

SECTION 37 COMPLAINT CANADA LABOUR CODE

PLEASE PRINT CLEARLY - Refer to Information Circulars No. 11-05 and *Virginia McRae Jackson et al.*, [2004] CIRB no. 290, posted at http://www.cirb-ccri.gc.ca/decisions/index_e.asp. These reference materials may also be obtained from the CIRB's regional offices.

Complainant

NAME:	KEVIN GAUTHIER		
ADDRESS:	12-53 RD ST. WASAGA BEACH, ONTARIO L9Z 1W8		
TELEPHONE NUMBER(S):	705 429 3097	FAX:	
EMPLOYMENT - DATE OF HIRE	02/17/98		
DATE OF TERMINATION (IF APPLICABLE)	JANUARY 31, 2006		
NAME OF REPRESENTATIVE OR COUNSEL, if applicable:	N/A		
ADDRESS:	N/A		
TELEPHONE NUMBER(S):	N/A	FAX:	N/A

Bargaining Agent

NAME OF UNION:	AIR CANADA PILOTS ASSOCIATION		
ADDRESS:	6299 AIRPORT ROAD, SUITE 205 MISSISSAUGA, ONT. L4V 1N3		
TELEPHONE NUMBER(S):	905 678 9008	FAX:	905 678 9016
NAME AND POSITION OF UNION REPRESENTATIVE:	GREG EDWARD LEC VICE CHAIR (PREVIOUS TERM) ACPA PRESIDENT KENT WILSON, ACPA PAC CHAIR ALLAN GRAHAM, ACPA MEC		

Employer

NAME OF COMPANY:	AIR CANADA		
ADDRESS:			
TELEPHONE NUMBER(S):		FAX:	
NAME AND POSITION OF COMPANY REPRESENTATIVE:			

General information concerning this complaint:

a. Nature of the incident (check all that apply)

- Termination of employment
- Other disciplinary action
- Seniority rights
- Collective bargaining issue
- Grievance not referred to the grievance procedure
- Grievance not referred to arbitration
- Union did not communicate its decision to you
- Other (specify):

b. Grievance (attach copy of grievances and responses - if available)

Date filed: PLEASE REFERENCE PAGES 4-15 SECTION ONE AND SUPPORTING DOCS

Name of the union official who agreed or refused to file this grievance:

GREG EDWARD, KENT WILSON, ACPA MEC

Articles of the collective agreement alleged to have been breached (attach the collective agreement or relevant extracts): PLEASE REFERENCE PAGES 4-15 AND SUPPORTING DOCUMENTS

c. Date the union's alleged violation came to your attention:

PLEASE REFERENCE PAGES 4-15 AND SUPPORTING DOCUMENTS

d. If this application is being filed more that 90 days after the union's alleged violation came to your attention, explain the reasons for the delay in filing this complaint:

PLEASE REFERENCE PAGES 4-15
AND SUPPORTING DOCUMENTS

e. Having reference to Reasons for decision no. 290, the union's actions were (describe only the applicable violation):

- Arbitrary
- Discriminatory
- In bad faith

Please explain why:

PLEASE REFERENCE PAGES 4-15
AND SUPPORTING DOCUMENTS

f. Oral hearing requested:

- Yes
- No

Please explain why:

ONLY IF REQUESTED BY OTHER PARTIES

Provide in chronological order a summary of the facts and circumstances in support of this complaint and the name of any witnesses for each occurrence:

PLEASE REFERENCE PAGES 4-15 (SECTION ONE)

A Chronological summary of the facts and circumstances of this complaint.

Summer 2003 - noticed a change in company procedure ie: ramp personnel begin the practice of opening the cabin door prior to {left}engine shut down. Shortly thereafter Air Canada {AC} begins to experience 'rollbacks' {unintentional movement of a/c at gate of arrival.}

I become convinced the premature opening of the cabin door is linked to the onset of 'rollbacks'.

December 10, 2003 I forward an ASR {air safety report} to FLT OPS and copy it to Acpa.{pgs 1&2}

January 8, 2004 I was 'written up' for first time by crew scheduler. Later that morning in discussions with A320 manager Jay Musselman, I was able to demonstrate an error/oversight on behalf of the scheduler. I then inquired as to whether my manager was familiar with the ASR I had filed in December {as I had received internal correspondence classifying the status of the ASR as an "action required" {pg 3}. During this conversation Mr. Musselman advised he had considered my ASR, however determined it would be best to leave the ramp SOP's {standard operating procedures} to ramp personnel. I found it difficult to accept my manager's reasoning and let him know that I had spoken to three supervisory pilots and had done everything in my power to make these concerns known. I viewed management's lack of regard for this issue as a "breach of confidence" and soon thereafter began having difficulties in my relationship with employer.

June 8, 2004 - telephone call by crew schedulers at 3:35 am. I was unable to accept this assignment as I was not adequately rested. Crew schedulers wrote me up. This is a first time refusal/experience and I was advised by A320 manager Jay Musselman ' just as long as it doesn't become a habit'.

June 18, 2004 - several telephone calls from crew schedulers between 03:00hrs and 03:30 am while on a layover in Vancouver. These calls were followed up with 'guest services' banging on my door at 03:35 am.

June 19, 2004 - complained to crew scheduling manager that middle of the night calls were becoming very disruptive and affecting my ability to sleep. I suggested if they continued I would be bringing the issue up with the Vice President of Operations.

June 21, 2004 - 2030hrs advised crew scheduler I was unable to accept a four day assignment due to a medical appointment with specialist {Dr. K. Wilkins} on June 23, 2004. Shortly thereafter I noticed I was removed from the company payroll for the following four day period. {pg 4} At approx. 2100hrs I telephoned Chief Pilot Derek Clarke at his home. The Chief Pilot advised me to get an Acpa representative and meet with Management.

June 22, 2004 - mid day conversation with YYZ {Toronto} LEC Vice Chair Brian Murray. Mr. Murray suggested this should be a 'non issue' however it was necessary to here them{management }out. Also discussed these developments with a fellow crewmember with 'pilot assistance'. {pg 7 }

June 22, 2004 - 2100 hrs. Consulted with fellow employee Kevin Vaillant. {Kevin held a previous representative position within Acpa} I emailed Kevin a copy of a drafted letter to my {physiatrist} Dr. Kathryn Wilkins {pgs 5&6}. Kevin recommended that I speak with Pilot Assistance individual David Noble. Kevin also advised that being removed from the payroll did not conform to the protocol of 'progressive discipline' and further expanded on this protocol. It was also recommended that I be represented by YYZ Lec Vice Chair Greg Edward. {pg 7}

June 23, 2004 - 9:15 am - doctor appointment with Dr. K. Wilkins. I forwarded the {attached} letter of same date. Dr. Wilkin's prescribed "Bextra" and recommended physiotherapy.

June 23, 2004 10:30 am spoke with LEC Vice Chair Brian Murray. {pg 7} Mr. Murray advised that I call FLT OPS Manager Jay Musselman. Mr. Murray also suggested I book off sick. I informed Mr. Murray I was unable to heed his advice. Given the circumstances I did not believe it was appropriate to communicate with management/ crewscheduling as I had been removed from the payroll and advised by immediate supervisor to get representation and meet with management.

June 23, 2004 - 11:45 am - discovered high blood pressure. Discovering HBP was a lifetime first. {pg 7}

June 23, 2004 - 1300hrs. Spoke with {pilot assistance} employee David Noble. I faxed Mr. Noble a copy of my letter to Dr. Wilkins. Mr. Noble also suggested I talk with LEC Vice Chair Greg Edward. {pg 8}

June 24, 2004 - visited with family doctor {Dr. J. Lane} advising of my concerns with HBP and difficulties at work. Also underwent physiotherapy and spoke with Mr. Edward. {pg 9} Although I did not make specific notes on these discussions, I believe this is the day I shared with Mr. Edward that I did not consider myself 'fit' for duty as I was under considerable stress, not sleeping well and suffering from high blood pressure. I also expressed a concern over the companies unwillingness to action the 'action required' status on the ASR previously filed. At one point Mr. Edward questioned the relevance of this former issue and suggested it as somewhat of a 'red herring'.

June 28 , 2004 12:45 pm - consulted with Acpa representative Greg Edward. {pg 9} Mr. Edward advised code '146' should not have been used and will have it removed.

Mr. Edward also stated that Chief Pilot Derek Clarke acknowledged the inappropriateness of removing me from the payroll, however it had been done to get my 'attention'. Mr. Edward also advised that I should expect a letter on 'file' but may have it removed after two years. It was also advised that I should contact David Noble and discuss the possibility of me seeing Dr. Craig Wilson at AC Medical Services. It was suggested that this doctor might be more proactive in communicating with Management my back condition {disability} than my previous AC physician. It was suggested that management's lack of awareness of this medical condition may have attributed to this particular situation. Mr. Edward also requested that I meet with Acpa and Management at the 'Days Inn' suite 205 on June 30, 2004. I agreed to meet with Mr. Edward at 11:30 am and Management at 13:30 hrs. I then expressed the concern that 'schedulers' attempted to contact me on at least two occasions {this same day ie pg 9} to award an 'assignment' for the following day {June 29, 2004}. Mr. Edward advised me not to talk with crew scheduling under any circumstances and assured he would call crew scheduling and inform them that I was not available/fit for duty. Mr. Edward also advised he was leaving on a flying assignment the same day and assured me he would make the necessary call before he left.

June 28, 2004 - 13:40 crew scheduling calls again {Clement}. Then at 16:33 hrs crew scheduling calls again {Robert} and assigns me pairing T 3371 {a west coast turn} the following day. I was told to consider myself 'advised'. {pgs 4 & 10}

June 28, 2004 - 1800hrs spoke with David Noble from Pilot Assistance. Mr. Noble suggests that I make arrangements to see Dr. Craig Wilson. I indicated to Mr. Noble that I would call the following day {June 29}. I also shared concern over being assigned flying duties especially after my conversation with Greg Edward. {pg 10}

June 28, 2004 - 2200hrs. It occurred to me that I was in a very 'compromising' position, as it was very difficult to imagine that Mr. Edward would not have informed the 'powers to be' that I was not available/fit for duty. I was also concerned the following morning flight would be delayed {as a result of me not showing}. In considering the significance of 'not reporting for duty', I decided it prudent to go against the recommendations of my representative and telephoned crew scheduling and booked off sick. It is also worth noting that this same day was 'our' eighteenth wedding anniversary. Instead of sharing what should have been a 'joyous' occasion with my wife, we were both very 'troubled' and overcome by a feeling of betrayal. The impending sense was that I had just been 'set up'. It was a very uncomfortable and eerie feeling to say the least!

June 29, 2004 - 0900 hrs. Mr. Edward telephoned and indicated that he had spoken to both a crew scheduling Manager and A320 Manager Jay Musselman. Both parties suggested I did the right thing in booking off sick - and there wasn't an issue with this. He went on to suggest that the company just wanted to meet with me and it was unlikely that a letter would be put on my file. {pg 11} I was nearly overcome with an overwhelming sense of despair. I recall expressing my disappointment with the manner in which this affair had been handled, and, being so upset that I was barely able to speak as my mouth

had become parched. I then proceeded to advise Mr. Edward that I would not be meeting with either Dr. Craig Wilson or AC Management until I was well enough to report for duty. The conversation ended. A few minutes later I realized I had not asked Mr. Edward if he had placed the call as suggested the previous afternoon. At 09:40 am {pg 11} I called Mr. Edward and asked if he had indeed spoken to crew scheduling the previous day in regard to my being unavailable/fit for duty. Mr. Edward stated he did not. I did not ask Mr. Edward why he had not done so. {In retrospect - I suspect posing this question would have forced Mr. Edward to offer an explanation - however the last thing I wanted to hear at this point was a fabrication of the truth from someone who's actions/lack thereof, had caused me considerable harm}. That Mr. Edward did not offer an 'explanation' is something I find very 'disturbing' to this day.

At 15:45 hrs David Noble and I spoke at length on what had just transpired. Mr. Noble advised me to keep a 'log' and my GP "in the loop". {pg 15}
 {In hindsight I will say I have had plenty of opportunity to dwell on what I may have done to deserve this kind of 'representation'. This experience has caused me to reflect on experiences of past and I would like Acpa and AC Management to know that I have not knowingly advanced comments/actions intended to bring 'harm' or insult to others. If there is anything that I have done/said to offend anyone in the association / company then I apologize for whatever it is that has offended others.}

Having said this, I do not suspect any action/comment generated from 'within', has given this association/representative the authority to disregard a "duty of fair representation". Given the circumstances I expect Mr. Edward briefed the appropriate Acpa officials of these events. That I did not hear anything further on the subject is highly suggestive the actions of Mr. Edward were 'justified/accepted' within Acpa rank. I view the above related experiences as a "breach of confidence and trust" in Acpa.

The aftermath of these events has been an extremely difficult period.

Question 'b' requests a copy of grievances and responses.

Although there is no actual hard-copy of a grievance in existence, I assert the completion of the 'grievance process' was preceded by a 'cease of communications' resulting from the perceived 'breach of confidence and trust'. {I would like to inform the board that I have worked with many companies in several sectors of industry over the course of my lifetime, and although I have been a member of various unions in the past, I have no previous 'grievance' experience nor am I familiar with this process.} Frankly, after the events of the latter part of June 2004, the grievance process simply did not enter my mind. What did occur to me was a feeling of betrayal, discomfort, shock and disbelief. My initial and most important concern was my health. Once the initial shock had subsided somewhat I decided it was appropriate to observe the advice given by Mr. Noble and make an appointment with AC Medical Services. On July 20, 2004 I visited Dr. Craig Wilson and later the same day visited with my family physician Dr. J Lane. My family physician was somewhat surprised that I would consult with a company physician at this time. I advised Dr. Lane

that Dr. Wilson suggested I may be suffering from an 'adjustment disorder' and possibly 'sleep apnea'. As Dr. Wilson also recommended that I seek 'counseling', I advised Dr. Lane that I intended following the recommendations of Dr. Wilson. Dr. Lane made a referral to respiralologist Dr. C. Tebbutt and I made arrangements to meet with Dr. R. Heaman, a psychologist practicing in Barrie, Ontario

On August 25, 2004 I began pyschotherapy with Dr. Heaman and I shared my relationship with Air Canada. One of the issues discussed was the difficulty I was having accepting Management and Acpa's disregard for the circumstances involving 'rollback' incidents. Interestingly, two days later I received the following internal Acpa/FLT OPS OSH bulletin {in the same block casing as below}:

"PLEASE BE ADVISED THAT THE OSH POLICY COMMITTEE HAS RECEIVED SAFETY CONCERNS WITH REGARD TO THE SETTING OF THE AIRCRAFT PARK BRAKE AND SUBSEQUENT ROLLBACKS.

WITH HEALTH AND SAFETY IN MIND ENSURING THAT THE PARK BRAKE IS SET AS PER SOPS PROTECTS ALL THOSE INVOLVED.

PLEASE BE GUIDED ACCORDINGLY."

The above bulletin was submitted by two OSH policy committee co-chairs. {pg 19}
As I was quite familiar with the circumstances that caused these 'rollbacks', I was not convinced a simple reminder via the above noted bulletin was going to be enough of a precautionary measure to bring these specific incidents to a halt. I had seen this same kind of 'internal neglect' happen once before in the aviation industry {outside of AC} and it was very disturbing to witness the continuation of such a serious occurrence/incident. This did not 'sit well' with me and I made this known to my doctors and several others outside of the 'industry'.

On January 10, 2005 I submitted a detailed account of my experiences to the Air Canada Board of Directors. {pgs 20 -36 and pgs 1-4}

Before advancing areas of the 'collective agreement' that may have been breached, I would first refer to the Employee Assistance Program and make reference to the 'requirements' of constructive interview skills when conducting 'corrective interviews'. As Acpa representative Greg Edward was involved in this process, I would expect that he was familiar with the recommendations of the interview process: {pg 37}

Four of several requirements are listed below:

- Leave the diagnosis and possible treatment to professionals
- Be supportive
- Avoid meaningless threats
- Not betray confidence

I also make the contention that several of these experiences may be in breach of a number of violations of the Canada Labour Code although I will not reference this Code in this complaint.

With regard to the 'collective agreement' I make the claim that Acpa failed to comply with several requirements of the 'constitution' and reference the following : {pg 38}

"We the pilot's of Air Canada recognize that our first and greatest responsibility is to the safety, well-being and comfort of the passengers entrusted to our care. With this responsibility in mind, the Air Canada Pilot's Association embraces the motto

Safety with Integrity

and adheres to the principals set forth in this Preamble." and

"Accordingly, the association is dedicated to ensuring an equal voice for all Air Canada Pilots in the management of our relationship with our employer and the regulatory bodies, and in the continued efforts to promote the well-being of our membership and their families."

and to

"Strive to ensure a working environment that is safe, healthy and rewarding.

Protect and enhance the career expectations of all members of this Association.

Maintain an organizational structure that ensures the elected officials are always accountable and responsive to the Membership."

and - under objectives: {pg 39}

"To protect and safeguard the rights of individual members and to promote the interests of the airline piloting profession.

To promote and maintain the highest standard of flight safety in the aviation industry.

The Master Executive Council shall consider ... the adequate representation of all members. {pg 42}

The Master Executive Council shall consist of the President, Master Executive Council Chair, the Secretary-Treasurer and the Local Executive Council Chairs and Vice Chairs. {pg 45}

The Master Executive Council shall be the highest governing body of the Association.

The President shall: consult with and be assisted by other Officers of the Association in pursuing the objectives and policies of the Association." {pg 45}

and... from Acpa's Home Page {on it's website}

"The Air Canada Pilots Association (ACPA) was founded to further the best interests of the Air Canada Pilots...

The Air Canada Pilots Association is organized and directed by the membership, for the benefit of the membership, and is founded on the principle of providing each member, to the maximum extent practical, an opportunity to direct the Association's leadership in the conduct of its affairs...

The Association's Constitution seeks to establish a system of checks and balances that will allow this voice to be clearly heard, yet ensure the goals and responsibilities of the Association can be accomplished effectively and efficiently...

ACPA was founded by pilots to improve their professional lives, and it continues to be governed by pilots with the same aim. The Association is a representational democracy in which the ultimate power lies with its individual members. Its organizational structure is built on a framework of checks and balances that provides a ladder of elected pilot representation leading directly from the individual to the highest level. There can be no unilateral decisions, no minority rule, no arbitrary establishment of policy. Instead, the identity of the individual is maintained, with channels for the expression and fulfillment of his opinions and desires, while preserving the unity of the organization through adherence to its Constitution and Policies...

Only Active members in good standing may hold elected office. All officers at every level of representation, including the President, continue to maintain their proficiency and to fly the line. This ensures that the leadership of the Association remains closely in touch with the daily realities of the airline piloting profession and is able to truly reflect the needs and wishes of the membership. It also demands a high level of dedication from elected officers, all of whom volunteer their time and receive no additional pay for their service to ACPA...

What does ACPA do?

ACPA's activities are divided between its members' professional and industrial interests, between safety and contractual matters. In fact, the two are often inextricably linked and complementary. Over a half century of experience in promoting and protecting pilot interests and concerns, the Air Canada Pilots' efforts have been of benefit to the airline industry as a whole, to the travelling public, and to all pilots, whether members or not. ACPA takes an active role in shaping the future of Canadian aviation.

Just a few of the areas where the Air Canada Pilots have been instrumental in bringing about improvements and continue to be active are:

- Maximum flight and duty times, working conditions and safety rules.
- Realistic proficiency and medical standards.
- Improved insurance and retirement benefits.
- Better training.
- Safe transportation of dangerous goods by air.
- Federal legislation under which problems can be solved, grievances processed and jobs protected.
- Airport disaster planning.
- Aviation security.
- Accident investigation.

On an ongoing basis, ACPA provides its members with fair representation in collective bargaining and the administration of the employment contract, in order to protect the pilots' interests and to ensure fair and equitable treatment of individuals. ACPA strives to be a powerful and independent force in all flight safety matters and is instrumental in establishing and maintaining appropriate safety standards, nationally, through consultation with the regulatory authorities and airlines. It provides an Air Canada Pilots voice in dealings with the government, and as a spokesperson to the public. Above all, through its activities the Association offers the individual pilot the opportunity to shape the future of his profession.

HOW DOES ACPA WORK?

ACPA is structured so that its control remains vested with individual members, whose opinions and votes form the foundation of the Association. While power is delegated to elected representatives, all lines of authority trace directly back to the individual members. Each level derives its authority from those who have elected it. Thus, while ACPA acts as a cohesive, collective unit, there can be no dictatorial powers exercised and no infringement of individual rights and privileges.

In the administration of the employment contract, the LEC and MEC representatives will deal with Air Canada management, with ACPA providing expert labour relations and legal assistance should it be required...

The Association's concern for safety reflects its professional role and the legal responsibilities of its members...

In all its endeavors, ACPA's safety organization reflects the input and needs of its members. It is regularly consulted by and works closely with Air Canada and the regulatory authorities on numerous issues to ensure a safe and efficient air transport system. Indeed, flying is now the safest mode of transportation precisely because of the cooperative approach taken by all parties to it. However, there can be no room for complacency. ACPA's Technical and Safety Division constantly seeks to uncover and

correct any weaknesses in the air transport system, a task that is becoming more demanding in the deregulated and rapidly expanding Canadian airline industry...

Legal

ACPA provides legal services to members, when required, in most areas of concern to a pilot. Outside legal services are normally engaged, in order to provide assistance and advocacy with regards to grievance arbitration (except expedited arbitration) and labour board matters. Lawyers may also be hired by the MEC to work on specific cases involving license issues, MOT enforcement actions, CAT appeals, and third party litigation related to the performance of work. Such legal assistance is provided at the discretion of the MEC, and will depend upon whether the MEC views the legal action as being in the interest of the individual pilot and the Association as a whole...

Mission Statement

We, the pilots of Air Canada, recognize that our first and greatest responsibility is the safety, well-being and comfort of the passengers entrusted to our care. With this responsibility in mind, the Air Canada Pilots Association embraces the motto *Safety with Integrity* and adheres to the principles set forth in this statement.

Code of Ethics

An airline pilot will keep uppermost in his mind that the safety, comfort and well-being of the passengers who entrust their lives to him are his first and greatest responsibility.

An airline pilot will faithfully discharge the duty he owes the airline which employs him and whose salary makes possible his way of life.

An airline pilot will accept the responsibility as well as the rewards of command, and will at all times so conduct himself, both on duty and off, as to instill and merit the confidence and respect of his crew, his fellow employees and his associates within the profession.

An airline pilot will conduct his affairs with other members of the profession and with the Association in such a manner as to bring credit to the profession and the Association as well as to himself.

To an airline pilot his profession is dear, and he will remember that his own character and conduct reflect honour or dishonour upon the profession."

In response to question 'c' the breach of confidence and trust with Acpa occurred at the end of June 2004 and remains to this present day.

In response to question 'd' I have stated my responses to the events of June 2004.

I would add however, that a constant concern of not being 'represented' is cause for considerable stress and anxiety. Sometime after the developments of June 2004 I began seeking legal representation that would be able to provide me with assistance in these matters. This became an exercise in futility and indeed - to this very day I have been unable to find a lawfirm willing to represent me. I have also requested assistance from mediation experts... all to no avail. It should be noted however that limited assistance did come from two individual lawyers who agreed to an initial consultation in the autumn of 2005. The first lawyer advised I had no complaint against either my employer or union and recommended not to filing a complaint against the union to the CIRB {pgs 54 & 55}. The lawyer of the second consultation {pg 60} encouraged me to 'break the impasse' and resolve outstanding differences with Acpa or bring my concerns to the CIRB. {hence my letter of November 22, 2005 {pg 65} and subsequent Acpa correspondence {pgs 66 - 112} It should also be noted that neither lawyer exercised the liberty of viewing available documentation.

On February 14, 2006 I was informed via email correspondence the "improper/unsafe" use of the parking brake at the gate is still an ongoing issue. {pg 93} That this 'unnecessary hazard' continues to thrive is testament to the vulnerability and weakness of an infrastructure that is incapable of addressing a situation that has been prevalent since the summer 2003. Soon after learning of this I began the somewhat arduous task of preparing a document to forward to the RCMP.

On March 3, 2006 I was advised: {pg 108}

““ACPA has no ability to reinstate your benefits. The Company will not do this either unless you comply with the contractual obligations regarding an IME (independent medical evaluation). I can think of no way to around this except possibly through pilot assistance. Should you work with them and they feel progress is being made with your case, they may be able to persuade the company medical department to reinstate your benefits.

My part has so far been to try and communicate to you your options.

There is little more I can do for you at this time.”

In response to question 'e' I offer the following:

I feel Acpa has acted in bad faith and demonstrated an arbitrary and discriminatory manner in doing so. Arbitrary because much of what has taken place is contrary to protocol and should not have happened in the first place. When the inappropriateness of these actions were made known to Acpa there should have been an effort to stop these reprisals - at once. Discriminatory, because both AC Management/ Medical Services and Acpa were aware of my back disability yet chose to leave me off the company payroll when there was clearly no justification for doing so. This should not have been any more clear than after sharing my back disability, high blood pressure and excessive stress with Acpa. Clearly,

the neglect in 'protocol' and my health care requirements at the time, should have been enough to convince my representative that a 'first ever' request for assistance was not too much to ask.

I have stated Acpa has demonstrated an act of bad faith. Given the circumstances I can't help but wonder whether Acpa deliberately conspired with management in order to either force me into 'booking off' or place me in the position of 'not reporting for duty'. I make this contention now because I have had plenty time to consider why this may have taken place. First, the company demonstrated an unwillingness to follow 'protocol' in not releasing me from duty - so that this meeting could take place. This is evident in management's decision to utilize code 146 and Acpa's inability to have this 'reprisal' rectified from the onset. Secondly, and no less disturbing, is the fact that by 'forcing the book off' I would be meeting with Management and Acpa while on 'sick days'. I believe the company {with the support of Acpa} viewed this as a form of reprimand and, in itself, would not only satisfy the requirement of "getting my attention", but would also serve the purpose of preventing me from being 'paid' while awaiting this meeting. Another motive may be the vulnerability generated by 'not reporting for duty'. Obviously following the direction of my 'representative' may have potentially exposed me to greater reprimand and/dismissal {pgs 113 & 114}. {Although this correspondence is from March and April 2005 it supports the possibility of termination had I not booked off sick.} The only sense I can make out of this, is that Acpa {and management} were put in an 'uncomfortable' position when I advanced concerns toward aircraft rollbacks to both parties' attention. Offering an explanation for these 'incidents' may have identified 'weakness within', and the resulting failure to recognize and stop these incidents from occurring. That both parties demonstrated an inability/unwillingness to take the necessary precautions in preventing rollbacks from occurring {before and after the events of June 2004} is testament to these conclusions. This may also lend support to Acpa's refusal in commenting on my removal from the payroll {post June 2004} and virtually no comment to date on the issue of "rollbacks".

I am also forwarding a complaint against Acpa's President Kent Wilson for not responding to requests mailed between March 10, 2005 and November 22, 2005 {pgs 61-65}. Please consider an email correspondence received from Acpa on February 22, 2006 {pg 99}.

"Captain Wilson acknowledges receiving correspondence from you which he forwarded to the Toronto LEC. Because it is not his role or responsibility to deal with individual issues, he sent this to the appropriate people namely the Toronto LEC. It is obvious that you were not satisfied with how the Toronto LEC dealt with you at that time. I will not make excuses for their actions but it is worth noting that they were dealing with the CCAA process at the time. As a result, I suspect that your case fell through the cracks."

I contend President Wilson had an obligation to ensure my concerns were responded to - even if these responses were to come from someone other than himself. These requests were submitted to the President via Canada Post with a signature required and, are in harmony with the following recommendations of legal counsel:

“If at any time you have issues with your union, you should address your concerns in writing with your union steward or union president, if the union steward is not helpful.”
 {pg 55}

To somehow suggest the President was not responsible for ensuring a ‘follow up’ and/ an acknowledgment of my correspondence, lends to Acpa’s neglect of ‘duty of fair representation’. Also to accept that LEC Vice Chair Greg Edward or anyone else at Acpa allowed my case to fall “through the cracks” because of the CCAA process is something I am simply not able to accept. {pg 99} Yes - we all had our concerns with respect to the CCAA process, however I am not aware this removes the requirement of a ‘duty of fair representation’.

I also forward a complaint that Acpa’s Pilot Assistant Committee Chair Allan Graham refused to implement the Emergency Response Program. {pg 99 and pgs 115 & 116} To refuse to implement this program is to suggest my ‘health and well-being’ and ‘career’ are not worthy of this program’s intent.

I also forward a complaint against the entire MEC for it’s failure in providing this member a ‘duty of fair representation’ and failing to bring charges against those members that failed in their duty of fair representation. On February 2, 2006 the entire MEC was forwarded a very detailed 19 page description of events up to and including that time frame {pgs 85-87 only the first three pages of this correspondence is attached}. That I was advised on more than one occasion that the continuation of ‘benefits’ were no longer dependent on an IME but were assured to be reinstated if I were to ‘start a process through pilot assistance’ is very disturbing {pgs 96 & 99}. It is disturbing because Management and Acpa have hinged the ‘continuation’ of benefits’ to a voluntary and confidential program. Please consider the words of MEC Chair John Scott in the MEC Newsletter of March 15, 2005 in referencing Acpa’s Pilot Assistance Program: {pg 113}

“Our program exists to support the pilots and is a voluntary and confidential program. Pilot Assistance can only function as it does if the program is able to maintain its integrity and confidentiality in the eyes of the pilots.”

On March 28, 2006 I submitted a twenty page letter to the Federal Investigation Unit with several supporting documents. {pgs 117 -138}

Finally, I make the claim that Acpa’s failure to adequately represent me is cause for significant irreparable damage. Significant, because it has jeopardized my career as an airline pilot. Irreparable, because a lack of resolve on Acpa’s part in addressing developments from the onset, brought on the present day ‘situational crisis’ that continues to cause considerable stress and anxiety. {pg 139}

Describe the orders or remedies being sought from the Board:

PLEASE REFERENCE Pg 17

List all documents in chronological order that support your complaint and provide a copy with this complaint form:

PLEASE REFERENCE Pg 17 (SECTION ONE) AND

1. PAGES 1-139 OF SECTION TWO

2.

3.

Describe the orders or remedies being sought from the board:

I am asking the CIRB to consider a decision that will assist in providing 'closure'.

This "situational crisis" and the associated stress and anxiety generated from these circumstances is doing nothing to resolve this situation. Under the circumstances I do not feel I am able to consider employment elsewhere as I continue to remain consumed and hamstrung by the present 'status quo'. I am not able to return to work for this employer and/ be represented by Acpa. That I am no longer in receipt of disability benefits has not helped resolve this situation.

List all documents in chronological order that support your complaint and provide a copy with this complaint form.

Pages	SECTION TWO	NOTE: PLEASE REFERENCE PAGE NO'S AT TOP CENTRE OF PAGE
1,2	Air Safety Report of December 10, 2003	
3	Internal Correspondence	
4	June 2004 schedule	
5,6	Letter to Dr. Wilkins	
7-18	Handwritten 'log'	
19	ACPA/FLT OPS OSH BULLETIN	
20-36	Letter of January 10, 2005	
37	Employee Assistance Program reference	
38-53	Acpa Constitution reference	
54,55	Legal Response ie from Ian Werker	
56-59	No pages	
60	Legal Response ie from Steven Rastin	
61-64	Letter of March 10, 2005 - ACE President and ACPA President	
65	Letter of request to ACPA President	
66	Letter of request to Pilot Assistance Committee Chair	
67-112	Internal email correspondence between myself and ACPA {Jan 13- Mar 6/06}	
113	MEC NEWSLETTER 2005 # 04	
114	Labour Relations Report - April 2005 - 'Progressive Discipline'	
115,116	Letter to the Federal Parties' Leaders - cc to PAC Chair	
117-138	Letter to the RCMP Federal Investigations Unit - cc to several parties.	
139	Personal Physicians diagnosis of March 10, 2006	

(Add additional pages if necessary)

Signature:

Kevin Mautner

Date:

April 11, 2006



AN ASR REPORT MUST BE FILED WITHIN 24 HOURS FOLLOWING A SAFETY RELATED EVENT

1. CAPTAIN <i>JIM ROWAN</i>			2. BASE <i>442</i>		3. EMPLOYEE # <i>78860</i>			
4. FIRST OFFICER <i>KEVIN GAUTHIER</i>			5. BASE <i>442</i>		6. EMPLOYEE # <i>33804</i>			
7. RELIEF PILOT			8. BASE		9. EMPLOYEE #			
10. DATE OF OCCURRENCE <i>10 DD / 12 MM / 03 YY</i>		11. TIME LOCAL / UTC DAY / NIGHT		12. FLIGHT # ACA		13. ROUTE FROM TO DIVERTED		
16. AIRCRAFT TYPE		17. REGISTRATION / FIN C /		18. PASSENGERS / CREW /		19. FUEL DUMPED LBS / KGS		
21. ALTITUDE (CLIMBING, LEVEL, DESCENDING) FL / FT			22. SPEED / MACH # /		23. AIRCRAFT WEIGHT LBS / KGS		24. SNAG # / ATA CODE /	
14. SQUAWK		15. ATC FACILITY		20. ETOPS YES / NO				

25. TYPE OF EVENT (MARK ALL THAT APPLY)

AIRMISS / ATC INCIDENT (SEE BACK OF FORM)
 TCAS / RA (SEE BACK OF FORM)
 WAKE TURBULENCE WINDSHEAR (SEE BACK OF FORM)
 BIRDSTRIKE (SEE BACK OF FORM)
 GO-AROUND
 ASR (SEE ASR FOLDER FOR LISTING)

26. FLIGHT PHASE

FLIGHT PLANNING PREFLIGHT ENGINE START TAXI OUT TAKE OFF REJECTED TAKE OFF INITIAL CLIMB
 EN ROUTE CLIMB CRUISE DESCENT APPROACH GO-AROUND LANDING TAXI-IN
 ARRIVAL/ENGINE SHUTDOWN POST-FLIGHT FLIGHT CLOSE

27. MET		28. ACTUAL WEATHER WIND VIS CLOUD TEMP ALTIMETER			29. SIGNIFICANT WEATHER MODERATE / SEVERE RAIN / SNOW / ICING / FOG / TURBULENCE HAIL / STANDING WATER / WINDSHEAR		
30. RUNWAY		31. RUNWAY STATE DRY / WET / ICE / SNOW / RVR.....			32. CONFIGURATION AUTO PILOT / AUTO THROTTLE / GEAR / FLAP / SLAT / SPOILERS		

33. SUMMARY (TYPE OF EVENT - USE MANDATORY REPORTING EVENT LIST IF APPLICABLE) *NUMBERS 4, 5, 32, 33*

DEPLANING PASSENGERS WITH AN ENGINE OPERATING

34. EVENT DESCRIPTION (DETAILED DESCRIPTION OF THE EVENT)

DO ALL INDIVIDUALS LISTED ABOVE WANT FLIGHT SAFETY TO SEND A COPY OF THIS ASR TO ACPA TECH SAFETY? YES NO

DID YOU ADVISE DISPATCH OF THIS INCIDENT? YES NO

TO MY KNOWLEDGE, THE ONLY PUBLICATION REFERING TO ARRIVAL PROCEDURES AT A GATE (SPECIFICALLY, OPENING OF THE PASSENGER DOOR / OTHER EXTERNAL DOORS, ONLY AFTER ENGINES ARE SHUT DOWN AND ANTICOLLISION LIGHTS ARE SELECTED OFF) IS PUBLICATION 72 CH 5 Pg 8. See ATTACHED.

TO ENSURE THIS PROCEDURE IS BEING COMPLIED WITH, (ESPECIALLY IN ADVERSE WEATHER CONDITIONS RE: SLIPPERY RAMP & GUSTY WINDS), IS IT POSSIBLE TO HAVE IT INCLUDED IN THE FOM AND 356 MANUAL (SEP)

OTHER INFORMATION (AND SUGGESTIONS FOR PREVENTATIVE ACTION)

FILING INSTRUCTIONS:

After Completion:

FIRST: FAX 1-905-676 - 4739 (FRONT ONLY)

THEN: Within 24 hours, submit the original ASR to the Flight Safety Department via:
 1. COMAIL (preferred)
 2. SURFACE MAIL

IF: IN EXCEPTIONAL CIRCUMSTANCES TELEPHONE 1-866-SAFETY-LINE (Use only in North America)

IF: YOU WISH A REPLY SENT TO AN E-MAIL ADDRESS, PLEASE PROVIDE THIS E-MAIL ADDRESS (BELOW).

Address:

COMAIL: FLIGHT SAFETY, YYZ 2468

SURFACE MAIL:

AIR CANADA
 CORPORATE SAFETY & ENVIRONMENT
 P.O. BOX 6002
 TORONTO AMF, ONTARIO L5P 1B4
 ATTN: FLIGHT SAFETY, YYZ 2468

Kevin Gauthier

SIGNATURE

jiggars@rogers.com

E-MAIL ADDRESS (Optional)

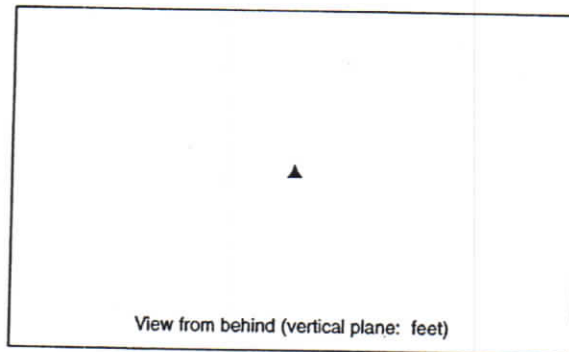
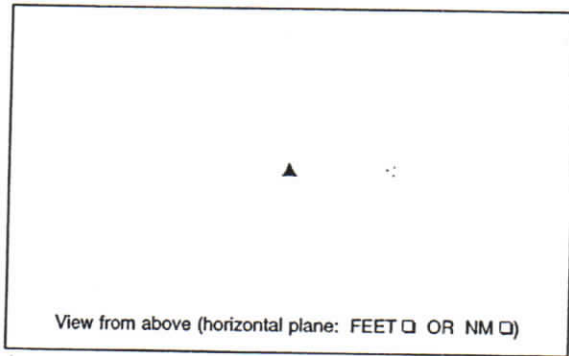
F/O

POSITION

AIRMISS - ATC INCIDENT - TCAS RA - WAKE TURBULENCE - BIRD/WILDLIFE STRIKES

36. AIRMISS / ATC INCIDENT AND/OR TCAS RA

Mark passage of other aircraft relative to you, in plan on the left and in elevation on the right, assuming YOU are at the center of each diagram.



SEVERITY OF RISK _____
 AVOIDING ACTION TAKEN _____
 REPORTED TO ATC _____
 ATC INSTRUCTIONS ISSUED _____
 YOUR CALL SIGN _____
 FREQUENCY IN USE _____
 CLEARED ALTITUDE _____
 ATC AGENCY _____
 TIME (UTC) _____ : _____ Z
 RELATIVE POSITION (EG, YYZ 225/20) _____
 ALTITUDE _____ FT / FL _____

LOW / MED / HIGH _____
 YES / NO
 FACILITY _____
 ACA _____
 _____ FT/FL _____
 _____ FT / FL _____

MINIMUM VERTICAL SEPARATION _____ FT
 MINIMUM HORIZONTAL SEPARATION _____ FT / NM
 TCAS ALERT _____ RA / TA / NONE
 TYPE OF RA _____
 RA FOLLOWED _____ YES / NO (VERTICAL DEVIATION _____ FT)
 WAS TCAS ALERT _____ NECESSARY / USEFUL / NUISANCE
 DESCRIBE:
 (OTHER AIRCRAFT TYPE, MARKINGS, COLOR, LIGHTING, CALLSIGN)

37. WAKE TURBULENCE

HEADING _____ DEG
 POSITION ON GLIDESLOPE _____ LEFT / RIGHT / NO
 POSITION ON EXTENDED CENTERLINE _____ HIGH / LOW / ON
 CHANGE IN ALTITUDE _____ LEFT / RIGHT / ON
 CHANGE IN ALTITUDE _____ PITCH _____ ROLL _____ YAW _____ DEG
 WAS THERE BUFFET? YES / NO _____ FT
 STICK SHAKER? YES / NO

WHAT MADE YOU SUSPECT WAKE TURBULENCE?

DESCRIBE ANY VERTICAL ACCELERATION

GIVE DETAILS OF PRECEDING AIRCRAFT (TYPE, CALLSIGN, ETC)

WERE YOU AWARE OF OTHER AIRCRAFT BEFORE INCIDENT? YES / NO

38. BIRD/WILDLIFE STRIKES

TYPE OF BIRD/WILDLIFE _____
 NUMBER SEEN/STRUCK _____ 0-10 >10 / 0-10 >10
 TIME _____ DAWN DAY DUSK NIGHT
 WAS TOWER NOTIFIED? YES NO
 FLT PHASE/RWY/LOCATION/HEIGHT _____ / _____ / _____ / _____
 (E.G., ARR / RWY23 / 1 NM / 300 FT AGL)

DESCRIBE IMPACT POINTS AND DAMAGE:

DEPARTMENT NOTES FOR OFFICIAL USE ONLY

INTERNAL CORRESPONDENCE INTERNE
CORRESPONDANCE

Air Canada



Flight Safety

15/Dec/2003

33804 GAUTHIER K S

A-320 F/O YYZ

Dear F/O GAUTHIER,

Thank you for submitting your Report. This information has been included in the Air Canada Safety Information System (ACSIS), which is used to monitor all Air Safety Reports for significant trends.

If you feel the information may be useful, you may wish to fill out a 'Confidential Human Factors Questionnaire' which is available at all flight crew bases. While filling out this form is not mandatory, your efforts in completing the form will further aid Flight Safety at Air Canada.

An investigator is available to discuss any aspects of your event or the human factors team may be contacted in confidence.

Your report has been categorized as follows:

ASR Ref: 779/03/320
OPERATING

Title: DEPLANING PASSENGERS WITH AN ENGINE

Flight: AC

Date: 10/Dec/2003

Location:

Status: ACTION REQUIRED

The status "ACTION REQUIRED" indicates that this report is being further investigated. Once the investigation is complete you will be issued a copy of the final report.

Thank you for your interest in the flight safety program.

Yours sincerely,

Captain Bill Curtis
Director, Flight Safety