -out)</i>		25 \$	Video Shown	Outbound	Inbound
Crew Alcohol Sales		25 \$	1. Promo Tape	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Duty Free Deposit		238 \$	2. Movie 1	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
One x One - enter # envelopes		0	3. Movie 2 (W/B only)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Postcards Distributed? <input type="checkbox"/> Yes <input type="checkbox"/> No (see Comments below)			4. Short Videos	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

AIRCRAFT GROOMING		S	N/S*	F/A REST PERIODS		Taken	Not Taken*
Cabin <i>(Carpet / Tray Table / Seats / Seat pockets / etc)</i>		X		1 st break - SFA / A2 / E1 / E2		X	
Galleys		X		2 nd break - B1 / B2 / E3 / E4		X	
Lavs		X					

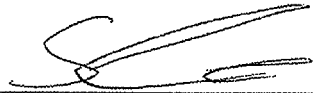
SEATING ISSUES

Double Seating? Yes No (see Comments below)
 Include Seat # / Name / Booking # on comments


Flight Sector (XXX-XXX)	COMMENTS
WESTBOUND LGW-VYZ	<p>✓ Inflight service not completed as per plan of action. Had to adjust it with the delay. We started with meals first, then the bar (coffee/tea was offered) and waited later during the flight for duty free since everyone was sleeping.</p> <p>✓ Decided to give complimentary bar "on demand" only for the delay. Passengers were furious at boarding, but the crew did an amazing job with them all and they leave d/c. giving great comments.</p> <p>✓ We received the dinner casseroles and PM snack. It would have been more appropriate to serve breakfast at this time of the night. ←</p> <p>* CSM [redacted] forgot her orange duty-free deposit bag in the aircraft, I bring it back & put it into the safe and filled a deposit form in case she needs them (the amounts) for her report. You will find the Sales Deposit Form attached.</p>

Page 3 Attached No Yes

This is Exhibit "L" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes.

A Commissioner for Taking Affidavits

From: Dino Almeida [mailto:
Sent: April-12-13 8:29 AM
To: Pedro Pissarra
Cc: John Murphy
Subject: RE: LGW YYZ August 10, 2012 SWG 201

Good afternoon Capt.,


Following the below request we've checked the database for any available Information on the referred flight.

No data is available in the Safety DB, neither is there any information on such event on either the Captain Trip Report and Cabin Crew Report (attached to this email). The Captain was today at the

Beloura Office and I had the opportunity to talk to him directly moments ago regarding the information request on this flight; conclusions were that there is no recollection by the crew of such an event taking place.

Should there be the need for any further information, please do not hesitate to contact us.

Best regards,

 Description:
cid:image001.png@01CD4D5

Dino M.P. DE ALMEIDA
ESPECIALISTA EM FDM E SEGURANCA OPERACIONAL
FLIGH DATA MONITORING AND SAFETY SPECIALIST

[REDACTED]

From: Pedro Pissarra
Sent: quinta-feira, 11 de Abril de 2013 21:10
To: John Murphy; Dino Almeida
Subject: RE: LGW YYZ August 10, 2012 SWG 201

john i dont remeber but i am copying dino that will update us with any event.
dino please confirm that this situation is on record and give an update
thank you
pedro pissarra

De: John Murphy [REDACTED]
Enviado: quinta-feira, 11 de Abril de 2013 17:59
Para: Pedro Pissarra
Assunto: LGW YYZ August 10, 2012 SWG 201

Hello Again Pedro,

Hope all is well with you. We had an incident on the above flight in the subject line and are wondering if anything is written in the Captains Report regarding the incident. The incident involved a passenger being denied boarding. If you can help out, that would be great.

Best Regards,

John

John Murphy | Safety Investigator
Sunwing Airlines

[REDACTED]
27 Fasken Drive, Toronto, Ontario M9W 1K6

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This is Exhibit "M" referred to in the
affidavit of Joanne Dhue sworn
before me, this 17 day of April, 2013.



A Commissioner for Taking Affidavits



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	02:25local 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

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
<p>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, when you are ready to redeem your voucher. Subject to availability of flights and hotels. ***LOST OR STOLEN VOUCHERS WILL NOT BE REPLACED***</p>	

MONTREAL
7785 Côte-de-Liesse Ouest
Ville St-Laurent, Québec
H4E 1C3 Canada
Tel: 1.866.722.8066

TORONTO (HEAD OFFICE)
27 Tasken Drive
Toronto Ontario
M0W 1K6 Canada
Tel: 416.520.4955 / 1.877.577.1755

VANCOUVER
1020-1500 West Georgia St.
Vancouver, British Columbia
V6G 2Z6 Canada
Tel: 1.877.377.1755

DATE:	10 Aug 12	SHIFT:	Night	PSS:	Vic
--------------	------------------	---------------	--------------	-------------	------------

	Flight	Route	STD	ATD	Delay	Delay2	Delay3
1	SWG201	1225	0225				
2							
3							
4							

RESOURCING ISSUES:

STAFFING LEVELS:	2 on night shift 3 staff stayed on as delay to SWG201 also borrowed 2 night shift from TCX 3 staff overslept and one had car trouble early morning.
-------------------------	---

SICKNESS/ ABSENCE:	
---------------------------	--

BELT/ SYSTEM PROBLEMS:	Belt Switch ok at 0150L
-------------------------------	-------------------------

OTHER INFORMATION:

OTHER INFO	<p>Sunwing flight ok most pax checked in by 0030 closed flight at 0125. 4 pax turned up 15 mins after closure time checked with dispatcher who advised most pax boarded so denied them travel. Inbound came in 30 mins early with 1 unmin 13 pax given Taxi to dest as per email from YYZ.</p> <p>BW903 POS made a medical emergency landing in the Azores the crew were running out of hours to take the flt to POS so flt returned to LGW arr at 0135L. As we were boarding the SWG 201 unable to meet the flight so it went into South Terminal all pax in Hilton Hotel ETD now 2030 L 11 Aug.</p> <p>██████████, ██████████ and ██████████ starting at 0300 all overslept. ██████████ late due to flat car battery.</p>			
CUSS	TOTAL PAX		TOTAL CUSS	

SIGNED

Vic

CTA File No. M4120-3/13-01696

IN THE MATTER BETWEEN:

Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot

- and -

Sunwing Airlines Inc.

AFFIDAVIT OF VIC TYDEMAN
(sworn April 26, 2013)

I, Vic Tydeman, of the City of Horley, in the United Kingdom, MAKE OATH AND SAY:

1. I am and was, at all material times, in the employ of Swissport UK ("Swissport") as the Passenger Services Supervisor, and as such have knowledge of the matters hereinafter deposed.
2. I was working the overnight shift from 18:00 August 10, 2012 to 06:00 August 11, 2012 at Gatwick International Airport's North Terminal which included supervising the ground handling operations of the arrival and departure of Sunwing Airlines Flight WG201.
3. I distinctly remember this incident.
4. Sunwing Airlines Flight WG201 was scheduled to depart at 02:25 August 11, 2012 and I personally closed the check-in for Flight WG201 at 01:25, August 11, 2012; 60 minutes prior to scheduled departure pursuant to standard procedures.
5. While I was at the check-in counter, three passengers of Flight WG201 arrived at 01:45 August 11, 2012 and approached me and a fourth passenger arrived approximately 5 minutes later.
6. I spoke to these passengers who sought to board Flight WG201 notwithstanding they arrived late for check-in.

7. As per standard operating procedure, I contacted the dispatcher and asked if she would accept 4 late running passengers. The dispatcher declined my request for the reason that all but 10 passengers had boarded the flight.

8. The fourth passenger made no complaint to me and left.

9. The check-in counter is never in darkness. When it is closed it is simply not staffed and the lights remain on.

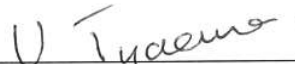
10. This Affidavit is sworn in response to the complaint brought by the Nawrot family to the Canadian Transportation Agency and for no other or improper purpose.

SWORN BEFORE ME at the City of
HORLEY / SATWICK, in the United Kingdom,
on April 26, 2013.



Commissioner for Taking Affidavits

EDWARD ROOS
SOLICITOR



Vic Tydeman

Newmans Solicitors
1 High Street
Horley Surrey RH6 7BE

June 14, 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
Reply

Please accept the following submissions in relation to the above-noted matter as a reply to Sunwing Airlines' April 17, 2013 answer to the Nawrots' complaint as per the Agency's directions of today.

OVERVIEW

The Nawrot Family was denied transportation from London Gatwick to Toronto by Sunwing Airlines on August 11, 2012. The Nawrots' evidence is that they presented themselves for check-in 75 minutes before the departure of their flight, but found Sunwing Airlines' check-in counters to be closed. Sunwing Airlines alleges that the Nawrots were late to their flight.

The Nawrots are also challenging the reasonableness of Sunwing Airlines' denied boarding policy. In response, Sunwing Airlines proposed a new denied boarding policy.

In the present reply, the Nawrots make submissions and lead rebuttal evidence in reply to Sunwing Airlines' representations. The Nawrots will be making submissions on the reasonableness of Sunwing Airlines' proposed new denied boarding policy by June 21, 2013 as per the Agency's directions.

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I. Sunwing Airlines' evidence

For the reasons explained below, based on the evidence tendered by Sunwing Airlines, the Nawrots submit that the culprit for their being denied transportation is/are the ground handling agent(s) for Sunwing Airlines at London Gatwick airport, who not only closed and abandoned the check-in counters early, but also subsequently misinformed Sunwing Airlines about the incident in order to cover up their wilful negligence.

(a) Affidavit of Mr. Mark Williams

The Nawrots accept that Mr. Williams has substantial experience in the airline industry, and accept his evidence that closing a check-in counter early, before the cut-off time stipulated by the conditions of carriage, is an exceptional event.

Affidavit of Mr. Williams (April 17, 2013), para. 4

The Nawrots submit that the exceptional nature of such an event is precisely the reason that Sunwing Airlines' ground handling agent(s) attempted to cover it up, in the hope of escaping the consequences of such a serious incident.

At the same time, Mr. Williams was not present at the Gatwick Airport when the Nawrots were denied transportation, and he does not have any first-hand evidence as to the time the Nawrots presented themselves for check-in; instead, Mr. Williams simply reiterates the information that he received from others. Thus, the Nawrots submit that the evidence of Mr. Williams is of no assistance in determining the time when the Nawrots presented themselves for check-in.

It is worth observing that the affidavit of Mr. Williams fails to provide any explanation as to why the Nawrots were offered a free flight from Gatwick London to Toronto for August 16, 2012 if Mr. Williams and his employees genuinely believed that the Nawrots were late to their flight.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits "J" and "N"

These actions of Sunwing Airlines were inconsistent with Sunwing Airlines' subsequent theory that the Nawrots were late to their flight. Indeed, airlines do not usually hand out free flights to no-show passengers. The absence of any explanation by Mr. Williams (or anyone else on behalf of Sunwing Airlines) for these actions strongly suggests that the theory that the Nawrots were late to their flight was created after the Nawrots began seeking compensation for the incident.

(b) Affidavit of Ms. Joanne Dhue

The affidavit of Ms. Dhue contains a wealth of information and exhibits, some of which are highly reliable and credible, while others are contradicted by the information in other reliable and credible documents.

(i) Swissport had severe staffing problems at the time of the incident

According to Exhibit “I” to the affidavit of Ms. Dhue (if this document is reliable at all), Swissport had some serious staffing problems on the night of the incident. Indeed, Exhibit “I” states that “3 staff overslept, and one had a car trouble.” According to Exhibit “I”, the staffing problem was so severe that some day shift workers “stayed on” and Swissport had to borrow 2 staff from another company (TCX).

These circumstances provide a logical explanation for the early closure of Sunwing Airlines’ check-in counters, well before 01:25 am (local time). Indeed, according to Exhibit “I”, some of the staff working for Swissport that night were “borrowed” from another company, so they were likely unfamiliar with Sunwing Airlines’ procedures or its updated departure time, while others “stayed on” from the day shift, and were likely very exhausted. Consequently, when “most” passengers had checked in already by 00:30 am (as Exhibit “I” states), it may have appeared logical (or convenient) to close the check-in counter earlier than 01:25 am.

(ii) Reports by aircraft crew (Exhibit “K”) are reliable

Exhibit “K” to the affidavit of Ms. Joanne Dhue is a collection of reports completed by the crew of Flight WG 201. These reports were completed by neutral individuals, who had no interest or stake in the dispute concerning the time Sunwing Airlines closed its check-in counters at the Gatwick Airport. Thus, the Nawrots submit that the contents of Exhibit “K” are reliable, and are helpful for testing the reliability of other documents and individuals whose evidence was tendered by Sunwing Airlines.

As explained below, of particular interest are the times that boarding of Flight WG 201 started and ended. According to Exhibit “K”, call for boarding took place at **1:40 am** local time, and boarding completed at **2:15 am**. Exhibit “K” also refers to a delay of 5 minutes due to missing passengers: “Delay 00:05 - 15PA boarding” (see Captain Report).

(iii) Swissport Passenger Services Supervisor Shift Report (Exhibit “I”) is not reliable

The Nawrots dispute the reliability and credibility of Exhibit “I” to the affidavit of Ms. Dhue not only because it contradicts their own evidence, but also because Exhibit “I” contradicts the neutral third-party evidence contained in Exhibit “K”.

Exhibit “I” is entitled “Passenger Services Supervisor Shift Report – North Terminal,” and it was signed by “Vic,” who is presumably Mr. Vic Tydeman. It states, among other things, that:

Sunwing flight ok most pax checked in by 0030 closed flight at 0125. 4 pax turned up 15 mins after closure time checked with dispatcher who advised most pax boarded so denied them travel. [...]

[Emphasis added.]

In other words, Exhibit “I” alleges that four passengers showed up at 01:40 am local time, and by that time “most” passengers had already boarded. This is clearly impossible and absurd, because Exhibit “K” confirms that the boarding only started at 01:40 am.

Thus, it is impossible that “most” passengers boarded Flight WG 201 by 01:40 am local time.

Therefore, the information in Exhibit “I” with respect to the time these four passengers presented themselves is unreliable and inconsistent with the evidence of disinterested third parties contained in Exhibit “K”.

(iv) Reliability of the Destinations QCM report (Exhibit “H”) is questionable

Exhibit “H” to the affidavit of Ms. Dhue is a “Destinations QCM” report, whose author is unknown, and which purports to list “no-show” and “go-show” passengers.

The Nawrots dispute the reliability of Exhibit “H” as it contradicts the information contained in Exhibit “K”. Indeed, while Exhibit “K” demonstrates that the boarding of Flight WG 201 completed only at 2:15 am, according to Exhibit “H”, the last passenger boarded the flight at 01:05 am (UTC), that is, 02:05 am local time.

The Nawrots submit that Exhibit “H”, which was likely completed by Swissport employees, reflects what *should have* happened, and not what *did* happen, and as such the Agency ought to give it little or no weight.

(v) Who was the fourth passenger? (Exhibit “I” vs. para. 14)

Although the Nawrot Family consisted of only three passengers, according to Exhibit “I”, there was also a fourth passenger allegedly presenting themselves for check-in at 01:40 am local time. Oddly, however, Exhibit “I” makes no mention of the name of any of the passengers involved, including this fourth passenger.

In paragraph 14 of her affidavit, Ms. Dhue states that she investigated all “no show” passengers other than the Nawrots, and found that none of them travelled or intended to travel following the substantial delay of the departure of Flight WG 201.

Affidavit of Ms. Dhue (April 17, 2013), para. 14

The Nawrots submit that this discrepancy is due to the questionable reliability of Sunwing Airlines' Destination QCM report (Exhibit "H"), which seems to be inaccurate in other aspects too.

(vi) The August 10, 2012 letter provided to the Nawrots months later (Exhibit "M")

Exhibit "M" to the affidavit of Ms. Dhue is a letter she states that Sunwing Airlines sent to passengers on Flight WG 201.

Affidavit of Ms. Dhue (April 17, 2013), para. 23

The affidavit is silent as to how this letter was delivered to passengers, the majority of whom were clearly away from their homes on August 10, 2012, and many of whom likely had no email access either.

Contrary to the recollection of Ms. Dhue, the Nawrots received this letter only on October 9, 2012, as one of the two PDF files attached to the email of Khadean Walker of October 9, 2012.

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

Ms. Dhue correctly states in paragraph 24 of her affidavit that the Nawrots never advised Sunwing Airlines that they chose not to travel. The reason for this is that the Nawrots had consistently intended to return to Toronto on Flight WG 201.

(vii) Exhibit "L" is inadmissible double-hearsay and should not be given any weight

Exhibit "L" to the affidavit of Ms. Dhue is an email correspondence between an employee of Sunwing Airlines and Dino Almeida, where the latter states that he spoke with the captain of Flight WG 201, who did not remember any "incident" about a passenger being denied boarding.

Exhibit "L" is a textbook example of double-hearsay. It is a statement by Dino Almeida about what he heard from the captain of the flight, which was then sent to Sunwing Airlines. The Nawrots submit that as such, Exhibit "L" is inadmissible, and anyway ought not be attributed any weight.

There is no reason for a captain to remember every detail about each and every flight. Moreover, from the captain's point of view, what happened with the Nawrots was not an "incident" (as phrased by Sunwing Airlines' question), because they were not unruly passengers who had to be denied transportation due to their behaviour.

Thus, the question sent by Sunwing Airlines to Dino Almeida was already formulated in a leading manner that no reasonable person would think of the Nawrots even if s/he remembered their case.

Therefore, the Nawrots submit that Exhibit "L" ought not be given any weight.

(c) The evidence of Mr. Vic Tydeman is self-serving and not reliable

Although Sunwing Airlines has been aware of the Nawrots' complaint that they presented themselves on time for check-in, but found the check-in counters closed since August 11, 2012, the only evidence tendered by Sunwing Airlines that directly speaks to the time when the Nawrots presented themselves for check-in is the affidavit of a single agent, Mr. Vic Tydeman.

In light of the evidence of Mr. Williams that such an incident, where agent(s) close the check-in counter before the official cut-off times, is unprecedented, one struggles to understand why Sunwing Airlines did not immediately launch a thorough investigation of the Nawrots' complaint, and in particular, why Sunwing Airlines did not request that the airport retain security camera footage, which would have provided conclusive and independent evidence of the time the Nawrots presented themselves at the check-in counter.

Regardless of the reasons for Sunwing Airlines failing to collect and retain independent evidence about incident, the Nawrots submit that the evidence of Mr. Tydeman is self-serving and not reliable.

(i) Mr. Tydeman has a stake in the present dispute

Swissport is the ground handling agent for Sunwing Airlines, and it has a substantial business interest in maintaining that contract. Mr. Tydeman was an employee in a supervisory role at the time of the incident. In particular, it would have been Mr. Tydeman's responsibility to ensure that the check-in counters of Sunwing Airlines at the Gatwick Airport were staffed until 1:25 am on August 11, 2012.

As the Nawrots' evidence demonstrates, Mr. Tydeman clearly failed in his supervisory role, and Sunwing Airlines' check-in counters closed earlier than permitted by Sunwing Airlines' tariff.

Thus, the Nawrots' complaint has a direct impact on the evaluation of Mr. Tydeman by his employer, and may expose Mr. Tydeman to disciplinary actions, including dismissal for having failed to discharge his duties as required.

Therefore, Mr. Tydeman 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. In particular, there is no reason to prefer his evidence to the recollection of the Nawrots. On the contrary, due to the high stakes for Mr. Tydeman, his evidence is far more likely to be self-serving than the evidence of the Nawrots.

Hence, it is submitted that the Agency ought to take into account that the recollection of Mr. Tydeman may well have been influenced by the desire to protect his own interests and ultimately his position with Swissport.

(ii) Mr. Tydeman's affidavit mentions no names of passengers

Mr. Tydeman states in his affidavit that he distinctly remembers "this incident."

Affidavit of Mr. Tydeman (April 26, 2013), para. 3

Nevertheless, Mr. Tydeman does not mention the name of any of the four passengers who allegedly presented themselves for check-in late. The absence of names of passengers in the affidavit of Mr. Tydeman raises very serious doubts about the reliability of his recollection.

One struggles to understand why Mr. Tydeman, who has reached a supervisory role in a company that provides customer service to passengers, would not ask for the tickets and/or names of passengers who were allegedly late for check-in, and not complete some kind of report about the incident.

It is not credible that a supervisor would not thoroughly document every irregularity related to passengers, including passengers who are late to the check-in or the boarding gate. It is self evident that such documentation ought to include the names of the passengers involved, and their reservation numbers.

While Mr. Tydeman seems to have reported in general terms that "4 pax turned up 15 mins after closure time," this report is also sorely wanting in particulars of the passengers involved, such as their names and reservation numbers.

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "I"

It is submitted that these shortcomings put the reliability of Mr. Tydeman's evidence into doubt.

(iii) Inconsistency with Exhibit "I" Affidavit of Ms. Dhue

Exhibit "I" to the affidavit of Ms. Dhue is a Swissport Passenger Services Supervisor Shift Report, which was signed by "Vic," who is presumably Mr. Vic Tydeman. There are a number of inconsistencies between the affidavit of Mr. Tydeman and the shift report (Exhibit "I" to the affidavit of Ms. Dhue):

1. Time of arrival of the allegedly late passengers: While Exhibit "I" refers to "15 mins after closure" (i.e., 01:40 am), the affidavit of Mr. Tydeman refers to 01:45 am.
2. Grouping of allegedly late passengers: While Exhibit "I" simply refers to "4 pax turned up," the affidavit of Mr. Tydeman speaks about "three passengers... ..and a fourth passenger arrived 5 minutes later."
3. Alleged state of boarding: While Exhibit "I" speaks about "most pax boarded," the affidavit of Mr. Tydeman states that "all but 10 passengers had boarded the flight."

These inconsistencies are significant and put the reliability of Mr. Tydeman's evidence and recollection into question for two reasons: first, Mr. Tydeman claims to "distinctly" remember the incident, which took place 8 months earlier; and second, the version provided in Mr. Tydeman's affidavit, if it were true, may be more favourable to Sunwing Airlines.

In other words, Mr. Tydeman's affidavit can best be described as an upgraded version of his report (Exhibit "I" to the affidavit of Ms. Dhue), which was created with the clear purpose to assist Sunwing Airlines' case.

(iv) Can 285 passengers be boarded in 5 minutes? Contradiction with Exhibit "K" to the Affidavit of Ms. Dhue

According to the affidavit of Mr. Tydeman, the Nawrots presented themselves for check-in at 01:45 am.

Affidavit of Mr. Tydeman (April 26, 2013), para. 5

Mr. Tydeman also states in his affidavit that at this point in time, there were only 10 passengers who had not yet boarded Flight WG 201.

Affidavit of Mr. Tydeman (April 26, 2013), para. 7

Can this possibly be true...?

According to the undisputed and reliable evidence of the flight crew, there were a total of 295 passengers on board; boarding only started at 01:40 am (local time), and was completed only at 02:15 am

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "K"

Thus, according to Mr. Tydeman's evidence, by 01:45 am, $295 - 10 = 285$ passengers had already boarded the aircraft, and there were only 10 passengers waiting to board the aircraft.

In other words, what follows from the evidence of Mr. Tydeman is that 285 passengers boarded Flight WG 201 within 5 minutes between 01:40 am and 01:45 am, but it took another 30 minutes to board the remaining 10 passengers.

This is obviously absurd, and physically impossible.

As everybody knows, the boarding of a passenger takes 5-10 seconds at the very least, resulting in a rate of 6-12 passengers per minute, even if there are multiple boarding queues.

Consequently, boarding 285 of the 295 passengers (i.e., "all but 10 passengers," as stated by Mr. Tydeman) takes almost 24 minutes at best, and if boarding started at 01:40 am, then so many passengers could not have boarded the flight before 02:04 am.

However, we know that at 02:05 am, the Nawrots checked in with the London Gatwick Sofitel, and so they could not have possibly been at the airport at that time.

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

Hence, it is plain and clear that the events described in Mr. Tydeman’s affidavit could not have possibly taken place at the time that he states, and that his recollection with respect to the time of the incident is not reliable.

(v) Conclusions

Although Sunwing Airlines wishes to paint Mr. Tydeman as an independent, disinterested, and neutral third party whose recollection is reliable, this is far from being the case. On the contrary, Mr. Tydeman has a substantial stake in the outcome of the present complaint, as it may seriously affect his career and future employment. Mr. Tydeman’s evidence is evidently self-serving, as he has far more to lose than the Nawrots.

There is nothing in the affidavit of Mr. Tydeman to even demonstrate that the four passengers whom he met included the Nawrots. Oddly, Mr. Tydeman did not record the names or reservation numbers of the passengers referred to in his affidavit.

Mr. Tydeman’s recollection of the incident described in his affidavit is unreliable, and inconsistent not only with his own report (Exhibit “I” of the affidavit of Ms. Dhue), but also with the evidence of reliable and independent third parties (Exhibit “K” of the affidavit of Ms. Dhue).

Giving any credence to Mr. Tydeman’s recollection would amount to accepting claims that are contrary to common sense, such as that 285 passengers can be boarded in 5 minutes, or that the Nawrots could have been both at the check-in counter and at their hotel at the same time.

Therefore, the Nawrots submit that, perhaps due to the lapse of time, Mr. Tydeman’s recollection of the events on August 11, 2012 is not reliable, and cannot be reconciled with reliable third-party documentary evidence such as the report of the crew of Flight WG 201 or the Nawrots’ credit card authorization slip.

II. Reply and rebuttal to Sunwing Airlines' submissions

The Nawrots agree with Sunwing Airlines that a key factual question to be determined is whether, on a balance of probabilities, the Nawrots presented themselves for check-in prior to 01:25 am local time on August 11, 2012.

(a) Misstatements of the law in Sunwing Airlines' answer

Before addressing the aforementioned question of fact, it is necessary to clarify the applicable law, and in particular, the burden of proof.

(i) Recommendations are not enforceable contractual terms

Sunwing Airlines appears to suggest, although it does not state so explicitly, that failure of a passenger to follow recommendations with respect to the time they should be at the airport can somehow be held against the passenger, and may justify refusing the passenger transportation. The Nawrots respectfully disagree with Sunwing Airlines.

The question of enforceability of recommendations of a carrier is not new, and was addressed by the Agency in *Craig McIntyre v. Air Canada*, 54-C-A-2006, a case that has many features in common with the present complaint. In that case, Scott and Eric McIntyre were denied transportation by Air Canada on the grounds that although they presented themselves for check-in before the 30-minute check-in cut-off of Sunwing Airlines, they failed to be at the airport at least 60 minutes before the departure, contrary to Sunwing Airlines' recommendations. The Agency disagreed with Air Canada, and held that:

[27] Only in the event that Scott and Eric had arrived at the check-in counter after 8:30 a.m. would the carrier have the right to refuse to complete the check-in process. The recommendation that passengers be available for check-in 60 minutes prior to the schedule departure is not an enforceable Tariff provision.

Thus, based on the Agency's findings in *Craig McIntyre v. Air Canada*, the Nawrots submit that the only enforceable provisions are the check-in cut-off times contained in Sunwing Airlines' tariff. Therefore, the Nawrots are asking the Agency to give no weight to Sunwing Airlines' submissions based on the "recommended time for arrival for check in."

(ii) Montreal Convention: Delay vs. non-performance

In paragraph 3 on page 10 of its answer, Sunwing Airlines seems to argue that the *Montreal Convention* is not applicable to the present case, or at least certain aspects of the present case, and cites authorities about complete non-performance in support of its position. The Nawrots respectfully disagree with Sunwing Airlines.

The distinction between delay and non-performance was analyzed in great detail by the Agency in *Lukács v. Air Canada*, LET-C-A-80-2011 and was upheld in *Lukács v. Air Canada*, 250-C-A-2012. In *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency explained that:

[34] In the Canadian case of *Lukács v. United Airlines Inc.*, [Footnote: 2009 MBQB 29 (Application for leave to Appeal dismissed: 2009 MBCA 111).] the plaintiff had been informed by air carrier personnel before arriving at the airport that his flight was cancelled. He went to the airport on the understanding that his ticket would be endorsed by another airline providing a flight that afternoon, but the process took so long that he ultimately decided not to travel at all. After hearing the position of the parties as to whether this event constituted “delay”, the Manitoba Court of Queen’s Bench ultimately decided that it came within the scope of Article 19 of the Convention.

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[36] In recent years, U.S. courts have begun to trace the outline of a principled distinction between delay and non-performance, which (1) recognizes the possibility that the alternative categorizations can coexist, although each is governed by a different legal regime; and (2) makes their characterization dependent on specific factors.

[37] Building on this distinction is the case of *In re Nigeria Charter Flights Contract Litigation*, [Footnote: 520 F. Supp. 2d 447 - (E.D.N.Y. 2007).] [...] in which the Court attempted to synthesize several key distinctions between delay and contractual non-performance. The Court stated that in the case law, courts tended to find “delay” where one of three conditions is met:

1. The defendant airlines ultimately provided transportation;
2. The plaintiffs secured alternate transportation without waiting to see whether the airline would transport them or they refused an offer of a later flight; or
3. Plaintiffs never alleged non-performance.

In the case of the Nawrots, not only one, but two of these three conditions are met: the Nawrots secured alternate transportation only after Sunwing Airlines offered them an unreasonable new flight (i.e., 6 days later than their original return); furthermore, the Nawrots allege in their complaint delay and that Sunwing Airlines failed to apply its tariffs correctly and failed to provide them return transportation, and not complete non-performance. The situation of the Nawrots has some features in common with *Mohammad c. Air Canada*, which was summarized by the Agency in *Lukács v. Air Canada*, LET-C-A-80-2011 as follows:

[77] In *Mohammad v. Air Canada*, [Footnote: 2010 QCCQ 6858.] a case brought against Air Canada and Kuwait Airlines for joint carriage between Canada and

Kuwait, the Court of Quebec Small Claims Division held that Air Canada, when faced with a flight cancellation, took all reasonable measures when it put passengers on its next available flight, described as a new flight created by the carrier. However, on a final segment of the same flight itinerary, Kuwait Airlines was found liable under the Convention on the grounds that it should have transferred passengers to another carrier given that its own flights were booked for the next several weeks. [...]

Thus, the Nawrots submit that, as in the case of *Mohammad v. Air Canada*, the failure of Sunwing Airlines offer to the Nawrots transportation to Toronto on the flight of another carrier was a breach of Sunwing Airlines' concomitant obligation under the *Montreal Convention*, and it falls within the scope of Article 19 of the *Montreal Convention*.

(iii) Burden of proof

Sunwing Airlines insists in its answer that the burden of proof to establish that the Nawrots presented themselves for check-in before 01:25 am is on the Nawrots. Although the Nawrots submit that they have done more than enough to discharge this onus, they also submit that Sunwing Airlines misstates the law in this point, and the burden of proof is on Sunwing Airlines to demonstrate that it was entitled to refuse to transport the Nawrots on Flight WG 201.

This point was also addressed by the Agency in *Craig McIntyre v. Air Canada*, 54-C-A-2006:

[29] [...] Air Canada failed to prove that it was entitled to cancel Scott's and Eric's reservation and that, in not allowing them the opportunity to present themselves at the boarding gate, Air Canada did not properly apply its Tariff in this matter and therefore has contravened subsection 67(3) of the CTA.

[Emphasis added.]

The *Craig McIntyre v. Air Canada* decision is also helpful in the present case, because of the remedy: the Agency ordered Air Canada to pay the cost of WestJet tickets that the passengers purchased after Sunwing Airlines refused to transport them.

The Agency's placing the burden of proof on the carrier in *Craig McIntyre v. Air Canada* was correct at law and logical, bearing in mind the purpose of the clauses that permit a carrier to refuse transportation in certain circumstances. Indeed, these provisions are exceptions to the contract of carriage and the general obligation of the carrier to transport the passenger. There is no doubt that a party to a contract who wishes to rely on such a provision must demonstrate the presence of the facts required for invoking such a provision.

(b) The Nawrots' journey from Victoria Station to Gatwick Airport

One of the most heavily disputed matters in the present complaint concerns the details of the Nawrots' journey from Victoria Station to the Gatwick Airport, a topic that Sunwing Airlines has addressed at great length in its April 17, 2013 answer, and made a wealth of representations on.

In light of the Agency's decision in *Spence v. Perimeter Aviation*, 349-C-A-2012 (para. 23), the Nawrots have both the obligation and the right to clarify their version of the events and rebut the representations made by Sunwing Airlines in its answer to the complaint.

The Nawrots' rebuttal also includes evidence that was not available to the Nawrots at the time of the filing of the complaint, and only became available to them after months of intensive efforts to locate independent third-party documentary evidence about their travel from Victoria Station to Gatwick Airport on August 11, 2012.

The Nawrots submit that these recently received documents confirm their account of the events, and provide the Agency with reliable and independent documentary evidence of a similar nature as the parking tickets were in *Craig McIntyre v. Air Canada*, 54-C-A-2006.

(i) The Nawrots purchased their train tickets at 11:56 pm on August 10, 2012

According to the affidavit of Mr. Nawrot, the Nawrots purchased their train tickets before 11:59 pm on August 10, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 7, Exhibit "G"

At the bottom of page 6 of Sunwing Airlines' April 17, 2013 answer, Sunwing Airlines questions the accuracy of Mr. Nawrot's recollection on this point.

On May 14, 2013, the Nawrots received from Southern Railway a copy of the credit card usage history of Mr. Nawrot (Annex "A"), showing the dates and times he purchased train tickets. Annex "A" was received on May 14, 2013 as an attachment to an email (Annex "B").

Annex "A" confirms that the Nawrots' train tickets were purchased on August 10, 2012 at 11:56 pm for travel from London Victoria to Gatwick Airport, and it fully confirms the Nawrots' account of the events.

(ii) Details of the Nawrots' train ticket

At the bottom of page 5 of its April 17, 2013 submissions, Sunwing Airlines appears to suggest that Mr. Nawrot purchased only one ticket, and not three tickets, and also suggests that there is no record of when or where the tickets were purchased.

First, we note that Sunwing Airlines misstates the evidence, because the credit card statement of Mr. Nawrot (which was an exhibit to his affidavit) clearly identifies the date and the postal code of the location where the ticket was purchased:

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”

We note that as the public record shows, “SW1V” are the first 4 letters of the postal code of Victoria Station in London, precisely as Mr. Nawrot stated in his affidavit.

Fortunately, however, there is no need to rely solely on the recollection of Mr. Nawrot. Thanks to the dedicated efforts of numerous members of the Southern Railway escalation team, the full transaction record of the ticket purchase was recovered.

On May 17, 2013, the Nawrots received from Southern Railway a copy of the transaction logs of the purchase of the tickets by the Nawrots on August 10, 2013 (Annex “C”).

Annex “C” provides a complete and independent record of the tickets the Nawrots purchased, specifically:

- (a) the tickets were purchased from “Victoria Window 96” (i.e., Victoria Station);
- (b) the Nawrots purchased “off peak day singles” for 1 adult and 2 children;
- (c) the tickets were marked “SOUTHERN ONLY” (i.e., not Gatwick Express).

(iii) The Nawrots could not have taken the Gatwick Express (GX)

Sunwing Airlines argues at the bottom of page 5 of its April 17, 2013 answer that Southern Railway owns and operates the Gatwick Express, and thus the Nawrots could have also taken the Gatwick Express, notwithstanding that they paid a total of 15.20 GBP for their tickets.

This submission of Sunwing Airlines is woefully misguided, and fails to disclose to the Agency the well-known fact that Gatwick Express has an entirely different and substantially higher fare structure than Southern Railway.

A copy of the fares for Gatwick Express for the year 2012 is attached as Annex “D” to the present reply.

As Annex “D” confirms, adult fares start at 16.85 GBP. Since the Nawrots paid a total of 15.20 GBP for their tickets, they could not have purchased Gatwick Express tickets, and consequently they could not have travelled on Gatwick Express.

(iv) Trains from Victoria Station to Gatwick Airport were on time on August 11, 2012 between midnight and 02:00 am

Sunwing Airlines argues on page 5 of its April 17, 2013 answer that the British rail system is notorious for not running on time and that the train taken by the Nawrots from Victoria Station to Gatwick Airport may have been late.

These submissions of Sunwing Airlines, and the meaning Sunwing Airlines attempts to attribute to Appendix “B” to their answer in particular, is misleading.

Annex “E” to the present reply is an email Mr. Nawrot received from Southern Railway on June 13, 2013, which states that:

Following our conversations over the phone last week I am happy to inform you that I have personally contacted our Performance Dept who handle the history of the performances of our trains services and I can confirm the following based on that conersation

Between the hours of 00:00 - 02:00 on the morning of 11.08.12 there were no delays or disruption to our services between London Victoria and Gatwick Airport

Annex “E” (p. 34 of the present reply)

While this is conclusive evidence in and on its own, we also note that Sunwing Airlines’ allegations as to the British rail system are patently false, as the punctuality report for the period from July 22, 2012 to August 18, 2012 (Annex “F”) demonstrates.

(v) Which train did the Nawrots take?

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” to the Nawrots’ complaint, p. 5 (p. 40 of the complaint)

There is no doubt that the Nawrots purchased their tickets at Victoria Station at 11:56 pm on August 10, 2012. Moreover, in light of the difference in the fares of Southern and Gatwick Express, it is plain and clear that the Nawrots' tickets could not have been used on Gatwick Express. This leaves only 3 possibilities:

1. departing London Victoria at 00:05 am, and arriving at Gatwick Airport at 00:41 am;
2. departing London Victoria at 00:14 am, and arriving at Gatwick Airport at 00:59 am;
3. departing London Victoria at 01:00 am, and arriving at Gatwick Airport at 01:46 am.

The third possibility, however, can easily be eliminated based on Sunwing Airlines' own evidence, which states that the Nawrots were already at Sunwing Airlines' check-in counter at the Gatwick Airport 15 minutes after 01:25 am, that is, by 01:40 am.

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "P"

This leaves only two possibilities:

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 submit that it is not necessary to decide which train they took in order to determine the present complaint; it suffices to observe that they took one of these two trains, and as both trains were on time (Annex "E"), the Nawrots were at the Gatwick Airport's train stop at 1:00 am or shortly thereafter, as Mr. Nawrot stated in his affidavit:

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.

Affidavit of Mr. Nawrot (February 28, 2013), para. 8

Thus, the only question that remains is what is more probable: that the Nawrots reached Sunwing Airlines' check-in counters approximately 10 minutes later (as the Nawrots claim), or that somehow it took then Nawrots about 40 minutes to get from the train stop at Gatwick Airport to the terminal building and the check-in counter of Sunwing Airlines (as Sunwing Airlines believes to be the case).

(c) The Nawrots' journey from the South Terminal to the North Terminal

The Nawrots were at the Gatwick Airport train stop, which is located at the South Terminal, at or shortly after 1:00 am on August 11, 2012. In his affidavit, Mr. Nawrot stated that:

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. [...]

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

At the top of page 5 of Sunwing Airlines' April 17, 2012 answer, Sunwing Airlines questions the method of transportation the Nawrots used to reach the North Terminal, where Sunwing Airlines' check-in counters are located.

The Gatwick Airport operates a free shuttle between the terminals. According to the airport's website (Annex "G"):

Transferring between terminals at Gatwick couldn't be easier. Our shuttle train service runs every few minutes 24 hours a day and the journey takes just two minutes. The service is free to use.

In other words, the journey takes only two (2) minutes, and the shuttle runs very frequently. This corroborates the evidence of Mr. Nawrot that it took the Nawrots about 10 minutes to reach the "check-in area at the London Gatwick Airport (North Terminal)."

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

(d) Minor points and/or irrelevant points

In its April 17, 2013 answer, Sunwing Airlines raised a number of minor points whose relevance is not clear. For the sake of completeness, the Nawrots will address these too.

(i) Communications with the captain

Contrary to what stems from Sunwing Airlines' answer, Mr. Nawrot never stated that he spoke to the captain of Flight WG 201. His evidence was that he was *told* that a third person spoke with the captain:

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.

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

Mr. Nawrot's evidence is confined to what he was told on the telephone. With utmost respect, we fail to see the relevance of this point.

(ii) 4th passenger

On page 7 of Sunwing Airlines' April 17, 2013 answer, Sunwing Airlines refers to a 4th passenger who may have also been denied boarding in the same circumstances as the Nawrots.

With utmost respect to Sunwing Airlines, this is a dispute between two witnesses of Sunwing Airlines, namely, Ms. Joanne Dhue and Mr. Vic Tydeman, and not between the Nawrots and Sunwing Airlines.

Indeed, the evidence of Sunwing Airlines is self-contradictory on this point. While Mr. Tydeman consistently refers to four passengers who allegedly were late for check-in, Ms. Dhue stated that she was unable to confirm the identity of the 4th passenger.

**Affidavit of Mr. Tydeman (April 26, 2013), paras. 5 and 7
Affidavit of Ms. Due (April 17, 2013), para. 14**

The Nawrots submit that in light of the clear and consistent documentary evidence about their journey from Victoria Station to the Gatwick Airport, the existence of a 4th passenger who may have also been denied boarding is irrelevant, and need not be determined.

(iii) Dimmed lights

Sunwing Airlines appears to question the credibility of Mr. Nawrot based on his recollection that the lights were "dimmed" when he arrived at the check-in counter for Sunwing Airlines at the Gatwick Airport.

Mr. Nawrot's evidence is not contradicted by the affidavit of Mr. Tydeman, who states that "the check in counter is never in darkness." Although this is a minor and immaterial point, the Nawrots submit that the statements of Mr. Nawrot and Mr. Tydeman are both true on this point.

Indeed, Mr. Nawrot was not suggesting that the check-in counter was in darkness, but rather that the lighting was reduced in the area, which is a common practice at all airports to conserve energy.

(e) **Conclusions**

It is common ground that Sunwing Airlines' check-in cut-off is 60 minutes before the scheduled departure. The parties agree that in the case of Flight WG 201 on August 11, 2012, the check-in cut-off was at 01:25 am local time.

Sunwing Airlines failed to prove, on a balance of probabilities, that it was entitled to refuse to transport the Nawrots on Flight WG 201 on August 11, 2012.

At the same time, there is a wealth of independent third-party documentary evidence to corroborate the Nawrots' account of the events:

1. The Nawrots purchased their train tickets from Victoria Station to the Gatwick Airport at 11:56 pm on August 10, 2012 (Annexes "A" and "C");
2. Their tickets were not valid for Gatwick Express, but only for Southern Railway regular trains (Annexes "C" and "D");
3. According to the train timetables, there were only two trains that the Nawrots could have taken on August 11, 2012: the 00:05 am train, arriving at 00:41 am, and the 00:14 am train, arriving at the Gatwick Airport at 00:59 am (Annex "A" to the Nawrots' complaint);
4. On August 11, 2012 between midnight and 2:00 am, there were no delays or disruptions of the train service between Victoria Station and the Gatwick Airport (Annex "E").

Therefore, there can be no doubt that the Nawrots arrived at the Gatwick Airport train stop at or shortly after **1:00 am** on August 11, 2012, at the latest. This is more than 25 minutes before Sunwing Airlines' check-in cut-off time.

The shuttle between the North and the South terminals of the Gatwick Airport operates 24 hours a day and run frequently, and the journey takes only 2 minutes (Annex "G").

Hence, on a balance of probabilities, the Nawrots presented themselves for check-in at 1:10 am or shortly thereafter, and certainly several minutes before the 1:25 am check-in cut-off time.

Consequently, the Nawrots presented themselves for check-in on time, and Sunwing Airlines had no valid reason to refuse to transport the Nawrots on Flight WG 201 on August 11, 2012.

III. Quantum of compensation payable to the Nawrots

Sunwing Airlines' entire answer of April 17, 2013 is based on the false premise that the Nawrots were late to check-in to their flight, and missed the check-in cut-off time. In particular, Sunwing Airlines failed to make any submissions on the quantum of compensation payable to the Nawrots if the Agency finds that they did present themselves for check-in on time, but were nevertheless denied transportation.

(a) Out-of-pocket expenses

At the bottom of page 10 of its April 17, 2013 answer, Sunwing Airlines indicated that it does not dispute the Nawrots' claim with respect to \$157.99 of hotel accommodation on August 10, 2012 and \$120.00 of meals due to the 14-hour delay of Flight WG 201.

The Nawrots submit that Sunwing Airlines denied them transportation and boarding on Flight WG 201 without any justifiable reason, and as such Sunwing Airlines is liable for their out-of-pocket expenses both under the *Montreal Convention* and pursuant to the *Air Transportation Regulations*.

Sunwing Airlines made no submissions as to the quantum of the Nawrots' out-of-pocket expenses should the Agency find in their favour with respect to the denial of transportation and/or boarding.

Thus, the Nawrots are asking the Agency to find that they incurred out-of-pocket expenses in the amount of \$4,963.32 as a result of the delay and/or Sunwing Airlines' failure to apply its tariff correctly.

(b) Denied boarding compensation

Although Sunwing Airlines wishes to distinguish the present case from a typical "bumping," it led no evidence to show that Flight WG 201 was not oversold. Indeed, although there were a number of no-show passengers, there were also a number of go-show passengers. All we know is that there were a total of 295 passengers on board, but Sunwing Airlines led no evidence as to the aircraft's capacity.

The Nawrots submit that in the circumstances of their denied boarding on Flight WG 201, it is immaterial whether Flight WG 201 was oversold, and the only material facts are that they presented themselves for check-in more than 60 minutes before the scheduled departure time, and that Sunwing Airlines nevertheless denied them boarding on Flight WG 201.

The purpose of providing denied boarding compensation to passengers is to compensate for inconvenience caused by the denied boarding. The inconvenience does not depend on the reason that the airline denies boarding, and it is the same whether the flight was oversold or, as in the present case, the check-in counter was closed earlier than the official check-in cut-off time. The impact on the passengers is exactly the same.

Thus, the Nawrots submit that “denied boarding” and the entitlement to denied boarding compensation does not depend on the cause that the airline denies a passenger with a confirmed reservation her/his seat, as long as the passenger was available to check-in and board the flight as required by the tariff (including required travel documents, etc.).

Therefore, the Nawrots respectfully submit that they are entitled to denied boarding compensation in addition to their out-of-pocket expenses.

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. *Craig McIntyre v. Air Canada*, Canadian Transportation Agency, 54-C-A-2006.
7. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
8. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2011.
9. *Spence v. Perimeter Aviation*, Canadian Transportation Agency, 349-C-A-2012.

**Annex "A" to the reply
of the Nawrots**

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98	9132	GTWF98	5605	36 30-JUL SOR (ACD) GATWICK AIRPORT to LONDON BRIDGE			3	30/07/2012 12:31	23605	32177	Visa Credit	NAWROT/RAYMOND P	0 Nov 30 2014	AUTH CODE:008757

Ray NAWROT

From: SR_Escalations <Southern.Escalations@postroom.com>
Sent: May-14-13 8:44 AM
To: ray.nawrot@gmail.com
Subject: Southern and Gatwick Express * IMPORTANT-CANADA**REQ Transaction Info*
Attachments: CC History Nawrot.pdf

Dear Ray

Attached is a copy of your card history with the dates and times you purchased your tickets. The manager you spoke to is on leave till next week, so thought I would pass this on sooner.

Hope this helps

Many Thanks

Terri Owen

Escalations Team
Southern

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Delivered-To: ray.nawrot@gmail.com
Received: by 10.52.119.201 with SMTP id kw9csp64230vdb;
Tue, 14 May 2013 06:45:42 -0700 (PDT)
X-Received: by 10.68.65.134 with SMTP id x6mr34063660pbs.219.1368539142089;
Tue, 14 May 2013 06:45:42 -0700 (PDT)
Return-Path: <Southern.Escalations@postroom.com>
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for <ray.nawrot@gmail.com>;
Tue, 14 May 2013 06:45:42 -0700 (PDT)
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Return-Path: <Southern.Escalations@postroom.com>
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X-Env-Sender: Southern.Escalations@postroom.com
X-Msg-Ref: server-3.tower-162.messagegates.com!1368539126!1415214!3
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by server-3.tower-162.messagegates.com with SMTP; 14 May 2013 13:45:28 -0000
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References: <6436DF78C313B24DA8D9C1B82C70E3030409B73D@mstexch02.Core.Internal>

From: "SR_Escalations" <Southern.Escalations@postroom.com>

To: <ray.nawrot@gmail.com>

X-Antispam: clean, score=2

X-Antivirus: avast! (VPS 130514-0, 05/14/2013), Inbound message

X-Antivirus-Status: Clean

Ray NAWROT

From: SR_Escalations <Southern.Escalations@postroom.com>
Sent: May-17-13 10:12 AM
To: Ray NAWROT
Subject: RE: Southern and Gatwick Express * IMPORTANT-CANADA**REQ Transaction Info*

Dear Ray

The below which is the log taken from Victoria Window 96 states that 3 tickets were issued. These are from Victoria to Gatwick off peak day singles for 1 adult at £13.20 and 2 children at £1 each.

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00:00 RTN null

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00:00 RTN null

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RPE INFO: 23:55:39.729 Sale 4836:58 Print sundry issue coupons set to true

RPE INFO: 23:55:39.744 Sale 4836:58 Print sundry payment coupons set to true

RPE INFO: 23:55:44.032 Sale 4836:58 Set payment method card

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG CDS LONDON VICTORIA to GATWICK AIRPORT: £13.20

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG TKS LONDON VICTORIA to GATWICK AIRPORT: £1.00

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG TKS LONDON VICTORIA to GATWICK AIRPORT: £1.00

RPE INFO: 23:55:44.092 Sale 4836:58 Started issuing

Hope this is suffice to your

claim. Many Thanks

Terri Owen

Escalations Team
Southern

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Delivered-To: ray.nawrot@gmail.com
Received: by 10.52.119.201 with SMTP id kw9csp111807vdb;
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[195.245.231.137])
by mx.google.com with ESMTP id 10si8352654pae.54.2013.05.17.07.17.25
for <ray.nawrot@gmail.com>;
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From: "SR_Escalations" <Southern.Escalations@postroom.com>
To: "Ray NAWROT" <ray.nawrot@gmail.com>
X-Antispam: clean, score=2
X-Antivirus: avast! (VPS 130517-0, 2013-05-17), Inbound message
X-Antivirus-Status: Clean

ually improved and meets the needs of its visitors, we would like to
an reader. Please email your feedback to
read our Accessibility statement. Thank you. [Skip navigation](#)

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Buying online is the best way to buy your Gatwick Express train tickets as you save time and money.

Gatwick Express is currently offering [Free Airport Lounge entry](#) for [First Class Anytime Returns](#) purchased online, and [10% OFF Single tickets](#).

Prices from 2 January 2012

Ticket Name	Adult Child*	RRP	Online Fare
Anytime Single	Adult	£18.90	£16.85
	Child	£9.45	£8.40
Anytime Return	Adult	£33.20	£33.20
	Child	£16.60	£16.60
Web Duo Anytime Return <i>Online promotion:</i> 35% off when 2 adults travel from London Victoria	2 x Adult	£66.40	£43.10
Anytime Day Return** Off-Peak Day Return***	Adult	£25.00	£25.00
	Child	£12.50	£12.50
First Class Anytime Single	Adult	£27.50	£24.50
	Child	£13.75	£12.25
First Class Anytime Return <i>Online price includes:</i> Free Airport Lounge Entry	Adult	£53.00	£53.00
	Child	£26.50	£26.50
First Class Off-Peak Day Return****	Adult	£31.80	£31.80
	Child	£15.90	£15.90
Carnet (10 for 8)	Adult	£151.00	N/A
First Class Carnet (10 for 8)	Adult	£220.00	N/A

*Children between five and 15 years old inclusive.

** Anytime Day Return tickets are only available from London Victoria to Gatwick Airport. First Class Anytime Day Return tickets are not available.

*** Off-Peak Day Return tickets are only available from Gatwick Airport to London Victoria. Valid after 09.35 on weekdays, and anytime on weekends and Bank Holidays.

**** First Class Off-Peak Day Return tickets are available in both directions. From London Victoria to Gatwick Airport they are valid anytime on weekdays, but from Gatwick Airport to London Victoria they are only valid after 09.35 on weekdays. These tickets are valid anytime on weekends and Bank Holidays.

Ray NAWROT

From: Southern Rail Customer Services <comments@southernrailway.com>
Sent: June-13-13 1:21 AM
To: ray.nawrot@gmail.com
Subject: Confirmation Of Services - Case Reference : 20130604-646218

Dear Mr Nawrot

Following our conversations over the phone last week I am happy to inform you that I have personally contacted our Performance Dept who handle the history of the performances of our trains services and I can confirm the following based on that conersation

Between the hours of 00:00 - 02:00 on the morning of 11.08.12 there were no delays or disruption to our services between London Victoria and Gatwick Airport

I do apologise in the delay of getting you this information and hopes this resolves your query.

If you have any further questions, please feel free to contact us directly at: comments@southernrailway.com or www.southernrailway.com/your-journey/contact-us/contact-us-form/ you can also contact our Customer Service team by phone on (08451 27 29 20), fax (08451 27 29 30) or in writing (Southern Customer Services, PO Box 3021, Bristol, BS2 2BS).

Kind regards

Matthew Cliff
Southern Customer Services

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Delivered-To: ray.nawrot@gmail.com
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Wed, 12 Jun 2013 22:44:10 -0700 (PDT)
X-Received: by 10.66.119.35 with SMTP id kr3mr1222351pab.149.1371102249537;
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by mx.google.com with ESMTP id e8si13194877pao.107.2013.06.12.22.44.08
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Received-SPF: neutral (google.com: 195.245.230.168 is neither permitted nor denied by best
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Authentication-Results: mx.google.com;
spf=neutral (google.com: 195.245.230.168 is neither permitted nor denied by best guess
record for domain of comments@southernrailway.com)
smtp.mail=comments@southernrailway.com
Return-Path: <comments@southernrailway.com>
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by server-3.tower-57.messagelabs.com with SMTP; 13 Jun 2013 05:43:56 -0000
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<ray.nawrot@gmail.com>; Thu, 13 Jun 2013 06:42:32 +0100
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From: Southern Rail Customer Services <comments@southernrailway.com>
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Date: Thu, 13 Jun 2013 06:21:25 +0100

**Annex “E” to the reply
of the Nawrots**

June 14, 2013
Page 36 of 38

360

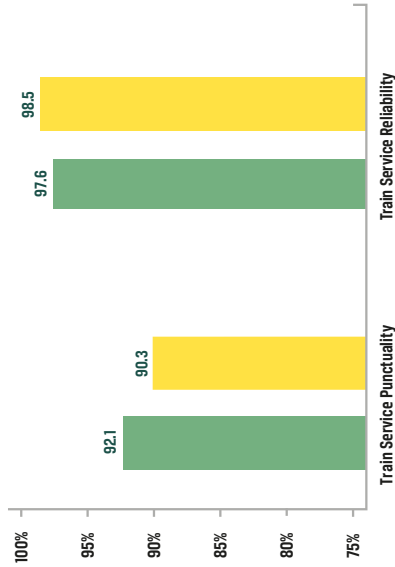
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Results Period 05, 22 July 2012 to 18 August 2012

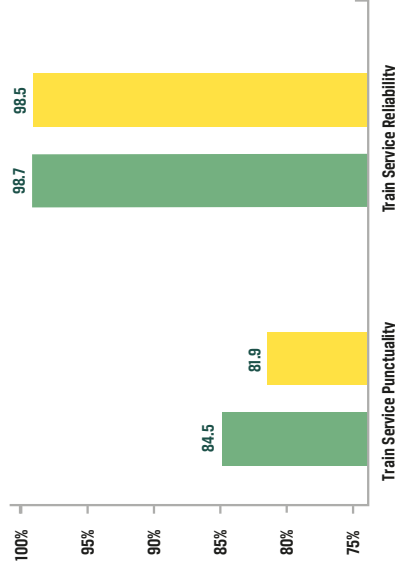
■ Performance on average this period
 ■ Performance on average this past year

SOUTH LONDON



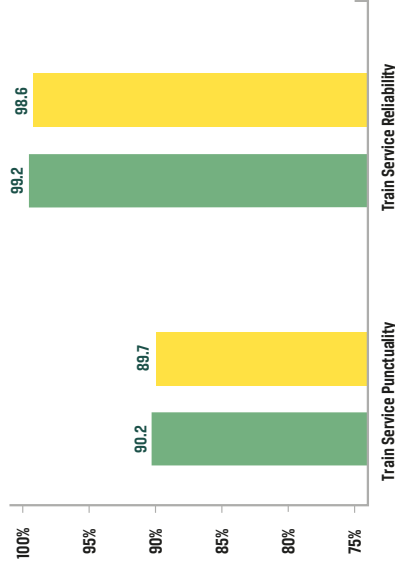
Major incidents excluded: None
 Annual number of void days: None

SUSSEX COAST



Major incidents excluded: None
 Annual number of void days: None

GATWICK EXPRESS



Major incidents excluded: None
 Annual number of void days: None

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- South Terminal
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- Which terminal?
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- (xvi) On international flights a child travelling alone must have their own passport and visas. A parent's passport in which they are listed cannot be used. Some countries also have specific limitations regarding the expiry date and other features of the passport. Additionally, some countries require special documentation, such as a notarized letter stating the child has permission to fly alone.
- (xvii) The carrier will not assume any financial or guardianship responsibility for unaccompanied children beyond those applicable to an adult passenger.
- (xviii) The carrier reserves the right to refuse transportation to the child and accompanying adult if a seat has not been purchased for the child and the carrier does not assume any liability for any consequence thereof.

RULE 10. LIMITATION OF LIABILITY - PASSENGERS

For travel governed by the Montreal Convention

For the purpose of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

For travel governed by the Warsaw Convention

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 the Warsaw Convention. However, the carrier with respect to all international transportation, as defined in the said Convention, performed by it, (except international transportation subject to the Montreal Agreement of 1966, which agreement, according to the contract of carriage includes a point in the United States of America as a point of origin, point of destination or agreed stopping place), agrees that the limit of liability for each passenger for death or wounding or other personal injury shall be limited to proven damages not to exceed the sum of SDR 100,000 exclusive of legal fees and cost. Nevertheless, if the Carrier proves that the damage was caused by, or contributed to by the negligence of the injured or deceased passenger; the Carrier may be exonerated in whole or in part from its liability in accordance with the applicable law.

For example of abbreviations, reference marks and symbols used but not explained hereon, see page 2.

ISSUE DATE
July 28, 2010

EFFECTIVE DATE
August 16, 2010
Per CTA SP #57115

For travel governed by either the Montreal Convention or the Warsaw Convention

Nothing herein shall be deemed to affect the rights and liabilities of the carrier with regard to any person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger. Furthermore, nothing herein shall imply that the Carrier is the sole party liable to pay damages or shall restrict the rights of the Carrier to seek contribution or indemnity from any other party in accordance with applicable law.

RULE 11. LIMITATION OF LIABILITY FOR BAGGAGE OR GOODS

(a) For travel governed by the Montreal Convention

For the purpose of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

(b) For travel governed by the Warsaw Convention

Carrier liability for the loss of, damage to or delay in the delivery of any personal property, including baggage which are carried as checked baggage and goods, is limited to the sum of 250 francs per kilogram, unless the passenger, at the time of presenting such baggage or goods for transportation, has declared a higher value and paid an additional charge in accordance with the provisions of this Rule.

As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

Normal carrier liability as contained in this Rule will be waived for substantial claims involving the loss of, damage to or delay in the delivery of mobility aids, when such items have been accepted as checked baggage or otherwise.

In the case of loss, damage or delay of part of property carried as checked baggage, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the property lost, damaged or delayed. Nevertheless, when the loss, damage or delay of a part of the property affects the value of other property covered by the same baggage check, the total weight of the property covered by the baggage check shall also be taken into consideration in determining the limit of liability.

The monetary unit referred to in this Rule shall be deemed to refer to the gold franc referred to in the Carriage by Air Act, R.S., 1985, c. C-26. For the purpose of settlement

For example of abbreviations, reference marks and symbols used but not explained hereon, see page 2.

ISSUE DATE
December 04, 2006

EFFECTIVE DATE
December 05, 2006
Per CTA SP#19492

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

AFFIDAVIT OF RAYMOND PAUL NAWROT

(Sworn: December , 2013)

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

1. My daughters, Kristina Marie Nawrot and Karolyn Theresa Nawrot, and I are the Moving Parties. As such, I have personal knowledge of the facts set out below.

2. My daughters and I held confirmed seats on Flight 201 WG of Sunwing Airlines on August 10, 2012, an international flight from London Gatwick to Toronto.

3. Flight WG 201 on August 10, 2012 was delayed by more than 14 hours, and was rescheduled to depart London at 2:25 am on August 11, 2012.

4. When my daughters and I presented ourselves for check-in to Flight WG 201 at approximately 1:10 am on August 11, 2012, we found the check-in counters closed, and we were involuntarily denied boarding on the flight.

5. My daughters and I are seeking leave to appeal from decision no. 432-C-A-2013 of the Canadian Transportation Agency that dismissed our complaint against Sunwing Airlines in part, and refused to order Sunwing Airlines:

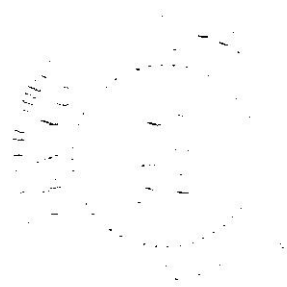
- (a) to reimburse us for out-of-pocket expenses incurred;
- (b) to pay us denied boarding compensation;
- (c) to pay us legal costs.

SWORN BEFORE me at the)
 City of Toronto)
 in the Province of Ontario)
 this 29 day of ~~December~~, 2013.)
Nov 2013)
 _____)
Jeffery A. Brown)
 Notary Public)

Ray Paul Nawrot

 RAYMOND PAUL NAWROT

JEFFERY A. BROWN
 Toronto Notary Public
 360 Bloor St. W. Suite 207E
 Toronto, On. M5S 1X1
 Tel: (416) 939-4158



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

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PART I – STATEMENT OF FACTS

A. Overview

1. This case involves fundamental principles of law: (a) the duty to provide adequate reasons; (b) that there is only one civil standard of proof; and (c) that a decision that is a product of fettered discretion is unreasonable. It also involves application of the *Montreal Convention*, an international treaty governing civil liability of airlines to passengers, to which Canada is a party.

2. In August 2012, the Nawrots' flight from London Gatwick to Toronto was delayed by 14 hours. The Nawrots presented themselves for check-in 75 minutes before the revised departure time, but found the airline's counters closed, and they were involuntarily denied boarding. The airline offered to transport the Nawrots six days later; however, this was not feasible due to the Nawrots' pre-existing commitments. The Nawrots purchased seats on an Air Canada flight, and returned to Toronto two days later than originally scheduled.

3. The Nawrots filed a complaint with the Canadian Transportation Agency against the airline, and sought, among other things, compensation for the out-of-pocket expenses they incurred, as well as denied boarding compensation, and legal costs. The Agency dismissed the Nawrots' claim for compensation, and concluded that they failed to prove that they presented themselves for check-in at least 60 minutes before the flight's departure. The Agency did not consider the claim based on the *Montreal Convention*, and did not award the Nawrots even the amounts that the airline explicitly admitted to owing.

4. Although the Agency upheld the Nawrots' complaint that the airline's tariff was unreasonable, the Agency refused to award the Nawrots legal costs based on the practice of the Agency that "an award of costs is warranted only in special or exceptional circumstances."

5. The Nawrots are seeking leave to appeal to this Honourable Court from the Agency's decision. The Nawrots submit that the Agency erred in law and/or rendered an unreasonable decision and/or exceeded its jurisdiction by:

- (a) failing to order the airline to pay the undisputed portion of their claim;
- (b) failing to give adequate reasons and to analyze important relevant evidence;
- (c) failing to consider delay and apply the *Montreal Convention*;
- (d) misstating the civil standard of proof;
- (e) fettering its discretion with respect to costs.

6. The proposed appeal raises matters of some public importance beyond the specific decision of the Agency, because it involves fundamental principles of administrative and international law.

B. Factual background

(a) The parties

7. The Moving Parties, Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot (the "Nawrots") purchased a Toronto-London Gatwick-Toronto round-trip itinerary on the flights of the Respondent, Sunwing Airlines ("Sunwing").

(b) Flight WG 201 was delayed by 14 hours

8. It is common ground that:

- (a) the Nawrots were scheduled to return from London to Toronto on Flight WG 201 of Sunwing on August 10, 2012 at 12:20 pm;
- (b) Flight WG 201 was delayed by more than 14 hours, and was rescheduled to depart at 2:25 am on August 11, 2012;
- (c) the Nawrots incurred hotel and meal expenses during this initial 14-hour delay, and Sunwing is liable for these expenses.

Answer of Sunwing, p. 10

[Tab 8, P228]

(c) Cut-off time for Flight WG 201: 1:25 am

9. It is also common ground that the check-in cut-off time for Flight WG 201 was 1:25 am on August 11, 2012 (60 minutes before departure), and Sunwing was required to staff its check-in counters and accept passengers until then.

Answer of Sunwing, p. 2

[Tab 8, P220]

(d) Arrival at Gatwick Airport station at 1:00 am

10. On August 10, 2013 at 11:55 pm, the Nawrots purchased three train tickets to Gatwick Airport at Victoria Station.

**Reply of the Nawrots, Annexes "A"- "C":
Southern Railway's records
Productions of the Nawrots, Annex "A"
Affidavit of Mr. Nawrot, para. 7**

[Tabs 13A-C, P349]

[Tab 7A, P212]

[Tab 4, P101]

11. The Nawrots' tickets were marked "SOUTHERN ONLY" and they were not valid for Gatwick Express, which has a different and higher fare schedule.

Reply of the Nawrots, Annexes "C" & "D"

[Tabs 13C-D, P353]

12. On August 11, 2012, in the hour following the Nawrots' train ticket purchase, there were only two regular (non-Gatwick Express) trains from Victoria Station to Gatwick Airport: at 0:05 am and 0:14 am, arriving at Gatwick Airport station at 0:41 am and 0:59 am, respectively.

Complaint of the Nawrots, Annex "A": [Tab 3A, P76]
Train schedule for 2012

13. On August 11, 2012, between 0:00 and 2:00 am, there were no delays of Southern Railway's trains between Victoria Station and Gatwick Airport.

Reply of the Nawrots, Annex "E": [Tab 13E, P358]
Southern Railway's records

14. On August 11, 2012, the Nawrots took the train from Victoria Station to Gatwick Airport, and arrived there at 1:00 am or shortly thereafter.

Affidavit of Mr. Nawrot, para. 8 [Tab 4, P101]

(e) The Nawrots presented themselves for check-in at 1:10 am

15. It is common ground that the train station of Gatwick airport is located at the South Terminal, while Sunwing's counters were at the North Terminal.

Answer of Sunwing, p. 4 [Tab 8, P222]

16. Gatwick Airport operates a free shuttle train service between the terminals 24 hours a day, whose journey takes two minutes.

Nawrot's Reply, Annex "G": [Tab 13G, P362]
Gatwick Airport website

17. The Nawrots arrived at the North Terminal of Gatwick Airport and presented themselves for check-in at 1:10 am.

Affidavit of Mr. Nawrot, para. 9 [Tab 4, P102]
Declaration of Ms. Karolyn Nawrot, para. 7 [Tab 6, P203]

(f) Involuntary denied boarding

18. On August 11, 2012, at 1:10 am, the Nawrots found the Sunwing check-in counters to be closed, unattended, and the lights dimmed. Their request to check in and be allowed to board Flight WG 201 was refused by a supervisor, who insisted that the Nawrots should have checked in 3 hours before the departure time of the flight.

Affidavit of Mr. Nawrot, paras. 9-12

[Tab 4, P102]

(g) Check-in at Sofitel London Gatwick Hotel: 2:05 am

19. The Nawrots left the North Terminal at 1:45 am, and proceeded to the Sofitel London Gatwick Hotel, where they checked in. Subsequently, Mr. Nawrot's credit card was preauthorized at 2:05 am.

Affidavit of Mr. Nawrot, Exhibit "H"

[Tab 4H, P138]

(h) Sunwing's offer to transport the Nawrots 6 days later

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

Affidavit of Mr. Nawrot, Exhibit "J"

[Tab 4J, P142]

(i) Purchase of Air Canada tickets

21. Due to their pre-existing commitments in Canada, the Nawrots were unable to accept Sunwing's unreasonable offer to transport them six days later. The Nawrots purchased new tickets from Air Canada, and returned to Toronto on August 12, 2012.

Affidavit of Mr. Nawrot, paras. 18-19, Exhibit "K"

[Tab 4K, P145]

C. Proceedings before the Agency

(a) The Nawrots' complaint

22. On March 21, 2013, the Nawrots filed a complaint against Sunwing with the Canadian Transportation Agency (the "Agency"), and asked the Agency to:

- (a) direct Sunwing to reimburse the Nawrots for out-of-pocket expenses in the amount of \$4,963.32 that they incurred;
- (b) direct Sunwing to pay denied boarding compensation;
- (c) substitute certain tariff provisions in Sunwing's International Tariff;
- (d) disallow Sunwing's International Tariff rule governing denied boarding as being unclear and unreasonable, and substitute it;
- (e) award costs on a full indemnity basis.

Complaint of the Nawrots, p. 33

[Tab 3, P69]

23. The Nawrots explicitly relied on the *Montreal Convention* as the legal basis for their claim for compensation.

Complaint of the Nawrots, p. 13

[Tab 3, P49]

(b) Sunwing's answer with respect to compensation

24. Sunwing explicitly admitted liability for the Nawrots' out-of-pocket expenses they incurred during the initial 14-hour delay.

Answer of Sunwing, p. 10

[Tab 8, P228]

25. Sunwing argued that the Nawrots were denied boarding because they did not present themselves by 1:25 am, 60 minutes before the flight's departure.

Answer of Sunwing, p. 2

[Tab 8, P220]

26. Sunwing relied on two documents in support of its position: the affidavit of Mr. Vic Tydeman, the supervisor of its handling agent at the Gatwick Airport, and a shift report completed by Mr. Tydeman. Both documents refer to four passengers who presented themselves late for check-in, and were denied boarding as a result. Neither of the documents mentions the passengers' names.

Partially unredacted Exhibit "1" [Tab 11]
to the Affidavit of Ms. Due
Affidavit of Mr. Tydeman [Tab 12]

27. Sunwing also challenged the credibility of the Nawrots.

Answer of Sunwing, p. 8 [Tab 8, P226]

28. Sunwing argued that the *Montreal Convention* was not applicable to the involuntary denied boarding of the Nawrots.

Answer of Sunwing, p. 10 [Tab 8, P228]

(c) The Nawrots' reply

29. The Nawrots challenged the credibility of Mr. Tydeman, and provided a detailed analysis of his evidence, demonstrating that it could only be true if one accepts that 285 passengers can be boarded in five (5) minutes or that the Nawrots were at two different places at the same time.

Reply of the Nawrots, p. 11 [Tab 13, P335]

30. The Nawrots also made extensive submissions on the applicability of the *Montreal Convention* and the strong presumption in favour of "delay" and against alternative categorizations that fall outside the scope of the convention.

Reply of the Nawrots, p. 12 [Tab 13, P335]

(d) **Decision no. 432-C-A-2013 of the Agency**

(i) **Compensation (Issue 1)**

31. The Agency failed to acknowledge in its decision the admissions made by Sunwing with respect to amounts owing to the Nawrots, and erred in law in failing to order Sunwing to pay these undisputed amounts to the Nawrots.

32. The Agency erred in law in failing to consider the parties' submissions on the applicability of the *Montreal Convention* to the Nawrots' claim for compensation, and failing to apply the *Montreal Convention*.

33. The Agency placed the burden of proof on the Nawrots, contrary to the *Montreal Convention*, and incorrectly held that "[t]hey have a greater burden of proof than simply presenting facts."

Decision of the Agency, p. 8, para. 42

[Tab 2, P14]

34. The Agency correctly found that the parties' versions of the events were contradictory, but erred in law in failing to conduct any analysis of the evidence on the record and failing to address the issue of reliability and credibility raised by both parties.

Decision of the Agency, p. 9, para. 44

[Tab 2, P15]

35. The Agency erred in law by simply stating its conclusion that the Nawrots failed to provide evidence that would lead to the conclusion that they arrived at Sunwing's check-in counter 60 minutes before the scheduled departure of their flight, without providing reasons for its conclusion.

Decision of the Agency, p. 9, para. 47

[Tab 2, P15]

(ii) **Sunwing's International Tariff (Issues 2-4)**

36. The Agency correctly concluded that Sunwing's International Tariff Rule 20, governing denied boarding, was unclear and unreasonable, and also held that certain portions of Sunwing's proposed amendments to the rule were unreasonable.

Decision of the Agency, p. 25, paras. 138-140

[Tab 2, P31]

(iii) **Costs (Issue 5)**

37. In refusing to award costs against Sunwing, the Agency fettered its discretion by taking into account irrelevant considerations, ignoring relevant considerations, and adhering to the practice that "an award of costs is warranted only in special or exceptional circumstances."

Decision of the Agency, p. 25, para. 136

[Tab 2, P31]

38. The Agency misinterpreted *Bell Canada v. Consumers' Assoc. of Canada* as standing for the proposition that "costs" before an administrative tribunal have a substantially different meaning than legal costs, and failed to consider the principle of indemnity.

Decision of the Agency, p. 24, paras. 130-131

[Tab 2, P30]

PART II – STATEMENT OF THE POINTS IN ISSUE

39. The only question to be decided is whether this Honourable Court should grant the Nawrots leave to appeal Decision no. 432-C-A-2013 of the Canadian Transportation Agency.

PART III – STATEMENT OF SUBMISSIONS

Applicable legal principles

(a) The test for granting leave to appeal

40. Every decision, order, rule or regulation of the Agency is appealable to this Honourable Court on a question of law or a question of jurisdiction with the leave of the Court.

Canada Transportation Act, s. 41(1) [Appendix “A”, P399]

41. Parties seeking leave to appeal need to establish only that the proposed appeal raises a fairly arguable question of jurisdiction or law, that is, some ground upon which the appeal *may* succeed. This test is a first and lower hurdle than what must be met on the hearing of the appeal on the merits.

Canadian National Railway Co. v. York (Regional Municipality), 2003 FCA 474 [Vol. III, Tab 5]

42. It is submitted that the proposed appeal more than meets this threshold.

(b) Standard of Review

43. According to the Supreme Court’s decision in *Dunsmuir*, there are only two standards of review: reasonableness and correctness. Reasonableness is a deferential standard, which concerns mostly the justification, transparency and intelligibility within the decision-making process, but also examines whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.

Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, 2008 SCC 9, para. 47 [Vol. III, Tab 7]

44. Questions of general law that are of central importance to the legal system as a whole and outside the tribunal's specialized area of expertise do not attract deference, and are subject to the standard of review of correctness: the reviewing court must impose its own view of the correct answer.

***Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, [Vol. III, Tab 7]
2008 SCC 9, para. 60**

A. The Agency's decision is unreasonable

(a) The Agency was oblivious to the parties' submissions

(i) Undisputed portions of the claim

45. The Nawrots sought compensation, as per the *Montreal Convention*, for the out-of-pocket expenses they incurred during the initial delay of 14 hours.

Complaint of the Nawrots, p. 14 [Tab 3, P50]

46. Sunwing explicitly admitted liability and that certain amounts were owing to the Nawrots:

With respect to the approximate 14 hour delay in departure of Flight WG201, Sunwing Airlines acknowledges that the *Convention* applies and that Sunwing Airlines would be liable pursuant to Article 19 for the proven out of pocket expenses incurred by the Nawrots caused by that delay. In which case, the Nawrots are relegated to compensation for their hotel accommodation August 10, 2012 in the amount of \$157.99 as well as reasonable amount for food expenses. [...] lunch and dinner; or, \$120.00 total.

Answer of Sunwing, p. 10 [Tab 8, P228]

47. The Agency considered neither the Nawrots' claim in this respect nor the admission of Sunwing that \$277.99 was owing to the Nawrots, and failed to order Sunwing to pay this undisputed, but unpaid, portion of the claim.

(ii) **Applicability of the *Montreal Convention***

48. Sunwing's International Tariff fully incorporates the liability rules set out in the *Montreal Convention*, and provides that the convention shall supersede and prevail over any provision in the tariff.

International Tariff Rule 10 of Sunwing

[Tab 14, P363]

49. Both parties made extensive submissions on the *Montreal Convention* and its applicability with respect to the Nawrots' claim for compensation, not only for the expenses incurred during the initial 14-hour delay, but also for the subsequent expenses the Nawrots incurred.

Complaint of the Nawrots, pp. 13-14, 16

[Tab 3, P49]

Answer of Sunwing, p. 10

[Tab 8, P228]

Reply of the Nawrots, pp. 12-14, 22

[Tab 13, P336]

50. The Agency did not consider the applicability of the *Montreal Convention* to the issue of compensation, nor did it otherwise address or acknowledge the parties' submissions on this central question of the applicable law.

(iii) **Conclusion**

51. The Agency's decision demonstrates that the Agency was oblivious to the parties' submissions and admissions both with respect to the facts and the law. Furthermore, the Agency provided no reasons for its not considering and awarding the undisputed, but unpaid, portion of the Nawrots' claim. Thus, it is submitted that the Decision is unreasonable.

(b) **The Agency failed to give adequate reasons and to consider and analyze important relevant evidence**

(i) **The duty to provide reasons**

52. When an administrative tribunal's decision is reviewable on a standard of reasonableness, the justification, transparency and intelligibility within the decision-making process and its reasons are primary concern.

Canadian Assn. of Broadcasters v. Society of Composers, Authors and Music Publishers of Canada, 2006 FCA 337, para. 16 [Vol. III, Tab 4]
Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, 2008 SCC 9, para. 47 [Vol. III, Tab 7]

53. Section 36 of the *Canadian Transportation Agency General Rules* imposes on the Agency the duty to give reasons.

Canadian Transportation Agency General Rules, SOR/2005-35, s. 36 [Appendix "A", P400]
Via Rail Canada Inc. v. Lemonde, [2001] 2 FC 25, para. 16 [Vol. III, Tab 16]

(ii) **Adequacy of reasons**

54. The duty to give reasons is a salutary one that is only fulfilled if the reasons provided are adequate. Adequate reasons are those that serve the functions for which the duty to provide them was imposed. Reasons serve a number of purposes:

- (a) focus the decision maker on the relevant factors and evidence;
- (b) provide the parties with the assurance that their representations have been considered;
- (c) provide a basis for an assessment of possible grounds for appeal;

- (d) allow the appellate court to determine whether the decision maker erred and thereby render him or her accountable.

Via Rail Canada Inc. v. Lemonde, [2001] 2 FC 25, [Vol. III, Tab 16]
paras. 17-19, 21

Vancouver International Airport Authority v. Public Service Alliance of Canada, 2010 FCA 158, [Vol. III, Tab 15]
paras. 13-14

55. A tribunal cannot discharge its duty to provide reasons by merely asserting bottom-line conclusions with no supporting information, because that immunizes the decision-maker from review and accountability.

Vancouver International Airport Authority v. Public Service Alliance of Canada, 2010 FCA 158, [Vol. III, Tab 15]
paras. 21

56. This Honourable Court held in the *Via Rail Canada* case that:

The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

Via Rail Canada Inc. v. Lemonde, [2001] 2 FC 25, [Vol. III, Tab 16]
para. 22

57. A tribunal must analyze and weigh the evidence presented by the parties. Evidence that is not mentioned specifically and analyzed in the tribunal's reasons supports a finding that it made an erroneous finding of fact without regard to the evidence. The tribunal's burden of explanation increases with the relevance of the evidence in question to the disputed facts.

Cepeda-Gutierrez v. Canada, 157 F.T.R. 35, [Vol. III, Tab 6]
paras. 15, 17

(iii) The Agency failed to discharge its duty

58. The time when the Nawrots presented themselves for check-in was a central question of fact. Although the Agency found that the parties' versions of the events were contradictory, the Agency failed to conduct any analysis of the evidence before it with respect to the issue of compensation.

Decision of the Agency, p. 9, para. 44

[Tab 2, P15]

59. The Agency's decision merely recited (albeit with material omissions) the submissions of the parties, and then stated the conclusion that the Nawrots failed to prove that they arrived at Sunwing's check-in counter 60 minutes before the scheduled departure of the flight, with no reasons for this conclusion.

Decision of the Agency, p. 9, para. 47

[Tab 2, P15]

60. The Agency's decision contains no consideration of the reliability or credibility of Mr. Nawrot's evidence, or whether it was corroborated by the documentary evidence on record. The Decision is silent as to why the Nawrots' evidence was held to be insufficient.

61. The affidavit of Mr. Nawrot, who swore that the Nawrots presented themselves for check-in at 1:10 am on August 11, 2012 **[Tab 4]**, was corroborated by third-party evidence before the Agency, but which the Agency failed to analyze:

(a) records of Southern Railway, confirming the time the Nawrots purchased their tickets, the train schedule, and that the trains were running on time; **[Tabs 13A-F], [Tab 3]**

(b) airport shuttle train schedule; **[Tab 13G]**

(c) credit card slip from the hotel at the airport. **[Tab 4H]**

62. The Agency also failed to address the substantial inconsistencies in Sunwing's evidence that were challenged by the Nawrots:

- (a) Why did Sunwing offer the Nawrots free transportation (albeit 6 days later) if Sunwing believed that the Nawrots were at fault for not presenting themselves for check-in on time? **[Tab 3, P46]**
- (b) The times stated in the affidavit of Mr. Tydeman, the "Passenger Services Supervisor" referred to in the Agency's decision, and his "Shift Report" could possibly be true only if either 285 passengers boarded the aircraft in five (5) minutes, or if the Nawrots were at two different locations at the same time. **[Tab 13, P334]**

The Agency failed to make findings with respect to the reliability and credibility of Sunwing's key affiant, Mr. Tydeman, and only observed that the parties' versions of the events were contradictory.

63. In the absence of an explicit finding of lack of reliability or credibility of Mr. Nawrot's evidence (who swore that the Nawrots presented themselves for check-in at 1:10 am) and explicit reasons for this finding, it was not open for the Agency to find that the Nawrots' evidence was insufficient, and the Agency's conclusion is (patently) unreasonable.

***Noorhassan v. Canada*, 2008 FC 97, para. 4**

[Vol. III, Tab 12]

64. It is submitted that the Agency entirely abandoned its duty as a trier of facts to analyze conflicting evidence before it and to provide adequate reasons. The Agency merely stated its conclusion. Consequently, the Agency's decision is unreasonable with respect to the issue of compensation.

B. Standard of proof

(a) Standard of review: correctness

65. Standard of proof is a question of law that is of central importance to the legal system as a whole, and falls outside the Agency's specialized area of expertise. Thus, according to *Dunsmuir*, the Agency's choice of standard of proof attracts a correctness standard.

Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, [Vol. III, Tab 7]
2008 SCC 9, para. 60

(b) There is only one civil standard of proof

66. There is only one civil standard of proof in Canada, and that is proof on a balance of probabilities. Considerations related to the seriousness of allegations or consequences do not change the standard of proof.

F.N. v. McDougall, [2008] 3 S.C.R. 41, 2008 SCC [Vol. III, Tab 8]
53, para. 40

(c) The Agency erred in law in applying an elevated standard of proof

67. The Agency cited *Smith v. Smith*, a 1952 case involving an allegation of a quasi-criminal offence of adultery—the only legal grounds for divorce at the time—that cites *George v. George and Logie*:

The judicial mind must be "satisfied" that the alleged act of adultery was in fact committed, but it need not be satisfied to the extent of a moral certainty as in a criminal case. 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.

Smith v. Smith, [1952] 2 S.C.R. 312 [Vol. III, Tab 13]

68. The Agency then went on to misdirect itself as to the “balance of probabilities” standard, and applied an elevated standard of proof:

[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.

[Emphasis added.]

Decision of the Agency, p. 8, para. 42

[Tab 2, P14]

69. Due to the lack of analysis of the evidence and adequate reasons by the Agency, it is difficult to understand what the Agency expected in addition to the sworn affidavit of Mr. Nawrot, the declarations of his daughters, and third-party documents corroborating their evidence, short of an admission by Sunwing.

70. The Agency failed to recognize that sworn affidavits are one of the most common documents used to establish facts on a balance of probabilities in civil matters in Canada, and without which the whole legal system would come to a grinding halt. Affidavits are not a way of presenting allegations or unverified statements as the Agency appears to believe, but rather a document that the affiant swears the truth of its contents.

71. The Agency erred in law and misdirected itself as to the meaning of “balance of probabilities” by holding that the Nawrots had a higher burden of proof than demonstrating facts. There is only one civil standard of proof, and in the absence of a negative finding of reliability or credibility with respect to Mr. Nawrot’s evidence, the Nawrots could have discharged this burden by as little as the sworn affidavit of Mr. Nawrot alone.

C. The Agency failed to apply the *Montreal Convention*

72. As noted earlier, Sunwing's International Tariff fully incorporates the liability rules set out in the *Montreal Convention*, and provides that the convention shall supersede and prevail over any provision in the tariff.

International Tariff Rule 10 of Sunwing

[Tab 14, P363]

73. The Nawrots sought compensation based on the *Montreal Convention* not only for the expenses they incurred during the initial 14-hour delay, but also for their subsequent expenses until their return to Canada, including the three Air Canada tickets they purchased after Sunwing offered to transport the Nawrots 6 days later than scheduled.

Complaint of the Nawrots, pp. 13-14, 16

[Tab 3, P49]

74. The applicability of the *Montreal Convention* to the Nawrots' claim for compensation was addressed in detail both in Sunwing's answer, and in the Nawrots' reply. Oddly and for unclear reasons, however, the Agency neither cited nor considered any of these submissions in its decision.

Answer of Sunwing, p. 10

[Tab 8, P228]

Reply of the Nawrots, pp. 12-14, 22

[Tab 13, P336]

(a) Excess of jurisdiction

75. The *Montreal Convention* is an international convention governing the rights and liabilities of carriers and passengers to which Canada is a party. The *Montreal Convention* has the force of law in Canada.

***Carriage by Air Act*, R.S. 1985, c. C-26, s. 2(2.1)**

[Appendix "A", P401]

76. Subsection 78(1) of the *Canada Transportation Act* provides that:

Subject to any directions issued to the Agency under section 76, the powers conferred on the Agency by this Part shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party.

Canada Transportation Act, s. 78(1)

[Appendix “A”, P400]

77. Thus, Parliament has specifically instructed the Agency to exercise its powers with respect to air transportation in accordance with international conventions relating to civil aviation to which Canada is a party, including the *Montreal Convention*.

78. Therefore, the Agency exceeded its jurisdiction by failing to consider whether the *Montreal Convention* was applicable to the Nawrots’ claim, and failing to apply the *Convention*.

(b) Delay under the *Montreal Convention*

(i) Reverse burden of proof

79. Article 19 of the *Montreal Convention*, governing the carrier’s liability in the case of delay of passengers, imposes strict liability upon carriers. The carrier’s liability is presumed, and the burden of proof is on the carrier to demonstrate that it meets the conditions for exonerating itself from liability:

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. [Emphasis added.]

Montreal Convention, Article 19

[Appendix “A”, P401]

80. Article 20 of the *Montreal Convention* permits the carrier to exonerate itself from liability in the case of negligence or other wrongful act or omission of the person claiming compensation, but the burden of proof is placed on the carrier:

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. [Emphasis added.]

Montreal Convention, Article 20

[Appendix “A”, P402]

81. The fact that a carrier’s airplanes are fully booked does not derogate from the obligation to transport stranded passengers to their destinations, and does not fulfill the defense under Article 19 of the *Convention*. In such situations, carriers are expected to transfer the unused portion of passengers’ tickets to another carrier and reroute passengers to their final destinations. If the carrier fails to reroute passengers in a timely manner, passengers who purchase tickets on another carrier are entitled to reimbursement of their out-of-pocket expenses pursuant to Article 19.

Mohammad c. Air Canada, 2010 QCCQ 6858,
paras. 27, 30

[Vol. III, Tab 11]

(ii) Presumption for delay and against non-performance

82. Article 29 of the *Montreal Convention* has a “preemptive effect” in that it preempts domestic law with respect to claims that fall within the scope of the *Convention*.

Montreal Convention, Article 29

[Appendix “A”, P403]

83. While claims for delay of passengers are within the scope of the *Montreal Convention*, complete non-performance falls outside its scope, and is subject to domestic law. Consequently, courts were often called upon to decide whether the particular facts of a case gave rise to delay or complete non-performance.

84. Due to the preemptive effect of the *Montreal Convention* and the intent of the contracting states to create unified rules, there is a strong presumption in favour of a finding of delay, where the *Convention* applies, and against non-performance, where the *Convention* does not apply.

85. Courts have found that the facts of the case gave rise to “delay” and not to complete non-performance if one of the following three conditions were met:

- (a) the defendant airlines ultimately provided transportation;
- (b) the plaintiffs secured alternate transportation without waiting to see whether the airline would transport them or they refused an offer of a later flight; or
- (c) plaintiffs never alleged non-performance.

Lukács v. Air Canada, Canadian Transportation Agency, LET-C-A-80-2011, paras. 36-37 [Vol. III, Tab 10]
In re Nigeria Charter Flights Contract Litigation, [Vol. III, Tab 9]
520 F. Supp. 2d 447 (E.D.N.Y. 2007)

86. In the present case, criterion (c) is met, because the Nawrots never alleged complete non-performance; as explained below, the case also meets criterion (b). Consequently the *Montreal Convention* is applicable to their claim for compensation.

(c) **Application of the law to the present case**

(i) **The Nawrots were delayed within the meaning of the *Convention***

87. An undisputed but important fact that entirely escaped the Agency's attention is that after the Nawrots were denied boarding on Flight WG 201, Sunwing offered to transport them six (6) days later than originally scheduled and without seeking an additional payment. In other words, Sunwing acknowledged its obligation to transport the Nawrots after they were denied boarding.

Affidavit of Mr. Nawrot, Exhibit "J"

[Tab 4J, P142]

88. Thus, based on the aforementioned criterion (b), the present case is not one of complete non-performance, but rather the Nawrots were delayed within the meaning of the *Montreal Convention*. In particular, the *Montreal Convention* is applicable to the Nawrots' claim for compensation.

Lukács v. Air Canada, Canadian Transportation Agency, LET-C-A-80-2011, paras. 36-37
In re Nigeria Charter Flights Contract Litigation,
520 F. Supp. 2d 447 (E.D.N.Y. 2007)

[Vol. III, Tab 10]

[Vol. III, Tab 9]

(ii) **The burden of proof is on Sunwing**

89. There is no doubt that a passenger showing up late for a flight may give rise to a defense of contributory negligence under Article 20 of the *Montreal Convention*; however, the *Convention* is clear that the burden of proof rests with the carrier, and not the passenger, to demonstrate contributory negligence.

Montreal Convention, Article 20

[Appendix "A", P402]

90. Consequently, in the present case, the burden of proof was on Sunwing, and not the Nawrots. Sunwing had to demonstrate that the Nawrots did not present themselves on time for their flight.

91. Since the Agency did not make a finding of fact that the Nawrots were late for their flight (but only that there was insufficient evidence to conclude that they were *not* late), Sunwing did not discharge its burden of proof under Articles 19 and 20 of the *Montreal Convention*, and therefore is liable for the out-of-pocket expenses incurred by the Nawrots as a result of the delay.

(iii) The Nawrots' out-of-pocket expenses occasioned by the delay

92. It is important to note that the Nawrots were seeking only out-of-pocket expenses: hotel, meals, and the three Air Canada tickets they purchased after Sunwing made the unreasonable offer of transporting the Nawrots six (6) days later than originally scheduled.

93. Although the Nawrots had no obligation to mitigate their damages by securing transportation on the flight of another airline that departed earlier than what Sunwing offered, they were certainly entitled to do so. The availability of seats on Air Canada demonstrates that Sunwing failed to take all reasonable measures to prevent or mitigate the Nawrots' delay. Consequently, Sunwing is liable for these out-of-pocket expenses.

***Mohammad c. Air Canada*, 2010 QCCQ 6858,
paras. 27, 30**

[Vol. III, Tab 11]

(d) Conclusion

94. It is submitted that the Agency erred in law by: (i) failing to consider the applicability of the *Montreal Convention*; (ii) failing to apply the *Convention* to the Nawrots' claim for compensation; (iii) placing the burden of proof on the Nawrots contrary to the *Convention*; and (iv) failing to award the Nawrots compensation pursuant to Article 19 of the *Convention*.

D. The Agency fettered its discretion

(a) The Agency's rationale for its practice

95. The Nawrots, who were represented by counsel, sought an award of legal costs against Sunwing Airlines, and challenged the longstanding practice of the Agency to award costs only in "special or exceptional circumstances," regardless of the outcome of the case.

Complaint of the Nawrots, pp. 26-32

[Tab 3, P62]

96. The Nawrots' request for costs was refused on the basis that:

[t]he 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.

Decision of the Agency, p. 25, para. 136

[Tab 2, P31]

97. The Agency provided the following justifications for this practice:

- (a) "costs" before tribunals have a substantially different meaning than legal costs;
- (b) there are no filing fees in proceedings before the Agency;
- (c) unrepresented parties can successfully plead before the Agency;
- (d) the Agency's *General Rules* can be used by an unrepresented party as a guide to the procedures of the Agency.

Decision of the Agency, pp. 24-25, paras. 131-134

[Tab 2, P30]

98. It is submitted that the Agency fettered its discretion to award costs by taking into account irrelevant considerations, ignoring relevant considerations, and adhering to this practice.

(b) Standard of review

99. A decision that is the product of a fettered discretion is automatically unreasonable.

***Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, para. 24** [Vol. III, Tab 14]

(c) Meaning of “costs”

100. Contrary to what is suggested by Agency’s reasons, the Supreme Court of Canada held in *Bell Canada v. Consumers’ Association of Canada* that “costs” in s. 73 of the *National Transportation Act* carries the same general connotation as legal costs, that is, being for the purpose of indemnification or compensation. A tribunal not being bound by the principle of indemnity means that it can award costs even in cases where no out-of-pocket legal expenses were incurred. This does not derogate from the principal purpose of costs: to indemnify.

***Bell Canada v. Consumers’ Association of Canada*, [1986] 1 S.C.R. 190, para. 30** [Vol. III, Tab 1]

***Canada v. Georgian College of Applied Arts and Technology (C.A.)*, 2003 FCA 199, para. 25** [Vol. III, Tab 3]

101. Section 25.1(1) of the *Canada Transportation Act*, which replaced section 73(1) of the *National Transportation Act*, unambiguously demonstrates the intent of Parliament that costs are to be awarded by the Agency in the same manner as in the Federal Court:

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.

***Canada Transportation Act*, s. 25.1(1)** [Appendix “A”, P399]

(d) Discretion to award costs

102. The discretion of tribunals to award (or not to award) costs does not relieve tribunals from the duty to exercise this discretion judicially.

British Columbia v. Okanagan Indian Band, [2003] 3 S.C.R. 371, 2003 SCC 71, paras. 20, 22 [Vol. III, Tab 2]

Canada v. Georgian College of Applied Arts and Technology (C.A.), 2003 FCA 199, para. 30 [Vol. III, Tab 3]

103. The discretion to award costs cannot be fettered by a practice that is not based on explicit statutory authority.

Canada v. Georgian College of Applied Arts and Technology (C.A.), 2003 FCA 199, para. 38 [Vol. III, Tab 3]

(e) Conclusion

104. The Agency's reasons contain four justifications for its current practice with respect to costs: the first is based on a misinterpretation of *Bell Canada* by the Agency as to the meaning of "costs"; the second one is relevant only to disbursements; and the third and fourth justifications are not only irrelevant, but also troubling, because they reflect an intent to discourage parties from exercising their rights to be represented by counsel.

105. There is nothing in the *Canada Transportation Act* that would confer authority upon the Agency to discourage parties from seeking legal representation, or penalize represented parties by withholding costs.

106. Therefore, it is submitted that the Agency fettered its discretion to award costs by adhering to the impugned practice, and ignoring relevant considerations, such as the indemnification principle.

PART IV – ORDER SOUGHT

107. The Moving Parties, the Nawrots, are seeking an Order:
- (a) granting the Nawrots leave to appeal decision no. 432-C-A-2013 dated November 15, 2013 of the Canadian Transportation Agency;
 - (b) granting the Moving Parties their costs of this motion; and
 - (c) granting such further relief as this Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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PART V – LIST OF AUTHORITIES

CASES	PARA. No.
<i>Bell Canada v. Consumers' Association of Canada</i> , [1986] 1 S.C.R. 190	100
<i>British Columbia (Minister of Forests) v. Okanagan Indian Band</i> , [2003] 3 S.C.R. 371, 2003 SCC 71	102
<i>Canada (Attorney General) v. Georgian College of Applied Arts and Technology (C.A.)</i> , 2003 FCA 199	100, 102, 103
<i>Canadian Assn. of Broadcasters v. Society of Composers, Authors and Music Publishers of Canada</i> , 2006 FCA 337	52
<i>Canadian National Railway Co. v. York (Regional Municipality)</i> , 2003 FCA 474	41
<i>Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)</i> , 157 F.T.R. 35	57
<i>Dunsmuir v. New Brunswick</i> , [2008] 1 S.C.R. 190, 2008 SCC 9	43, 44, 52, 65
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<i>Lukács v. Air Canada</i> , Canadian Transportation Agency, LET-C-A-80-2011	85, 88
<i>Mohammad c. Air Canada</i> , 2010 QCCQ 6858	81, 93
<i>Noorhassan v. Canada (Minister of Citizenship and Immigration)</i> , 2008 FC 97	63
<i>Smith v. Smith</i> , [1952] 2 S.C.R. 312	67

CASES	PARA. No.
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<i>Vancouver International Airport Authority v. Public Service Alliance of Canada</i> , 2010 FCA 158	54, 55
<i>Via Rail Canada Inc. v. Lemonde</i> , [2001] 2 FC 25	53, 54, 56
STATUTES AND REGULATIONS	PARA. No.
<i>Canada Transportation Act</i> , S.C. 1996, c. 10, ss. 25.1, 41	40, 101, 76
<i>Canadian Transportation Agency General Rules</i> , SOR/2005-35, s. 36	53
<i>Carriage by Air Act</i> , R.S. 1985, c. C-26, s. 2(2.1)	75
<i>Montreal Convention (Schedule VI, Carriage by Air Act, R.S. 1985, c. C-26)</i> , Articles 19, 20, 29	79, 80, 82, 89

APPENDIX “A” – STATUTES AND REGULATIONS

<p><i>Canada Transportation Act, S.C. 1996, c. 10</i></p>	<p><i>Loi sur les transports au Canada, L.C. 1996, ch. 10</i></p>
<p>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.</p> <p>(2) Costs may be fixed in any case at a sum certain or may be taxed.</p> <p>(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.</p> <p>(4) The Agency may make rules specifying a scale under which costs are to be taxed.</p>	<p>25.1 (1) Sous réserve des paragraphes (2) à (4), l'Office a tous les pouvoirs de la Cour fédérale en ce qui a trait à l'adjudication des frais relativement à toute procédure prise devant lui.</p> <p>(2) Les frais peuvent être fixés à une somme déterminée, ou taxés.</p> <p>(3) L'Office peut ordonner par qui et à qui les frais doivent être payés et par qui ils doivent être taxés et alloués.</p> <p>(4) L'Office peut, par règle, fixer un tarif de taxation des frais.</p>
<p>41. (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.</p>	<p>41. (1) Tout acte - décision, arrêté, règle ou règlement - de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.</p>

<p>(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.</p>	<p>(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.</p>
<p>78. (1) Subject to any directions issued to the Agency under section 76, the powers conferred on the Agency by this Part shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party.</p>	<p>78. (1) Sous réserve des directives visées à l'article 76, l'exercice des attributions conférées à l'Office par la présente partie est assujéti aux ententes, conventions ou accords internationaux, relatifs à l'aviation civile, dont le Canada est signataire.</p>
<p><i>Canadian Transportation Agency General Rules, SOR/2005-35</i></p>	<p><i>Règles générales de l'Office des transports du Canada, DORS/2005-35</i></p>
<p>36. The Agency shall give oral or written reasons in support of any of its orders and decisions that do not allow the relief requested, or if opposition has been expressed.</p>	<p>36. L'Office a l'obligation de motiver oralement ou par écrit ceux de ses arrêtés ou celles de ses décisions qui n'accordent pas le redressement demandé ou qui donnent lieu à une opposition.</p>

<p><i>Carriage by Air Act, R.S. 1985, c. C-26</i></p>	<p><i>Loi sur le transport aérien, L.R. 1985, c. C-26</i></p>
<p>2. (2.1) Subject to this section, the provisions of the Convention set out in Schedule VI, in so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons, have the force of law in Canada in relation to any carriage by air to which the provisions apply, irrespective of the nationality of the aircraft performing that carriage.</p>	<p>2. (2.1) Sous réserve des autres dispositions du présent article, les dispositions de la convention figurant à l'annexe VI, dans la mesure où elles se rapportent aux droits et responsabilités des personnes concernées par le transport aérien - notamment les transporteurs et leurs préposés, les voyageurs, les consignateurs et les consignataires -, ont force de loi au Canada relativement au transport aérien visé par ces dispositions, indépendamment de la nationalité de l'aéronef en cause.</p>
<p><i>Montreal Convention (Schedule VI, Carriage by Air Act, R.S. 1985, c. C-26)</i></p>	<p><i>Convention de Montréal (Annexe VI, Loi sur le transport aérien, L.R. 1985, c. C-26)</i></p>
<p>Article 19 - Delay</p> <p>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.</p>	<p>Article 19 - Retard</p> <p>Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de passagers, de bagages ou de marchandises. Cependant, le transporteur n'est pas responsable du dommage causé par un retard s'il prouve que lui, ses préposés et mandataires ont pris toutes les mesures qui pouvaient raisonnablement s'imposer pour éviter le dommage, ou qu'il leur était impossible de les prendre.</p>

Article 20 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 20 - Exonération

Dans le cas où il fait la preuve que la négligence ou un autre acte ou omission préjudiciable de la personne qui demande réparation ou de la personne dont elle tient ses droits a causé le dommage ou y a contribué, le transporteur est exonéré en tout ou en partie de sa responsabilité à l'égard de cette personne, dans la mesure où cette négligence ou cet autre acte ou omission préjudiciable a causé le dommage ou y a contribué. Lorsqu'une demande en réparation est introduite par une personne autre que le passager, en raison de la mort ou d'une lésion subie par ce dernier, le transporteur est également exonéré en tout ou en partie de sa responsabilité dans la mesure où il prouve que la négligence ou un autre acte ou omission préjudiciable de ce passager a causé le dommage ou y a contribué. Le présent article s'applique à toutes les dispositions de la convention en matière de responsabilité, y compris le paragraphe 1 de l'article 21.

Article 29 – Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 29 - Principe des recours

Dans le transport de passagers, de bagages et de marchandises, toute action en dommages-intérêts, à quelque titre que ce soit, en vertu de la présente convention, en raison d'un contrat ou d'un acte illicite ou pour toute autre cause, ne peut être exercée que dans les conditions et limites de responsabilité prévues par la présente convention, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs. Dans toute action de ce genre, on ne pourra pas obtenir de dommages-intérêts punitifs ou exemplaires ni de dommages à un titre autre que la réparation.