

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

-and-

**CANADIAN TRANSPORTATION AGENCY**

Respondent

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**MEMORANDUM OF FACT AND LAW OF THE RESPONDENT  
ATTORNEY GENERAL OF CANADA**

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**Overview**

1. During the onset of the COVID-19 pandemic, passengers and air carriers found themselves in unprecedented situations, with flights at a standstill and passengers uncertain as to recovery of their travel costs where flights were cancelled for situations outside of the air carriers' control. In response, the Canadian Transportation Agency (the "CTA") exercised its discretion to provide non-binding guidance to air carriers and passengers: passengers should be compensated; vouchers were a possible means of compensation; and, passengers could bring complaints to the CTA and each case would be dealt with on its own merits.
2. The Applicant has incorrectly characterized this guidance as a biased and bad faith decision by the CTA to mandate vouchers and favour air carriers over the rights of passengers. There is no support in fact or law for this position.
3. This application should be dismissed. The matter is not subject to judicial review under section 28 of the *Federal Courts Act*, and the Applicant should not be given the public interest standing necessary to bring the application as they are unaffected by the matter raised. Further, the tests for apprehension of bias and bad faith are not met.

## Part I – FACTS

### A. Parties to the Application

4. The Applicant ‘Air Passenger Rights’ is organization operated by Dr. Gabor Lukacs, an “air passenger rights advocate” who has previously appeared, and attempted to appear, before this Court, the Federal Court, and the CTA, in matters related to air travel.<sup>1</sup>
5. The Attorney General of Canada (the “AGC”) appears pursuant to a Decision of this Court at the outset of the application that the AGC was the appropriate Respondent, having regard for the *Federal Courts Act*, the *Federal Court Rules*, and the allegations brought by the Applicant.<sup>2</sup>
6. The Intervener CTA is an independent, quasi-judicial tribunal and economic regulator, created under the *Canada Transportation Act*<sup>3</sup> (the “*Transportation Act*”) to deal with, among many things, matters involving air transportation and airline obligations to passengers. The CTA was initially named as a respondent in this matter. Following the Court Order that the AGC was the appropriate respondent, the CTA sought and received status as an intervener. At this Court’s direction the CTA has submitted a factum setting out its jurisdiction and role.<sup>4</sup>

### B. COVID-19 in March 2020

7. The unprecedented events that led to this proceeding were summarized by the Honourable MacTavish, J.A. in her May 22, 2022 Decision denying the Applicant a preliminary injunction.<sup>5</sup>
8. Justice MacTavish began by noting that the airline industry and airline passengers were seriously affected by the COVID-19 pandemic. International borders were closed, travel

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<sup>1</sup> Applicant’s Record, vol. 1, Affidavit of Dr. Gabor Lukacs.

<sup>2</sup> *Air Passenger Rights v Canada (Attorney General)*, 2021 FCA 112 (CanLII) at [paras 11-14](#).

<sup>3</sup> [Canada Transportation Act, SC 1996, c 10](#). (as amended)

<sup>4</sup> *Air Passenger Rights v Canada (Attorney General)*, 2021 FCA 201 (CanLII) at [paras 32-39](#).

<sup>5</sup> [Air Passengers Rights v Canada \(Transportation Agency\)](#), 2020 FCA 92 (CanLII).

advisories and bans had been instituted, people were not travelling for non-essential reasons, and airlines had cancelled numerous flights.<sup>6</sup>

9. In response to the unprecedented situation, the CTA had placed two documents on its public website: the first was a “Statement on Vouchers” (the “Statement”), that suggested that it could be reasonable for airlines to provide passengers with travel vouchers when flights were cancelled for pandemic-related reasons, rather than refunding the monies that passengers paid for their tickets.<sup>7</sup> The second document was an “Information Page” that provided details of the CTA response to the pandemic, including suspension of dispute resolution activities and adjustments to the *Air Passenger Protection Regulations* (the APPR)<sup>8</sup> which did not at that time require air carriers to provide a refund to passengers under situations outside of the air carrier’s control.<sup>9</sup> The Information Page included a reference and link to the Statement.
10. The Statement noted the extraordinary circumstances facing the airline industry and airline customers because of the pandemic, and the need to strike a “fair and sensible balance between passenger protection and airlines’ operational realities” in the circumstances of that time. The Statement observed that passengers who have no prospect of completing their planned itineraries “should not be out-of-pocket for the cost of cancelled flights”. At the same time, the Statement acknowledged that airlines facing enormous drops in passenger volumes and revenues “should not be expected to take steps that could threaten their economic viability”.<sup>10</sup>
11. The Statement confirmed that any complaint brought to the CTA would be considered on its own merits. The Statement goes on to state that generally the CTA believes that “an

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<sup>6</sup> *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 (CanLII) at [para 1](#).

<sup>7</sup> *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 (CanLII) at [para 2](#).

<sup>8</sup> Applicant’s Record vol 1, Lukacs affidavit, Exhibits 36-37, reproduced as Appendix “A” to this memorandum for convenience.

<sup>9</sup> *Air Passenger Protection Regulations*, SOR/2019-150, (version in effect as of March 2020), [ss 10\(3\)](#); *Air Passenger Protection Regulations*, SOR/2019-150, as amended, [s 10](#) and specifically [ss 10\(3\)\(c\)](#); *Direction Respecting Flight Cancellations for Situations Outside of Carrier’s Control*, [SOR/2020-283](#).

<sup>10</sup> *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 (CanLII) at [paras 5-6](#).

appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time”. The Statement then suggests that a 24-month period for the redemption of vouchers “would be considered reasonable in most cases”.<sup>11</sup>

12. The Statement was subsequently amended<sup>12</sup> and then archived from the CTA’s internet site.

## **Part II - ISSUES**

13. This application raises the following issues:
  - a. Whether Judicial Review under section 28 of the *Federal Courts Act* is available;
  - b. Whether the Applicant has standing to bring the present application;  
and,
  - c. In the alternative,
    - i) Whether the Statement issued by the CTA was reasonable
    - ii) Whether the Applicant has satisfied the test for reasonable apprehension of bias, or established their allegations of bad faith.

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<sup>11</sup> *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 (CanLII) at [para 7](#).

<sup>12</sup> Applicant’s Record, vol. 1, Lukacs affidavit, page 91, para 185, Exhibit 119.

### Part III - SUBMISSIONS

#### A. Judicial Review is Not Available Under S.28

14. This application for judicial review is intrinsically flawed. There is no matter, decision, or order, that falls with s. 18.1(1) of the *Federal Courts Act*.
15. The *Federal Courts Act*, ss. 28(1)(k), sets out the Court of Appeal’s specific jurisdiction to hear an application for judicial review of decisions by the CTA. The *Canada Transportation Act* (the “*Transportation Act*”) ss 41(1) provides for appeals from the CTA to the Federal Court of Appeal on question of law or jurisdiction, with leave.<sup>13</sup>
16. The Court has found that for a matter to be subject to judicial review under *Federal Courts Act* ss.28(1), it must affect legal rights, impose legal obligations, or cause prejudicial effects.<sup>14</sup>
17. The Statement, on its face, does none of these things.
18. It is clear from the evidence, and a plain, reasonable reading of the Statement, that the CTA, faced with an unprecedented world-wide situation, issued the Statement as non-binding guidance. The Statement does not represent any decision by the CTA. There is no finality on any subject. The text itself states that any future decision will be determined “on its own merits”.<sup>15</sup> The very reference to future decisions makes clear that the Statement does not amount to an actual decision.
19. Furthermore the Statement does not determine any right or impose legal obligations. Air travelers retain all options available to them under the *Transportation Act* and the *Federal Courts Act*. The Statement in no way denies anyone anything. Similarly, it imposes no legal

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<sup>13</sup> [Canada Transportation Act, ss 41\(1\)](#)

<sup>14</sup> [Democracy Watch v Canada \(Attorney General\), 2021 FCA 133 \(CanLII\)](#).

<sup>15</sup> Applicant’s Record vol 1, Lukacs affidavit, Exhibits 36-37, reproduced as Appendix “A” to this memorandum for convenience.

obligations on traveler, airline, or other party. The Applicant has failed to deduce any evidence of any situation where, as a result of the Statement, a complaint to the CTA was dealt with in a manner that was procedurally unfair or lacked natural justice.

20. Unsworn third-hand statements reproduced in the Applicant's affidavit, related to complaints about the actions of third parties outside of the CTA's control, are irrelevant to the present matter and amount to hearsay at best.<sup>16</sup>
21. An individual denied a refund for air travel, by an airline relying on or referring to the Statement, would, under the *Transportation Act*, have recourse to a complaint before the CTA. The Statement is clear that such complaints would be judged on their own merits.
22. Were an individual unsatisfied with a CTA decision on a complaint, appeal under s.41(1) of the *Transportation Act*, or judicial review by this Court, would be available to them as an appropriate applicant, a member of the public with an actual stake in the facts and outcome.
23. Finally, the Notice of Application states that the Applicant "...makes application for...a declaration that: (a) the Agency's Statement is not a decision, order, determination, or any other ruling of the Agency and has no force or effect of law;"<sup>17</sup>
24. The Respondent agrees that the Statement is of no force or effect. The statement itself says so, and this request for relief is asking the Court of Appeal to state the obvious. The CTA has never stated nor acted otherwise. Courts only issue declarations that have a practical utility. There is nothing practical in stating the obvious, and such a request should be rejected.
25. In denying the Applicant an injunction at the outset of this matter, Justice MacTavish concluded that "...The statements on the CTA website also do not determine the right of

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<sup>16</sup> Applicant's Record vol 1, Lukacs affidavit, pages 92-98, paras 188-204.

<sup>17</sup> Applicant's Application Record, Notice of Motion, vol. 1, page 3.

airline passengers to refunds where their flights have been cancelled by airlines for pandemic-related reasons.”<sup>18</sup>

26. This is a full and complete finding, which, if accepted by the Court at this stage, is on its own sufficient basis to dismiss the application.

## **B. The Applicant should not be granted public interest standing**

27. The Applicant does not meet the requirements for public interest standing. To reject the Applicant’s claim of standing, it is sufficient for this Court to conclude that one branch of the test is not met. In the present case the Applicant fails in all three: (i) The application for judicial review raises no serious justiciable issues; (ii) The Applicant has no real stake or genuine interest in the issues raised; and, (iii) the application is not a reasonable nor effective means of bringing the issues before the courts.<sup>19</sup>

### **(i) No Serious Justiciable Issue**

28. As explained above there is no decision, matter, or order, susceptible to judicial review. This is sufficient grounds for public interest standing to be denied.<sup>20</sup>
29. Further, the Applicant’s ‘justiciable issue’ - apprehension of bias or misinformation - relies on characterizing non-binding CTA guidance as a final determination or bad faith attempt to mislead air passengers that they cannot obtain a refund. Neither characterization is accurate.

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<sup>18</sup> *Air Passenger Rights v Canada (Transportation Agency)*, 2020 FCA 92 (CanLII) at [para 24](#).

<sup>19</sup> *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524; *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27.

<sup>20</sup> *Ridgeview Restaurant Limited v Canada (Attorney General)*, 2010 FC 506 (CanLII), at [para 52](#).

30. The relevant facts are: COVID-19 struck, and the CTA put a statement on its internet site suggesting one way which a problem – one of many arising at the time - might be dealt with. In doing so, no law was invoked, no right infringed, and no member of the public prejudiced. The CTA’s communications reproduced in the Applicant’s Record demonstrate people doing their jobs in a crisis. Those jobs included receiving communications from various interested parties such as Transport Canada, airlines, and other groups. That the Applicant tries to insinuate that these communications are conspiratorial is irrelevant. The communications on their face demonstrate otherwise.<sup>21</sup>
31. The Lukacs affidavit includes four types of communications with the CTA<sup>22</sup>:
- a. Air carriers concerned with the form of refund to passengers;
  - b. Communications from third parties;
  - c. Transport Canada inquiring about possible responses to air carrier inquiries;
  - d. Internal CTA communications including communications about air carrier inquiries;
32. The first two types reasonably form a normal component of the CTA’s communications with stakeholders in normal times. It is hardly surprising that in the situation presented by COVID-19, air carriers and third parties operating in the travel industry sought guidance or assistance from the federal agency mandated by legislation to regulate air travel. The evidence – the same communications which the Applicant relies on - demonstrates that the CTA does not respond to the inquiries in any way that suggests favoritism or preferential treatment.
33. Similarly, communication with Transport Canada, as the Federal Government department whose mandate directly engages the CTA, should not come as a surprise, nor should the fact that some of the communications relate to responses to the crisis in progress. The CTA internal communications are simply evidence of the CTA dealing with the situation.

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<sup>21</sup> Applicant’s Record, vol. 1, Lukacs affidavit, pages 44-92.

<sup>22</sup> Applicant’s Record, vol. 1, Lukacs affidavit, pages 31-92

34. Importantly, none of the reproduced emails represent an actual decision, other than the eventual issuance of non-binding guidance. On its face this single document does not amount to a decision, matter, or order, susceptible to judicial review because it does not – indeed cannot - affect legal rights, impose legal obligations, or cause prejudicial effects. The Statement is of no force or effect.

**(ii) The Applicant has no genuine stake in the issue**

35. APR’s entitlement to standing, in reliance on Dr. Lukac’s affidavit, is not a foregone conclusion. Dr. Lukacs claims in his affidavit that he – and therefore APR - has a personal stake or interest in the issues raised, as an air traveler rights advocate.<sup>23</sup> However, he has also been denied standing where he had no involvement in prior closely related issues, as well as where he was not a complainant before the CTA.<sup>24</sup>

36. The unprecedented nature of the COVID-19 situation removes any possibility of prior similar involvement. The evidence shows that he was not a traveler in March 2020; he was not directly impacted by the Statement at any point; he is not seeking any form of refund from any airline for COVID-19 impacted travel; and, he does not actually represent anyone who was. He, and APR, have no actual stake, which is also sufficient grounds on its own for denial of public interest standing.

**(iii) The Application is not a reasonable nor effective means of bringing the issues before the Courts**

37. This present application is not reasonable nor effective because the outcome cannot have any actual impact on dealings between the CTA and any air traveler. The Statement, and Information Page, are now dated.<sup>25</sup> An actual appeal of a COVID-19 decision, or judicial

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<sup>23</sup> Applicant’s Record, vol 1, Lukacs affidavit, pages 16-29, paras 2-40.

<sup>24</sup> See for example *Lukács v. Swoop Inc.*, 2022 FCA 71, at [para 10](#).

<sup>25</sup> [Statement on Vouchers | Canadian Transportation Agency \(otc-cta.gc.ca\)](#)

review of an actual decision, might raise a genuine issue for deliberation and generate an outcome which upholds or changes how COVID-19 related complaints are handled by the CTA. If there is a justiciable issue, that issue may be raised by someone impacted by it, under a process set out in legislation with a direct path - via the *Transportation Act* or the *Federal Courts Act* - to this Court where the relevant facts and law may be raised.

38. Based on the foregoing, this Court should dismiss the application.

### **C. In the alternative, the Statement on Vouchers should stand**

39. In the alternative, should the Court of Appeal decide to consider the merits of the CTA's Statement for the purpose of judicial review, the Statement was reasonable and the application should be dismissed.

#### **(i) Standard of Review**

40. The standard of review for a discretionary decision is reasonableness.<sup>26</sup> The CTA's decision to issue non-binding guidance in the unprecedented COVID-19 situation was an exercise of discretion, made with regard for its role under the *Transportation Act*, with the benefit of its expertise and resources.<sup>27</sup> It merits interference by the Court only if the tests for apprehension of bias, or bad faith, are met.

#### **(ii) The Applicant's makes unfounded statements of fact**

41. The Applicant's affidavit and written submissions attempt to characterize events and communications as suspicious, even conspiratorial. Actions taken by airlines and other travel industry participants that were not under the control of the CTA are raised as

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<sup>26</sup> *Squamish Indian Band v Canada (Fisheries and Oceans)*, 2017 FC 1182 at [paras 43-44](#).

<sup>27</sup> *Air Passenger Rights v AGC*, 2020 FCA 92 at [para 34](#).

examples of impermissible communications despite the CTA's role requiring it to engage in communications with industry participants.<sup>28</sup>

42. Certain events set out in the Applicant's submissions<sup>29</sup> post-date the Statement being placed on the CTA website and cannot have formed any part of the CTA's decision to issue the Statement. Accordingly, while the events referred to – by example air carriers referring to the Statement<sup>30</sup> - are not disputed, much of the information relied on by the Applicant was not before the CTA at the relevant time, and reflects decisions made by third parties.
43. The Applicant's submission that the Statement was prompted by a Transport Canada email forwarding requests for assistance from various airlines<sup>31</sup> is not supported by the evidence and therefore, wholly unproven. It is clear from the record that the email was but one of many pandemic related communications sent at the relevant time.
44. The revisions made to the Statement and CTA internet site<sup>32</sup> reasonably reflect the ongoing response to the pandemic. There is no support for the Applicant's suggestion that the changes were made in response to this application.<sup>33</sup>

**(iii) Reasonable Apprehension of Bias is not relevant nor proven**

45. There is no basis to the Applicant's argument that the CTA had pre-judged all COVID-19 related complaints seeking refunds, and that this was done in order to favour airlines to the prejudice of air travelers.
46. The test for reasonable apprehension of bias as set out by this Court, is "what would an informed person, viewing the matter realistically and practically—and having thought the

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<sup>28</sup> Applicant's Record, vol. 1, Lukacs affidavit, pages 44-72.

<sup>29</sup> Applicant's Record, vol. 2, Memorandum of Fact and Law, page 1301, para 17.

<sup>30</sup> Applicant's Record, vol. 1, Lukacs affidavit, pages 90-91.

<sup>31</sup> Applicant's Record, vol. 2, Memorandum of Fact and Law, page 1298, para 4.

<sup>32</sup> Applicant's Record, vol. 1, Lukacs affidavit, pages 81 - 86, paras 161 – 169.

<sup>33</sup> Applicant's Record, vol. 1, Lukacs affidavit, pages 89.

matter through—conclude. Would they think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly?”<sup>34</sup>

47. The Statement reads plainly: each case before the CTA will be decided on its own merits and vouchers could be an option. No situation is a pre-determined certainty. The conjecture and suspicion in the Applicant’s Record do not alter the reality and practicality of these two points.
48. The Applicant’s assertion that the Statement can only be taken as an indication that the CTA has pre-judged all complaints in favour of the airlines is without merit. This position is simply unsupportable in view of the plain language of the Statement.
49. The Applicant’s argument relies on his own speculative analysis of the communications exchanged between the CTA and airlines, other industry players and Transport Canada. An argument that the CTA released the statement in response to requests for guidance or support from the airlines and to benefit them is not supported by the record.
50. The Applicant’s theory of the case disregards the CTA’s mandated role to communicate with airlines and others. In particular, in the midst of the onset of COVID-19, it was reasonable for the CTA to communicate with airlines, among others.
51. The Applicant implies that the only possible interpretation of the Statement is that vouchers were the only option available for cancelled flights. That interpretation is blatantly incorrect. The text of the Statement on its face contradicts this claim. In fact, no statement by the CTA on the record, or indeed anywhere, supports the Applicant’s interpretation.

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<sup>34</sup> *Gagnon v Canadian Association of Professional Employees*, 2023 FCA 59 at [para 25](#).

**(iv) No evidence of bad faith**

52. The Applicant's allegations that the CTA acted in bad faith by knowingly spreading 'misinformation' in the Statement should be rejected.<sup>35</sup> There is no basis in fact or law for the Applicant's argument that the CTA, in the Statement, was required to: recite its own jurisprudence; include an explanation of airline tariffs; address provincial consumer protection laws; and, explain the Statement's (purported) true purpose of protecting airlines from credit card chargebacks.
53. The Statement on Vouchers was, on its face, brief, non-binding guidance, provided in an unprecedented situation. It states explicitly that complaints will be judged on their own merits. There is no evidence before this Court that the purpose of the Statement on Vouchers was otherwise, nor that complaints would be dealt with in any way other than fairly. Decisions on all complaints are subject to appeal or judicial review if that were not the case.
54. The Applicant relies on the cornerstone decision in *Roncarelli v Duplessis*<sup>36</sup>. In discussing that case, Justice Shore of the Federal Court stated that the principle of bad faith requires an element of intent, and further requires more than error or omission, or even improper conduct.<sup>37</sup>
55. As evidence of intent, the Applicant points to communications between the CTA and the industry it regulates, as well as conduct by parties outside of the agency's jurisdiction. This is not evidence of bad faith. It is evidence of many parties grappling with the fallout of COVID-19 and the CTA attempting to fulfill its obligations to consumers and airlines. The record demonstrates only that, faced with this difficult task, the CTA did what it could in the circumstances.

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<sup>35</sup> Applicant's Record, vol. 2, Memorandum of Fact and Law, page 1329, paras 122-123.

<sup>36</sup> *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121, see [page 140](#).

<sup>37</sup> *Lavigne v Canada (Justice)*, 2009 FC 684 (CanLII) at [paras 61-62](#).

(v) **Issues with the relief sought**

56. The relief sought by the Applicant in their Notice of Motion<sup>38</sup> further demonstrates that this application is improperly conceived and should be dismissed.
57. The relief sought is a declaration that the Statement is not a decision, order, or determination, and has no force or effect. As already stated, this is evident on any plain and reasonable reading of the Statement and, frankly, not in dispute. No clarification is necessary to affirm the obvious and an Order of this Court in respect of the Statement made over two years ago will only confuse the matter.
58. The Supreme Court of Canada has stated that a declaration can only be granted if it will have practical utility, that is, if it will settle a “live controversy” between the parties.<sup>39</sup> This is clearly not the case. While the Applicant may have strong feelings on the subject, the fact remains that COVID-19 refunds by air carriers are not an issue between the parties as the Applicant is not seeking such a refund, and any live issues related to refunds may be raised by individuals who are.
59. In respect of item 2(c), a writ of prohibition preventing the CTA from making any decision in respect of refunds from air carriers related to COVID-19, such a writ is an exceptional remedy warranted only in instances where a tribunal exceeds its jurisdiction.<sup>40</sup> A complaint as to the CTA’s jurisdiction would raise a question of law, properly addressed under an appeal per s.41 of the *Transportation Act* and therefore not available in the present judicial review application. Further, the relief sought would paralyze the complaint resolution process and prevent affected passengers from obtaining refunds or decisions appealable to this Court.<sup>41</sup>

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<sup>38</sup> Notice of Motion, Applicant’s Record vol. 1, pages 3-6.

<sup>39</sup> *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 (CanLII), [2016] 1 SCR 99 at [para 11](#).

<sup>40</sup> *Herbert v Canada (Attorney General)*, 2022 FCA 11 at [para 18](#).

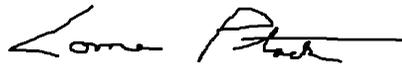
<sup>41</sup> [Air travel complaints resolution process | Canadian Transportation Agency \(otc-cta.gc.ca\)](#) and [Guideline on the Canadian Transportation Agency's Complaint Resolution Office air travel complaints process | Canadian Transportation Agency \(otc-cta.gc.ca\)](#). See also [Government Bill](#)

## PART IV – ORDER SOUGHT

### Conclusion

60. This application for judicial review should be dismissed, with costs to the Respondent.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> DAY OF DECEMBER 2023



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**ATTORNEY GENERAL OF CANADA**

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[\(House of Commons\) C-47 \(44-1\) - Third Reading - Budget Implementation Act, 2023, No. 1 - Parliament of Canada](#), 'Air Travel Complaints', 'Complaint Resolution Officers', [ss 85.02\(1\) – \(3\)](#).

## LIST OF AUTHORITIES

### Statutes and Regulations

1. [\*Air Passenger Protection Regulations, SOR/2019-150.\*](#)
2. [\*Canada Transportation Act, SC 1996, c. 10.\*](#)
3. [\*Government Bill \(House of Commons\) C-47 \(44-1\) - Third Reading - Budget Implementation Act, 2023, No. 1 - Parliament of Canada.\*](#)
4. [\*Federal Courts Rules, SOR/98-106, as amended.\*](#)

### Caselaw

1. [\*Air Passenger Rights v Canada \(Attorney General\), 2021 FCA 112.\*](#)
2. [\*Air Passenger Rights v Canada \(Attorney General\), 2021 FCA 201.\*](#)
3. [\*Air Passengers Rights v Canada \(Transportation Agency\), 2020 FCA 92.\*](#)
4. [\*British Columbia \(Attorney General\) v Council of Canadians with Disabilities, 2022 SCC 27.\*](#)
5. [\*Canada \(Attorney General\) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45, \[2012\] 2 SCR 524.\*](#)
6. [\*Daniels v Canada \(Indian Affairs and Northern Development\), 2016 SCC 12 \(CanLII\), \[2016\] 1 SCR 99.\*](#)
7. [\*Democracy Watch v Canada \(Attorney General\), 2021 FCA 133 \(CanLII\).\*](#)
8. [\*Gagnon v Canadian Association of Professional Employees, 2023 FCA 59.\*](#)
9. [\*Herbert v Canada \(Attorney General\), 2022 FCA 11.\*](#)
10. [\*Lavigne v Canada \(Justice\), 2009 FC 684.\*](#)
11. [\*Lukács v Swoop Inc., 2022 FCA 71.\*](#)
12. [\*R. v Find, 2001 SCC 32, \[2001\] 1 SCR 863.\*](#)
13. [\*R. v Spence 2005 SCC 71, \[2005\] 3 SCR 458.\*](#)
14. [\*Ridgeview Restaurant Limited v Canada \(Attorney General\), 2010 FC 506 \(CanLII\).\*](#)
15. [\*Roncarelli v. Duplessis, \[1959\] SCR 121.\*](#)

16. *Squamish Indian Band v Canada (Fisheries and Oceans)*, 2017 FC 1182.

## **Other**

1. [Air travel complaints resolution process | Canadian Transportation Agency \(otc-cta.gc.ca\)](http://otc-cta.gc.ca)
2. [Direction Respecting Flight Cancellations for Situations Outside of a Carrier's Control \(justice.gc.ca\)](http://justice.gc.ca)
3. [Guideline on the Canadian Transportation Agency's Complaint Resolution Office air travel complaints process | Canadian Transportation Agency \(otc-cta.gc.ca\)](http://otc-cta.gc.ca)
4. [Statement on Vouchers | Canadian Transportation Agency \(otc-cta.gc.ca\)](http://otc-cta.gc.ca)

## **APPENDIX “A”**

### **Other**



[Home](#)

## Statement on Vouchers

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The COVID-19 pandemic has caused major disruptions in domestic and international air travel.

For flight disruptions that are outside an airline's control, the *Canada Transportation Act* and *Air Passenger Protection Regulations* only require that the airline ensure passengers can complete their itineraries. Some airlines' tariffs provide for refunds in certain cases, but may have clauses that airlines believe relieve them of such obligations in force majeure situations.

The legislation, regulations, and tariffs were developed in anticipation of relatively localized and short-term disruptions. None contemplated the sorts of worldwide mass flight cancellations that have taken place over recent weeks as a result of the pandemic. It's important to consider how to strike a fair and sensible balance between passenger protection and airlines' operational realities in these extraordinary and unprecedented circumstances.

On the one hand, passengers who have no prospect of completing their planned itineraries with an airline's assistance should not simply be out-of-pocket for the cost of cancelled flights. On the other hand, airlines facing huge drops in passenger volumes and revenues should not be expected to take steps that could threaten their economic viability.

While any specific situation brought before the CTA will be examined on its merits, the CTA believes that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time (24 months would be considered reasonable in most cases).

The CTA will continue to provide information, guidance, and services to passengers and airlines as we make our way through this challenging period.

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**Date modified:**

2020-03-25



[Home](#)

## Important Information for Travellers During COVID-19

### Official Global Travel Advisory from the Government of Canada

#### Suspension of all air dispute resolution activities

During these difficult times, the Canadian Transportation Agency (CTA) continues to maintain its normal operations while our employees practice social distancing. Our dedicated employees are working remotely and are available through electronic means to provide service. You can continue to request CTA services, file applications, and do normal business with us through our normal channels.

Please note, however, that the CTA has temporarily paused all dispute resolution activities involving air carriers until June 30, 2020, to permit them to focus on immediate and urgent operational demands. While you can continue to file air passenger complaints with us and all complaints will be processed in due course, we may not be able to respond quickly. On or before June 30, 2020, the Agency will determine if the pause should end on that date or be extended to a later date.

### Air Passenger Protection Obligations During COVID-19 Pandemic

On March 11, 2020, the World Health Organization assessed the outbreak of COVID-19 as a pandemic. Since the outbreak of the virus, a number of countries, including Canada, have imposed travel bans, restrictions, or advisories. Officials have also recommended behaviours, such as enhanced hygiene practices and social distancing, to mitigate the spread of the virus. The situation is evolving rapidly, and further restrictions relating to travel may be implemented.

The Canadian Transportation Agency (CTA) has taken steps to address the major impacts that the COVID-19 pandemic is having on the airline industry by making temporary exemptions to certain requirements of the *Air Passenger Protection Regulations* (APPR) that apply **from March 13, 2020 until June 30, 2020**.

This guide explains these temporary changes and how the APPR apply to certain flight disruptions related to COVID-19.

In addition to the APPR, carriers must also follow their tariffs. In light of the COVID-19 Pandemic, CTA has issued a Statement on Vouchers.

## Related Links

[Air carriers - Exemptions due to COVID-19 pandemic](#)

[A-2020-42 | Determination | 2020-03-13](#)

[Air Canada also carrying on business as Air Canada rouge and as Air Canada Cargo - temporary exemption from the advance notice requirements of section 64 of the CTA](#)

[2020-A-36 | Order | 2020-03-25](#)

[Extension of stay - COVID-19 - immediate and temporary stay of all dispute proceedings involving air carriers](#)

[2020-A-37 | Order | 2020-03-25](#)

[Air carriers - further exemptions due to COVID-19 pandemic](#)

[A-2020-47 | Determination | 2020-03-25](#)

## Delays and Cancellations

The APPR set airline obligations to passengers that vary depending on whether the situation is **within the airline's control, within the airline's control and required for safety purposes, or outside the airline's control**. Descriptions of these categories can be found in [Types and Categories of Flight Disruption: A Guide](#).

The CTA has identified a number of situations related to the COVID-19 pandemic that are considered outside the airline's control. These include:

- flight disruptions to locations that are covered by a government advisory against travel or unnecessary travel due to COVID-19;
- employee quarantine or self-isolation due to COVID-19; and
- additional hygiene or passenger health screening processes put in place due to COVID-19.

Airlines may make decisions to cancel or delay flights for other reasons. Whether these situations are within or outside the airline's control would have to be assessed on a case-by-case basis.

### Airline obligations

In the event of a flight delay or cancellation, airlines must always keep passengers informed of their rights and the cause of a flight disruption. Airlines must also always make sure the passengers reach their destinations (re-booking them on other flights).

If the cause of the disruption is within an airline's control, there are additional obligations, as outlined below.

#### Situations outside airline control (including COVID-19 related situations mentioned above)

In these situations, airlines must:

- [Rebook passengers](#) on the next available flight operated by them or a partner airline.
  - *For disruptions between March 13, 2020 and June 30, 2020, airlines do not have to follow APPR requirements to rebook passengers using an airline with which they have no commercial agreement.*
  - Please refer to the CTA's [Statement on Vouchers](#).
  - This obligation does not require air carriers to rebook passengers who have already completed

their booked trip (including by other means such as a repatriation flight).

### Situations within airline control

In these situations, airlines must:

- **Meet** standards of treatment
- **Rebook passengers** on the next available flight operated by them or a partner airline or a refund, if rebooking does not meet the passenger's needs;
  - *For disruptions between March 13, 2020 and June 30, 2020, airlines do not have to follow APPR requirements to rebook passengers using an airline with which they have no commercial agreement.*
  - Please refer to the CTA's [Statement on Vouchers](#).
  - This obligation does not require air carriers to rebook passengers who have already completed their booked trip (including by other means such as a repatriation flight).
- **Provide compensation:** *For disruptions between March 13, 2020 and June 30, 2020, different compensation requirements are in effect.* If the airline notified the passengers of the delay or cancellation less than 72 hours in advance, they must provide compensation based on how late the passenger arrived at their destination (unless the passenger accepted a ticket refund):
  - *Large airline:*
    - 6-9 hours: \$400
    - 9+ hours: \$700
  - *Small airline:*
    - 6-9 hours: \$125
    - 9+ hours: \$250
- Effective March 25, 2020, the deadline for a carrier to respond to claims filed by passengers for payment of the compensation for inconvenience is suspended until June 30, 2020 (or any further period that the Agency may order). Once the suspension is over, carriers will have 120 days to respond to claims received before or during the suspension.

### Situations within airline control, but required for safety

In these situations, the airline must:

- **Meet** standards of treatment;
- **Rebook passengers** on the next available flight operated by them or a partner airline or a refund, if rebooking does not meet the passenger's needs.
  - *For disruptions between March 13, 2020 and June 30, 2020, airlines do not have to follow APPR requirements to rebook passengers using an airline with which they have no commercial agreement.*
  - Please refer to the CTA's [Statement on Vouchers](#).
  - This obligation does not require air carriers to rebook passengers who have already completed their booked trip (including by other means such as a repatriation flight).

### Other APPR requirements

All other air passenger entitlements under the APPR remain in force, including clear communication, tarmac delays and seating of children. For more information visit the CTA's [Know Your Rights](#) page.

## Refusal to transport

The Government of Canada has barred foreign nationals from all countries other than the United States from entering Canada (with some exceptions). Airlines have also been instructed to prevent all travellers who present COVID-19 symptoms, regardless of their citizenship, from boarding international flights to Canada.

The APPR obligations for flight disruptions would not apply in these situations.

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**Date modified:**

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## APPENDIX “B”

### Statutes and Legislation

*Canada Transportation Act, SC 1996, c 10.*

<p><b>Appeal from Agency</b></p> <p><b>41 (1)</b> An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.</p>	<p><b>Appel</b></p> <p><b>41 (1)</b> Tout acte — décision, arrêté, règle ou règlement — de l’Office est susceptible d’appel devant la Cour d’appel fédérale sur une question de droit ou de compétence, avec l’autorisation de la cour sur demande présentée dans le mois suivant la date de l’acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l’Office et audition de ceux d’entre eux qui comparaissent et désirent être entendus.</p>
<p><b>Equality before and under law and equal protection and benefit of law</b></p> <p><b>15 (1)</b> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p><b>Égalité devant la loi, égalité de bénéfice et protection égale de la loi</b></p> <p><b>15 (1)</b> La loi ne fait acception de personne et s’applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l’origine nationale ou ethnique, la couleur, la religion, le sexe, l’âge ou les déficiences mentales ou physiques.</p>

*Government Bill (House of Commons) C-47 (44-1) - Third Reading - Budget Implementation Act, 2023, No. 1 - Parliament of Canada.*

<p><b>Air Travel Complaints</b></p> <p><b>Complaint resolution officers</b></p> <p><b>85.02 (1)</b> The Chairperson, or a person designated by the Chairperson, shall</p>	<p><b>Plaintes relatives au transport aérien</b></p> <p><b>Agents de règlement des plaintes</b></p> <p><b>85.02 (1)</b> Le président — ou la personne qu’il désigne — désigne des personnes parmi</p>
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<p>designate, from among the members and staff of the Agency, persons to act as complaint resolution officers for the purpose of sections 85.04 to 85.12.</p> <p><b>Limits on powers and duties</b></p> <p>(2) A member of the Agency or its staff who acts as a complaint resolution officer has the powers, duties and functions of a complaint resolution officer and not of the Agency.</p> <p><b>Clarification — proceedings</b></p> <p>(3) Proceedings before a complaint resolution officer are not proceedings before the Agency.</p>	<p>les membres et le personnel de l'Office pour agir à titre d'agents de règlement des plaintes pour l'application des articles 85.04 à 85.12.</p> <p><b>Limites aux attributions</b></p> <p>(2) Le membre de l'Office ou de son personnel qui agit à titre d'agent de règlement des plaintes n'a que les attributions d'un agent de règlement des plaintes et non celles de l'Office.</p> <p><b>Précision : procédure</b></p> <p>(3) La procédure devant un agent de règlement des plaintes ne constitue pas une procédure devant l'Office.</p>
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*Air Passenger Protection Regulations, SOR/2019-150.*

<p>Version of section 10 from 2019-07-15 to 2022-09-07:</p> <p><b>Obligations — situations outside carrier's control</b></p> <p><b>10 (1)</b> This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier's control, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>(a) war or political instability;</li> <li>(b) illegal acts or sabotage;</li> <li>(c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;</li> <li>(d) instructions from air traffic control;</li> <li>(e) a <i>NOTAM</i>, as defined in subsection 101.01(1) of the <a href="#">Canadian Aviation Regulations</a>;</li> <li>(f) a security threat;</li> <li>(g) airport operation issues;</li> <li>(h) a medical emergency;</li> </ul>	<p>Version de l'article 10 du 2019-07-15 au 2022-09-07 :</p> <p><b>Obligations — situations indépendantes de la volonté du transporteur</b></p> <p><b>10 (1)</b> Le présent article s'applique au transporteur lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment :</p> <ul style="list-style-type: none"> <li>o <b>a)</b> une guerre ou une situation d'instabilité politique;</li> <li>o <b>b)</b> un acte illégal ou un acte de sabotage;</li> <li>o <b>c)</b> des conditions météorologiques ou une catastrophe naturelle qui rendent impossible l'exploitation sécuritaire de l'aéronef;</li> <li><b>d)</b> des instructions du contrôle de la circulation aérienne;</li> </ul>
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<p>(i) a collision with wildlife;  (j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;  (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and  (l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.</p> <p><b>Earlier flight disruption</b>  (2) A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier’s control, is considered to also be due to situations outside that carrier’s control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.</p> <p><b>Obligations</b>  (3) When there is delay, cancellation or denial of boarding due to situations outside the carrier’s control, it must</p> <p>(a) provide passengers with the information set out in section 13;  (b) in the case of a delay of three hours or more, provide alternate travel arrangements, in the manner set out in section 18, to a passenger who desires such arrangements; and  (c) in the case of a cancellation or a denial of boarding, provide alternate travel arrangements in the manner set out in section 18.</p>	<p>e) un <i>NOTAM</i> au sens du paragraphe 101.01(1) du <a href="#">Règlement de l’aviation canadien</a>;</p> <p>f) une menace à la sûreté;</p> <p>g) des problèmes liés à l’exploitation de l’aéroport;</p> <p>h) une urgence médicale;</p> <p>i) une collision avec un animal sauvage;</p> <p>j) un conflit de travail chez le transporteur, un fournisseur de services essentiels comme un aéroport ou un fournisseur de services de navigation aérienne;</p> <p>k) un défaut de fabrication de l’aéronef, qui réduit la sécurité des passagers, découvert par le fabricant de l’aéronef ou par une autorité compétente;</p> <p>l) une instruction ou un ordre de tout représentant d’un État ou d’un organisme chargé de l’application de la loi ou d’un responsable de la sûreté d’un aéroport.</p> <p><b>Perturbation de vols précédents</b>  (2) Le retard ou l’annulation de vol ou le refus d’embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable à une situation indépendante de la volonté du transporteur est également considéré comme attribuable à une situation indépendante de la volonté du transporteur si ce dernier a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou de l’annulation précédent.</p> <p><b>Obligations</b>  (3) Lorsque le retard ou l’annulation de vol ou le refus d’embarquement est attribuable à une situation indépendante de la volonté du transporteur, ce dernier :</p>
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	<p><b>a)</b> fournit aux passagers les renseignements prévus à l'article 13;</p> <p><b>b)</b> dans le cas d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs aux termes de l'article 18;</p> <p><b>c)</b> dans le cas d'une annulation ou d'un refus d'embarquement, fournit des arrangements de voyage alternatifs aux termes de l'article 18.</p>
<p>Regulations are current to 2023-11-27 and last amended on 2022-09-08</p> <p><b>Obligations — situations outside carrier's control</b></p> <p><b>10 (1)</b> This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier's control, including but not limited to the following:</p> <ul style="list-style-type: none"> <li><b>(a)</b> war or political instability;</li> <li><b>(b)</b> illegal acts or sabotage;</li> <li><b>(c)</b> meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;</li> <li><b>(d)</b> instructions from air traffic control;</li> <li><b>(e)</b> a <i>NOTAM</i>, as defined in subsection 101.01(1) of the <a href="#">Canadian Aviation Regulations</a>;</li> <li><b>(f)</b> a security threat;</li> <li><b>(g)</b> airport operation issues;</li> <li><b>(h)</b> a medical emergency;</li> <li><b>(i)</b> a collision with wildlife;</li> <li><b>(j)</b> a labour disruption within the carrier or within an essential service provider such</li> </ul>	<p>Règlement à jour 2023-11-27; dernière modification 2022-09-08</p> <p><b>Obligations — situations indépendantes de la volonté du transporteur</b></p> <p><b>10 (1)</b> Le présent article s'applique au transporteur lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment :</p> <ul style="list-style-type: none"> <li><b>a)</b> une guerre ou une situation d'instabilité politique;</li> <li><b>b)</b> un acte illégal ou un acte de sabotage;</li> <li><b>c)</b> des conditions météorologiques ou une catastrophe naturelle qui rendent impossible l'exploitation sécuritaire de l'aéronef;</li> <li><b>d)</b> des instructions du contrôle de la circulation aérienne;</li> <li><b>e)</b> un <i>NOTAM</i> au sens du paragraphe 101.01(1) du <a href="#">Règlement de l'aviation canadien</a>;</li> <li><b>f)</b> une menace à la sûreté;</li> </ul>

as an airport or an air navigation service provider;  
**(k)** a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and  
**(l)** an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

**Earlier flight disruption**

**(2)** A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

**Obligations**

**(3)** When there is delay, cancellation or denial of boarding due to situations outside the carrier's control, it must

- (a)** provide passengers with the information set out in section 13;
- (b)** in the case of a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 18, to a passenger who desires such arrangements;
- (c)** in the case of a cancellation, provide alternate travel arrangements or a refund, in the manner set out in section 18; and
- (d)** in the case of a denial of boarding, provide alternate

- g)** des problèmes liés à l'exploitation de l'aéroport;
- h)** une urgence médicale;
- i)** une collision avec un animal sauvage;
- j)** un conflit de travail chez le transporteur, un fournisseur de services essentiels comme un aéroport ou un fournisseur de services de navigation aérienne;
- k)** un défaut de fabrication de l'aéronef, qui réduit la sécurité des passagers, découvert par le fabricant de l'aéronef ou par une autorité compétente;
- l)** une instruction ou un ordre de tout représentant d'un État ou d'un organisme chargé de l'application de la loi ou d'un responsable de la sûreté d'un aéroport.

**Perturbation de vols précédents**

**(2)** Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable à une situation indépendante de la volonté du transporteur est également considéré comme attribuable à une situation indépendante de la volonté du transporteur si ce dernier a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou de l'annulation précédent.

**Obligations**

**(3)** Lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de la volonté du transporteur, ce dernier :

- a)** fournit aux passagers les renseignements prévus à l'article 13;
- b)** dans le cas d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage

<p>travel arrangements in the manner set out in section 18. <a href="#">SOR/2022-134, s. 2</a></p>	<p>alternatifs ou un remboursement aux termes de l'article 18; <b>c)</b> dans le cas d'une annulation, fournit des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 18; <b>d)</b> dans le cas d'un refus d'embarquement, fournit des arrangements de voyage alternatifs aux termes de l'article 18. <a href="#">DORS/2022-134, art. 2</a></p>
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