



# Travelling with Non-Congruent Government Identification

Submitted to the Parliamentary Standing Committee on  
 Transportation, Infrastructure and Communities (TRAN)  
 Re: changes to the *Aeronautics Act (2011)\*\**

by Jan Buterman on behalf of the

Trans Equality Society of Alberta  
 PO Box 2053 Edmonton Main  
 Edmonton AB T5J 2P4  
 tesaonline.org | info@tesaonline.org

## Table of Contents

Introduction.....	2
Purpose.....	2
Materials.....	3
Methods.....	3
Outbound journey.....	3
Return journey.....	4
Data & Results.....	4
Analysis.....	5
Lack of clarification in the Act.....	5
Impact on the Charter & Human Rights Act.....	6
Beyond borders.....	6
Conclusion .....	6
References.....	7
Appendices.....	8
Identification & displayed features.....	9

## Introduction

In February 2012, Mr. Jan Buterman, chair of the Trans Equality Society of Alberta (TESA), travelled by airline through Edmonton-Toronto-Ottawa to meet with MP Dany Morin, the Associate Critic for LGBT issues for the New Democratic Party, regarding recent regulatory changes to the *Aeronautics Act* (2011, July 29).

The Trans Equality Society of Alberta (TESA) formally protests the lack of clarity regarding wording in the amended *Aeronautics Act* (2011, July 29) which states,

*Aeronautics Act* (2011), Section 5.2 (1):

An air carrier shall not transport a passenger if

- (a) the passenger presents a piece of photo identification and does not resemble the photograph;
- (b) the passenger does not appear to be the age indicated by the date of birth on the identification he or she presents;
- (c) the passenger does not appear to be of the gender indicated on the identification he or she presents; or
- (d) the passenger presents more than one form of identification and there is a major discrepancy between those forms of identification.

TESA notes that items (c) and (d) could expose some transgender, transsexual, and gender non-conforming Canadians to undue scrutiny and hardship in Canadian airports that could result in lack of access to air travel.

## Purpose

Trans individuals face numerous barriers to accessing congruent government-issued identification documents, with policies, regulations, and law that are inconsistent between provincial and federal governments as well as inconsistent between governmental departments within the same strata of government. Please see Reid (2012) for a simplified overview of obtaining air travel documents for trans Canadians (<http://www.tesaonline.org/simplified-air-travel-chart.html>).

The purpose of this journey was two-fold:

1. To bring formal attention to concerns of interest to trans-identified Albertans to an elected official with direct interest in concerns related to LGBT issues, and
2. To better determine the extent that the 2011 regulatory change impacts a trans-identified person's ability to travel within Canada by deliberately travelling with non-congruent government-issued identification documentation.

## Materials

Mr. Buterman carried several pieces of government-issued identification during his journey along with common named items such as student identification and debit/credit cards. Most of the government-issued documents were either incongruent with his gender presentation or had no sex markers. Note: for the purpose of this investigation, Mr. Buterman chose not to use his provincial Operator's (driver's) licence for identification purposes.

See Appendix 1, *Identification & Displayed Features* (p. 8) for more details regarding the features displayed on each type of identification. Language used to describe these features is in accordance with International Civil Aviation Organization (2006) descriptors used in *Doc 9303: Machine Readable Travel Documents*.

## Methods

As a domestic airline passenger, Mr. Buterman must present government-issued identification. Like many Canadians, Mr. Buterman has several pieces of government-issued identification. However, unlike many Canadians, much of his documentation is non-congruent.

For his journey, he had the option to present:

*Identification Requirements* (2011, May 19):

- One piece of valid government-issued identification that includes a photograph and the passenger's name, date of birth and gender; OR
- Two pieces of valid government-issued ID without photographs showing the passenger's name, date of birth and gender; OR
- A Restricted Area Identity Card (RAIC) (a smart card issued to airport workers).

## Outbound journey

For his outbound journey from Edmonton (YEG) to Toronto (YYZ) and thereon to Ottawa (YOW), Mr. Buterman chose to present two pieces of non-photographic identification. These documents were:

- Alberta birth certificate
- Alberta health care insurance card

These two pieces of identification had congruent names [Jan Lukas Buterman] but conflicted regarding sex/gender (see Appendix 1, *Identification & Displayed Features*, p. 8, for more details regarding identification features). According to the *Aeronautics Act* (2011) Section 5.2 (1) “An air carrier shall not transport a passenger if ... (c) the passenger does not appear to be of the gender indicated on the identification he or she presents ...” and (d) “the passenger presents more than one form of identification and there is a major discrepancy between those forms of identification.”

## Return journey

For his return journey from YOW to YYZ to YEG, Mr. Buterman chose to present one piece of photographic identification. This document was:

- Canadian passport

This single piece of identification included Mr. Buterman's photograph that matches his appearance and his signature; however, both his listed name was his former (female) name and the sex marker still indicated F [Female]. Again, the document presented was not in compliance with Section 5.2 (1)(a) as well as Section 5 (2)(b) requiring the air carrier to “compare the name on the passenger's boarding pass with the required identification.”

## Data & Results

All gate attendants checked Mr. Buterman's presented identification against his boarding pass. All gate attendants passed him for proceeding to board the aircraft without comment regarding his identification's non-compliance with Section 5.2 (1)(c) and 5.2 (1)(d) of the Identity Screening Regulations of the *Aeronautics Act* (2011). Mr. Buterman then drew attention to these discrepancies as follows,

- “Can I ask you something? What about the discrepancy between the sex markers?” [outbound],  
or
- “Can I ask you something? What about my name and sex marker not matching?” [return]

**Table 1: Outbound travel with government-issued non-congruent identification**

Item(s)	Location	Presentation	Response
Birth certificate, health insurance card	YEG	Before preboarding was called, gate agent explicitly requested anyone with questions or special needs to please come forward to discuss. Mr. Buterman complied with that request, presenting his identification and asking the agent to check if it was acceptable.	The agent accepted the identification. When the discrepancy was pointed out and the concerns regarding the relevant sections of the <i>Aeronautics Act</i> , the agent indicated concern that such requirements could pose problematic for some travellers and engaged in a brief discussion about adjunct issues related to difficulties obtaining congruent government-issued identification. The agent indicated confidence in Mr. Buterman's identity and offered to bring the issue forward within the air carrier as part of committee duties the agent performed within that carrier.  Mr. Buterman's identification was re-checked by the same agent during actual boarding to ensure audit compliance.
Birth certificate, health insurance card	YYZ	Preboarding called without any prior requests to passengers. Mr. Buterman joined regular boarding lineup, presenting his identification at his turn.	The agent accepted the identification. When the discrepancy was pointed out, the agent responded, “I'm going to let that pass this time.” Attempting further engagement with the agent resulted only in firm repetition of the same statement, followed by “But you may have trouble on future flights, no guarantees.” The agent would not engage in discussion on the matter nor made any further queries as to why the identification might not be compliant.

**Table 2: Return travel with government-issued non-congruent identification**

Item(s)	Location	Presentation	Response
Passport	YOW	Preboarding called without any prior requests to passengers. Mr. Buterman joined regular boarding lineup, presenting his identification at his turn.	The agent accepted the identification. When the discrepancy was pointed out and the concerns regarding the relevant sections of the <i>Aeronautics Act</i> , the agent re-checked the boarding pass and took note of the discrepancy between Mr. Buterman's male passenger listing, male gender expression, and the passport's female name and female sex marker. The agent passed over duties to a second agent and stepped aside with Mr. Buterman to discuss concerns with the <i>Act</i> as well as review other adjunct documentation such as an Alberta name change certificate that clarifies that the name on the passport was once Mr. Buterman's legal name. The agent expressed concern that some travellers might face these challenges particularly if a gate agent chose to behave in a prejudiced manner toward the passenger. The agent also offered that assessing such documentation was arbitrary and to some degree up to the discretion of the gate agent, thus being unfair to these travellers.
Passport	YYZ	Preboarding called without any prior requests to passengers. Mr. Buterman joined regular boarding lineup, presenting his identification at his turn.	The agent accepted the identification. Mr. Buterman chose not to bring discrepancies to the agent's attention and no further discussion ensued.

## Analysis

### ***Lack of clarification in the Act***

Mr. Buterman's lack of congruent government-issued identification is believed to be typical of many trans-identified Canadians. Under current regulatory language used within the *Aeronautics Act* (2011), such documentation poses problems for Section 5 (2)(b) requiring the air carrier to “compare the name on the passenger's boarding pass with the required identification,” as well as Section 5.2 (1)(c) to not allow the passenger to board the aircraft if “the passenger does not appear to be of the gender indicated on the identification he or she presents” and Section 5.2 (1)(d) “the passenger presents more than one form of identification and there is a major discrepancy between those forms of identification.”

On paper, the Act does not appear to make allowances for passengers who present identification with major discrepancies yet in practise, airline agents were clearly willing to make professional assessments of such identification and choose to allow the passenger to board. Additionally, it is unclear as to how such discrepancies are handled in the case of using machine-readable documents such as passports.

## ***Impact on the Charter & Human Rights Act***

TESA notes that relying on such assessments opens the potential for arbitrary decision-making on the part of each gate agent, thus creating opportunities for trans-identified travellers to be denied Charter rights regarding mobility (Section 6) and equality (Section 15). Additionally, the potential for arbitrary decisions to affect trans-identified travellers negatively also creates opportunities for these travellers to be denied access rights to services “customarily available to the general public” on the basis of sex (*Canadian Human Rights Act*, 1985, Section 5(b)).

## ***Beyond borders***

As trans-identified Canadians face substantial barriers to obtaining congruent government-issued identification across various departments and strata of government, these challenges place an unequal burden for such Canadians to access publicly-available air travel. As early as 2000, the Canadian Human Rights Act Review Panel, under the authority of the Minister of Justice and the Attorney General of Canada, reported that trans-identified Canadians had “significant difficulty obtaining changes to government documents” (p. 105) and recommended accordingly that gender identity be added explicitly to the *Canadian Human Rights Act* to help mitigate these problems. ICAO (2006, p. III-24) recommendations that all databases related to “breeder documents” [birth, marriage, and death certificates as well as driver's licences] be reconciled suggest that further discussion among these government departments and strata is urgently warranted.

## **Conclusion**

The concerns raised by amendments to the *Aeronautics Act* (2011) regulations help demonstrate the need for more explicit inclusion within Canadian policy, regulatory, and legal frameworks. While Mr. Buterman was able to complete his outbound and return journey without delay, most gate agents indicated concern about the regulations in place and supported further inquiry. The arbitrary nature of the documentation verification process during travel makes reviewing and reworking these regulations necessary to ensure that all Canadians have equal access to secure, safe air transportation both within and beyond Canada's borders.

## References

- NDP. (n.d.). *Shadow Cabinet*. Retrieved from <http://www.ndp.ca/shadow-cabinet>
- Government of Canada. (1985). *Canadian Human Rights Act* [R.S.C., 1985, c.H-6]. Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-3>
- Government of Canada. (1982). *Constitution Act--Part I: Canadian Charter of Rights and Freedoms*. Retrieved from [http://laws.justice.gc.ca/eng/charter/CHART\\_E.PDF](http://laws.justice.gc.ca/eng/charter/CHART_E.PDF)
- Government of Canada. (2011, July 29). *Identity Screening Regulations* (SOR/2007-82). Retrieved from <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2007-82/page-2.html#h-5>
- Government of Canada. (2011, July 29). *Regulations Amending the Designated Provisions Regulations and the Identity Screening Regulations* [Aeronautics Act, P.C. 2011-830]. Retrieved from <http://www.gazette.gc.ca/rp-pr/p2/2011/2011-08-17/html/sor-dors156-eng.html>
- Government of Canada. (2011, May 19). *Passenger Protect: Identification Requirements*. Retrieved from <http://www.passengerprotect.gc.ca/identity-requirements.html>
- International Civil Aviation Organization. (2006). *Doc 9303 Machine Readable Travel Documents: Part 1: Machine Readable Passports* [Sixth edition]. Retrieved from [http://www.icao.int/publications/Documents/9303\\_p1\\_v1\\_cons\\_en.pdf](http://www.icao.int/publications/Documents/9303_p1_v1_cons_en.pdf)
- La Forest, G., Black, W. W., Dupuis, R., & Jain, H.C. (2000). *Promoting Equality: A New Vision* [report by the Canadian Human Rights Act Review Panel]. Ontario, Canada: Attorney General of Canada. Retrieved from <http://publications.gc.ca/collections/Collection/J2-168-2000E.pdf>
- Reid, A. (2012). *Simplified overview of obtaining air travel documents for trans Canadians*. Retrieved from <http://www.tesaonline.org/simplified-air-travel-chart.html>

## Appendices

- Identification & displayed features

## Identification & displayed features

Identification and displayed features carried by Mr. Buterman during his journey to and from Edmonton-Toronto-Ottawa.

**Table 3: Government-issued non-congruent identification presented at gate**

Item	Issuer	Biographical Data		Personalisation		Presented at Gate
		Marker	Name	Portrait	Signature	
Birth certificate	XX	XX	XX	none	none	YEG, YYZ
Health insurance card	XX	XX	XX	none	none	YEG, YYZ
Passport	Canada	XX	XX	yes	yes	YOW, YYZ

**Table 4: Supplemental government-issued identification carried**

Item	Issuer	Biographical Data		Personalisation		Presented at Gate
		Marker	Name	Portrait	Signature	
Name change certificate	XX	none	former and present names	none	none	YOW
Social insurance card	Canada	none	XX	none	none	YEG
Operator's licence	XX	XX	XX	yes	yes	never

**Table 5: Non-governmental documentation carried**

Item	Issuer	Biographical Data		Personalisation		Presented at Gate
		Marker	Name	Portrait	Signature	
Doctor's letter	XX	none	XX	none	none	never
Student identification	XX	none	XX	yes	yes	never
Other (debit/credit cards)	various	none	XX	none	yes	never

XX = anonymized personal information

**\*\* Note:** This document was reformatted in 2014 to reflect a change in mailing address and formatting standards. Personal information has been anonymized. All other contents of this document remain unaltered.