Federal Court Cour fédérale

SIMPLIFIED ACTION

Date: 20260331

Docket: T-1251-19

Citation: 2026 FC 421

Toronto, Ontario, March 31, 2026

PRESENT: Associate Judge John C. Cotter

BETWEEN:

NAZARELYS PAULA MEJIAS TURMERO

Plaintiff

and

AIR CANADA AND
ATTORNEY GENERAL OF CANADA

Defendants

ORDER AND REASONS (COSTS)

[1] This decision deals with the costs to be awarded following the trial of this action.

[2] Pursuant to the Judgment dated April 11, 2025 [Trial Judgment] (2025 FC 673), the claim of the plaintiff, Nazarelys Paula Mejias Turmero [Ms. Mejias], was allowed in part against Air Canada. Her claim against the Attorney General of Canada [AGC] was dismissed.

[3] Certain of the background that led to this action is summarized in the first paragraph of the Trial Judgment (defined terms in the quote below are also used in this decision):

> [1] Generally stated, this action arose because the plaintiff, Nazarelys Paula Mejias Turmero [Ms. Mejias], and her three children [Children], who were in transit from Venezuela to Toronto, were not permitted to board an Air Canada flight from Panama City to Toronto on August 4, 2017 (unless otherwise indicated, all dates in these reasons are in 2017). As a result, they ended up in Panama for 33 days before being able to travel to Toronto. The reason why they were not permitted to board that flight is that their Visas (defined below) were cancelled after they presented themselves at the Air Canada check-in counter at Tocumen International Airport [Airport] in Panama City, Panama. When they presented themselves for check-in, the Visas were valid. The Visas were cancelled as a result of a sequence of events set in motion by an Air Canada agent.

[4] After 33 days in Panama, the "Visas" referred to in the above passage were re-issued. Ms. Mejias and the Children then travelled to Toronto.

[5] The Trial Judgment set a schedule for submissions on costs in the event that the parties were unable to agree on costs. The following submissions were filed by the parties pursuant to that schedule:

a) "WRITTEN SUBMISSIONS ON COSTS OF DEFENDANT AIR CANADA" filed May 9, 2025;

b) "COSTS SUBMISSIONS OF THE DEFENDANT, ATTORNEY GENERAL OF CANADA" filed May 9, 2025 [AGC's Submissions];

c) "RESPONDING WRITTEN SUBMISSIONS ON COSTS OF THE DEFENDANT AIR CANADA" filed May 23, 2025 [Air Canada's Responding Submissions];

d) "SUBMISSIONS OF ATTORNEY GENERAL OF CANADA […] IN REPLY TO PLAINTIFF'S COST SUBMISSIONS" filed May 23, 2025 [AGC's Reply Submissions];

e) "PLAINTIFF'S RESPONDING COSTS SUBMISSIONS" filed May 23, 2025;

[6] In addition, by Direction dated May 27, 2025, Ms. Mejias was permitted to file a letter dated May 26, 2025, in reply to the AGC's Reply Submissions. By letter dated June 5, 2025, the AGC confirmed that a response would not be submitted to the letter of Ms. Mejias.

[7] I will first outline the requests of the parties and set out certain general principles from the case law. I will then address whether there are any offers to settle that fall within the ambit of Rule 420, following which I will discuss the Rule 400(3) factors, the quantum to be awarded, and Ms. Mejias's request for a Sanderson or Bullock order (any reference in this decision to a Rule is to those in the *Federal Courts Rules*, SOR/98-106).

I. Parties' requests for costs

A. *Ms. Mejias*

[8] Ms. Mejias "seeks a substantial costs award against Air Canada to reflect the Court's disapproval of its litigation tactics", and a Sanderson or Bullock order requiring Air Canada to

pay for the AGC's costs (Plaintiff's Submissions, para 5). As explained below, Ms. Mejias is seeking slightly more than $60,000 (all amounts in this decision are in CAD unless otherwise specified).

B. *Air Canada*

[9] Air Canada does not seek costs.

[10] Air Canada acknowledges that "the general rule is that costs follow the event and the successful party, in this case Ms. Mejias, is entitled to their costs subject to the discretion of the Court" (Air Canada's Responding Submissions, para 11).

C. *AGC*

[11] The AGC seeks costs against Ms. Mejias of $33,511.61, consisting of $30,061.10 plus disbursements of $3,450.51 (AGC's Submissions, para 2). The AGC submitted a bill of costs in support of that request.

II. General Principles

[12] As acknowledged by Air Canada, the general rule is that the successful party is entitled to its costs as determined by the Court in its discretion (*British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at paras 19-21; *Maier Estate v Bulger*, 2025 FC 189 [*Maier Estate*] at para 14]). Rule 400(3) lists the factors the Court may consider in exercising its discretion on costs, one of which is the result of the proceeding.

[13] As stated by Justice McHaffie in *Tekna Plasma Systems Inc. v AP&C Advanced Powders & Coatings Inc*., 2024 FC 1954 [*Tekna*]:

> [5] The Federal Court has a broad discretion over the award of costs: *Federal Courts Rules*, Rule 400(1); *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 10. In exercising this discretion, the Court seeks to achieve, as best as possible, the various purposes of costs awards, which include indemnifying the successful party for the costs they incurred, encouraging settlement and efficient litigation, and facilitating access to justice: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at paras 22–27; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19; *Betser-Zilevitch v Petrochina Canada Ltd*, 2021 FC 151 at para 10.

[14] The nature of the Court's discretion on costs was described by the Federal Court of Appeal as follows in *Steelhead LNG (ASLNG) Ltd. v ARC Resources Ltd*., 2025 FCA 5:

> [2] The Court has "full discretionary power over the amount…of costs": Rule 400(1) of the *Federal Courts Rules, S.O.R./98-106*. In setting the amount, many factors may be considered. Rule 400(3) lists 15 factors and adds that the Court may take into account "any other matter that it considers relevant". This is as broad a discretion as can be imagined. However, depending on the circumstances of the particular case, some factors may take on considerable significance, others less so, and still others, not at all.

III. Offers to settle

[15] Written offers to settle can impact an award of costs if the requirements of Rule 420 are met, and even if not, may be considered under Rule 400(3) (*Pharmascience Inc v Teva Canada Innovation*, 2022 FCA 207 at para 18; *Tekna* at para 24).

[16] In this portion of the decision I address whether any of the offers made meet the requirements for consideration under Rule 420. As explained below, none do.

[17] As stated in *Tekna*:

> [27] As a particular incentive to encourage parties to resolve litigation, Rule 420 provides for cost consequences if a party does not accept a written offer to settle that would have yielded terms more favourable than those they obtain at trial. To trigger the rule, the offer to settle must be made at least 14 days before the commencement of trial, and must not be withdrawn or expire before the commencement of trial: *Federal Courts Rules*, Rule 420(3). In addition to these requirements in the rule, the jurisprudence requires the offer to be clear and unequivocal, to contain an element of compromise or "incentive to accept," and to bring the litigation to an end: *Venngo Inc v Concierge Connection Inc (Perkopolis)*, 2017 FCA 96 at para 87, citing *H-D USA, LLC v Berrada*, 2015 FC 189 [*Berrada*] at para 32 and *Syntex Pharmaceuticals International Ltd v Apotex Inc*, 2001 FCA 137 at para 10.

[18] There were offers to settle in this case; some written, and some oral. As discussed below, none of the written offers to settle met the requirements of Rule 420(3), and as a result, the costs consequences of Rule 420 do not apply. Regarding the oral offers to settle, Rule 420 requires offers to be written.

[19] The first written offer was made by the AGC. On May 5, 2022, the AGC made a written offer to Ms. Mejias to settle the litigation for $5,000 inclusive of interests and costs [AGC's Offer]. The offer stated that it would be "open until the close of pleadings". As it expired before the commencement of trial, it does not meet the requirement of Rule 420(3)(b).

[20] On June 23, 2022, Ms. Mejias made a written offer to settle with both defendants for $5,000, paid jointly, inclusive of interest and costs [Plaintiff's Offer]. The offer was "contingent on acceptance by both Defendants before the commencement of the trial". The AGC accepted the offer by letter dated July 18, 2022, stating:

> With respect to the settlement of the within litigation, the AGC agrees to jointly settle the litigation for $5000 CAD inclusive of all costs, interests and disbursements. Because this settlement offer is contingent on both Defendants accepting the offer, we suggest that the Plaintiffs discuss with the Defendant Air Canada, to reach an agreement on costs.

[21] Air Canada did not accept the Plaintiff's Offer. There is a question as to whether it met the requirements of Rules 420(1) and 420(3)(b); specifically, whether the offer did "not expire before the commencement of the hearing or trial" and whether Ms. Mejias obtained a judgment more favourable than her offer. Ms. Mejias has the burden to establish that Rule 420 applies (*Maier Estate* at para 30).

[22] I will deal first with the requirement that the Plaintiff's Offer did "not expire before the commencement of the hearing or trial" (Rule 420(3)(b)). It came very close but missed the mark ever so slightly. It was "contingent on acceptance by both Defendants before the commencement of the trial". The offer had to be accepted before the commencement of the trial, and therefore, it expired before the commencement of trial. Although the Plaintiff's Offer does not meet the requirements of Rule 420(3)(b) and therefore does not fall within the ambit of Rule 420(1), it may still be considered under Rule 400(3). This is addressed later in this decision.

[23] There is also the issue of whether Ms. Mejias obtained a judgment more favourable than her offer. Ms. Mejias offered to settle on the basis that: "The Defendants shall jointly pay the Plaintiffs the amount of five thousand Canadian Dollars (CAD$5,000.00), inclusive of interest and costs."

[24] I will first address whether the Plaintiff's Offer included an element of compromise. In the action, Ms. Mejias sought damages of USD $4,520.13, plus interest and costs. The offer was for CAD $5,000, inclusive of interest and costs. The Canadian equivalent of the damage claim alone is greater than the Plaintiff's Offer of $5,000 (which was inclusive of interest and costs). Therefore, the offer involved an element of compromise.

[25] The question of whether Ms. Mejias obtained a judgment more favourable than her offer is somewhat problematic. First, there is the requirement in the offer that Air Canada and the AGC jointly pay, which I will put aside and address the quantum. Ms. Mejias was awarded damages against Air Canada of $4,129.04, plus pre-judgment interest at a rate of 2% per annum, from August 20, 2017, to the date of the judgment, not compounded. Ms. Mejias calculates that to be $4,760.54 with prejudgment interest. Neither of the defendants disputed that calculation in their submissions. In any event, it is less than $5,000. If Ms. Mejias is awarded costs, and depending on the amount, it is possible that the total would be greater than $5,000. However, as stated by Justice Furlanetto in *Maier Estate*, that "requires me to put the cart before the horse and draw conclusions on costs before I have fully evaluated all relevant factors" (para 32).

[26] In *Maier Estate*, Justice Furlanetto went on to state the following, which is the approach I would have adopted in this case even if the Plaintiff's Offer met the requirements of Rule 420:

> [33] Thus, I prefer to consider the Offer under rule 400(3)(e). Indeed, even though I cannot find the Offer more favourable than the Judgment, I consider it to be a close and reasonable offer that is a relevant and important factor under rule 400(3)(e) for determining the appropriate quantum of costs (*Pharmascience Inc v Teva Canada Innovation*, 2022 FCA 207 at para 18) […]

IV. Rule 400(3) factors

[27] Each of the parties argues that certain of the Rule 400(3) factors are in their favour. Collectively, they argue that almost all the Rule 400(3) factors are engaged. I comment below on the factors that I consider to be most important in this case, and also address a few raised by the parties that warrant specific comment.

A. *Rule 400(3)(a) - The result of the proceeding*

[28] Ms. Mejias was successful against Air Canada.

[29] Her claim against the AGC was dismissed. That claim was framed in the alternative, in the event that Air Canada was not liable. As Air Canada was found liable, it was not necessary to determine if the AGC was liable. However, in the interests of completeness, I considered whether the claims against the AGC could succeed and found that they could not.

B. *Rule 400(3)(b) - The amounts claimed and the amounts recovered*

[30] Ms. Mejias sought damages of USD 4,520.13. She was awarded damages of the Canadian equivalent of USD 3,283.27, to be paid by Air Canada. The amount claimed was small, reasonable in the circumstances, and the amount recovered was a substantial portion of it.

C. *Rule 400(3)(c) - The importance and complexity of the issues*

[31] Ms. Mejias argues that although the events giving rise to the action were significant and traumatic for her, the legal issues of liability and damages were simple and straightforward. Air Canada agreed with Ms. Mejias on this point. She also asserts that any complexity is due to the conduct of Air Canada. The AGC argues that the issues regarding the AGC were important and

complex. The AGC also argues that the action was made more complex by certain steps taken by Ms. Mejias.

[32] While this was not a simple case, the factual and legal issues were such that they do not impact any award of costs.

[33] Whether the proceeding was made more complex by the conduct of one or more of the parties is something more appropriately considered under the Rule 400(3)(i) factor, “any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding”.

D. *Rule 400(3)(e) - Any written offer to settle*

[34] There are two offers to be considered: the Plaintiff’s Offer and the AGC’s Offer.

[35] I will deal first with AGC’s Offer. It was to settle the action as against the AGC with the AGC to pay Ms. Mejias $5,000, inclusive of interest and costs. The quantum was reasonable, and the AGC certainly did better than that at trial. For costs purposes in the context of this case, the shortcoming of that offer relates to when it was made and the relatively brief period of time that it was open for acceptance. It was made on May 5, 2022, and open for acceptance until the close of pleadings. The AGC filed an amended statement of defence to the amended statement of claim on June 1, 2022, shortly after that offer, and on July 4, 2022, Ms. Mejias filed her reply to that pleading. The trial commenced almost two years later on May 21, 2025. In these circumstances, I give no weight to that offer.

[36] I will now deal with the Plaintiff's Offer. It was a reasonable offer. The quantum was $5,000. Ms. Mejias received a damages award against Air Canada of $4,129.04, plus prejudgment interest. As noted above, Ms. Mejias calculates that to be $4,760.54 with prejudgment interest, an amount that none of the defendants took issue with in their submissions. I am mindful of my comments above in paragraph 25. Having said that, with virtually any award of costs to Ms. Mejias, she beats her offer as against Air Canada. Even with only disbursements of $790.56, the quantum of which Air Canada does not object to (Air Canada's Responding Submissions, para 12), Ms. Mejias beats that offer. This is a factor in Ms. Mejias's favour vis-à-vis- Air Canada.

[37] The AGC states that verbal offers to settle were made to Ms. Mejias that if she were to discontinue the action against the AGC, costs would not be sought. Rule 400(3)(e) specifically refers to "any written offer to settle". I give no weight to any verbal settlement proposals under this factor nor, in the circumstances of this case, under the Rule 400(3)(o) factor (*i.e.* any other matter the Court considers relevant).

[38] The AGC argues that (AGC's Submissions, para 23):

> The AGC's offers to settle [including the verbal offers] and acceptance of the Plaintiff's offer to settle would have brought the dispute between the AGC and the Plaintiff to an end, but the Plaintiff unreasonably refused to settle.

and that (AGC's Reply Submissions, para 4):

> The AGC accepted the Plaintiff's offer to settle, and it was again open to the Plaintiff to end the litigation with the AGC and continue it against Air Canada. The Plaintiff chose not to.

[39] I give no weight to these arguments. On the verbal offers, the AGC could have made them in writing, but did not.

[40] Regarding the Plaintiff's Offer, the AGC's reliance on the AGC's acceptance of it as a factor against Ms. Mejias is misplaced. To recap, the Plaintiff's Offer to settle for $5,000 was contingent on acceptance by both defendants. The action did not settle on that basis because Air Canada chose not to accept the offer, which I consider later. The AGC cannot use its acceptance of that offer to point the finger at Ms. Mejias. If the AGC wanted to settle the action on the basis of a $5,000 payment to Ms. Mejias, separate and apart from Air Canada, such an offer could have been made by the AGC in addition to, or instead of, accepting the Plaintiff's Offer. The AGC did not do so. As noted above, the AGC had offered to settle on that basis much earlier in the litigation, but that offer was only open for acceptance until the close of pleadings, which was almost two years prior to the trial. It was open to the AGC to put that offer, or a similar one, back on the table. The AGC chose not to do so.

E. *Rules 400(3)(g)(i)(j) and (k)*

[41] None of these are significant factors on costs.

[42] There is much finger pointing in both directions on these factors. Although this litigation was hard fought, I do not consider the conduct of any party or the steps taken to rise to the level warranting consideration for costs purposes in this case.

[43] Air Canada and the AGC advanced an argument under certain of these factors, as well as under Rule 400(3)(o), that warrants comment. Generally stated, their argument is that the Court should consider that the claim could have, and should have, been brought in the Ontario Small Claims Court, and that the cost to do so would have been less for all parties. I firmly reject that argument.

[44] For the sake of this analysis I will assume, without deciding the point, that Ms. Mejias could have brought her claim in the Ontario Small Claims Court and that the costs of the litigation would have been less. It is of no consequence. Her claim fell within the jurisdiction of the Federal Court. She was entitled to bring her claim in this Court. She should not be penalized in costs even if another Court also had jurisdiction and it might have been cheaper to litigate in that Court. Among other things, such an approach could result in disincentivizing litigants from bringing a proceeding in Federal Cout even if they are otherwise entitled to do so.

[45] A related argument is that the statement of claim was filed in Halifax. In this case, the reasons why that might have been done are of no consequence. The Federal Court is a national court with registry offices at various locations across the country. A litigant can file an originating document at any one of those locations and as a general matter, that alone has no impact on where subsequent steps in the litigation take place. In any event, the mere filing of the statement of claim in Halifax had no impact on the costs of this proceeding. Simply by way of example, the trial was held in Toronto.

F. *Rule 400(3)(o) - Any other matter that the Court considers relevant*

[46] Of significance is that Air Canada's Responding Submissions conclude with the following:

> 40. Air Canada submits that this is an appropriate case that calls for the Court to award Air Canada pay the plaintiff a "modest allowance" of $7500 in costs plus her disbursements of $790.56.

[47] This $7,500 position on costs is very reasonable having regard to the jurisprudence on costs to be awarded to self-represented litigants (*Air Canada v Thibodeau*, 2007 FCA 115 at paras 23-24; *Haynes v Canada (Attorney General)*, 2023 FCA 244 at paras 14-15; *Sherman v Canada (Minister of National Revenue)*, 2004 FCA 29 at paras 13-14; and 2003 FCA 202 at para 52). This factor weighs in Air Canada's favour.

[48] Another relevant factor concerns the Plaintiff's Offer. As discussed above, that offer was contingent on acceptance by both defendants. The AGC accepted the offer. The action did not settle on that basis because Air Canada chose not to accept the offer. The impact of this on the costs to be awarded is discussed below.

G. *Concluding comments on Rule 400(3) factors*

[49] The most significant factor in the assessment of costs in this action is the result. There is no factor that causes me to depart from the general rule that the successful party should receive their costs. This means that: a) Ms. Mejias should receive an award of costs to be paid by Air Canada; and b) the AGC should receive an award of costs. The issue of who should pay the AGC's costs is addressed below.

[50] When all of the Rule 400(3) factors are considered, I conclude there is no reason that either Ms. Mejias or the AGC should receive a greater or lesser award of costs than would otherwise be the case:

a) Regarding the costs to be awarded to the AGC, other than the result of the proceeding, there was no factor weighing in favour of a greater or lesser award of costs.

b) Regarding the costs to be awarded to Ms. Mejias, I find that the favourable impact for Ms. Mejias of the Plaintiff's Offer is offset by the favourable impact for Air Canada of its position on the quantum of costs.

[51] The fact that the AGC accepted the Plaintiff's Offer, and Air Canada did not, is a relevant factor that in this case that I believe is best considered in assessing the request for a Sanderson or Bullock order.

V. Quantum to be awarded to Ms. Mejias

[52] As noted above, Air Canada does not object to Ms. Mejias's request for disbursements in the amount of $790.56.

[53] In addition to disbursements, Ms. Mejias seeks "double the costs sought by the AGC in its bill of costs or double the $10,000 sought by Air Canada on July 12, 2023 (i.e., $20,000), whichever is greater, plus post-judgment interest of 4.75% per annum". I pause here to note that the initial submissions of all three parties were filed on the same day. It may be that Ms. Mejias was not aware when her submissions were completed that the AGC was seeking $30,061.10 plus

disbursements of $3,450.51, for a total of $33,511.61. That said, she did not subsequently scale back her request for double those costs, which would amount to more than $60,000.

[54] There are many issues concerning whether the $10,000 amount referred to in the previous paragraph should be considered at all, but they need not be addressed since Ms. Mejias seeks the higher of that amount or the amount sought by the AGC.

[55] As discussed above, Air Canada's position on quantum is an award to Ms. Mejias of $7,500. I find that reasonable and appropriate having regard to:

a) the principles set out in the cases cited above in paragraph 47;

b) the effort put into this case by Ms. Mejias, which was not insignificant;

c) the fact that there is no evidence of any foregone income arising from her participation in this case; and

d) the circumstances of this case and the Rule 400(3) factors.

VI. Quantum to be awarded to the AGC

[56] The AGC submitted a bill of costs in support of its request for fees and disbursements totalling $33,511.61.

[57] There is one significant wrinkle with that bill of costs, which is no fault of the AGC. Subsequent to that bill of costs being submitted, Tariff B was replaced by the *Rules Amending*

the Federal Courts Rules and the Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/2025-232. In this decision I refer to the version of Tariff B brought into force by this amendment as "New Tariff B". As a result of the transitional provision in section 13, New Tariff B applies in respect of costs that are awarded by Order made on or after the day on which the amendments came into force, which was December 21, 2025 (see also section 14). As a result, the AGC should have the opportunity to submit a bill of costs based on New Tariff B on the basis set out below. I will make one comment at this time. In the AGC's bill of costs, counsel fees are sought for second counsel, which I would not allow.

VII. Sanderson or Bullock orders

[58] Sanderson or Bullock orders have been made in the Federal Court. A Sanderson order was made by the trial judge and upheld by the Federal Court of Appeal in *Great Lakes Towing Co v North Central Maritime Corp*, 1990 CanLII 8044 (FCA) [*Great Lakes Towing*] at paras 24, 51; see also *Apple Computer Inc v Mackintosh Computer Inc* (1987), 12 FTR 287 (TD) [*Apple*] at paras 4, 7. However, there is not a well-developed body of reported Federal Court decisions dealing with orders of that nature. As a result, it is helpful to consider the Ontario jurisprudence where there is a well-developed body of case law on Sanderson and Bullock orders, including the decision of the Ontario Court of Appeal in *Moore v Wienecke*, 2008 ONCA 162 at paras 37-41, 45-50. *Moore* is a leading case on Sanderson and Bullock orders. I note that both Air Canada and the AGC rely on it (see Air Canada's Responding Submissions, para 32; AGC's Reply Submissions, para 12).

[59] The decision in *Moore* was aptly summarized in *Comrie Estate v Algra*, 2023 ONSC 1139 [*Comrie*], rev'd on other grounds 2023 ONCA 811 (Sanderson order analysis upheld, see paragraph 50):

> [15] In an obvious deviation from the normal course, in multiple defendant cases in which the plaintiff succeeds against some, but not all, of the defendants, in certain circumstances a court may order the unsuccessful defendant to pay not only the plaintiff's costs but also the costs of the successful defendant: *Moore (Litigation Guardian of) v. Wienecke*, 2008 ONCA 162 ("*Moore*"), at para. 37.
>
> [16] The purpose of this deviation is to alleviate injustice that can occur in certain circumstances: *Moore*, at para. 38. As stated by Carthy J.A. in *Rooney (Litigation Guardian of) v. Graham*, 2001 CanLII 24064 (ON CA), [2001] O.J. No. 1055 (C.A.), 198 D.L.R. (4th) 1 ("*Rooney*"), at para. 6:
>
> > The [rationale] behind both orders is the same. Where the allocation of responsibility is uncertain, usually because of interwoven facts, it is often reasonable to proceed through trial against more than one defendant. In these cases, a Bullock or Sanderson order provides a plaintiff with an appropriate from of relief.
>
> [17] There are two types of orders: a Bullock order directs the unsuccessful defendant to reimburse the plaintiff for the successful defendant's costs; and a Sanderson order directs the unsuccessful defendant to pay the successful defendant's costs directly: *Moore*, at para. 38.
>
> [18] The *Moore* decision established a two-step test for deviating from the normal course and entering a Sanderson or Bullock order: *Moore*, at para. 41. The first, or threshold step, asks whether it was reasonable for the plaintiff to sue multiple defendants in the same action: *Moore*, at para. 41. If the answer to this threshold question is yes, then the court must determine whether it would be fair to shift the costs from the plaintiff to the unsuccessful defendant: *Moore*, at para. 41.
>
> [19] In the court's exercise of discretion in determining the answer to the second step, four factors are relevant to consider, but should not be applied mechanically in every case: *Moore*, at

> para. 45. They are identified in *Moore*, at paras. 46 – 50, as follows:
>
> 1. whether the defendants tried to shift responsibility onto each other as opposed to concentrating on meeting the plaintiff's case?
>
> 2. whether the unsuccessful defendants caused the successful defendant to be added as a party?
>
> 3. whether the actions against the successful defendant and the unsuccessful defendant were independent of each other?
>
> 4. whether the plaintiff has the ability to pay?
>
> [Emphasis added]

[60] In *Rooney (Litigation Guardian of) v Graham*, 2001 CanLII 24064 (ON CA) [*Rooney*], Justice Carthy stated:

> [7] A Bullock or Sanderson order has been said to be inappropriate when an independent cause of action is alleged against each defendant, for example when one is based in contract and the other in tort, or when separate actions have been instituted against each defendant. See *Scarboro Golf & Country Club Ltd. v Scarborough (City) (No. 2)* (1986), 1986 CanLII 2707 (ON SC), 57 O.R. (2d) 202, 32 D.L.R. (4th) 732 (H.C.J.) and *Dellelce Construction & Equipment v Portec Inc.* (1990), 1990 CanLII 6858 (ON SC), 73 O.R. (2d) 396 at p. 442, 44 C.P.C. (2d) 165 (H.C.J.).
>
> [8] In my view, these authorities do not provide a blanket rule that a Bullock or Sanderson order can never be made when the causes of action are independent, or when separate actions are instituted. Although such circumstances may indicate the appropriateness of these orders, and will at times be determinative, each case must be assessed on its own facts. The proper approach to issuing a Bullock or Sanderson order will consider each case in its context. Thus, there may be times where the causes of action are independent or the actions separate, but it is nevertheless fair that the responsible defendant be called upon to pay for the inclusion of others in the trial proceedings.

[61] Each of the two steps in the analysis set out in *Moore* are discussed below.

[62] Before discussing those two steps, it is useful to comment on an argument advanced by Ms. Mejias on the test. She argues that Air Canada's reliance on *Moore* is misplaced, and that *Moore* articulates a different test than is set out in *Great Lakes Towing* and in *Apple*. While it is the case that *Moore* uses some different terminology, with two steps in the analysis, and outlines four factors for consideration in the second step, there is significant overlap between it and the way in which the test is described in *Apple* at paragraph 4. I consider the analytical framework from Moore useful to apply. In any event, the result would be the same using the three steps as described in *Apple*.

A. *First step – Was it reasonable for Ms. Mejias to sue multiple defendants in this action?*

[63] To state the obvious, since Ms. Mejias succeeded against Air Canada at trial, it was reasonable for her to have sued Air Canada.

[64] The AGC was initially not named as a defendant. The action was commenced against only one defendant, Air Canada. After a number of steps in the litigation, including Air Canada producing documents, providing its answers to written examination for discovery questions, and providing a response to a request to admit, Ms. Mejias brought a motion seeking to add the AGC as a defendant and for leave to amend the statement of claim. That motion was granted by Case Management Judge Horne by Order dated November 8, 2021. It should be noted that although that Order is part of the pertinent chronology, it is not significant for the purposes of assessing whether it was reasonable for Ms. Mejias to claim against the AGC. Case Management Judge Horne was applying a different test; he was not considering whether it was reasonable for Ms.

Mejias to assert a claim against the AGC. Similarly, for the purposes of the present analysis, it is not significant that Air Canada did not oppose that motion.

[65] Having regard to the circumstances of this case, it was reasonable for Ms. Mejias to add the AGC as a defendant. Those circumstances include Air Canada's defence and the positions it asserted, including that:

a) it was not at fault;

b) its agents at the Airport entered the Visa information of Ms. Mejias and the Children into the Air Canada system and did not receive an "OK to Board" message (note that the Trial Judgment found that the Visa information was not entered into the system, without which there could be no meaningful response from the system (see paras 54-55, 58));

c) as a result of which the Air Canada agent contacted the Canada Border Services Agency [CBSA] (note that the Trial Judgment found that this was not why the Air Canada agent contacted the CBSA (see paras 58, 62)); and

d) as a result of that, the Visas were cancelled; and because the Visas were cancelled, Air Canada denied boarding to Ms. Mejias and the Children.

[66] The position of Air Canada, and the information and evidence that it provided, put into question the conduct and actions of both the CBSA and Immigration, Refugees and Citizenship Canada [IRCC]. Air Canada's position was maintained through trial. A few examples from Air

Canada's closing submissions at trial illustrate this point (see the Written Submission on the Law of the Defendant Air Canada dated June 10, 2024, at paras 27, 32, 54-57).

B. *Second step – Would it be fair to shift the costs from Ms. Mejias to the unsuccessful defendant, Air Canada?*

[67] As explained in the case law set out above, there are four factors to be considered in assessing whether it would be fair to shift the costs from the plaintiff to the unsuccessful defendant, although they should not be applied mechanically in every case. Each of those factors is discussed below:

a) *Whether the defendants tried to shift responsibility onto each other as opposed to concentrating on meeting the plaintiff's case* – While both defendants focused on meeting Ms. Mejias's case, and neither explicitly stated that the other should be found liable, each defendant tried to meet her case by asserting that they were not at fault and that they were relying on the other. In that way, the defendants were each trying to shift responsibility onto the other. In the case of Air Canada, its position was that it did nothing wrong, and that Ms. Mejias and the Children were denied boarding because the CBSA cancelled their Visas. The AGC's position was that neither the CBSA nor IRCC did anything wrong, and that the CBSA relied upon the preliminary assessment of the Air Canada agents and the information provided by them.

b) *Whether the unsuccessful defendant caused the successful defendant to be added as a party* - Yes, it was the positions of Air Canada, and the information and evidence that it provided, that caused the AGC to be added.

c) *Whether the actions against the successful defendant and the unsuccessful defendant were independent of each other* – The claims against Air Canada and the ACG were not independent of each other. While there were different causes of action asserted against each, they arose from the same circumstances and the facts were interwoven. In reaching this conclusion I am guided by the following: *Comrie* at para 16; *Rooney* at paras 6 and 8; *Pinsonneault v Phair*, 2024 ONSC 6971 at paras 6-8.

d) *Whether the plaintiff has the ability to pay* – Ms. Mejias made no submissions on this point. There is no basis to conclude that she does not have the ability to pay.

[68] As noted above, these factors should not be applied mechanically in every case, and the determination is discretionary (*Moore* at para 43; *Comrie* at para 19). As stated in *Rooney* at paragraph 8, "[t]he proper approach to issuing a Bullock or Sanderson order will consider each case in its context."

[69] Having regard to the circumstances of this case, including the four factors discussed above, I conclude that a Sanderson order should be made, requiring Air Canada to pay the AGC's costs directly.

[70] I reach this conclusion without factoring in that the AGC accepted the Plaintiff's Offer, which was a reasonable offer, and that the only reason this action did not settle is that Air Canada did not accept that offer. Having said that, it is an additional consideration in favour of a Sanderson order being made.

VIII. Additional comments and conclusions

[71] Ms. Mejias is awarded costs of $8,290.56, consisting of $7,500, plus disbursements of $790.56. These costs are to be paid by Air Canada.

[72] I note that there appears to have been an issue between Ms. Mejias and Air Canada regarding payment of amounts awarded to her under the Trial Judgment. Whether there is merit in that, and whether it was a matter of timing or some other issue, I do not know. I mention it to explain what I will do to hopefully avoid any issues between Ms. Mejias and Air Canada regarding payment of the costs award. I am setting a deadline by which the costs award is to be paid to Ms. Mejias and addressing how it is to be paid.

[73] Regarding the AGC's costs, these are to be paid directly by Air Canada. Since the AGC is being given the opportunity to submit a bill of costs based on New Tariff B, and since the issue of who is required to pay the AGC's costs has now been determined, it may be beneficial to provide Air Canada and the AGC with an opportunity to attempt to resolve the matter of those costs. This is addressed below.

ORDER in T-1251-19

THIS COURT ORDERS that:

1. Air Canada shall pay costs to Ms. Mejias in the total amount of $8,290.56. Unless otherwise agreed to in writing by Ms. Mejias and Air Canada, such costs are to be paid by way of certified cheque, bank draft or money order, by no later that April 30, 2026.

2. Air Canada shall pay costs to the AGC in an amount to be determined if those two parties are unable to resolve that matter. By May 15, 2026, Air Canada and the AGC shall submit a joint letter to the Court which shall indicate whether or not they have resolved the matter of costs (without any details relating to same), and if not, a proposed timetable for: a) the AGC to serve and file a bill of costs based on New Tariff B; and b) submissions of Air Canada and the AGC relating to same.

"John C. Cotter"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1251-19
STYLE OF CAUSE:	NAZARELYS PAULA MEJIAS TURMERO v. AIR CANADA ET AL.

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS:	COTTER A.J.
DATED:	MARCH 31, 2026

WRITTEN SUBMISSIONS BY:

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