

SCC File No.: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

AIR PASSENGER RIGHTS

APPLICANT
(Applicant)

– and –

CANADIAN TRANSPORTATION AGENCY

RESPONDENT
(Respondent)

APPLICATION FOR LEAVE TO APPEAL
(AIR PASSENGER RIGHTS, APPLICANT)
(Pursuant to s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26 and
Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

AIR PASSENGER RIGHTS

APPLICANT
(Applicant)

– and –

CANADIAN TRANSPORTATION AGENCY

RESPONDENT
(Respondent)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(AIR PASSENGER RIGHTS, APPLICANT)
(Pursuant to Rule 25(1)(a) of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

TAKE NOTICE that AIR PASSENGER RIGHTS hereby applies for Leave to Appeal to the Court, pursuant to section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, from the judgment of the Honourable Madam Justice Mactavish of the Federal Court of Appeal in File No. A-102-20 made on May 22, 2020, and for:

1. an order granting leave to appeal;
2. alternatively, pursuant to subsection 43(1.1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, remanding for re-hearing by a five-judge panel of the Federal Court of Appeal and an order to review whether the subject administrative action could be amenable to judicial review and the Federal Court of Appeal's formulation of the *RJR-Macdonald* test for injunctions;
3. an order for costs or, alternatively, disbursements only; and
4. any other order that this Court may deem appropriate.

AND TAKE FURTHER NOTICE that this Application for Leave is made on the following grounds:

1. The Federal Court of Appeal motions judge erred in law by resurrecting an outmoded and restrictive test for the availability of judicial review in the federal courts that is:
 - (a) inconsistent with the test applied by provincial appellate and superior courts;
 - (b) inconsistent with the statutory language, context, and legislative intent of the judicial review provisions of the *Federal Courts Act*; and
 - (c) incongruent with the test articulated by this Court in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, [2018 SCC 26](#) and affirmed in *J.W. v. Canada (Attorney General)*, [2019 SCC 20](#).

2. The Federal Court of Appeal motions judge erred in applying her court's mechanistic formulation of the *RJR-MacDonald* framework that drastically differs from the contextual approach of the vast majority of Canadian courts, including this Court. The motion judge's reasons exemplify the frequently criticized flaws in the Federal Court of Appeal's approach. These flaws make obtaining interlocutory relief in the federal courts nearly impossible by:
 - (a) applying a tick-box checklist without properly weighing and balancing the *RJR-MacDonald* factors in an equitable and contextual fashion;
 - (b) imposing a comparatively onerous "irreparable harm" criterion that is impossible to meet by litigants seeking interlocutory relief in the public interest, and nearly impossible to meet in any other context;
 - (c) requiring proof with certainty that harm will be suffered, and that it cannot be repaired later via theoretical means, without consideration of its practicalities; and/or
 - (d) failing to consider the primacy of injunctive relief as a preventative and effective measure for protection of consumers and the public interest.

DATED at Vancouver, British Columbia, this 3rd day of August, 2020.

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**Counsel for the Respondent,
Canadian Transportation Agency**

NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the Supreme Court Act.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200522

Docket: A-102-20

Citation: 2020 FCA 92

Present: MACTAVISH J.A.

BETWEEN:

AIR PASSENGERS RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 22, 2020.

REASONS FOR ORDER BY:

MACTAVISH J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200522

Docket: A-102-20

Citation: 2020 FCA 92

Present: MACTAVISH J.A.

BETWEEN:

AIR PASSENGERS RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

REASONS FOR ORDER

MACTAVISH J.A.

[1] As is the case with so many other areas of life today, the airline industry and airline passengers have been seriously affected by the COVID-19 pandemic. International borders have been closed, travel advisories and bans have been instituted, people are not travelling for non-essential reasons and airlines have cancelled numerous flights.

[2] In response to this unprecedented situation, the Canadian Transportation Agency (CTA) issued two public statements on its website that suggest that it could be reasonable for airlines to provide passengers with travel vouchers when flights are cancelled for pandemic-related reasons, rather than refunding the monies that passengers paid for their tickets.

[3] Air Passenger Rights (APR) is an advocacy group representing and advocating for the rights of the public who travel by air. It has commenced an application for judicial review of the CTA's public statements, asserting that they violate the CTA's own *Code of Conduct*, and mislead passengers as to their rights when their flights are cancelled. In the context of this application, APR has brought a motion in writing seeking an interlocutory order that, among other things, would require that the statements be removed from the CTA's website. It also seeks to enjoin the members of the CTA from dealing with passenger complaints with respect to refunds on the basis that a reasonable apprehension of bias exists on their part as a result of the Agency's public statements.

[4] For the reasons that follow, I have concluded that APR has not satisfied the tripartite injunctive test. Consequently, the motion will be dismissed.

1. Background

[5] In early 2020, the effects of the COVID-19 coronavirus began to be felt in North America, rapidly reaching the level of a pandemic. On March 25, 2020, the CTA posted a statement on its website dealing with flight cancellations. The statement, entitled "Statement on

Vouchers” notes 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 current circumstances.

[6] The Statement on Vouchers observes 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, airlines facing enormous drops in passenger volumes and revenues “should not be expected to take steps that could threaten their economic viability”.

[7] The Statement on Vouchers states that any complaint brought to the CTA will be considered on its own merits. However, the Statement goes on to state that, generally speaking, the Agency believes that “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”. The Statement then suggests that a 24-month period for the redemption of vouchers “would be considered reasonable in most cases”.

[8] Concurrent with the posting of the Statement on Vouchers, the CTA published an amendment to a notice already on its website entitled “Important Information for Travellers During COVID-19” (the Information Page), which incorporates references to the Statement on Vouchers.

[9] These statements are the subject of the underlying application for judicial review.

2. APR's Arguments

[10] APR submits that there is an established body of CTA jurisprudence that confirms passengers' right to a refund where air carriers are unable to provide air transportation, including cases where flight cancellations are for reasons beyond the airline's control. According to APR, this jurisprudence is consistent with the common law doctrine of frustration, the doctrine of *force majeure* and common sense. The governing legislation further requires airlines to develop reasonable policies for refunds when airlines are unable to provide service for any reason.

[11] According to APR, statements on the Information Page do not just purport to relieve air carriers from having to provide passenger refunds where flights are cancelled for reasons beyond the airlines' control, including pandemic-related situations. They also purport to relieve airlines from their obligation to provide refunds where flights are cancelled for reasons that are within the airlines' control, including where cancellation is required for safety reasons.

[12] APR further contends that the impugned statements by the CTA are tantamount to an unsolicited advance ruling as to how the Agency will treat passenger complaints about refunds from air carriers where flights are cancelled for reasons relating to the COVID-19 pandemic. The statements suggest that the CTA is leaning heavily towards permitting the issuance of vouchers in lieu of refunds, and that it will very likely dismiss passenger complaints with respect to airlines' failure to provide refunds during the pandemic, regardless of the reason for the flight cancellation. According to APR, this creates a reasonable apprehension that CTA members will not deal with passenger complaints fairly.

3. The Test for Injunctive Relief

[13] The parties agree that in determining whether APR is entitled to interlocutory injunctive relief, the test to be applied is that established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385.

[14] That is, the Court must consider three questions:

- 1) Whether APR has established that there is a serious issue to be tried in the underlying application for judicial review;
- 2) Whether irreparable harm will result if the injunction is not granted; and
- 3) Whether the balance of convenience favours the granting of the injunction.

[15] The *RJR-MacDonald* test is conjunctive, with the result that an applicant must satisfy all three elements of the test in order to be entitled to relief: *Janssen Inc. v. Abbvie Corp.*, 2014 FCA 112, 120 C.P.R. (4th) 385 at para. 14.

4. Has APR Raised a Serious Issue?

[16] The threshold for establishing the existence of a serious issue to be tried is usually a low one, and applicants need only establish that the underlying application is neither frivolous nor vexatious. A prolonged examination of the merits of the application is generally neither necessary nor desirable: *RJR-MacDonald*, above at 335, 337-338.

[17] With this low threshold in mind, I will assume that APR has satisfied the serious issue component of the injunctive test to the extent that it seeks to enjoin members of the CTA from dealing with passenger complaints on the basis that a reasonable apprehension of bias exists on their part. However, as will be explained further on in these reasons, I am not persuaded that APR has satisfied the irreparable harm component of the injunctive test in this regard.

[18] However, APR also seeks mandatory orders compelling the CTA to remove the two statements from its website and directing it to “clarify any misconceptions for passengers who previously contacted the Agency regarding refunds arising from COVID-19, and key stakeholders of the travel industry”. It further seeks a mandatory order requiring that the CTA bring this Court’s order and the removal or clarification of the CTA’s previous statements to the attention of airlines and a travel association.

[19] A higher threshold must be met to establish a serious issue where a mandatory interlocutory injunction is sought compelling a respondent to take action prior to the determination of the underlying application on its merits. In such cases, the appropriate inquiry is whether the party seeking the injunction has established a strong *prima facie* case: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 S.C.R. 196 at para. 15. That is, I must be satisfied upon a preliminary review of the case that there is a strong likelihood that APR will be ultimately successful in its application: *C.B.C.*, above at para. 17.

[20] As will be explained below, I am not persuaded that APR has established a strong *prima facie* case here as the administrative action being challenged in its application for judicial review is not amenable to judicial review.

[21] APR concedes that the statements on the CTA website do not reflect decisions, determinations, orders or legally-binding rulings on the part of the Agency. It notes, however, that subsection 18.1(1) of the *Federal Courts Act* does not limit the availability of judicial review to formal decisions or orders, stating rather that applications may be brought “by anyone directly affected by the matter in respect of which relief is sought” [my emphasis].

[22] Not every administrative action gives rise to a right to judicial review. No right of review arises where the conduct in issue does not affect rights, impose legal obligations, or cause prejudicial effects: *Democracy Watch v. Canada (Attorney General)*, 2020 FCA 69, [2020] F.C.J. No. 498 at para. 19. See also *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, [2019] 2 F.C.R. No. 3, leave to appeal to SCC refused 38379 (2 May 2019); *Democracy Watch v. Canada (Conflict of Interest and Ethics Commissioner)*, 2009 FCA 15, 86 Admin. L.R. (4th) 149.

[23] For example, information bulletins and non-binding opinions contained in advance tax rulings have been found not to affect rights, impose legal obligations, or cause prejudicial effects: see, for example, *Air Canada v. Toronto Port Authority at al.*, 2011 FCA 347, 426 N.R. 131; *Rothmans, Benson & Hedges Inc. v. Minister of National Revenue*, [1998] 2 C.T.C. 176, 148 F.T.R. 3. It is noteworthy that in its Notice of Application, APR itself states the CTA’s

statements “purport[t] to provide an unsolicited advance ruling” as to how the CTA will deal with passenger complaints about refunds for pandemic-related flight cancellations.

[24] I will return to the issue of the impact of the CTA’s statements on APR in the context of my discussion of irreparable harm, but suffice it to say at this juncture that there is no suggestion that APR is itself directly affected by the statements in issue. The statements on the CTA website also do not determine the right of airline passengers to refunds where their flights have been cancelled by airlines for pandemic-related reasons.

[25] Noting the current extraordinary circumstances, the statements simply suggest that having airlines provide affected passengers with vouchers or credits for future travel “could be” an appropriate approach in the present context, as long as these vouchers or credits do not expire in an unreasonably short period of time. This should be contrasted with the situation that confronted the Federal Court in *Larny Holdings Ltd. v. Canada (Minister of Health)*, 2002 FCT 750, relied on by APR, where the statement in issue included a clear statement of how, in the respondent’s view, the law was to be interpreted and the statement in issue was intended to be coercive in nature.

[26] As a general principle, CTA policy documents are not binding on it as a matter of law: *Canadian Pacific Railway Company v. Cambridge (City)*, 2019 FCA 254, 311 A.C.W.S. (3d) 416 at para. 5. Moreover, in this case the Statement on Vouchers specifically states that “any specific situation brought before the Agency will be examined on its merits”. It thus remains open to affected passengers to file complaints with the CTA (which will be dealt with once the

current suspension of dispute resolution services has ended) if they are not satisfied with a travel voucher, and to pursue their remedies in this Court if they are not satisfied with the Agency's decisions.

[27] It thus cannot be said that the impugned statements affect rights, impose legal obligations, or cause prejudicial effects on either APR or airline passengers. While this finding is sufficient to dispose of APR's motion for mandatory relief, as will be explained below, I am also not persuaded that it has satisfied the irreparable harm component of the test.

5. Irreparable Harm

[28] A party seeking interlocutory injunctive relief must demonstrate with clear and non-speculative evidence that it will suffer irreparable harm between now and the time that the underlying application for judicial review is finally disposed of.

[29] APR has not argued that it will itself suffer irreparable harm if the injunction is not granted. It relies instead on the harm that it says will befall Canadian airline passengers whose flights have been cancelled for pandemic-related reasons. However, while APR appears to be pursuing this matter as a public interest litigant, it has not yet sought or been granted public interest standing.

[30] As a general rule, only harm suffered by the party seeking the injunction will qualify under this branch of the test: *RJR-MacDonald*, above at 341; *Manitoba (Attorney General) v.*

Metropolitan Stores Ltd., [1987] 1 S.C.R. 110, 38 D.L.R. (4th) 321 at 128. There is a limited exception to this principle in that the interests of those individuals dependent on a registered charity may also be considered under this branch of the test: *Glooscap Heritage Society v. Minister of National Revenue*, 2012 FCA 255, 440 N.R. 232 at paras. 33-34; *Holy Alpha and Omega Church of Toronto v. Attorney General of Canada*, 2009 FCA 265, [2010] 1 C.T.C. 161 at para. 17. While APR is a not-for-profit corporation, there is no suggestion that it is a registered charity.

[31] I am also not persuaded that irreparable harm has been established, even if potential harm to Canadian airline passengers is considered.

[32] Insofar as APR seeks to enjoin the CTA from dealing with passenger complaints, it asserts that the statements in issue were published contrary to the CTA's own *Code of Conduct*. This prohibits members from publicly expressing opinions on potential cases or issues relating to the work of the Agency that may create a reasonable apprehension of bias on the part of the member. According to APR, the two statements at issue here create a reasonable apprehension of bias on the part of the CTA's members such that they will be unable to provide complainants with a fair hearing.

[33] Bias is an attitude of mind that is unique to an individual. As a result, an allegation of bias must be directed against a specific individual who is alleged to be unable to bring an impartial mind to bear on a matter: *E.A. Manning Ltd. v. Ontario Securities Commission*, 23 O.R.

(3d) 257, 32 Admin. L.R. (2d) 1 (C.A.), citing *Bennett v. British Columbia (Securities Commission)* (1992), 69 B.C.L.R. (2d) 171, 94 D.L.R. (4th) 339 (C.A.).

[34] As is the case with many administrative bodies, the CTA carries out both regulatory and adjudicative functions. It resolves specific commercial and consumer transportation-related disputes and acts as an industry regulator issuing permits and licences to transportation providers. The CTA also provides the transportation industry and the travelling public with non-binding guidance with respect to the rights and obligations of transportation service providers and consumers.

[35] There is no evidence before me that the members of the CTA were involved in the formulation of the statements at issue here, or that they have endorsed them. Courts have, moreover, rejected the notion that a “corporate taint” can arise based on statements by non-adjudicator members of multi-function organizations: *Zündel v. Citron*, [2000] 4 FC 225, 189 D.L.R. (4th) 131 at para. 49 (C.A.); *E.A. Manning Ltd.*, above at para. 24.

[36] Even if it subsequently turns out that CTA members were in fact involved in the formulation of the statements, APR’s argument could be advanced in the context of an actual passenger complaint and any bias concerns could be addressed in that context. Relief could then be sought in this Court if the complainant is not persuaded that they have received a fair hearing. The alleged harm is thus not irreparable.

[37] APR also asserts that passengers are being misled by the travel industry as to the import of the CTA's statements, and that airlines, travel insurers and others are citing the statements as a basis to deny reimbursement to passengers whose flights have been cancelled for pandemic-related reasons. If third parties are misrepresenting what the CTA has stated, recourse is available against those third parties and the alleged harm is thus not irreparable.

6. Balance of Convenience

[38] In light of the foregoing, it is unnecessary to deal with the question of the balance of convenience.

7. Other Matters

[39] Because it says that APR's application for judicial review does not relate to a matter that is amenable to judicial review, the CTA argues in its memorandum of fact and law that the application should be dismissed. There is, however, no motion currently before this Court seeking such relief, and any such motion would, in any event, have to be decided by a panel of judges, rather than a single judge. Consequently, I decline to make the order sought.

[40] APR asks that it be permitted to make submissions on the issue of costs once the Court has dealt with the merits of its motion. APR shall have 10 days in which to file submissions in writing in relation to the question of costs, which submissions shall not exceed five pages in length. The CTA shall have 10 days in which to respond with submissions that do not exceed

five pages, and APR shall have a further five days in which to reply with submissions that do not exceed three pages in length.

"Anne L. Mactavish"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-102-20

STYLE OF CAUSE: AIR PASSENGERS RIGHTS v.
CANADIAN TRANSPORTATION
AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: MACTAVISH J.A.

DATED: MAY 22, 2020

WRITTEN REPRESENTATIONS BY:

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Allan Matte FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Burnaby, British Columbia

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Canadian Transportation Agency
Gatineau, Quebec

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200522

Docket: A-102-20

Ottawa, Ontario, May 22, 2020

Present: MACTAVISH J.A.

BETWEEN:

AIR PASSENGERS RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

THIS COURT ORDERS that:

1. APR's motion for an interlocutory injunction is dismissed; and
2. APR shall have 10 days from the date hereof in which to file submissions in writing in relation to the question of costs, which submissions shall not exceed five pages in length. The CTA shall have 10 days in which to respond with submissions not

exceeding five pages, and APR shall have a further five days in which to reply with submissions not exceeding three pages in length.

"Anne L. Mactavish"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200501

Docket: A-102-20

Ottawa, Ontario, May 1, 2020

Present: BOIVIN J.A.

BETWEEN:

AIR PASSENGERS RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

UPON motion in writing by the proposed intervener, the National Airlines Council of Canada (NACC), seeking to intervene in the application and motion commenced by the applicant;

AND UPON reading the NACC's motion record;

AND UPON considering the response from the applicant and the respondent as per this Court's amended Direction dated April 29, 2020, with respect to the NACC's request to intervene;

AND UPON considering that, by Order dated April 16, 2020, this Court granted the applicant's request that the motion for interlocutory order proceed on an expedited basis;

AND UPON not being satisfied that the NACC has demonstrated that the test for granting intervener status is met in the circumstances or that it otherwise complied with Rule 109(2) of the *Federal Courts Rules*, S.O.R./98-106;

THIS COURT ORDERS THAT:

The motion from the National Airlines Council of Canada to intervene is dismissed.

"Richard Boivin"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200416

Docket: A-102-20

Ottawa, Ontario, April 16, 2020

Present: LOCKE J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

WHEREAS the applicant has filed an application for judicial review of two public statements made by the respondent on its website; these two public statements comprise (i) a Statement on Vouchers published on March 25, 2020 concerning the propriety of airlines offering vouchers or credits for future travel (instead of refunds) to passengers affected by flight disruptions caused by COVID-19, and (ii) a webpage entitled Important Information for Travellers During COVID-19 which refers to the Statement on Vouchers; the applicant argues that the Statement on Vouchers was published contrary to the respondent's own *Code of Conduct*, and further that it misleads passengers concerning their rights;

AND WHEREAS, in the context of this application, the applicant has made a motion in writing (under Rule 369 of the *Federal Courts Rules*, SOR/98-106) for an interlocutory order that, among other things, the two public statements in question be removed from the respondent's website;

AND WHEREAS there appears no longer to be any dispute that the applicant's motion record has been properly served on the respondent;

AND WHEREAS on March 19, 2020, this Court issued a *Notice to the Parties and the Profession*; the Notice provided, among other things, for a suspension period ("suspension period"); this is a period during which time will not run under the *Federal Courts Rules*, judgments and directions; the Notice set the suspension period from March 16, 2020 to April 17, 2020;

AND WHEREAS on April 2, 2020, this Court issued a further *Notice to the Parties and the Profession* extending the suspension period to May 15, 2020;

AND WHEREAS the March 19, 2020 Notice suggests that the suspension period may not apply in cases of genuine urgency, and that such cases should be dealt with case-by-case;

AND WHEREAS the applicant requests that its motion be dealt with on an expedited basis and as a case of genuine urgency not subject to the suspension period; among other things, the applicant alleges that the Statement on Vouchers is being cited by members of the travel industry, including air carriers, travel agencies and travel insurance companies, to convince passengers (wrongly, it is alleged) that they are not entitled to refunds for travel disruptions caused by COVID-19, and must instead be satisfied with vouchers, credits, cancellation fees, or

reduced refunds; the applicant argues that, since the Statement on Vouchers is affecting relations between non-parties, any delay in addressing the concerns raised in its application and its motion may give rise to irreparable harm, and that this matter is therefore urgent;

AND WHEREAS the respondent opposes the request that the applicant's motion be dealt with on an expedited basis; the respondent notes that its operations have been significantly affected by various measures put in place in the context of COVID-19, though it does acknowledge on its website that it "continues to maintain its normal operations" other than dispute resolution activities involving air carriers and their passengers; the respondent also notes that the Statement on Vouchers has already been widely publicized, and that little benefit would therefore be achieved by dealing with the applicant's motion on an expedited basis; the respondent further alleges that it will suffer significant prejudice if required to respond to the applicant's motion in the normal course;

AND WHEREAS it is not the role of this Court to reach any conclusions at this time concerning the issues that will be considered in the context of the applicant's motion or the applicant's application;

AND WHEREAS the Court is satisfied that, if the applicant is successful in its arguments on the motion, there is potential for reliance by non-parties on the Statement on Vouchers such that their rights might be irrevocably affected - indeed the timing of the publication of the Statement on Vouchers (in the midst of the COVID-19 pandemic) suggests that it was intended to have an immediate effect on relations between air carriers and their passengers;

AND WHEREAS the Court is also satisfied that, though the respondent's resources are limited at present, it is not unable to deal with the applicant's motion during the suspension period, especially if the usual timelines are relaxed somewhat; the Court is not convinced that the respondent will suffer significant prejudice under these circumstances;

AND WHEREAS the Court is also not convinced that the wide dissemination of the Statement on Vouchers is a reason not to expedite the applicant's motion; the apparently urgent basis on which the Statement on Vouchers was prepared and published suggests that the question of its removal should likewise be considered on an expedited basis;

AND WHEREAS the Court is therefore satisfied that it is in the interest of justice that the applicant's motion be dealt with during the suspension period despite the March 19 and April 2, 2020 Notices;

THIS COURT ORDERS that:

1. The applicant's request that its motion for an interlocutory order shall be dealt with on an expedited basis is granted.
2. The respondent shall serve and file its record no later than April 29, 2020.
3. The applicant may serve and file its written representations in reply within eight days after being served with the respondent's record.

“George R. Locke”

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200409

Docket: A-102-20

Ottawa, Ontario, April 9, 2020

Present: PELLETIER J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

ORDER

WHEREAS the Court has before it a motion for an *ex parte* interim injunction and an interlocutory injunction arising from certain statements made by or on behalf of the Canadian Transportation Agency (the Agency); and

WHEREAS the urgency alleged by the applicant, Air Passenger Rights, (APR) consists in the fact that the Agency did not take action when requested to by APR on March 30, 2020 and the dissemination of allegedly misleading information by members of the travel industry under the guise of the Agency's statement; and

WHEREAS the failure of the Agency to respond to APR's deadline is not evidence of urgency; and

WHEREAS while the matters raised in the Notice of Application are important, they are not of such urgency as to require this Court to interfere in the work of a senior Canadian agency without hearing from it.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

1. The portion of the motion seeking an *ex parte* interim injunction is dismissed;
2. The portion of the motion seeking an interlocutory injunction is dismissed as it was filed without proof of service but the applicant has leave to file it again upon proof of service;
3. There will be no order as to costs.

"J.D. Denis Pelletier"

J.A.

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The proposed appeal seeks to restore doctrinal uniformity across Canada on both the availability of interlocutory relief and the constitutional right to access judicial review. The Federal Court of Appeal [FCA] has diverged from the approaches of this Court and provincial appellate and superior courts, and most importantly, its enabling statute, the *Federal Courts Act*.

2. The case arises from a motion for interlocutory relief to compel the Canadian Transportation Agency to remove and/or clarify misleading Publications it widely disseminated to the travelling public, and to enjoin the Agency’s members from adjudicating on the subject matter expressed in the Publications. The FCA denied the motion on the basis that: (a) judicial review was not available in relation to the Publications; (b) a public interest advocacy group cannot rely on the “irreparable harm” to the vulnerable people it represents, but rather must show harm to the Applicant itself; (c) the Applicant must prove that “irreparable harm” **would** result, not simply that it **may** result. On each of these points, the FCA adopted tests that are at odds with the jurisprudence of provincial courts, with the objectives of judicial review and public interest litigation, and with common sense.

3. The *Federal Courts Act* confers on federal courts the same extensive and constitutionally guaranteed judicial review jurisdiction with respect to federal administrative bodies as provincial superior courts have with respect to provincial administrative bodies. Yet, over the past decade, the FCA has imposed an onerous non-statutory prerequisite for the availability of judicial review, which is not in the text of the *Federal Courts Act* and is also inconsistent with the test applied in the provincial courts.¹ By so doing, the FCA restricted Canadians’ access to judicial review of federal administrative acts that affect citizens from coast to coast, and departed from Parliament’s will.

4. The FCA has also diverged from other Canadian courts with respect to the *RJR-MacDonald* framework for interlocutory relief. In the past decades, the FCA imposed a mechanistic and onerous approach to “irreparable harm,” diverging from the analysis adopted in this Court, the provincial appellate and superior courts, and even the Federal Court. The FCA’s approach makes it nearly impossible for litigants to obtain interlocutory relief in the federal courts in all areas of law within the

¹ *Highwood Congregation of Jehovah’s Witnesses (Jud. Comm.) v. Wall*, 2018 SCC 26 at para. 14.

subject-matter expertise of the federal courts, including immigration and refugee law, intellectual property law, admiralty law, and aboriginal claims involving the federal crown.

5. The combined effect of the FCA’s diverging approaches effectively forecloses interlocutory relief in judicial reviews of federal administrative actions that have a broad public interest implication, contrary to Parliament’s expressed intent in s. 18.2 of the *Federal Courts Act*. The proposed appeal offers the Court an opportunity to restore doctrinal uniformity across Canada and address the FCA’s diverging approaches to both of the aforementioned, seemingly unrelated areas of law that touch upon the daily lives of those in Canada, in one form or another.

B. Facts

6. Air Passenger Rights [APR] is a non-profit advocacy group representing and advocating for the rights of the public who travel by air. Dr. Gábor Lukács is the founder and president of APR, and he has been a recognized advocate for the Canadian travelling public for more than a decade. Dr. Lukács’s public interest advocacy work involved appearances as a stakeholder or public interest litigant before the Canadian Transportation Agency [Agency] and invitations to appear before Parliamentary committees to represent the interest of air passengers. Dr. Lukács has also appeared before all levels of Court in Canada, including this Court, as a public interest litigant or as a court-approved advocate for specific passengers on a *pro bono* and *pro hac vice* basis.²

7. The Agency is a statutory body that administers a regulatory scheme for transportation by air from, to, and within Canada. In respect of air travel, the Agency fulfills a dual role: (i) as a quasi-judicial tribunal, it adjudicates consumer disputes between passengers and carriers; (ii) as the economic regulator, it makes regulatory determinations and issues licenses or permits to air carriers.³ The Agency is composed exclusively of its members appointed by the Governor in Council. Members of the Agency perform and are accountable for all of the Agency’s work including its role to adjudicate passenger disputes.⁴ Although the Agency’s statutory functions are non-delegable unless authorized by statute, its members are assisted by a roster of civil service staff.⁵

² *Air Passenger Rights v. Canadian Transportation Agency*, 2020 FCA 92 [FCA Reasons] at para. 3 [Tab 2, p. 7]; Lukács Affidavit, paras. 2-27 [Tab 10, p. 93].

³ *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at paras. 50-52.

⁴ *Canada Transportation Act*, ss. 7(2), 10, 13; and 85.1.

⁵ *Canada Transportation Act*, s. 19; *Code of Conduct for Members of the Agency* [Code of Conduct] paras. 4 and 36 – Lukács Affidavit, Exhibit “T” [Tab 10T, p. 186].

i. The Agency’s Code of Conduct prohibits commentary on potential cases

8. As a quasi-judicial body, the Agency’s Members are held to a high standard of professional and ethical conduct, akin to judicial members of a court. The Agency’s *Code of Conduct* further reinforces the standard statutory and common law protections with a specific prohibition that:

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.⁶

ii. The COVID-19 pandemic and the Agency’s Publications

9. Air passengers and air carriers have been seriously affected by the COVID-19 pandemic that began with a World Health Organization declaration on March 11, 2020 and Canadian government advisory on non-essential travel on March 13, 2020.⁷ The Agency issued two formal orders to suspend adjudication of passenger complaints until June 30, 2020, and two formal determinations to suspend or relax until June 30, 2020 some of the carriers’ minimum compensation, rebooking, and complaint response time requirements under the *Air Passenger Protection Regulations*, SOR/2019-150 [*APPR*]. None of these four actions relieved the carriers from the fundamental obligation to refund passengers for unused airfares.⁸ The legality of these actions are not in dispute in this case.

10. On March 25, 2020, the Agency published two commentaries on its website [**Publication(s)**]. The pertinent part of the first Publication, entitled “**Statement on Vouchers**,” reads as follows:

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.

⁶ *Code of Conduct*, para. 40 – Lukács Affidavit, Exhibit “T” [Tab 10T, p. 186].

⁷ FCA Reasons, at para. 1 [Tab 2, p. 6].

⁸ Lukács Affidavit, Exhibits “H”-“K” [Tabs 10H-10K, pp. 145-155].

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).⁹

11. The Agency has not revealed the author(s) of the Statement on Vouchers; however, its text indicates that it represents the Agency's position as a whole. The author(s) were fully aware that carriers' refusal to refund passengers would potentially come before members of the Agency, but still chose to encourage carriers in issuing vouchers to protect the air carriers' economic viability.

12. The second Publication is a webpage detailing a carrier's legal obligations under the *APPR* to passengers whose flights were disrupted during the pandemic, and describing three types of disruptions distinguished under the *APPR*: outside the carrier's control, within the carrier's control, or within the carrier's control but required for safety reasons [**COVID-19 Agency Page**].¹⁰ That page gives the impression that **all** flight disruptions during the pandemic would be categorized as outside the carrier's control, and as such passengers are not entitled to refunds of unused airfare.

13. The COVID-19 Agency Page further endorsed the Statement on Vouchers in all three types of flight disruptions under the *APPR*, giving lay passengers the inescapable impression that accepting a voucher was their only viable option. The Agency did not state why it endorsed the Statement on Vouchers for disruptions within the carrier's control (whether or not required for safety reasons), despite the *APPR* codifying passengers' right to a refund in the case of such disruptions.¹¹

14. Inexplicably, the Agency omitted from both Publications its own long-standing jurisprudence affirming that passengers have a fundamental right to a refund when a carrier is unable to provide the air transportation for any reason, including reasons outside the carrier's control.¹² That

⁹ **Statement on Vouchers** – Lukács Affidavit, Exhibit "M" (emphasis added) [Tab 10M, p. 160].

¹⁰ **COVID-19 Agency Page** – Lukács Affidavit, Exhibit "P" [Tab 10P, p. 170].

¹¹ *Air Passenger Protection Regulations*, ss. 17(2) and 17(7).

¹² *Re: Air Transat*, CTA Decision No. 28-A-2004; *CTA Lukács v. Sunwing*, Decision No. 313-C-

jurisprudence is anchored in the legislative requirement that carriers must have just and reasonable terms and conditions¹³ that address “refunds for services purchased but not used” for any reason.¹⁴ The *APPR*’s codification of some existing rights did not extinguish this entrenched jurisprudence.

iii. Confusion to the public caused by the Agency’s Conduct and Publications

15. If the Agency intended the Statement on Vouchers to clarify and assist passengers in ascertaining their rights to a refund, the Agency has failed. The Statement on Vouchers had the opposite effect, causing confusion and frustration for passengers.

16. The Agency widely disseminated the Statement on Vouchers to passengers via public and private platforms, including Twitter and email.¹⁵ In response to specific passenger inquiries, the Agency indiscriminately regurgitated or directed passengers to the Statement on Vouchers and, in some instances, stated that the Agency will not be dealing with passenger complaints at this time. The incongruity of the Publications and the Agency’s boilerplate replies to passengers’ cries for assistance gave passengers an impression that they had no right to a refund for unused airfares.

17. Major Canadian air carriers used the Statement on Vouchers as an excuse to refuse refunds to passengers. Sunwing passed it off as the Agency’s binding ruling. Westjet claimed the Agency had approved the issuance of vouchers. Air Canada represented it as a form of temporary exemption formally granted by the Agency, or that issuing vouchers is a policy mandated by the Agency. Air Transat characterized it as an opinion supporting the air carriers’ decision to refuse refunds. Swoop represented it as a clarification of the Agency’s position to endorse carriers in issuing vouchers.¹⁶

18. The Statement on Vouchers also inspired the travel industry to undermine rights under various provincial consumer protection legislation to a credit card chargeback for unperformed services, and offered insurers an excuse to deny policy coverage for actual travel disruptions.¹⁷

A-2013 at para. 15; *Lukács v. Porter*, [CTA Decision No. 344-C-A-2013](#) at para. 88; and *Lukács v. Porter*, [CTA Decision No. 31-C-A-2014](#) at para. 137.

¹³ *Air Transportation Regulations*, s. 111(1); and *Canada Transportation Act*, s. 67.2.

¹⁴ *Air Transportation Regulations*, ss. 107(1)(n)(xii) and 122(c)(xii).

¹⁵ Order of Locke, J.A., dated April 16, 2020 [Tab 5, p. 27]; *Lukács Affidavit*, paras. 48-49, 54, and 56-58 [Tab 10, pp. 102-105].

¹⁶ *Lukács Affidavit*, paras. 60-65 [Tab 10, pp. 106-108].

¹⁷ *Lukács Affidavit*, paras. 68 and 74 [Tab 10, pp. 110 and 113].

19. The Agency had full knowledge of the carriers' systematic misrepresentation of the Statement on Vouchers.¹⁸ Yet, the Agency took no remedial action to protect passengers from the deception, nor did the Agency distance itself from those misleading statements to the public. Most disturbingly, the Agency did not denounce Westjet's claim that the Statement on Vouchers was a "decision [that] was reached in conjunction with the [Agency] regarding the refund of itineraries."¹⁹

20. In short, the Agency abdicated its mandate to provide guidance to protect passengers, and instead its actions frustrated all practical remedies for lay passengers to recover funds for travel services they had paid for but never received and may never receive in the foreseeable future.

21. The confusion created by the Agency's actions is underscored by the Transport Minister referring to the impugned statements as expressing what the Agency had already "ruled" upon:

Mr. Chair, as my hon. colleague knows, the Canadian Transportation Agency has ruled on this issue and has ruled that, in the present circumstances and in a non-binding way, it is acceptable for airlines to offer credits for up to two years. In the case of Air Canada, the credit has no expiry date.²⁰

C. Proceedings before the Federal Court of Appeal

22. APR promptly brought a judicial review application upon learning of the potential harm to passengers arising from the Agency's Publications. The application was brought to the Federal Court of Appeal as the court of first instance pursuant to s. 28 of the *Federal Courts Act*. APR also brought a motion seeking firstly interim *ex parte* injunctions, followed by interlocutory injunctions to remove and/or clarify the Publications and to enjoin the Agency's members from dealing with passenger refund claims related to COVID-19 until further order of the court.²¹

23. On April 9, 2020, Pelletier, J.A. held that while the Applicant raised important matters, they were not sufficiently urgent to be heard *ex parte*, without hearing from the Agency. He granted leave to refile the interlocutory injunctions motion, which is the subject of this proposed appeal.²²

¹⁸ The Agency was duly served with the Lukács Affidavit on April 9, 2020.

¹⁹ Lukács Affidavit, para. 45 (emphasis added) [Tab 10, p. 99].

²⁰ COVI Committee, Evid., 43rd Parl., 1st Sess., No. 013, p. 14 (emphasis added) [Tab 11, p. 262].

²¹ Notice of Motion, dated April 7, 2020 [Tab 9, p. 77]; and FCA Reasons at para. 3 [Tab 2, p. 7].

²² Order of Pelletier, J.A., dated April 9, 2020 [Tab 6, p. 28].

24. On April 16, 2020, Locke, J.A. recognized that the Statement on Vouchers' timing suggested it was intended to immediately affect the relations between carriers and passengers, and that there was potential for confusion to non-parties that rely on that statement, whose rights might be irrevocably affected. He ordered the Applicant's motion to be expedited despite the Suspension Period.²³

25. On May 22, 2020, Mactavish, J.A. [**Motions Judge**] issued reasons for her judgment dismissing both the interlocutory mandatory and prohibitory injunctions.

26. The Motions Judge acknowledged the Applicant's argument that the Agency's established jurisprudence confirms the passengers' right to a refund when carriers are unable to provide the service, including situations beyond a carrier's control, and its omissions from the Publications.²⁴

27. The Motions Judge applied a mechanistic, tick-box approach to the *RJR-Macdonald* framework for interlocutory relief, and held that the Applicant must satisfy all three factors in order to be entitled to relief,²⁵ an approach that differs from that of most provincial courts.

28. The Motions Judge correctly held that mandatory interlocutory relief requires meeting a higher threshold of strong *prima facie* case, and correctly acknowledged the Applicant's submission that section 18.1 of the *Federal Courts Act* is not limited to formal decisions and orders but allows judicial review "by anyone directly affected by the matter in respect of which relief is sought."²⁶

29. The Motions Judge did not consider this Court's guidance on availability for judicial review. Instead, she applied an outmoded test that restricted judicial review to administrative actions that "affect rights, impose legal obligations, or cause prejudicial effects," and concluded on that basis that judicial review was not available and this case did not meet the strong *prima facie* threshold.²⁷

30. Departing further from the provincial courts' approach, the Motions Judge also held that the "irreparable harm" element required proof with clear and non-speculative evidence that the Applicant itself **would** suffer the harm. She noted a narrow exception where charities can rely on

²³ Order of Locke, J.A., dated April 16, 2020 [Tab 5, p. 24].

²⁴ FCA Reasons at para. 10 [Tab 2, p. 9].

²⁵ FCA Reasons at para. 15 [Tab 2, p. 10].

²⁶ FCA Reasons at paras. 19 and 21 [Tab 2, pp. 11-12].

²⁷ FCA Reasons at paras. 22-23 and 26-27 [Tab 2, pp. 12-14].

the harm of those that rely on the charity, but did not explain why a similar reasoning could not equally apply to a public interest non-profit advocacy group²⁸ that speaks on behalf of passengers.²⁹

31. The Motions Judge then concluded that there was no “irreparable harm,” because rather than curtailing the misinformation at the main source, there is a theoretical possibility of passengers individually seeking legal recourse against air carriers for repeating or using that misinformation.³⁰

32. For the prohibitory relief to temporarily enjoin the Agency’s members from dealing with refund complaints arising from COVID-19, the Motions Judge assumed that the *serious issue to be tried* threshold was met in respect of the allegation that the Agency’s members violated the *Code of Conduct*, or otherwise displayed a reasonable apprehension of bias.³¹

33. The Motions Judge denied the prohibitory relief under the “irreparable harm” heading, because she found that there was no evidence that members of the Agency were involved in formulating or endorsing the Publications. The Motions Judge opined that statements by Agency staff cannot “taint” the Agency’s members.³² However, there was equally no evidence that the Agency’s civil service staff exclusively authored the Publications, or formulated a policy shift that undermines the *APPR* and the Agency’s jurisprudence without any support from the Agency’s members.

34. The Motions Judge then opined that if it subsequently turned out that the Agency’s members formulated the Publications, the passengers could, in theory, individually raise the ground of bias and then seek leave to appeal to the Federal Court of Appeal if unsatisfied.³³ There was no evidence that the Agency would voluntarily divulge the authors of the Publication, even before the FCA. The Motions Judge did not explain how lay passengers would be expected to navigate the Agency’s procedures, and then the *Federal Courts Rules*, to compel the Agency to disclose the Publications’ author(s) and then advance a serious argument against an adjudicator. The Motions Judge’s reasons are also silent about access to justice considerations and the harms to the administration of justice in allowing such a serious issue to go unchecked.

²⁸ FCA Reasons at paras. 28 and 30. [Tab 2, p. 14].

²⁹ FCA Reasons at para. 3 [Tab 2, p. 7]; Purpose of Corporation for Air Passenger Rights – Lukács Affidavit, Exhibit “D” [Tab 10D, p. 127].

³⁰ FCA Reasons at para. 37 [Tab 2, p. 17].

³¹ FCA Reasons at para. 17 [Tab 2, p. 11].

³² FCA Reasons at para. 35 [Tab 2, p. 16].

³³ FCA Reasons at para. 36 [Tab 2, p. 16].

PART II – QUESTIONS IN ISSUE

35. This case raises the following questions of national, public, and constitutional importance:

Issue 1: What is the correct test for availability of judicial review in the federal courts?

Issue 2: What is the national and consistent approach to “irreparable harm” in the *RJR-MacDonald* framework for litigants seeking interim relief in the public interest?

PART III – STATEMENT OF ARGUMENT

Issue 1: What is the correct test for availability of judicial review in the federal courts?

36. Sections 96 to 101 of the *Constitution Act, 1867* guarantee all Canadians access to a superior court for judicial review of administrative actions.³⁴ Administrative bodies are vested with statutory powers for the public’s benefit, such powers that do not accrue to private entities. Consequently, these administrative bodies are subject to judicial review when they purport to exercise their statutory powers or mandate.³⁵

37. Judicial review is a public law remedy by which courts uphold the rule of law and ensure that administrative bodies act within the bounds of their statutory mandate provided by the law.³⁶ The function of judicial review therefore is not merely to ariht individual injustices, but also to protect society as a whole from administrative overreach.³⁷

38. In *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 14, this Court articulated the test for availability of judicial review as whether the administrative bodies’ action is an exercise of state authority that is of a sufficiently public character [**Wall-test**]. In *J.W. v. Canada (Attorney General)*, 2019 SCC 20 at para. 101, this Court reaffirmed the applicability of the *Wall-test*.

³⁴ *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 31; and *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 13.

³⁵ *Knox v. Conservative Party of Canada*, 2007 ABCA 295 at para. 20.

³⁶ *Highwood Congregation of Jehovah’s Witnesses (Judicial Comm.) v. Wall*, 2018 SCC 26 at para. 13 citing with approval *Knox v. Conservative Party of Canada*, 2007 ABCA 295 at para. 14.

³⁷ *Martineau v. Matsqui Institution Disciplinary Board*, [1980] S.C.R. 602 at 619.

39. There is a divide among FCA judges as to the correct test for availability of judicial review. Since 2018, at least three different panels of the FCA have acknowledged or applied the *Wall*-test.³⁸ However, in 2020, the FCA reverted back to an outmoded and more restrictive test, which superimposes a non-statutory prerequisite that the challenged administrative act must “affect rights, impose legal obligations, or cause prejudicial effects.”³⁹ This extra prerequisite is not in the text of s. 18.1(1) of the *Federal Courts Act*, and does not accord with Parliament’s intent in the 1992 reform to guarantee broad unimpeded access to judicial reviews for supervising federal administrative actions.

40. In the case at bar, the Motions Judge failed to apply the *Wall*-test, and instead applied the aforementioned outmoded and restrictive test for determining whether judicial review was available.⁴⁰ By so doing, the Motions Judge overlooked not only the principle of *stare decisis*, but also Parliamentary supremacy in not giving effect to Parliament’s clear guidance in the 1992 reform for the broad availability of judicial review in the federal courts.

A. The Plenary Scope of Judicial Review in the Federal Courts

41. Judicial review in the federal courts originated from the 1971 *Federal Court Act*, but reached its current plenary scope only after the 1992 legislative reform.

42. In 1971, Parliament first enacted section 18 of the 1971 *Federal Court Act* to fully transfer the constitutional role to judicially supervise every “federal board, commission or other tribunal,” from the provincial superior courts to a unified court,⁴¹ whose judicial review decisions would affect the daily lives of every Canadian from coast to coast. Section 28 of the 1971 *Federal Court Act* carved out an exception for the appeal division to exclusively review a “decision or order” of a “federal board, commission or other tribunal” that is of a non-administrative (i.e., judicial or quasi-judicial) nature, based on three specifically enumerated grounds under the then s. 28(a)-(c).

43. In 1992, the *Federal Court Act* was amended to clarify the dichotomy and confusion that previously surrounded the different remedial powers exercised by the trial and appeal divisions

³⁸ *Wenham v. Canada (Attorney General)*, 2018 FCA 199 at para. 36; *Canada (Attorney General) v. Public Service Alliance of Canada*, 2019 FCA 41 at para. 30; and *Oceanex Inc. v. Canada (Transport)*, 2019 FCA 250 at para. 30.

³⁹ *Canada (Attorney General) v. Democracy Watch*, 2020 FCA 69 at paras. 15 and 19.

⁴⁰ FCA Reasons at paras. 22-23 [Tab 2, p. 12].

⁴¹ *Canada (Human Rights Comm.) v. Canadian Liberty Net*, [1998] 1 SCR 626 at paras. 33-36.

under ss. 18 and 28 of the 1971 *Federal Court Act*, respectively.⁴² In place of the former s. 28 that carved out the appeal division’s jurisdiction based on the remedies being sought, the new s. 28 of the 1992 *Federal Court Act* now assigns exclusive judicial review jurisdiction to the Federal Court of Appeal with respect to enumerated federal administrative bodies, including the Agency.

44. In 1992, Parliament also enacted a unified s. 18.1, replacing the “decisions or orders” limitation in the former s. 28(1) with “matter” in the new s. 18.1(1).⁴³ Parliament also retired the exclusion of “decisions or orders” of an administrative nature from judicial review under the former s. 28(1). The three limited grounds for judicial review have been expanded to include an all-encompassing ground where the public body “acted in any other way that was contrary to law.”⁴⁴

45. Section 18.1 of the *Federal Courts Act* reaffirms the plenary scope of judicial review of federal administrative acts in the federal courts, which is coextensive with the constitutionally guaranteed common law right of judicial review before the provincial superior courts.⁴⁵ Today, the federal courts enjoy the same extensive and constitutionally guaranteed judicial review jurisdiction with respect to federal administrative bodies as provincial superior courts do with respect to provincial administrative bodies. Section 18.1 of the *Federal Courts Act* does not constrain the federal courts’ constitutional role and jurisdiction, but rather breathes life into it.

B. The Motions Judge Erred by Failing to Apply the Wall-Test

46. The *Wall*-test, articulated by this Court for the availability of judicial review,⁴⁶ equally applies before the federal courts,⁴⁷ courts that carry out an identical constitutional role with respect to federal administrative bodies as provincial superior courts do for provincial administrative bodies.⁴⁸

47. In this case, the Motions Judge overlooked the *Wall*-test, and resurrected the outmoded and

⁴² *Martineau v. Matsqui Institution Disciplinary Board*, [1980] S.C.R. 602 at 606 and 609.

⁴³ *Krause v. Canada*, [1999] 2 FC 476 at paras. 22-24; *Markevich v. Canada*, [1999] 3 FC 28 at paras. 9-13; *Larny Holdings Ltd. v. Canada (Minister of Health)*, 2002 FCT 750 at paras. 14-22; and *Morneault v. Canada*, [2001] 1 FC 30 at paras. 42-44.

⁴⁴ *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116 at paras. 29-31; and *Federal Courts Act*, s. 18.1(4)(f) – see *Morneault v. Canada*, [2001] 1 FC 30 at para. 44.

⁴⁵ *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paras. 33-34 and 48.

⁴⁶ *Highwood Congregation of Jehovah’s Witnesses (Jud. Comm.) v. Wall*, 2018 SCC 26 at para. 14.

⁴⁷ *Oceanex Inc. v. Canada (Transport)*, 2019 FCA 250 at para. 30.

⁴⁸ *Canada (Human Rights Comm.) v. Canadian Liberty Net*, [1998] 1 SCR 626 at paras. 32-36.

restrictive test for assessing the availability of judicial review.⁴⁹ Had the Motions Judge applied the *Wall*-test, she would have reached the inevitable conclusion that judicial review must be available for the Agency's act of publishing non-binding guidance for consumption by the travelling public.

48. First, the Agency was purporting to exercise state authority. The Motions Judge found that the Agency's provision of non-binding guidance is part of their mandate and the Agency's impugned acts were in furtherance of that mandate.⁵⁰ Subsequently, the Transport Minister acknowledged that the impugned statements expressed what the Agency had already "ruled" upon.⁵¹

49. Second, the Agency's actions were of a sufficiently public character. The Agency is a statutory economic regulator of air carriers and a quasi-judicial adjudicator of air travel disputes.⁵² Under the guise of a policy statement or guidance,⁵³ the Agency opined on the merits of a live controversy that would land on its adjudicative docket in short order. The Agency claims that the purpose of its commentary was to offer the public a "fair and sensible balance between passenger protection and airlines' operational realities" in order to protect the airlines' "economic viability."⁵⁴ In other words, the Agency claims it was its role to step in and settle the debate in some fashion, and as the Transport Minister acknowledged, the Agency has publicly sealed the debate.⁵⁵

50. The recent April 2020 FCA panel's resurrection of the outmoded and restrictive test and the Motions Judge's application thereof undermines the predictability of and access to judicial reviews at the federal level. A close review of the jurisprudence demonstrates that the non-statutory prerequisite in that test has its origin rooted in jurisprudence before the 1992 Parliamentary reform, when federal judicial review focused on "decisions or orders" rather than "matters."⁵⁶

⁴⁹ FCA Reasons at paras. 22-23 [Tab 2, p. 12].

⁵⁰ FCA Reasons at para. 34 [Tab 2, p. 16].

⁵¹ COVI Committee, Evidence, 43rd Parl., 1st Sess., No. 013, p. 14 [Tab 11, p. 262].

⁵² FCA Reasons at para. 34 [Tab 2, p. 16].

⁵³ FCA Reasons at paras. 25-26 [Tab 2, p. 13].

⁵⁴ FCA Reasons at paras. 5-6 [Tab 2, pp. 7-8].

⁵⁵ COVI Committee, Evidence, 43rd Parl., 1st Sess., No. 013, p. 14 [Tab 11, p. 262].

⁵⁶ *Air Canada v. Toronto Port Authority et al*, 2011 FCA 347 at para. 29 [*Air Canada*] cites both *Irving Shipbuilding Inc. v. Canada (A.G.)*, 2009 FCA 116 (which does not support the *ratio* in *Air Canada*) and *Democracy Watch v. Conflict of Interest and Ethics Commission*, 2009 FCA 15 at para. 10 which relies on *Canadian Institute of Public and Private Real Estate Co. v. Bell Canada*, 2004 FCA 243 at paras. 5 and 7, which further relies on *Re Attorney-General of Canada and Cylien*, 1973 CanLII 1163 (FCA) that deals exclusively with "decisions" and not "matters."

51. This Court’s swift correction and prompt settling of any division of opinion among FCA panels is essential to restore constitutional order, to enable full access to the constitutionally guaranteed federal judicial review, and to uphold the rule of law at the federal administrative agencies.

Issue 2: What is the national and consistent approach to “irreparable harm” in the *RJR-MacDonald* framework for litigants seeking interim relief in the public interest?

52. For over a decade, a spectrum of vastly different formulations of the “irreparable harm” criteria for interlocutory relief under the *RJR-MacDonald* framework have permeated among appellate and superior courts across Canada.⁵⁷ On one end of the spectrum, the New Brunswick Court of Appeal does not require demonstration of “irreparable harm” at all.⁵⁸ On the other end, the FCA requires clear, real and not speculative evidence that irreparable harm **will** result,⁵⁹ which is on its face contrary to this Court’s guidance that this factor refers to harm that **may** result.⁶⁰

53. In between those ends of the spectrum, various provincial appellate and superior courts have treated the three *RJR-MacDonald* criteria contextually, not as watertight compartments or a checklist, but rather as interrelated factors, where the strength of one may compensate for the weakness of another. Most importantly, these middle-of-the-road courts only require that “irreparable harm” **may** result absent the interim relief. Even the Federal Court has begun to join the middle-of-the-road approach in moving away from a box-ticking exercise in favour of a contextual analysis.⁶¹ An additional point of diversion between these courts across Canada is whether a party seeking the interim relief on behalf of the public must itself suffer the “irreparable harm” directly or this criteria may also be satisfied through a flexible application of the relevant contextual factors. These inconsistencies undermine predictability for litigants and restrict access to justice in the federal courts, calling for this Court’s intervention to establish a consistent national approach.

⁵⁷ *The Commissioner of Competition v. HarperCollins Publishers LLC, et al.*, 2017 CACT 14 [*HarperCollins*] at para. 38 (per Justice D. Gascon); see *Mosaic Potash Esterhazy L.P. v. Potash Corp. of Saskatchewan Inc.*, 2011 SKCA 120 [*Mosaic*] paras. 51-67 for a detailed review of the spectrum of formulations, and *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 [*Vancouver Aquarium*] at paras. 58-60 rejecting the FCA approach.

⁵⁸ *Imperial Sheet Metal Ltd. v. Landry and Gray Metal Products*, 2007 NBCA 51 at paras. 25-30.

⁵⁹ *Janssen Inc. v. Abbie Corporation*, 2014 FCA 112 at paras. 19, 21, and 24

⁶⁰ *Tabah v. Quebec (A.G.)*, [1994] 2 SCR 339 at 359 (per La Forest J, in dissent on other grounds).

⁶¹ *Letnes v. Canada (A.G.)*, 2020 FC 636 at para. 36; *Okojie v. Canada (C.I.)*, 2019 FC 880 at para. 35; and *Ahousaht First Nation v. Canada (Fisheries)*, 2019 FC 1116 at para. 51.

54. In this case, the disparity is particularly striking as the Applicant would likely have succeeded under the middle-of-the-road approach adopted in various provincial superior and appellate courts, and even the Federal Court. However, the Motions Judge applied a distinctively stringent formulation of “irreparable harm” for the *RJR-MacDonald* framework and refused any relief.

C. A Contextual Application of the *RJR-MacDonald* Framework is the Correct Approach

55. Returning to first principles, equitable doctrines are inherently contextual, flexible, not easily framed by formulas, and are based on what is just in all the circumstances.⁶² The *RJR-MacDonald* framework guides a court’s exercise of its equitable jurisdiction to grant interim or interlocutory relief, often on an urgent basis, before a full evidentiary record could be developed.

56. In *Google Inc. v. Equustek Solutions Inc.* [**Google**], this Court reaffirmed the centuries old principle that a court’s exercise of its equitable jurisdiction to grant interim equitable relief must be based on a contextual analysis of the fundamental question of whether it would be just and equitable in the circumstances of that particular case (i.e., in the interests of justice).⁶³ The purpose of the *RJR-MacDonald* framework and its three interrelated factors is to assist the courts in carrying out this contextual analysis, not to bind their discretion with a specific, closed tick-box formula.

57. The contextual application of the *RJR-MacDonald* framework has been adopted by provincial appellate and superior courts across Canada,⁶⁴ and more recently even the Federal Court has

⁶² *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at paras. 58 and 78; and *Soulos v. Korkontzilas*, [1997] 2 SCR 217 at para. 34; see also *Federal Courts Act*, s. 44.

⁶³ *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 23-25.

⁶⁴ *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19; *Vancouver Aquarium*, *supra*, at paras. 91 and 94-5; *Nova Scotia (Minister of Health) v. J. (J.)*, 2003 NSCA 71 at para. 30; *Northway Aviation Ltd. v. Southeast Resource Development Council Corp. Ltd. et al.*, 2008 MBCA 93 at para. 19; *Livent Inc. v. Deloitte & Touche*, 2016 ONCA 395 at para. 5; *Vidéotron ltée c. Industries Microlec produits électroniques inc.*, 1987 CanLII 658 (QC CA) at para. 29; *Entreprises Jacques Despars inc. c. Pelletier*, 1992 CanLII 3130 (QC CA) at para. 13; *Wildman v. Kulyk*, 2013 SKCA 55 at para. 28; *Zipper Transportation Services Ltd. v. Korstrom*, 1998 CanLII 5440 (MB CA) at para. 11; *Royal Bank of Canada v. Saulnier*, 2006 NSCA 108 at para. 9; *Govt. P.E.I. v. Summerside Seafood*, 2006 PESCAD 11 at para. 61; *Henderson v. Quinn*, 2019 NSSC 190 at para. 44; *William v. British Columbia (A.G.)*, 2019 BCCA 112 at para. 30; *Mosaic*, *supra*, at paras. 26 and 51; and *M & M Homes Inc. v. 2088556 Ontario Inc.*, 2020 ONCA 134 at para. 42.

shifted towards the contextual application of *RJR-MacDonald*, in line with the provincial courts.⁶⁵

58. Despite this Court’s guidance in *Google*, the Federal Court of Appeal remains an outlier. For decades, the FCA has adopted a mechanistic and onerous approach to this Court’s *RJR-MacDonald* framework in three respects: first, the factors have been treated as tick-box formulas;⁶⁶ second, the level of certainty and the quality of evidence to demonstrate “irreparable harm” is distinctly more onerous than what is required in the provincial courts;⁶⁷ and third, the “irreparable harm” must be suffered by the person seeking interim relief, with a narrow exception for registered charities.⁶⁸

59. The FCA’s approach of requiring litigants to prove “irreparable harm” at the outset with a high degree of certainty defeats the very objective of making interim equitable relief available to litigants, because fact finding at the interlocutory stage is necessarily speculative in nature.⁶⁹ Such an onerous approach creates a threshold that arguably can never be met, and undermines the role of equity in balancing which party may suffer greater harm if the relief were to be granted, tips the balance heavily against moving parties, and risks that interim relief could be denied even when the possible harm to the moving party outweighs any potential harm to the non-moving party.⁷⁰

60. The wisdom of the contextual approach is apparent in cases affecting the public interest, where a mechanistic requirement that the moving party suffer the “irreparable harm” can practically

⁶⁵ *Letnes v. Canada (Attorney General)*, 2020 FC 636 at para. 36; *Okojie v. Canada (Citizenship and Immigration)*, 2019 FC 880 at para. 35; *Ahousaht First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116 at para. 51; *Robinson v. Canada (Attorney General)*, 2019 FC 876 at para. 67; *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334 at para. 98; *Baciu v. Canada (Citizenship and Immigration)*, 2020 FC 7 at para. 10; *Awashish v. Conseil des Atikamekw d’Opitciwan*, 2019 FC 1131 at para. 11; and *British Columbia (Attorney General) v. Alberta (Attorney General)*, 2019 FC 1195 at paras. 96-97.

⁶⁶ *Ahlul-Bayt Centre, Ottawa v. Canada (N.R.)*, 2018 FCA 61 at para. 8; *Canada (A.G.) v. Oshkosh Defense Canada Inc.*, 2018 FCA 102 at para. 21; *Western Oilfield Equipment Rentals Ltd. v. M-I L.L.C.*, 2020 FCA 3 at paras. 6-7; and *Janssen Inc. v. Abbvie Corporation*, 2014 FCA 112 at paras. 13-14. See also *HarperCollins*, *supra* at paras. 35 and 56.

⁶⁷ Norman Siebrasse, Interlocutory Injunctions and Irreparable Harm in the Federal Courts, 2010 88-3 Canadian Bar Review 515, 2010 CanLIIDocs 93 [Bar Review Article], cited with approval in *Mosaic*, *supra*, at paras. 58-59; *HarperCollins*, *supra* at paras. 38 and 56.

⁶⁸ *Glooscap Heritage Society v. M.N.R.*, 2012 FCA 255 at paras. 33-34.

⁶⁹ *Mosaic*, *supra*, at para. 59; and Bar Review Article, *supra*, p. 523.

⁷⁰ Bar Review Article, *supra*, pp. 525 and 529.

never be met.⁷¹ Under this approach, the fairly low threshold⁷² for “irreparable harm” may be met by harm to the community at large instead of narrowly focusing on the moving party, or by showing impropriety of an administrative act, or otherwise relaxed when monetary damages are not sought.⁷³

61. The FCA’s approach has been impeding interlocutory relief for litigants in all matters within the federal courts’ jurisdiction, such as intellectual property, immigration, and admiralty. This Court’s guidance could restore access to such relief as intended in the *Federal Courts Act*.

D. The Motions Judge Erred by Failing to Follow the Contextual Approach

62. The Motions Judge’s reasons manifested all of the indicia of the FCA’s mechanistic and onerous approach in assessing the “irreparable harm” factor under the *RJR-MacDonald* framework.⁷⁴ The Motion Judge erred by failing to apply the contextual approach and overlooking the public interest nature of the proceedings and proposed relief, thereby creating a cascading effect.

63. Had the Motions Judge taken into account the *Wall*-test and the public interest nature of the relief sought, she would have granted the relief under a contextual analysis.

i. The *RJR-MacDonald* factors are not cumulative tick-boxes

64. The Motions Judge treated the *RJR-MacDonald* factors as cumulative tick-boxes, each of which must be met separately.⁷⁵ By so doing, the Motions Judge overlooked the public interest dimension of the case, which allows for the strong merits of the case and/or the obvious improprieties of the administrative acts to make up for perceived frailties to the “irreparable harm” aspect.⁷⁶

⁷¹ *Vancouver Aquarium, supra*, at paras. 92-93.

⁷² *Mosaic, supra*, at para. 61; and Bar Review Article, pp. 528 and 533.

⁷³ *Newlab Clinical Research Inc. v. N.A.P.E.*, 2003 NLSCTD 167 at paras. 42-44 and 49; *Island Telephone Company, Re*, 1987 CanLII 192 (PE SCAD); *N.A.P.E. v. Western Regional Integrated Health Authority*, 2008 NLTD 20 at para. 9; *Cambie Surgeries Corp. v. B.C. (A.G.)*, 2018 BCSC 2084 at paras. 123-124; leave to appeal ref’d: 2019 BCCA 29 at paras. 18-19; *PT v. Alberta*, 2019 ABCA 158 at para. 69; *Edmonton Northlands v. Edmonton Oilers Hockey Club*, 1993 CanLII 7234 (AB QB) at para. 85; affirmed: 1994 ABCA 90; and *M & M Homes Inc. v. 2088556 Ontario Inc.*, 2020 ONCA 134 at para. 42.

⁷⁴ See paragraph 58 on page 44.

⁷⁵ FCA Reasons at para. 15 [Tab 2, p. 10].

⁷⁶ See paragraph 60 on page 44.

65. The cascading error from the Motions Judge’s approach is that she also fettered her discretion in failing to consider where the balance of convenience lied in this case.⁷⁷ The balance of convenience is key for assessing whether it is “just or convenient” in the circumstances,⁷⁸ a principle of equity that Parliament enshrined in ss. 18.2 and 44 of the *Federal Courts Act*.

66. Had the Motions Judge considered the balance of convenience, she would have reached the inevitable conclusion that this factor favoured granting the relief. There was no evidence before the Motions Judge of any inconvenience or harm to the Agency or any persons in granting the interim relief preserving the *status quo* that ensued before the Agency engaged in the impugned acts.

ii. “Irreparable harm” may be demonstrated by risk of harm to the public

67. The Motions Judge erred in law by holding that “**only** harm suffered **by the party** seeking the injunction will qualify” as irreparable harm under the *RJR-MacDonald* framework. There are two difficulties with this proposition. First, this Court held that “[h]arm is generally viewed from **the standpoint of the person seeking to benefit** from the interlocutory relief,” which implies that the harm does not have to be suffered by the party seeking the relief before the court.⁷⁹

68. Second, and more importantly, parties that seek relief for the public benefit or the benefit of others would not themselves be suffering the alleged harm. Frequently, those at risk of suffering the harm, and in turn, benefiting from the requested interlocutory relief, are the most vulnerable who would be unable, incapable, or inexperienced in advancing the grievance themselves.⁸⁰ The Motion Judge’s narrow interpretation of “irreparable harm” therefore can arguably never be met in litigation that transcends the interest of the parties, foreclosing interlocutory relief for such litigation in the federal courts. As this Court confirmed in *Delta Air Lines v. Lukács*, the imposition of a legal test that can arguably never be met is unreasonable, and such a test should not be applied.⁸¹

⁷⁷ FCA Reasons at para. 38 [Tab 2, p. 17].

⁷⁸ Bar Review Article, *supra*, pp. 520, 523, 528, 534, and 539.

⁷⁹ *PT v. Alberta*, 2019 ABCA 158 at para. 50, following *Tabah v. Quebec (A.G.)*, [1994] 2 SCR 339 at 359 (per La Forest J, in dissent on other grounds).

⁸⁰ *Richard v. Time Inc.*, 2012 SCC 8 at paras. 36-37, 72, and 74; *Canada (A. G.) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras. 71 and 73-74.

⁸¹ *Delta Air Lines v. Lukács*, 2018 SCC 2 at paras. 17-18.

69. The FCA’s stringent approach is exhibited by its recognition of only one exception to the rule that “only harm suffered by the party seeking the injunction will qualify.” The FCA narrowly permits registered charities to rely on risk of harm to persons that depend on that charity.⁸² There is no reason why the same exception should not apply to a non-profit entity, such as the Applicant.

70. The correct and equitable approach to “irreparable harm” would be to assess the risk of harm to the beneficiaries, or group of beneficiaries, that the interlocutory relief seeks to protect or benefit.⁸³ For example, “irreparable harm” was previously assessed from the perspective of the beneficiaries, such as the risk of harm to children, when parents, grandparents, or a school board applied for relief.⁸⁴

71. Had the Motions Judge turned her mind to the contextual approach and this Court’s guidance, she would have found that when a non-profit advocacy organization, like the Applicant, seeks relief to benefit consumers, the risk of harm should be assessed from the consumers’ perspective.

iii. “Irreparable harm” concerns assessment of risks, not absolute certainties

72. The Motions Judge required the Applicant to “demonstrate with clear and **non-speculative evidence** that it **will suffer** irreparable harm.”⁸⁵ That approach to the evidentiary threshold and the level of certainty of the harm the evidence should demonstrate detracts from the equitable objective underlying interlocutory relief. The exercise of equitable jurisdiction on an interlocutory basis is comprised of balancing and minimizing risks of harm pending final adjudication, and is not about making conclusive findings based on certainties.⁸⁶ Irreparable harm concerns **risks** of what harms might occur in the future, which cannot be predicted with certainty.⁸⁷ A requirement for proof with certainty of the harm occurring is an impossible burden, which therefore should not be applied.⁸⁸

⁸² *Glooscap Heritage Society v. M.N.R.*, 2012 FCA 255 at paras. 33-34.

⁸³ *Tabah v. Quebec (A.G.)*, [1994] 2 SCR 339 at 360 (per La Forest J, in dissent on other grounds).

⁸⁴ *C.D. v. A.B.*, 2004 CanLII 43691 (NB CA) at para. 28; and *Whitcourt Roman Catholic Separate School District No. 94 v. Alberta*, 1995 ABCA 260 at para. 29.

⁸⁵ FCA Reasons at para. 28 [Tab 2, p. 14].

⁸⁶ *Mosaic*, *supra*, at paras. 58-60; see also paragraph 59 on page 44 above.

⁸⁷ *Minister of Community Services v. B.F.*, 2003 NSCA 125 at para. 19; and *C.D. v. A.B.*, 2004 CanLII 43691 (NB CA) at para. 30.

⁸⁸ *Manto v. Canada (IRC)*, 2018 FC 335 at para. 22; *Wang v. Luo*, 2002 ABCA 224 at para. 17.

73. The Motions Judge erred by finding that the mere *theoretical* possibility of *individual* passengers bringing separate recourses rendered the alleged *aggregate* harm to every passenger repairable.⁸⁹ This Court has cautioned that consideration be given to *realistic* alternative recourses that are practically, not merely in theory, possible.⁹⁰ The Motions Judge did not heed that caution.

74. The Motions Judge did not appreciate that average passengers are not legally savvy and are unable to pierce through deceptions on their own.⁹¹ Such passengers trust and rely on the Agency's Publications' accuracy, unaware that those Publications enabled air carriers to deceive passengers and to trample upon their rights. Even if a passenger were to break through the cloud of deceit, it would be unworkable for them to retain counsel for individual claims.⁹² Furthermore, it is impractical for a self-represented passenger to advance complex bias arguments before the Agency or to individually challenge the Agency's conduct via a leave to appeal motion to the FCA.

iv. Injunction: Most effective consumer and public interest remedy

75. Courts have recognized the principle that “information is power” (*scientia potestas est*).⁹³ Conversely, disinformation is an abuse of that power, to the prejudice of its audiences, which can lead to serious ramifications and repercussions for the audiences and the public.⁹⁴ In the consumer context, misinformed consumers are at risk of their legal rights being trampled upon without their knowledge,⁹⁵ which is precisely what this interlocutory injunction seeks to protect against.

76. In this instance, the Motions Judge stated that any proliferation of misinformation from the Agency (i.e., the Publications) and the travel industry quoting or relying on the Agency's publications can be adequately “repaired” by passengers later seeking separate recourse against those third parties.⁹⁶ The Motions Judge's finding is unsupportable in law or logic in three respects.

⁸⁹ FCA Reasons at paras. 36-37 [Tab 2, pp. 16-17].

⁹⁰ *Canada (A. G.) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 51.

⁹¹ *Richard v. Time Inc.*, 2012 SCC 8 at paras. 36-37, 72, and 74.

⁹² *AIC Limited v. Fischer*, 2013 SCC 69 at para. 27.

⁹³ *Cote v. Canada (Treasury Board)*, 1993 CanLII 9382 (FCA) at para. 15.

⁹⁴ Lee, Newton. “Misinformation and Disinformation,” in Newton Lee, ed., *Facebook Nation: Total Information Awareness*, 2nd ed. Springer, 2014. [Tab 12, pp. 269, 279, and 280]; and *Stagg v. Condominium Plan No. 882-2999*, 2013 ABQB 684 at para. 50.

⁹⁵ *Richard v. Time Inc.*, 2012 SCC 8 at paras. 36-37, 72, and 74.

⁹⁶ FCA Reasons at para. 37 [Tab 2, p. 17].

77. Firstly, the Motions Judge overlooked the difficulty, if not impossibility, of tracking and tracing the effects of disinformation after the fact, especially considering the sheer number of passengers.⁹⁷ Secondly, the Motions Judge failed to adhere to this Court's guidance on the primacy of injunctions as the most efficient remedy in protection of vulnerable consumers and deterrence of wrongful conduct against them.⁹⁸ Thirdly, the Motions Judge's approach is tantamount to holding that disinformation should not be swiftly curtailed and corrected at its source (i.e., the Agency), but rather should be addressed through relief against the multitude of third persons that proliferate it.

PART IV – SUBMISSIONS CONCERNING COSTS

78. The Applicant seeks its costs, or alternatively, disbursements only. The Applicant also asks that considering the public interest nature of the issues raised, no costs be awarded against it.

PART V – ORDER SOUGHT

79. The Applicant seeks an order granting leave to appeal, or alternatively, an order remanding the case to a five-judge panel of the Federal Court of Appeal for re-hearing, pursuant to subsection 43(1.1) of the *Supreme Court Act*, with an order for a *de novo* review whether the subject administrative action could be amenable to judicial review and the Federal Court of Appeal's formulation of the *RJR-Macdonald* test for interlocutory relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of August, 2020.



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Air Passenger Rights

⁹⁷ *Bell Canada v. Cogeco Cable Canada*, 2016 ONSC 6044 at para. 37; and *B.C. Tel Mobility Cellular Inc. v. Rogers Cantel Inc.*, 1995 CanLII 1679 (BC SC) at para. 31.

⁹⁸ *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 35.

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PART VII

STATUTES AND REGULATIONS WITHOUT HYPERLINKS

19 ELIZABETH II

19 ELIZABETH II

CHAPTER 1[†]CHAPITRE 1[†]

An Act respecting the Federal Court of
Canada

Loi concernant la Cour fédérale du
Canada

[Assented to 3rd December, 1970]

[Sanctionnée le 3 décembre 1970]

Her Majesty, by and with the advice
and consent of the Senate and House of
Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consente-
ment du Sénat et de la Chambre des
communes du Canada, décrète:

SHORT TITLE

TITRE ABRÉGÉ

Short title 1. This Act may be cited as the *Federal
Court Act.*

1. La présente loi peut être citée sous le titre: *Loi sur la Cour fédérale.*

INTERPRETATION

INTERPRÉTATION

Definitions 2. In this Act,
"Associate Chief Justice" (a) "Associate Chief Justice" means the Associate Chief Justice of the Court;
"Canadian maritime law" (b) "Canadian maritime law" means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the *Admiralty Act* or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this or any other Act of the Parliament of Canada;
"Chief Justice" (c) "Chief Justice" means the Chief Justice of the Court;
"Court" or "Federal Court" (d) "Court" or "Federal Court" means the Federal Court of Canada;
"Court of Appeal" or "Federal Court of Appeal" (e) "Court of Appeal" or "Federal Court of Appeal" means that division of the Court referred to as the Court of Appeal or Federal Court of Appeal by this Act;

2. Dans la présente loi,
«juge en chef adjoint» désigne le juge en chef adjoint de la Cour;
«droit maritime canadien» désigne le droit dont l'application relevait de la Cour de l'Échiquier du Canada, en sa juridiction d'amirauté, en vertu de la *Loi sur l'Amirauté* ou de quelque autre loi, ou qui en aurait relevé si cette Cour avait eu, en sa juridiction d'amirauté, compétence illimitée en matière maritime et d'amirauté, compte tenu des modifications apportées à ce droit par la présente loi ou par toute autre loi du Parlement du Canada;
«juge en chef» désigne le juge en chef de la Cour;
«Cour» ou «Cour fédérale» désigne la Cour fédérale du Canada;
«Cour d'appel» ou «Cour d'appel fédérale» désigne la division de la Cour appelée Cour d'appel ou Cour d'appel fédérale;

† See R.S.C., 1970 (2nd Supp.), c. 10.

† Voir S.R.C. de 1970 (2^e Supp.), c. 10.

"Crown"	(f) "Crown" means Her Majesty in right of Canada;	f) «Couronne» désigne Sa Majesté du «Couronne» chef du Canada;
"Federal board, commission or other tribunal"	(g) "federal board, commission or other tribunal" means any body or any person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of the Parliament of Canada, other than any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of <i>The British North America Act, 1867</i> ;	g) «office, commission ou autre tribunal fédéral» désigne un organisme ou une ou plusieurs personnes ayant, exerçant ou prétendant exercer une compétence ou des pouvoirs conférés par une loi du Parlement du Canada ou sous le régime d'une telle loi, à l'exclusion des organismes de ce genre constitués ou établis par une loi d'une province ou sous le régime d'une telle loi ainsi que des personnes nommées en vertu ou en conformité du droit d'une province ou en vertu de l'article 96 de l' <i>Acte de l'Amérique du Nord britannique, 1867</i> ;
"Final judgment"	(h) "final judgment" means any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding;	h) «jugement final» désigne tout jugement ou toute autre décision qui statue en totalité ou en partie sur le fond au sujet d'un droit d'une ou plusieurs des parties à une procédure judiciaire;
"Judge"	(i) "judge" means a judge of the Court and includes the Chief Justice and Associate Chief Justice;	i) «juge» désigne un juge de la Cour, y compris le juge en chef et le juge en chef adjoint;
"Laws of Canada"	(j) "laws of Canada" has the same meaning as those words have in section 101 of <i>The British North America Act, 1867</i> ;	j) «droit du Canada» a le sens donné, à l'article 101 de l' <i>Acte de l'Amérique du Nord britannique, 1867</i> , à l'expression «lois du Canada» dans les versions françaises de cet Acte;
"Practice and procedure"	(k) "practice and procedure" includes evidence relating to matters of practice and procedure;	k) «pratique et procédure» s'entend également de la preuve relative aux questions de pratique et de procédure;
"Property"	(l) "property" means property of any kind whether real or personal, movable or immovable or corporeal or incorporeal and, without restricting the generality of the foregoing, includes a right of any kind, a share or a chose in action;	l) «bien» désigne n'importe quelle sorte de bien, mobilier ou immobilier, corporel ou incorporel, et notamment, sans restreindre la portée générale de ce qui précède, un droit de n'importe quelle nature, une part ou un droit d'action;
"Relief"	(m) "relief" includes every species of relief whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise;	m) «redressement» comprend toute espèce de redressement judiciaire, qu'il soit sous forme de dommages-intérêts, de paiement d'argent, d'injonction, de déclaration, de restitution d'un droit incorporel, de restitution d'un bien mobilier ou immobilier, ou sous une autre forme;
"Rules"	(n) "Rules" means provisions of law and rules and orders made under section 46 or continued in force by subsection (6) of section 62;	n) «Règles» désigne les règles et ordonnances établies en vertu de l'article 46 ou qui demeurent en vigueur aux termes du paragraphe (6) de l'article 62, ainsi
"Ship"	(o) "ship" includes any description of vessel or boat used or designed for use in navigation without regard to method or lack of propulsion;	

1970

Cour fédérale

C. 1

3

"Supreme Court"

(p) "Supreme Court" means the Supreme Court of Canada; and

que toute autre disposition du droit en la matière;

"Trial Division"

(q) "Trial Division" means that division of the Court called the Federal Court—Trial Division.

o) «navire» comprend toute espèce de bâtiment ou bateau utilisé ou conçu pour la navigation, indépendamment de son mode de propulsion ou même s'il n'en a pas;

p) «Cour suprême» désigne la Cour suprême du Canada; et

q) «Division de première instance» désigne la division de la Cour appelée Division de première instance de la Cour fédérale.

THE COURT

LA COUR

Original Court continued

3. The court of law, equity and admiralty in and for Canada now existing under the name of the Exchequer Court of Canada is hereby continued under the name of the Federal Court of Canada as an additional court for the better administration of the laws of Canada and shall continue to be a superior court of record having civil and criminal jurisdiction.

3. Le tribunal de *common law*, d'*equity* et d'amirauté du Canada existant actuellement sous le nom de Cour de l'Échiquier du Canada est maintenu sous le nom de Cour fédérale du Canada, en tant que tribunal supplémentaire pour la bonne application du droit du Canada, et demeure une cour supérieure d'archives ayant compétence en matière civile et pénale.

Court to consist of two divisions

4. The Federal Court of Canada shall hereafter consist of two divisions, called the Federal Court—Appeal Division (which may be referred to as the Court of Appeal or Federal Court of Appeal) and the Federal Court—Trial Division.

4. La Cour fédérale du Canada est désormais formée de deux divisions appelées Division d'appel de la Cour fédérale qui peut être appelée Cour d'appel ou Cour d'appel fédérale et Division de première instance de la Cour fédérale.

THE JUDGES

LES JUGES

Constitution of Court

5. (1) The Federal Court of Canada shall consist of the following judges:

5. (1) La Cour fédérale du Canada est composée des juges suivants:

(a) a chief justice called the Chief Justice of the Federal Court of Canada, who shall be the president of the Court, shall be the president of and a member of the Court of Appeal and shall be *ex officio* a member of the Trial Division;

a) un juge en chef, appelé juge en chef de la Cour fédérale du Canada, qui est président de la Cour, président et membre de la Cour d'appel et membre de droit de la Division de première instance;

(b) an associate chief justice called the Associate Chief Justice of the Federal Court of Canada, who shall be the president of and a member of the Trial Division and shall be *ex officio* a member of the Court of Appeal; and

b) un juge en chef adjoint, appelé juge en chef adjoint de la Cour fédérale du Canada, qui est président et membre de la Division de première instance et qui est membre de droit de la Cour d'appel; et

Extra-ordinary remedies

18. The Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Inter-gov-ernmental disputes

19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to in that Act by its new name or by its former name, has jurisdiction in cases of controversies,

(a) between Canada and such province, or

(b) between such province and any other province or provinces that have passed a like Act,

the Court has jurisdiction to determine such controversies and the Trial Division shall deal with any such matter in the first instance.

Industrial property

20. The Trial Division has exclusive original jurisdiction as well between subject and subject as otherwise,

(a) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade mark or industrial design, and

(b) in all cases in which it is sought to impeach or annul any patent of invention, or to have any entry in any register of copyrights, trade marks or industrial designs made, expunged, varied or rectified,

and has concurrent jurisdiction in all other cases in which a remedy is sought under the authority of any Act of the Parliament of Canada or at law or in equity, respecting

18. La Division de première instance a compétence exclusive en première instance Recours extra-ordinaires

a) pour émettre une injonction, un bref de *certiorari*, un bref de *mandamus*, un bref de prohibition ou un bref de *quo warranto*, ou pour rendre un jugement déclaratoire, contre tout office, toute commission ou tout autre tribunal fédéral; et

b) pour entendre et juger toute demande de redressement de la nature de celui qu'envisage l'alinéa a), et notamment toute procédure engagée contre le procureur général du Canada aux fins d'obtenir le redressement contre un office, une commission ou à un autre tribunal fédéral.

19. Lorsque l'assemblée législative d'une province a adopté une loi reconnaissant que la Cour, qu'elle y soit désignée sous son nouveau ou son ancien nom, a compétence dans les cas de litige Différends entre gouvernements

a) entre le Canada et cette province, ou

b) entre cette province et une ou plusieurs autres provinces ayant adopté une loi au même effet,

la Cour a compétence pour juger ces litiges et la Division de première instance connaît de ces questions en première instance.

20. La Division de première instance a compétence exclusive en première instance, tant entre sujets qu'autrement, Propriété industrielle

a) dans tous les cas où des demandes de brevet d'invention ou d'enregistrement d'un droit d'auteur, d'une marque de commerce ou d'un dessin industriel sont incompatibles, et

b) dans tous les cas où l'on cherche à faire invalider ou annuler un brevet d'invention ou insérer, rayer, modifier ou rectifier une inscription dans un registre des droits d'auteur, des marques de commerce ou des dessins industriels,

et elle a compétence concurrente dans tous les autres cas où l'on cherche à obtenir un redressement en vertu d'une

(b) in the case of any other judgment within thirty days (in the calculation of which July and August shall be excluded),

from the pronouncement of the judgment appealed from or within such further time as the Trial Division may, either before or after the expiry of those ten or thirty days, as the case may be, fix or allow.

Service

(3) All parties directly affected by the appeal shall be served forthwith with a true copy of the notice of appeal and evidence of service thereof shall be filed in the Registry of the Court.

Final judgment

(4) For the purposes of this section a final judgment includes a judgment that determines a substantive right except as to some question to be determined by a referee pursuant to the judgment.

Review of decisions of federal board, commission or other tribunal

28. (1) Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis, made by or in the course of proceedings before a federal board, commission or other tribunal, upon the ground that the board, commission or tribunal

(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

b) dans le cas de tout autre jugement, dans les trente jours (les mois de juillet et août devant être exclus pour le calcul de ce délai),

à compter du prononcé du jugement dont il est fait appel ou dans le délai supplémentaire que la Division de première instance peut, soit avant, soit après l'expiration de ces dix ou trente jours, selon le cas, fixer ou accorder.

(3) Une copie certifiée conforme de l'avis d'appel doit être immédiatement signifiée à toutes les parties directement intéressées dans l'appel et la preuve de cette signification doit être déposée au greffe de la Cour. Signification

(4) Aux fins du présent article, un jugement final comprend notamment un jugement qui statue sur le fond au sujet d'un droit, à l'exception d'un point litigieux laissé à la décision ultérieure d'un arbitre qui doit statuer en conformité du jugement. Jugement final

28. (1) Nonobstant l'article 18 ou les dispositions de toute autre loi, la Cour d'appel a compétence pour entendre et juger une demande d'examen et d'annulation d'une décision ou ordonnance, autre qu'une décision ou ordonnance de nature administrative qui n'est pas légalement soumise à un processus judiciaire ou quasi judiciaire, rendue par un office, une commission ou un autre tribunal fédéral ou à l'occasion de procédures devant un office, une commission ou un autre tribunal fédéral, au motif que l'office, la commission ou le tribunal Examen des décisions d'un office, d'une commission ou d'un autre tribunal fédéral

a) n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier; ou

c) a fondé sa décision ou son ordonnance sur une conclusion de fait erronée, tirée de façon absurde ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

When application may be made

(2) Any such application may be made by the Attorney General of Canada or any party directly affected by the decision or order by filing a notice of the application in the Court within ten days of the time the decision or order was first communicated to the office of the Deputy Attorney General of Canada or to that party by the board, commission or other tribunal, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiry of those ten days, fix or allow.

(2) Une demande de ce genre peut être faite par le procureur général du Canada ou toute partie directement affectée par la décision ou l'ordonnance, par dépôt à la Cour d'un avis de la demande dans les dix jours qui suivent la première communication de cette décision ou ordonnance au bureau du sous-procureur général du Canada ou à cette partie par l'office, la commission ou autre tribunal, ou dans le délai supplémentaire que la Cour d'appel ou un de ses juges peut, soit avant soit après l'expiration de ces dix jours, fixer ou accorder.

Délai de présentation de la demande

Trial Division deprived of jurisdiction

(3) Where the Court of Appeal has jurisdiction under this section to hear and determine an application to review and set aside a decision or order, the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision or order.

(3) Lorsque, en vertu du présent article, la Cour d'appel a compétence pour entendre et juger une demande d'examen et d'annulation d'une décision ou ordonnance, la Division de première instance est sans compétence pour connaître de toute procédure relative à cette décision ou ordonnance.

Cas où la Division de première instance n'a pas compétence

Reference to Court of Appeal

(4) A federal board, commission or other tribunal to which subsection (1) applies may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Court of Appeal for hearing and determination.

(4) Un office, une commission ou un autre tribunal fédéral auxquels s'applique le paragraphe (1) peut, à tout stade de ses procédures, renvoyer devant la Cour d'appel pour audition et jugement, toute question de droit, de compétence ou de pratique et procédure.

Renvoi à la Cour d'appel

Hearing in summary way

(5) An application or reference to the Court of Appeal made under this section shall be heard and determined without delay and in a summary way.

(5) Les demandes ou renvois à la Cour d'appel faits en vertu du présent article doivent être entendus et jugés sans délai et d'une manière sommaire.

Procédure sommaire d'audition

Limitation on proceedings against certain decisions or orders

(6) Notwithstanding subsection (1), no proceeding shall be taken thereunder in respect of a decision or order of the Governor in Council, the Treasury Board, a superior court or the Pension Appeals Board or in respect of a proceeding for a service offence under the *National Defence Act*.

(6) Nonobstant le paragraphe (1), aucune procédure ne doit être instituée sous son régime relativement à une décision ou ordonnance du gouverneur en conseil, du conseil du Trésor, d'une cour supérieure ou de la Commission d'appel des pensions ou relativement à une procédure pour une infraction militaire en vertu de la *Loi sur la défense nationale*.

Restriction relative aux procédures d'opposition à certaines décisions ou ordonnances

Where decision not to be restrained

29. Notwithstanding sections 18 and 28, where provision is expressly made by an Act of the Parliament of Canada for an appeal as such to the Court, to the Supreme Court, to the Governor in Council or to the Treasury Board from a decision or order

29. Nonobstant les articles 18 et 28, lorsqu'une loi du Parlement du Canada prévoit expressément qu'il peut être interjeté appel, devant la Cour, la Cour suprême, le gouverneur en conseil ou le conseil du Trésor, d'une décision ou ordonnance d'un

Cas où il ne doit pas être mis obstacle à la décision

Court File No.: A-102-20

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court of Appeal in **Vancouver, British Columbia**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date: April 8, 2020

Issued by: _____

JEAN-FRANÇOIS DUPOUR
REGISTRY OFFICER
AGENT DU GREFFE

Address of

local office: Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario, K1A 0H9

TO: CANADIAN TRANSPORTATION AGENCY

APPLICATION

This is an application for judicial review pursuant to section 28 of the *Federal Courts Act* in respect of two public statements issued on or about March 25, 2020 by the Canadian Transportation Agency [Agency], entitled “Statement on Vouchers” [Statement] and the “Important Information for Travellers During COVID-19” page [COVID-19 Agency Page] that cites the Statement.

These public statements, individually or collectively, purport to provide an unsolicited advance ruling on how the Agency will treat and rule upon complaints of passengers about refunds from air carriers relating to the COVID-19 pandemic.

The Statement was issued without hearing the perspective of passengers whatsoever.

The Applicant makes application for:

1. 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;
 - (b) the issuance of the Statement on or about March 25, 2020, referencing of the Statement within the COVID-19 Agency Page, and the subsequent distribution of those publications is contrary to the Agency’s own *Code of Conduct* and/or gives rise to a reasonable apprehension of bias for:
 - i. the Agency as a whole, or
 - ii. alternatively, the appointed members of the Agency who supported the Statement;
 - (c) further, the Agency, or alternatively the appointed members of the Agency who supported the Statement, exceeded and/or lost its (their) jurisdiction under the *Canada Transportation Act*, S.C. 1996, c. 10 to rule upon any complaints of passengers about refunds from carriers relating to the COVID-19 pandemic;

2. an interim order (*ex-parte*) that:
 - (a) upon service of this Court's interim order, the Agency shall prominently post the interim clarification (below) at the top portion of both the French and English versions of the "Statement on Vouchers" [**Statement**] and the "Important Information for Travellers During COVID-19" page [**COVID-19 Agency Page**] (both defined in paragraphs 11-12 of the Notice of Application):

The Canadian Transportation Agency's "Statement on Vouchers" is not a decision, order, determination, or any legal ruling of the Canadian Transportation Agency. It does **not** have the force of law. The "Statement on Vouchers" is currently pending judicial review by the Federal Court of Appeal. This notice is posted by Order [insert URL link to PDF of order] of the Federal Court of Appeal.;
 - (b) starting from the date of service of this Court's interim order, the Agency shall bring the above interim clarification to the attention of anyone that contacts the Agency with a formal complaint and/or informal inquiry regarding air carriers' refusal to refund arising from the COVID-19 pandemic;
 - (c) the Agency shall not issue any decision, order, determination, or any other ruling with respect to refunds from air carriers in relation to the COVID-19 pandemic; and
 - (d) this interim order is valid for fourteen days from the date of service of this Court's interim order on the Agency, and may be renewed by the Applicant under Rule 374(2);
3. an interlocutory order that:
 - (a) the Agency shall forthwith completely remove the Statement from the Agency's website including any references to the Statement within the COVID-19 Agency Page and substitute it with this Court's interlocutory order, or alternatively the order renewing the interim clarification (subparagraph 2(a) above), until final disposition of the Application;

- (b) the interim orders in subparagraphs 1(b)-(c) above are maintained until final disposition of the Application;
 - (c) the Agency shall forthwith communicate with persons that the Agency has previously communicated with regarding the Statement and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement; and
 - (d) the Agency shall forthwith communicate with air carriers under the Agency's jurisdiction, the Association of Canadian Travel Agencies, and Travel Pulse and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement;
4. a permanent order that:
- (a) the Agency prominently post at the top portion of the COVID-19 Agency Page that the Agency's Statement has been ordered to be removed by this Court;
 - (b) the Agency remove the Statement, and references to the Statement within the COVID-19 Agency Page, from its website and replace the Statement with a copy of this Court's judgment;
 - (c) in the event the Agency receives any formal complaint or informal inquiry regarding air carriers' refusal to refund in respect of the COVID-19 pandemic, promptly and prominently inform the complainant of this Court's judgment; and
 - (d) the Agency, or alternatively the appointed members of the Agency who supported the Statement, be enjoined from dealing with any complaints involving air carriers' refusal to refund passengers in respect of the COVID-19 pandemic, and enjoined from issuing any decision, order, determination or any other ruling with respect to refunds from air carriers for the COVID-19 pandemic;
5. costs and/or reasonable out-of-pocket expenses of this Application; and

6. such further and other relief or directions as the Applicant may request and this Honourable Court deems just.

The grounds for the application are as follows:

A. Overview

1. The present Application challenges the illegality of the Canadian Transportation Agency's Statement, which purports to provide an unsolicited advance ruling in favour of air carriers without having heard the perspective of passengers beforehand.
2. The Statement and the COVID-19 Agency Page preemptively suggest that the Agency is leaning heavily towards permitting the issuance of vouchers in lieu of refunds. They further suggest that the Agency will very likely dismiss passengers' complaints to the Agency for air carriers' failure to refund during the COVID-19 pandemic, irrespective of the reason for flight cancellation.
3. Despite the Agency having already determined in a number of binding legal decisions throughout the years that passengers have a fundamental right to a refund in cases where the passengers could not travel for events outside of their control, the Agency now purports to grant air carriers a blanket immunity from the law via the Statement, without even first hearing passengers' submissions or perspective as to why a refund is **mandated** by law. This is inappropriate.
4. The Agency, as a quasi-judicial tribunal, must at all times act with impartiality. That impartiality, unfortunately, has clearly been lost, as demonstrated by the Agency's issuance of the unsolicited Statement and usage thereof.
5. The fundamental precept of our justice system is that "*justice should not only be done, but should manifestly and undoubtedly be seen to be done*" (*R. v. Yumnu*, 2012 SCC 73 at para. 39). This fundamental precept leaves no room for any exception, even during difficult times like the COVID-19 pandemic.
6. Impartiality is further emphasized in the Agency's own *Code of Conduct* stipulating that the appointed members of the Agency shall not express an opinion on potential cases.

B. The COVID-19 Pandemic

7. The coronavirus [COVID-19] is a highly contagious virus that originated from the province of Hubei in the Peoples Republic of China, and began spreading outside of the Peoples Republic of China on or around January 2020.
8. On or about March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.
9. On or about March 13, 2020, the Government of Canada issued a blanket travel advisory against non-essential travel outside of Canada until further notice and restricting entry of foreign nationals into Canada, akin to a “declaration of war” against COVID-19, and that those in Canada should remain at home unless absolutely necessary to be outside of their homes [Declaration].
10. COVID-19 has disrupted air travel to, from, and within Canada. The disruption was brought about by the COVID-19 pandemic and/or the Declaration, such as:
 - (a) closure of borders by a number of countries, resulting in cancellation of flights by air carriers;
 - (b) passengers adhering strictly to government travel advisories (such as the Declaration) and refraining from air travel (and other forms of travel) unless absolutely necessary; and
 - (c) air carriers cancelling flights on their own initiative to save costs, in anticipation of a decrease in demand for air travel.

C. The Agency’s Actions in Relation to COVID-19, Including the “Statement on Vouchers”

11. Since March 13, 2020 and up to the date of filing this Application, the Agency has taken a number of steps in relation to COVID-19. Those listed in the four sub-paragraphs below are **not** the subject of review in this Application.
 - (a) **On March 13, 2020**, the Agency issued Determination No. A-2020-42 providing, *inter alia*, that various obligations under the *Air Passen-*

ger Protection Regulations, SOR/2019-150 [APPR] are suspended until April 30, 2020:

- i. Compensation for Delays and Inconvenience for those that travel: compensation to passengers for inconvenience has been reduced and/or relaxed (an air carrier's obligation imposed under paragraphs 19(1)(a) and 19(1)(b) of the *APPR*);
 - ii. Compensation for Inconvenience to those that do not travel: the air carrier's obligation, under subsection 19(2) of the *APPR* to pay compensation for inconvenience to passengers who opted to obtain a refund instead of alternative travel arrangement, if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket; and
 - iii. Obligation to Rebook Passengers on Other Carriers: the air carrier's obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the *APPR*.
- (b) **On or about March 25, 2020**, the Agency issued Determination No. A-2020-47 extending the exemptions under Decision No. A-2020-42 (above) to June 30, 2020. This Determination further exempted air carriers from responding to compensation requests within 30 days (s. 19(4) of *APPR*). Instead, air carriers would be permitted to respond to compensation requests 120 days *after* June 30, 2020 (e.g. October 28, 2020).
 - (c) **On or about March 18, 2020**, the Agency issued Order No. 2020-A-32, suspending **all** dispute proceedings until April 30, 2020.
 - (d) **On or about March 25, 2020**, the Agency issued Order No. 2020-A-37, extending the suspension (above) to June 30, 2020.
12. On or about March 25, 2020, almost concurrently with the Order and Determination on the same date (above), the Agency publicly posted the Statement on its website (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **En-**

glish: <https://otc-cta.gc.ca/eng/statement-vouchers>) providing that:

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.

13. On or about March 25, 2020, concurrently with the Statement, the Agency posted an amendment to the COVID-19 Agency Page on its website, adding four references to the Statement (French: **Information importante pour les voyageurs pour la période de la COVID-19** [

importante-pour-voyageurs-pour-periode-covid-19]; English: **Important Information for Travellers During COVID-19** [<https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19>]).

14. The COVID-19 Agency Page cites and purports to apply the Statement in the context of an air carrier's legal obligation in three circumstances: (1) situations outside airline control (including COVID-19 situations); (2) situations within airline control; and (3) situations within airline control, but required for safety.
15. In effect, the COVID-19 Agency Page purports to have relieved air carriers from providing passengers with refunds in practically **every** imaginable scenario for cancellation of flight(s), contrary to the Agency's own jurisprudence and the minimum passenger protections under the *APPR*.

D. Jurisprudence on Refunds for Passengers

16. Since 2004, in a number of decisions, the Agency confirmed passengers' fundamental right to a refund when, for whatever reason, an air carrier is unable to provide the air transportation, including those outside of the air carrier's control:
 - (a) *Re: Air Transat*, Decision No. 28-A-2004;
 - (b) *Lukács v. Porter*, Decision No. 344-C-A-2013, para. 88;
 - (c) *Lukács v. Sunwing*, Decision No. 313-C-A-2013, para. 15; and
 - (d) *Lukács v. Porter*, Decision No. 31-C-A-2014, paras. 33 and 137.
17. The Agency's jurisprudence was entirely consistent with the common law doctrine of frustration, the civil law doctrine of *force majeure*, and, most importantly, common sense.
18. The *APPR*, which has been in force since 2019, merely provides **minimum** protection to passengers. The *APPR* does not negate or overrule the passengers' fundamental right to a refund for cancellations in situations outside of a carrier's control.
19. Furthermore, the COVID-19 Agency Page also suggests that the Statement *would* apply to cancellations that are within airline control, or within airline control but required for safety purposes, squarely contradicting the provisions

of subsection 17(7) of the *APPR*. Subsection 17(7) clearly mandates that any refund be in the original form of payment, leaving no room for the novel idea of issuing a voucher or credit.

20. Finally, whether an air carrier's flight cancellation could be characterized as outside their control, or within their control, remains to be seen. For example, if a cancellation was to save costs in light of shrinking demand, it may be considered a situation within an air carrier's control. However, the Statement and the COVID-19 Agency Page presuppose that **any and all** cancellations at this time should be considered outside an air carrier's control.
21. The combined effect of the Statement and the COVID-19 Agency Page purports to ignore decade old and firmly established jurisprudence of the Agency. This all occurred without any formal hearing, adjudication, determination, or otherwise, or even a single legal submission or input from the passengers.
22. As described further below, the Agency does not even outline its legal basis or provide any support for those public statements.
23. The Agency's public statements are tantamount to endorsing air carriers in illegally withholding the passengers' monies, all without having to provide the services that were contracted for. The air carriers all seek to then issue vouchers with varying expiry dates and usage conditions to every passenger, effectively depriving all the passengers of their fundamental right to a refund, which is a right the Agency itself firmly recognized.

E. The Agency's Conduct Gives Rise to a Reasonable Apprehension of Bias

24. The Agency is a quasi-judicial tribunal that is subject to the same rules of impartiality that apply to courts and judges of the courts.
25. Tribunals, like courts, speak through their legal judgments and not media postings or "statements."
26. The Statement and/or the COVID-19 Agency Page is not a legal judgment. They give an informed member of the public the perception that it would be more

likely than not that the Agency, or the members that supported the Statement, will not be able to fairly decide the issue of refunds relating to COVID-19.

27. The Agency has already stipulated a general rule, outside the context of a legal judgment, that refunds need not be provided. No support was provided for this radical departure from the fundamental rights of passengers. The Agency merely provided a bald assertion or conclusion that passengers are not entitled to any refund.
28. The Agency's own Code of Conduct expressly prohibits members of the Agency from expressing an opinion about potential cases or any other issue related to the Agency's work, or comments that may create a reasonable apprehension of bias:

(40) Members **shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency**, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

[Emphasis added.]

29. Although neither the Statement, nor the COVID-19 Agency Page, contain the signature or names of any specific member of the Agency, given the circumstances and considering the Agency's own Code of Conduct providing that the professional civilian staff's role are to **fully** implement the appointed member(s)' directions, the Statement and the COVID-19 Agency Page ought to be attributed to the member(s) who supported the Statement either before or after its posting on the internet.
30. In these circumstances, the Court must proactively step in to protect the passengers, to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done," and to ensure that the administration of justice is not put to disrepute.
31. The Court ought to issue an interim, interlocutory, and/or permanent order restricting the Agency's involvement with passengers' COVID-19 related refunds against air carriers.

F. The Applicant

32. The Applicant is a non-profit corporation under the *Canada Not-for-profit Corporations Act*, SC 2009 that is an advocacy group representing the rights of air passengers.
33. Air Passenger Rights is led by a Canadian air passenger rights advocate, Dr. Gábor Lukács, whose work and public interest litigation has been recognized by this Honourable Court in a number of judgments:
- (a) *International Air Transport Assn et al. v. AGC et al.* (Federal Court of Appeal File No. A-311-19, Order of Near J.A., dated March 3, 2020) that:
- [...] the Court is of the view that the case engages the public interest, that the proposed intervener [Dr. Gábor Lukács] would defend the interests of airline passengers in a way that the parties [the Agency, the Attorney General of Canada, and an airlines trade association] cannot, that the interests of justice favour allowing the proposed intervention in the appeal, and that the proposed intervention would be of assistance to the Court in deciding the appeal [...]
- (b) *Lukács v. Canada (Transportation Agency)* 2016 FCA 174 at para. 6;
- (c) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 269 at para. 43;
- (d) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140 at para. 1; and
- (e) *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at para. 62.

G. Statutory provisions

34. The Applicant will also rely on the following statutory provisions:
- (a) *Canada Transportation Act*, S.C. 1996, c. 10 and, in particular, sections

25, 37, and 85.1;

(b) *Federal Courts Act*, R.S.C. 1985, c. F-7, and in particular, sections 18.1, 18.2, 28, and 44; and

(c) *Federal Courts Rules*, S.O.R./98-106, and in particular, Rules 300, 369, and 372-374; and

35. Such further and other grounds as counsel may advise and this Honourable Court permits.

This application will be supported by the following material:

1. Affidavit of Dr. Gábor Lukács, to be served.
2. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

The Applicant requests the Canadian Transportation Agency to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Canadian Transportation Agency to the Registry and to the Applicant:

1. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents involving the appointed members of the Agency relating to the Statement and/or issuance of vouchers or credits in relation to the COVID-19 incident, including both before and after publication of the Statement;
2. The number of times the URLs for the Statements were accessed (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **English:** <https://otc-cta.gc.ca/eng/statement-vouchers>) from March 24, 2020 onward;
3. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents between the Canadian Transportation Agency and the travel industry (including but not limited to any travel agencies, commercial airlines, industry groups, etc.) from February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected

by COVID-19; and

- 4. Complete and unredacted copies of all correspondences, e-mails, and/or complaints that the Agency received from passengers between February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected by COVID-19.

April 6, 2020

“Simon Lin”

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**Counsel for the Applicant,
Air Passenger Rights**

I HEREBY CERTIFY that the above document is a true copy of the original files in the Court.

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date April 9, 2020
Date de dépôt

April 9, 2020
Dated
Fait le

JEAN-FRANÇOIS DUPORE
REGISTRY OFFICER
AGENT DU GREFFE

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT THE MOVING PARTY will make an urgent motion in writing to the Court under Rule 369 of the *Federal Courts Rules*, S.O.R./98-106, **without notice**.

THE MOTION IS FOR:

1. an interim order (*ex-parte*) that:
 - (a) upon service of this Court’s interim order, the Agency shall prominently post the interim clarification (below) at the top portion of both the French and English versions of the “Statement on Vouchers” [**Statement**] and the “Important Information for Travellers During COVID-19” page [**COVID-19 Agency Page**] (both defined in paragraphs 11-12 of the Notice of Application):

The Canadian Transportation Agency’s “Statement on Vouchers” is not a decision, order, determination, or any legal ruling of the Canadian Transportation Agency. It **does not** have the force of law. The “Statement on Vouchers” is currently pending judicial review by the Federal Court of Appeal. This notice is posted by Order of the Federal Court of Appeal.

- (b) starting from the date of service of this Court's interim order, the Agency shall bring the above interim clarification to the attention of anyone that contacts the Agency with a formal complaint and/or informal inquiry regarding air carriers' refusal to refund arising from the COVID-19 pandemic;
 - (c) the Agency shall not issue any decision, order, determination or any other ruling with respect to refunds from air carriers for the COVID-19 pandemic; and
 - (d) this interim order is valid for fourteen days from the date of service of this Court's interim order on the Agency, and may be renewed by the Applicant under Rule 374(2);
2. an interlocutory order that:
- (a) the Agency shall completely remove the Statement from the Agency's website including any references to the Statement within the COVID-19 Agency Page, or alternatively renewing the order for interim clarification (subparagraph 1(a) above), until final disposition of the Application;
 - (b) the interim order in subparagraph 1(b) above is maintained until final disposition of the Application;
 - (c) the interim order in subparagraph 1(c) above is maintained until final disposition of the Application;
 - (d) the Agency shall forthwith communicate with all persons that the Agency has communicated with regarding the Statement and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement; and

- (e) the Agency shall forthwith communicate with all air carriers under the Agency's jurisdiction and the Association of Canadian Travel Agencies and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement;
3. an order fixing an expedited timetable for the Applicant's motion for an interlocutory order (para. 2 above), and the hearing of the Application;
4. an order directing that all documents in this Application shall be served electronically;
5. costs and/or reasonable out-of-pocket expenses of this motion; and
6. such further and other relief or directions as the counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. This is a motion seeking an interim order, on an *ex-parte* basis, and an interlocutory order pending final disposition of the Application, including the fixing of a timeline for the matter.
2. There is urgency in addressing the interim order at the earliest opportunity because the Agency's conduct, that is the subject of the underlying Application, has a clear tendency to mislead, and likely has already misled, tens of thousands of passengers. Many more passengers will continue to be misled regarding their rights unless a prompt clarification is issued.

Background

3. The underlying Application challenges the legality of the Canadian Transportation Agency's Statement on refunds for air tickets relating to COVID-19. The Agency's Statement purports to provide an unsolicited advance ruling favouring air carriers without submissions from passengers at all. The Statement specifi-

cally endorses the air carriers in withholding refunds from passengers, and instead issuing expiring “credits” that are subject to other various conditions that air carriers seeks to impose, such as one-time use only or any excess credit is to be forfeited.

4. Since as early as 2004, the Agency has determined that passengers have a fundamental right to a refund in cases where the passengers could not travel due to events outside of their control, even when it arises from a situation outside the air carriers’ control. The Agency now seeks to upend that settled principle via the Statement and grants air carriers a blanket immunity from the law without hearing the submissions from a single passenger.
5. The Agency is a quasi-judicial tribunal that must act independently and impartially at all times. The Statement, and the COVID-19 Agency Page, stray far from the required independence and impartiality. This motion seeks to bring interim measures, followed by interlocutory measures, to protect the passengers’ interest in the face of the anonymous Statement, which has since been widely distributed and relied upon as “support” by air carriers and travel agencies in denying refunds rightfully owed to passengers.
6. This Application is brought by the Applicant, Air Passenger Rights [APR], a non-profit public interest advocacy group that represents the right of air passengers. The public interest advocacy work of Dr. Gábor Lukács, the President of APR, has been recognized by this Court.

The Impugned Statement and the COVID-19 Agency Page

7. On or about March 25, 2020, the Agency publicly posted the Statement on its website (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **English:** <https://otc-cta.gc.ca/eng/statement-vouchers>) which reads as follows:

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.

8. Concurrently with the Statement, the Agency posted an amendment to the COVID-19 Agency Page on its website, adding four references to the Statement (French: **Information importante pour les voyageurs pour la période de la COVID-19** [<https://otc-cta.gc.ca/fra/information-importante-pour-voyageurs-pour-periode-covid-19>]; English: **Important Information for Travellers During COVID-19** [<https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19>]).
9. The COVID-19 Agency Page purports to endorse a blanket immunity for air

carriers to withhold refunds from passengers in **all** circumstances, and instead issue a “credit,” contrary to the explicit provisions of the *Air Passenger Protection Regulations*, SOR/2019-150 [APPR] and settled jurisprudence of the Agency:

- (a) **Cancellations within an air carriers’ control:** The COVID-19 Agency Page specifically endorsed the Statement, *despite* s. 17(7) of the APPR specifically providing for a refund to the original form of payment.
- (b) **Cancellations within an air carriers’ control, but required for safety:** The COVID-19 Agency Page specifically endorsed the Statement, *despite* s. 17(7) of the APPR specifically providing for a refund to the original form of payment.
- (c) **Cancellations outside an air carriers’ control:** The COVID-19 Agency Page specifically endorsed the Statement. The APPR sets the minimum standards of treatment in this situation, mandating that an air carrier provide alternative transportation on the next available flight (s. 18 of APPR). Section 18 is silent on what is required of the air carrier if transportation cannot be offered on the next available flight, which would then fall to be determined by previous decisions of the Agency (i.e., the fundamental right to a refund when the air carrier cannot offer the service, as briefly mentioned above).

The Orders Sought on this Motion

The Interim Order Preserving and Clarifying the Rights of Passengers

10. The test for issuing the interim mandatory order that the Agency providing a clarification relating to their website (interim order subparagraphs (1)(a)-(b)) is met:
 - (a) There is a strong *prima facie* case that the Statement is not a legally binding decision, order, determination or any other ruling of the Agency.
 - (b) There is also a strong *prima facie* case that the Statement and COVID-19 Agency Page, individually or collectively, have the capability, tendency or effect of deceiving or misleading passengers regarding their legal right to a refund of their airfares from the air carriers.
 - (c) Public interest will be severely undermined if misinformation is not promptly remedied. In particular, the passengers will suffer irreparable harm if the Statement and the COVID-19 Agency Page are not immediately clarified. Many passengers have already been contacting airlines to seek refunds. Many passengers may, or already have, incorrectly relied on the Statement and the COVID-19 Agency Page, potentially prejudicing their legal rights to a refund.
 - (d) The balance of convenience favours the issuing of the interim order, pending the hearing of the interlocutory order. The Applicant has written to the Agency indicating that the Statement is misleading and must be removed. The Agency has failed to take any action or respond. The Agency suffers no prejudice whatsoever in having its public message properly qualified and clarified until this Court makes its determination.
 - (e) The Applicant is a non-profit advocacy group and does not have the means to provide an undertaking as to damages. In any case, the Agency clearly will not suffer any damages from the interim order. And, most

importantly, the lack of an undertaking is merely a factor in considering the balance of convenience and is not fatal to a motion for an injunction.

11. The test for issuing the interim injunction enjoining the Agency's conduct (interim order subparagraph (1)(c)) is also met:
 - (a) There is a *serious issue to be tried* as to whether the Statement and/or the COVID-19 Agency Page gives rise to a reasonable apprehension of bias for the Agency as a whole, or for the appointed members of the Agency that supported the Statement.
 - (b) There will be irreparable harm to the passengers, and also to the administration of justice, if a decision-maker that is not impartial and not independent embarks on an inquiry of the passengers' complaints.
 - (c) The balance of convenience favours the issuing of the interim injunction, pending the hearing of the interlocutory injunction. There will be no inconvenience or prejudice to the Agency in simply maintaining the same *status quo* and not hearing any complaints in relation to refunds from air carriers for COVID-19. The Agency, on its own motion, already suspended all dispute resolutions until June 30, 2020, but that suspension could be rescinded with little to no notice. The Agency's own motion supports the view that there is no urgency in having the passengers' complaints determined before this Court rules on the Application.

Interlocutory Order Preserving the Rights of Passengers

12. The test for issuing the interlocutory mandatory order that the Agency remove the Statement and references to the Statement in the COVID-19 Agency Page (interlocutory order subparagraph (2)(a)) is met:
 - (a) There is a strong *prima facie* case, and very clear, that the Statement cannot be a legally binding decision, order, determination, or any other ruling of the Agency;

- (b) There is also a strong *prima facie* case that the Statement and the COVID-19 Agency Page, individually or collectively, have the capability, tendency, or effect of deceiving or misleading passengers regarding their legal right to a refund of their airfares from the air carriers;
 - (c) Public interest will be severely undermined if the misinformation is not promptly corrected. In particular, the passengers will suffer irreparable harm if the Statement and the COVID-19 Agency Page are not removed. Many passengers have already been contacting airlines to seek refunds. Airlines have already relied on the Statement and the COVID-19 Agency Page to mislead passengers regarding their rights, to the prejudice of the passengers.
 - (d) The balance of convenience favours the issuing of the interlocutory order. Alternatively, the Court should continue the interim orders in subparagraphs 1(a)-(b).
 - (e) The Applicant is a non-profit advocacy group and does not have the means to provide an undertaking as to damages. In any case, the Agency clearly will not suffer any damages from the interim order. And, most importantly, the lack of an undertaking is merely a factor in considering the balance of convenience and is not fatal to a motion for an injunction.
13. The interim orders in subparagraphs 1(b)-(c) ought to be maintained until final disposition of the Application.
14. The test for issuing the mandatory interlocutory order for the Agency to inform the air carriers, the travel industry, and passengers that the Agency previously communicated with regarding the Statement, regarding this Court's interlocutory order (interlocutory order subparagraph 2(c)-(d)), is also met:
- (a) There is a strong *prima facie* case that the Statement was used as "legal support" by air carriers and the travel industry in refusing refunds to

passengers. Those persons ought to be promptly informed of this Court's order so that they can take the appropriate steps to correct information they previously provided to passengers.

- (b) Public interest will be severely undermined if the misinformation is not promptly remedied. In particular, the passengers will suffer irreparable harm if the Statement and the COVID-19 Agency Page are not immediately removed or clarified. Many passengers have already been contacting airlines to seek refunds. Many passengers may, or already have, incorrectly relied on the Statement and the COVID-19 Agency Page, prejudicing their legal rights to a refund.
- (c) The balance of convenience favours the issuing of the mandatory interlocutory order. There will be no inconvenience or prejudice to the Agency in simply informing those persons of this Court's interlocutory order.

An Order Fixing an Expedited Timetable

15. There is urgency in hearing **both** the interlocutory orders, and the underlying Application, on an expedited basis. While there is no direct evidence from passengers, the Court can take judicial notice of the COVID-19 situation that has affected virtually every individual and entity. The air carriers and the tens of thousands (or likely hundred of thousands) of passengers require some certainty of their legal rights, so as to allow them to assess their financial positions in these difficult times.

An Order for Electronic Service of Documents

16. In light of the COVID-19 situation, it would be most expedient for documents in this Application to be dealt with electronically as much as possible.

Statutes and regulations relied on

17. *Canada Transportation Act*, S.C. 1996, c. 10 and, in particular, sections 7 and 41;
18. *Federal Courts Act*, R.S.C. 1985, c. F-7, and in particular, sections 18.1, 18.2, 28, and 44; and
19. *Federal Courts Rules*, S.O.R./98-106, and in particular, Rules 300, 369, and 372-374;
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used for the motion:

1. Affidavit of Dr. Gábor Lukács, affirmed on April 7, 2020.
2. Such further and additional materials as counsel may advise and this Honourable Court may allow.

April 7, 2020

“Simon Lin”

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**Counsel for the Applicant,
Air Passenger Rights**

TO: **CANADIAN TRANSPORTATION AGENCY**

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

AFFIDAVIT OF DR. GÁBOR LUKÁCS**(Affirmed: April 7, 2020)**

I, **DR. GÁBOR LUKÁCS**, of the City of Halifax in the Province of Nova Scotia, AFFIRM THAT:

1. I am the President of the Applicant, Air Passenger Rights. As such, I have personal knowledge of the matters to which I depose, except as to those matters stated to be on information and belief, which I believe to be true.
 - A. Public interest advocacy activities**
2. Since 2008, in my personal capacity, I have been an air passenger rights advocate, and I have been volunteering my time and expertise for the benefit of the travelling public. I have filed more than two dozen successful regulatory complaints with the Canadian Transportation Agency [**Agency**] that resulted in airlines being ordered to amend their terms and conditions and/or their websites and/or their signage, and to offer better protection to passengers. An excerpt from a 2017 brief, summarizing my activities, is attached and marked as **Exhibit “A”**.
3. On September 4, 2013, the Consumers’ Association of Canada recognized my achievements in the area of air passenger rights by awarding me its Order of

Merit for “singlehandedly initiating Legal Action resulting in revision of Air Canada unfair practices regarding Over Booking.”

4. In a 2013 review article on aviation law in Canada, a copy of which is attached and marked as **Exhibit “B”**, Mr. Carlos Martins, a lawyer at the Bersenas Jacobsen Chouest Thomson Blackburn firm, described my advocacy as follows:

In the consumer protection landscape, for the last several years, the field has largely been occupied by Gabor Lukács, a Canadian mathematician who has taken an interest in challenging various aspects of the tariffs filed by air carriers with the regulator, the Canadian Transportation Agency (the Agency). The majority of Mr Lukács’ complaints centre on the clarity and reasonableness of the content of the filed tariffs, as well as the extent to which air carriers are applying their tariffs, as filed, in the ordinary course of business.

Mr Lukács’ efforts have created a significant body of jurisprudence from the Agency - to the extent that his more recent decisions often rely heavily upon principles enunciated in previous complaints launched by him.

5. I have successfully challenged, in the public interest, the legality of the Agency’s actions on a number of occasions before this Honourable Court:
- (a) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, relating to the open court principle in proceedings before the Canadian Transportation Agency;
 - (b) *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, relating to denied boarding compensation; and
 - (c) *Lukács v. Canada (Canadian Transportation Agency)*, 2016 FCA 220, relating to standing to bring a complaint about discrimination against large passengers without being personally affected.

6. In *Lukács v. Canada (Transportation Agency)*, 2016 FCA 174, at paragraph 6, the Federal Court of Appeal recognized my genuine interest in air passenger rights and the legality of the Agency's decisions and actions, and granted me public interest standing on that basis.
7. In October 2017, I appeared before the Supreme Court of Canada. The court's judgment was delivered on January 19, 2018, and is indexed as *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2.
8. In October 2018, I delivered two invited lectures on air passenger rights at McGill University Faculty of Law's Institute of Air and Space Law.
9. In *Lukács v. Canada (Transportation Agency)*, 2019 FC 1148, at paragraphs 46 and 50, the Federal Court recognized my reputation, continued interest, and expertise in advocating for passenger rights.
10. In March 2020, I was granted leave to intervene by the Federal Court of Appeal in the appeal of the International Air Transport Association and a number of airlines against certain provisions of the *Air Passenger Protection Regulations* in File No. A-311-19:

[...] the Court is of the view that the case engages the public interest, that the proposed intervener would defend the interests of airline passengers in a way that the parties cannot, that the interests of justice favour allowing the proposed intervention in the appeal, and that the proposed intervention would be of assistance to the Court in deciding the appeal;

[Emphasis added.]

A copy of the Order of the Federal Court of Appeal granting leave to to intervene, dated March 3, 2020, is attached and marked as **Exhibit "C"**.

11. I offer *pro bono* assistance to passengers in their disputes with airlines to the extent that I am permitted to do so by law. For example:
 - (a) In *Lachance v. Air Canada*, 2014 NSSM 14, I obtained a judgment requiring Air Canada to compensate the passenger, who had been bumped.
 - (b) Since 2015, I have been assisting and representing Ms. Nayla Farah and Ms. Amal Haddad of Toronto, Ontario, who were harassed and discriminated against by airline crew due to their visual impairment and reliance on the assistance of Seeing Eye service dogs. In October 2018, the Canadian Human Rights Commission decided to refer the case to the Canadian Human Rights Tribunal for an inquiry.
 - (c) In *Paine v. Air Canada*, 2018 NSSC 215, I was granted permission to represent passengers in an appeal before the Supreme Court of Nova Scotia in a case relating to denied boarding compensation.
- (i) **Involvement with the *Transportation Modernization Act* and the *Air Passenger Protection Regulations***
12. I testified twice with respect to the *Transportation Modernization Act*:
 - (a) in September 2017, before the House of Commons' Standing Committee on Transport, Infrastructure and Communities (TRAN); and
 - (b) in March 2018, before the Standing Senate Committee on Transport and Communications.
13. The Agency recognized me as a stakeholder in the consultation process leading to the development of the *Air Passenger Protection Regulations* [*APPR*]:
 - (a) In June 2018, I had a 2-hour bilateral consultation session with officials from the Agency.

- (b) In August 2018, I submitted a 26-page brief to the Agency with respect to the *APPR*.
- (c) In January 2019, after the proposed *APPR* were prepublished in Canada Gazette Part I, I had a 1.5-hour bilateral consultation session with officials from the Agency.
- (d) In February 2019, I submitted a 52-page brief to the Agency with respect to the proposed *APPR*.

For greater clarity, these bilateral consultation sessions were organized only for those whom the Agency identified as “stakeholders,” and were distinct from the Agency’s townhall meetings for the general public.

- 14. As noted earlier, the Federal Court of Appeal granted me leave to intervene in the appeal of the International Air Transport Association and a number of airlines against certain provisions of the *Air Passenger Protection Regulations* (Exhibit “C”).

(ii) Involvement with accessibility

- 15. In October 2018, I submitted a brief to the House of Commons’ Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities with respect to the *Act to ensure a barrier-free Canada* (Bill C-81).
- 16. In April 2019, I submitted a brief to the Agency about the draft *Accessible Transportation for Persons with Disabilities Regulations* that were prepublished in Canada Gazette Part I.
- 17. In April 2019, I submitted a brief to the Standing Senate Committee on Social Affairs, Science, and Technology with respect to the *Act to ensure a barrier-free Canada* (Bill C-81).

18. In February 2020, I submitted a brief to the Agency about phase 2 of the *Accessible Transportation for Persons with Disabilities Regulations*.

B. The Applicant: Air Passenger Rights

19. Air Passenger Rights [APR] is a non-profit organization, formed under the *Canada Not-for-profit Corporations Act*, SC 2009 on or about May 2019, to expand and continue the air passenger advocacy work that I have initiated in my personal capacity for the last decade. A copy of APR's articles of incorporation are attached and marked as **Exhibit "D"**.
20. APR's mandate is to engage in public interest advocacy for air passengers, continuing the same work that I have been engaging in personally for the past decade, including advocating on behalf of the travelling public before Parliament, administrative agencies and tribunals, and the courts, when necessary.
21. I am the President and a director of APR, and I actively lead all the work of APR. APR operates on a non-profit basis and its directors, including myself, are not paid any salaries or wages.
22. APR currently receives small donations, on a non-recurring and irregular basis, from a limited number of passengers that have benefited from APR's work or my work. Those donations only cover some out-of-pocket expenses incurred by myself and APR in undertaking the public interest advocacy work.
23. APR does not own real property or personal property. As such, it has no available means to provide an undertaking to this Court to pay damages that may arise from an issuance of the interim or interlocutory orders.
24. APR promotes air passenger rights by referring passengers mistreated by airlines to legal information and resources through the press, social media, and the

AirPassengerRights.ca website.

25. APR's Facebook group, entitled "Air Passenger Rights (Canada)," has more than 23,700 members as of the date of this Affidavit [**APR Facebook Group**].
26. The APR Facebook Group is a platform for passengers to share their concerns regarding air travel and passenger rights, and to discuss their issues and concerns with other passengers.
27. A small group of volunteers, led by me, regularly responds to every passengers' Facebook post on the APR Facebook Group and provides passengers with information whenever possible.

C. The COVID-19 Pandemic and Air Travel

28. Since the start of the COVID-19 disruptions in various countries in early March, I observed that the APR Facebook Group began to regularly receive Facebook posts from passengers concerning disruption of their travel plans to countries that were heavily affected by COVID-19 during that time, such as the People's Republic of China and Italy.
29. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. A copy of the WHO's press release is attached and marked as **Exhibit "E"**.
30. On March 13, 2020, the Government of Canada issued an advisory advising those within Canada to avoid non-essential travel abroad, and those abroad to consider returning to Canada earlier as options were becoming more limited. A copy of the news release issued by Global Affairs Canada is attached and marked as **Exhibit "F"**.

31. At around the time of the Global Affairs Canada advisory above, the government of Canada began urging Canadians to stem the spread of COVID-19. A copy of a news report published by Reuters, which appeared in the National Post online on March 16, 2020, is attached and marked as **Exhibit “G”**.
32. After the March 11 WHO announcement and the March 13 Global Affairs Canada advisory, internet traffic to the APR Facebook Group has increased substantially, despite individuals refraining from air travel for a number of reasons. The majority of that increased traffic relates to passengers experiencing difficulties obtaining a full refund of unused travel services, mostly air fare, in light of the COVID-19 situation.
33. During the period of February 2 to April 2, 2020, the daily number of new Facebook posts to the APR Facebook Group has increased by 189%, to 3,210 posts for the entire period. The graph generated by Facebook is reproduced below.



34. During the same time period, the daily number of comments to the new Facebook posts (above) has increased by 196%, to 53,205 for the entire period. The graph generated by Facebook is reproduced below.



35. During the same time period, the APR Facebook Group increased from approximately 15,700 members to 23,709 members as of the date of this Affidavit. The graph generated by Facebook is reproduced below.



36. Based on my ongoing and daily involvement with assisting passengers through the APR Facebook Group, I believe that COVID-19 affected and continues to affect passengers' air travel in the following ways:

- (a) passengers could not travel to some countries, such as France and Italy, because they closed their borders to foreign nationals;

- (b) passengers adhering to the government travel advisories or health warnings decided to cancel their travel plans in the near term; and/or
- (c) air carriers cancelled some or all of their flights.

D. The Agency's Lawful Actions in Response to COVID-19

37. Since March 13, 2020 and up to the date of this affidavit, the Agency has issued some orders and/or determinations in response to COVID-19, which are not the subject of challenge on this judicial review application.

(iii) Exemptions of Air Carriers from Minimum Compensation and Accommodations under the APPR

38. On March 13, 2020, the Agency issued [Determination No. A-2020-42](#) suspending and/or relaxing some of the air carriers' obligation to pay minimum compensation to passengers and the obligation to rebook passengers, under the *Air Passenger Protection Regulations*, SOR/2019-150 [APPR] until April 30, 2020. A copy of Determination No. A-2020-42 is attached and marked as **Exhibit "H"**.

39. On March 25, 2020, the Agency issued [Determination No. A-2020-47](#) extending the exemptions under Decision No. A-2020-42 (above) to June 30, 2020, and further allowed air carriers to respond to compensation requests within 120 days after June 30, 2020, instead of the usual 30 days after receipt. A copy of Determination A-2020-47 is attached and marked as **Exhibit "I"**.

(iv) Suspension of All Existing and New Passenger Dispute Resolutions

40. On March 18, 2020, the Agency issued [Order No. 2020-A-32](#), suspending all of the Agency's new and existing dispute resolution activities, including passenger complaints, until April 30, 2020. A copy of Order No. 2020-A-32 is attached and marked as **Exhibit "J"**.

41. On March 25, 2020, the Agency issued [Order No. 2020-A-37](#), extending the suspension of all passenger dispute resolution activities to June 30, 2020. A copy of Order No. 2020-A-37 is attached and marked as **Exhibit “K”**.

E. The Agency’s Impugned and Unlawful Actions on this Judicial Review

(v) The Agency’s “Statement on Vouchers”

42. On March 25, 2020, at approximately the same time as the orders and determinations of the Agency on March 25, 2020 (above), the Agency posted a “Statement on Vouchers” [**Statement**] on its website.
43. The Statement makes no reference to the names of the appointed members of the Agency. The contents of the Statement are excerpted in full below.

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.

The French version of the Statement is attached and marked as **Exhibit “L”**.
The English version of the Statement is attached and marked as **Exhibit “M”**.

44. I have long been recognized as a stakeholder for passenger rights. Since I was not informed by the Agency about the Statement beforehand and I could not find any indication of any consultation on the Statement, I believe that the Agency’s Statement was issued without any input or submissions from the passengers’ perspective.
45. On the other hand, based on the email sent by Westjet to a passenger, Mr. Jeff Chamberlain (below), I believe that the Statement was the culmination of cooperation between the Agency and air carriers, with extensive input from air carriers in the absence of passengers.

We recognize that the cancellation of flights and the current economic uncertainty for many of our guests has created a great deal of frustration. A viable and consistent decision was reached in conjunction with the Canada Transportation Agency regarding the refund of itineraries immediately affected by the COVID-19 crisis period.

We appreciate that your view is that the Canadian Transportation Agency has issued two different initiatives however they act as the governing agency for all Canadian agencies and we operate within the policies that they set out.

We assure you that should future discussions result in an alter-

nate policy adjustment that you will be contacted via email to advise you of such.

[Emphasis added.]

A copy of the email that Westjet sent to Mr. Chamberlain on April 5, 2020, which Mr. Chamberlain provided to me, is attached and marked as **Exhibit “N”**.

(vi) The Agency’s COVID-19 Agency Page

46. On March 18, 2020, the Agency posted to their internet website a page dedicated to COVID-19 matters [**COVID-19 Agency Page**].
47. On March 25, 2020, I believe at approximately the same time as the posting of the Statement, the COVID-19 Agency Page was updated to include four references to the Statement and a URL linking to the Statement.

Air Passenger Protection Obligations During COVID-19 Pandemic

[...]

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.

Delays and Cancellations

[...]

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

[...]

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

In these situations, airlines must:

- Rebook passengers [...]
 - Please refer to the CTA's Statement on Vouchers [...]

Situations within airline control

In these situations, airlines must:

- Rebook passengers [...]
 - Please refer to the CTA's Statement on Vouchers [...]

Situations within airline control, but required for safety

In these situations, airlines must:

- Rebook passengers [...]
 - Please refer to the CTA's Statement on Vouchers [...]

A copy of the French version of the COVID-19 Agency Page, entitled “Information importante pour les voyageurs pour la période de la COVID-19,” is attached and marked as **Exhibit “O”**. A copy of the English version of the COVID-19 Agency Page, entitled “Important Information for Travellers During COVID-19,” is attached and marked as **Exhibit “P”**.

(vii) **The Agency’s Usage and Dissemination of the “Statement on Vouchers”**

48. Based on my experience that the CTA typically repeats template answers to passengers, and on comments from passengers on the APR Facebook Group that I believe to be true, I believe that after the Agency’s posting of the Statement and updating of the COVID-19 Agency Page with specific references to the Statement, the Agency took it upon itself to disseminate those publications to as many passengers as possible, as outlined in the examples below.

49. On March 25, 2020, the Agency responded to public Twitter tweets from passengers using the following text:

Good afternoon, please refer to this link that will answer your question: <https://otc-cta.gc.ca/eng/statement-vouchers> Thank you.
CTA social media

A copy of the Agency’s tweets on March 25, 2020 are attached and marked as **Exhibit “Q”**.

50. Twitter also permits account holders to privately respond to messages. I do not know if the Agency privately sent the Statement to passengers.

51. Between March 20 to 27, 2020, the Agency was responding to inquiries from a passenger named Tammy Pedersen. On March 20, 2020 at 1:08AM, Ms. Pedersen asked the Agency about her rights to a refund when Swoop is cancelling the flight, without reference to the COVID-19 situation:

Hello,

I booked a flight with Swoop Airlines for next month and they are cancelling the flight and only offering me a future credit. The flight is from Abbotsford, B.C. to Las Vegas, Nevada and return.

Am I not entitled to a refund back to my card?

Thank you,

52. On March 20, 2020 at 7:43AM, the Agency replied and referred to the COVID-19 situation. The Agency then cited to Ms. Pedersen material portions of Determination No. A-2020-42 (Exhibit “H”) relating to the relaxing of an air carriers’ obligation to pay the minimum compensation under the *APPR* and that the air carrier “would have to make sure the passenger completes the itinerary.”
53. On March 20, 2020 at 11:25AM, Ms. Pedersen wrote back to the Agency indicating she did not understand the Agency’s answer. Ms. Pedersen specifically inquired what her rights would be if the air carrier is unable to complete her itinerary, which reads as follows:

Hello,

Thank you for your response, but I don’t understand the answer.

“However, they would have to make sure the passenger completes their itinerary.” If the carrier doesn’t - what form of compensation am I entitled to? A refund in the form of a future credit or a refund in the original form of payment?

I have them my money in exchange for a service they are unable to provide. This is also outside of my control and a financial burden to me. All I want is my money returned.

Any info/clarification would be appreciated.

Thank you.

54. On March 27, 2020 at 10:25AM, the Agency responded to Ms. Pedersen’s inquiry from March 20, 2020 with a copy of material portions of the Statement as follows:

Hello Tammy,

Thanks for following up.

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 com-

plete their itineraries. Some airlines' tariffs provide for refunds in certain cases, but may have clauses that may relieve the airline of such obligations in force majeure situations.

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).

55. A copy of the email chain between the Agency and Ms. Pedersen between March 20 to 27, 2020, provided to me by Ms. Pedersen, is attached and marked as **Exhibit "R"**.
56. On March 27, 2020, another passenger named Ms. Jennifer Mossey received from the Agency a similar email as Ms. Pedersen that repeats the Statement. The Agency's response did not answer Ms. Mossey's concern about Sunwing initially agreeing to a refund pursuant to their own policies, only to change the policy days after and deny any refunds. In particular, the Agency provided a generic response as follows:

[...]

The CTA has taken steps to address the major impact that the COVID-19 pandemic is having on the airlines industry by making temporary exemptions to certain requirements of the Air Passenger Protection Regulations (APPR). These exemptions apply to flight disruptions that occur from March 13, 2020 until June 30, 2020.

[...]

You should first contact your airline to try and resolve the issues you have raised. Given circumstances, please be patient and provide your airline time to respond to you ? a minimum of 30 days. If you do not hear back from your airline, or you are dissatisfied with the response you receive, you may file a complaint with the CTA.

If you decide to file, or have already filed, a complaint with the CTA, please note that in light of the extraordinary circumstances resulting from the COVID-19 pandemic, the CTA has decided to temporarily pause communications with airlines on complaints against them. This includes all new complaints received, as well as those currently in the facilitation process. The pause is currently set to continue until June 30, and is aimed at allowing the airlines to focus on immediate and urgent operational demands, like getting Canadians home.

Also, 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.

Rest assured that once the pause is lifted, we will deal with every complaint. The delay will not change the outcome of our review.

A copy of the exchange between the Agency and Ms. Mossey, provided to me by Ms. Mossey, is attached and marked as **Exhibit “S”**.

57. Based on my interactions with numerous passengers and my understanding of the Agency’s usual practice of giving boilerplate answers, I believe that many passengers that contacted the Agency would have received similar generic responses from the Agency.
58. Based on my experience of managing the APR Facebook Group, I believe that many passengers rely on the APR Facebook Group for information and/or guidance as a reliable resource when the passengers cannot receive satisfactory resolution or assistance from the air carrier, as demonstrated in Ms. Mossey’s situation above.

(viii) **The Agency’s Own *Code of Conduct***

59. Since the Agency is a quasi-judicial tribunal that engages in the adjudication of disputes between air carriers and passengers, the Agency published a *Code of Conduct* for its members. The *Code of Conduct* provides, in part, that:

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

A copy of the Agency’s *Code of Conduct* is attached and marked as **Exhibit “T”**.

F. Immediate Prejudice to the Passengers Arising from the Agency’s Unlawful Actions

(ix) **Air Carriers and Travel Agents Misrepresenting the Effects of the Agency’s ”Statement on Vouchers” to Passengers**

60. On March 27, 2020, Sunwing issued a letter that was distributed to travel agents, including an accompanying FAQ, both of which contained the text below:

Initially, we offered customers booked on our flights during this suspension the choice between a future travel credit valid for 12 months and a full cash refund. However, after the Government of Canada’s non-essential travel advisory, we adjusted our policy to be aligned with all other Canadian airlines and tour operators. This decision is also consistent with the ruling made by the Canadian Transportation Agency on March 26, 2020.

[Emphasis added.]

A copy of the letter to the travel agents is attached and marked as **Exhibit “U”**.

A copy of the accompanying FAQ is attached and marked as **Exhibit “V”**.

61. On March 31, 2020, WestJet communicated with a passenger, Ms. Steffany Christopher, via Facebook Messenger, stating that:

We understand the challenges our guest have been faced with. However, the Canadian Transport Agency has approved us to issue refunds to the travel bank. [...]

[Emphasis added.]

A screenshot of those Facebook messages, provided to me by Ms. Christopher, is attached and marked as **Exhibit “W”**.

62. On April 1, 2020, Air Canada wrote in response to an email from Mr. David Foulkes, a passenger, demanding a refund:

[...] Hello / Bonjour Mr. Foulkes,

I would like to attach two links from the Canadian Transportation Agency website as they may help clarify some of your questions. The CTA has issued temporary exemptions to the Air Passenger Protection Regulations regarding refund request and extension of ticket validity.

<https://www.otc-cta.gc.ca/eng/content/canadian-transportation-agency-issues-temporary-exemptions-certain-air-passenger-protection>

<https://otc-cta.gc.ca/eng/statement-vouchers> [...]

[Emphasis added.]

A copy of the email chain between Air Canada and Mr. Foulkes, provided to me by Mr. Foulkes, is attached and marked as **Exhibit “X”**.

63. On March 27, 2020, Air Canada wrote in response to an email from Mr. Ahren Belisle, a passenger, demanding a refund:

As mention previously the maximum we can provide is to keep your ticket as a credit for 24 months (2 years) [...] The policy we follow at the moment is supported by the CTA (Canadian air transportation agency).

[Emphasis added.]

A copy of the email chain between Air Canada and Mr. Belisle, provided to me by Mr. Belisle, is attached and marked as **Exhibit “Y”**.

64. On March 26, 2020, Air Transat responded to a personal message on Twitter from a passenger, Mr. Adam Bacour, as follows:

[...] We strongly believe that the 24-month credit offered to our customers to compensate for their cancelled travel plans is a flexible proposition in these exceptional circumstances [...] In this regard, the Canadian Transportation Agency recently issued an opinion on the subject, which supports our decision and emphasizes that the solution proposed by Transat, among others, is appropriate given the current situation.

[Emphasis added.]

A screenshot of that Twitter message, which was provided to me by Mr. Bacour, is attached and marked as **Exhibit “Z”**.

65. On March 28, 2020, Swoop responded to an email request for a refund from a passenger, Ms. Susan Simpson, as follows:

We do understand that a refund would be preferred, however we are only offering Swoop credits at this time for cancelled flights.

On March 25, the Canadian Transportation Agency clarified its position on providing credit for travel due to the uncertain times we are in. This clarification stated that airlines could offer travel credit for cancelled flights, and the credit should be valid for a reasonable amount of time, which was indicated to be 24 months. If you would like more information please visit the CTA’s website here: <https://otc-cta.gc.ca/eng/statement-vouchers>

A copy of the email chain between Swoop and Ms. Simpson, which was provided to me by Ms. Simpson, is attached and marked as **Exhibit “AA”**.

66. On March 25, 2020, a travel agency based in Ontario named TravelOnly, made the following Facebook post on their Facebook page, citing the Agency's Statement as follows:

To all of our amazing clients - thank you for putting your trust in TravelOnly and our amazing advisors. Over the course of the past two weeks, our advisors have been on hold for upwards of 12+ hours to help you get home or cancel or rebook your trips. No doubt this will continue for the foreseeable future – we are here for you and hope that you will remember the value of using a travel advisor in the future!

Some of you have reached out to enquire how the new Air Passenger Protection Regulations would impact the requirements of airlines when flights were cancelled and/or rebooked.

The Canadian Transportation Agency has provided a statement which provides direction for you and your travel advisor regarding the issuing of future travel vouchers. In summary, the CTA believes that providing affected passengers with vouchers or credits for future travel is appropriate and reasonable. We understand that you may have questions on your voucher and how to use it for future travel and we encourage you to reach out to your TravelOnly advisor or our offices for assistance at any time. Please note that most vouchers will be issued within the next 4-6 weeks depending on the airline and travel supplier.

[Emphasis added.]

A copy of the Facebook post is attached and marked as **Exhibit "AB"**.

- (x) **Other Entities Mischaracterizing the Agency's "Statement on Vouchers"**
67. On March 31, 2020, the Travel Industry Council of Ontario (the organization that regulates travel agents in Ontario) released a bulletin targeted towards licensed Ontario travel agents entitled "Registrar Bulletin: Vouchers or Similar Documents." The article, suggesting that the Travel Industry Council of Ontario understands the Agency's Statement as a form of approval for the issuance of vouchers, states in part as follows:

If you sold only air transportation on an airline regulated by the Canadian Transportation Agency (CTA):

The CTA has indicated that to sustain the economic viability of the airline industry, the airlines under their jurisdiction may issue vouchers for future travel in lieu of refunds. Please click [here](#) for the CTA's statement. Please note that TICO does not have jurisdiction over airlines, which are federally regulated.

A copy of the article is attached and marked as **Exhibit "AC"**.

68. On April 3, 2020, a news article entitled "Tactful and tough, agents have effective strategies for dealing with refund demands" was published in Travel Week, a weekly publication targeting travel agents. The news article referred to the Agency's Statement and outlined an example of how travel agents can utilize the Statement to cause passengers to accept a voucher, in part, as follows:

[...] On March 25 the Canadian Transportation Agency waded into the fray, issuing a special statement saying that while specific cases may get further analysis, in general, vouchers are appropriate in these extraordinary circumstances.

[...]

A letter that Vanderlubbe and his team have ready for any client making persistent refund requests or launching credit card chargebacks is strongly worded but fair, and explains the situation from the retailer's side. The letter cites the CTA statement and reads, in part: "We too are experiencing financial damage from the COVID19 pandemic, paying our staff for more than 5 weeks now with little or no revenue coming, in order to help our customers return home, process future travel credits, and we will be re-booking for months later."

The letter also notes: "The Federal Government has issued a plain language statement which you can read from the link below [<https://otc-cta.gc.ca/eng/statement-vouchers>] that states that, as far as the air travellers protection regime goes, it was never intended to cover acts of God, or a force majeure situation. In short, they state that a future travel credit for 2 years is sufficient compensation under this circumstance.

“Further, the Travel Industry Council of Ontario, that administers the Ontario Travel Industry Act, has issued a statement that ‘under Ontario law, there is no requirement for a travel company to refund or offer alternative travel services if a government travel advisory is in effect’. In short, our suppliers are not even obligated to provide a future travel credit, but they are.

[*sic*] Your chargeback through your credit card is unreasonable given that you are being offered a travel credit good for two years, and that you had the opportunity to purchase cancellation insurance at the time of booking, and you declined to do so.

[*sic*] We ask that you contact your credit card company and ‘reverse the chargeback request’. We need evidence of this in order to process your future travel credit.”

[Emphasis added.]

A copy of the article is attached and marked as **Exhibit “AD”**.

(xi) Inconsistency with a Lawful Directive of the US Regulator

69. The United States Department of Transportation [USDOT] is the federal regulator of commercial US and foreign airlines that fly to, from, or within the United States. Unlike the Agency in Canada, the USDOT **does not** adjudicate or mediate disputes between passengers and the air carriers.

70. On April 3, 2020, the USDOT issued a formal enforcement notice, citing various legal authorities and signed by the USDOT Assistant General Counsel for Aviation Enforcement and Proceedings, entitled “Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency On Air Travel” [USDOT Enforcement Notice]. The USDOT Enforcement Notice specifies that:

Although the COVID-19 public health emergency has had an unprecedented impact on air travel, the airlines’ obligation to refund passengers for cancelled or significantly delayed flights remains unchanged.

[Emphasis added.]

A copy of the USDOT Enforcement Notice is attached and marked as **Exhibit “AE”**.

(xii) The Statement’s Impacts on Passengers

71. Based on various public statements made by the air carriers and information posted by passengers on the APR Facebook Group, which I believe to be true, I believe that the overwhelming majority of passengers whose travel was affected by COVID-19 have not received full refunds for their unused airfares.

72. Based on the experiences shared by passengers on the APR Facebook Group, which I believe to be true, I believe that the air carriers and/or travel agents are avoiding their obligations to refund passengers by presenting vouchers as the passengers’ only viable option:

(a) Many passengers received an automatic template email from the air carrier and/or their travel agent indicating that either:

- i. a voucher would be automatically issued to the passenger shortly and the passenger need not contact the air carrier or travel agent;
or
- ii. the passenger can elect between rebooking their flight or accepting a voucher, subject to conditions and expiry;

(b) Passengers who initiate contact with the air carrier and/or travel agent are being informed that their only options are:

- i. rebooking their flight for a future date;
- ii. accepting a voucher, subject to conditions and expiry; or

- iii. receiving a partial refund, usually of less than 50% of the price originally paid, consisting only of the applicable taxes and fees, or after deduction of cancellation fees from the price originally paid.
73. Based on information posted by passengers on the APR Facebook Group that I believe to be true, and as demonstrated in the exhibits referred to above, after March 25, 2020, passengers that contacted air carriers or travel agents for a refund would have the Statement cited to the passengers as support for refusing issuing refunds.
74. On April 1, 2020, the Canadian Life and Health Insurance Association, a voluntary association representing 99 percent of Canada's life and health insurance business, published a press release entitled "Advisory: Travel cancellation insurance and airline vouchers or credits" that specifically relies on the Statement, suggesting that passengers may be unable to claim against their travel insurance policies as follows:

[...] On March 25, 2020, the Canadian Transportation Agency updated its endorsement of the use of vouchers or credits as an appropriate approach for Canada's airlines as long as these vouchers or credits do not expire in an unreasonably short period of time.

Travel insurers are advising policyholders that if you have been offered this type of full credit, or voucher for future use by an airline, train or other travel provider, in many instances, under the terms of your insurance policy you will not be considered to have suffered an insurable loss.

[...]

Disputes over refunds and credits should be directed to your travel service provider, transportation carrier or the Canadian Transportation Agency. [...] [Emphasis added.]

A copy of the press release is attached and marked as **Exhibit "AF"**.

G. The CTA’s Failure to Address Any of the Passengers’ Prejudice from the “Statement on Vouchers”

75. On March 30, 2020, I sent a letter to the Agency on behalf of APR, specifically raising a concern that the Statement is misleading. APR specifically requested that the Agency remove the Statement by March 31, 2020. A copy of that letter is attached and marked as **Exhibit “AG”**.
76. On March 30, 2020, the Secretariat of the Agency sent an email acknowledging receipt of my letter of March 30, 2020. A copy of that acknowledgement email is attached and marked as **Exhibit “AH”**.
77. Until the time of affirming this Affidavit, the Agency has not responded to APR’s letter of March 30, 2020, except for the acknowledgement email above. The Agency also did not remove the Statement, or make any modifications or clarifications to the Statement.
78. APR retained pro-bono counsel, Mr. Simon Lin who is also a director of APR, to issue the Notice of Application and bring this Motion to this Honourable Court to seek an injunction. A draft, unfiled copy of the Notice of Application is attached and marked as **Exhibit “AI”**.

AFFIRMED before me at the
City of Halifax, Nova Scotia
on April 7, 2020.

“Simon Lin”

A Commissioner for Taking Affidavits
in the Province of Ontario

Simon P. Lin, Barrister & Solicitor
Evolink Law Group
4388 Still Creek Drive, Suite 237
Burnaby, BC V5C 6C6

“Dr. Gábor Lukács”

Dr. Gábor Lukács

Halifax, NS

Tel:

lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

Halifax, NS

AirPassengerRights.ca

lukacs@AirPassengerRights.ca



The Transportation Modernization Act (Bill C-49)

**Submissions to the Standing Committee
on Transport, Infrastructure and Communities**

by Air Passenger Rights

September 2017

About *Air Passenger Rights*

Air Passenger Rights (APR) is an independent nonprofit network of volunteers, devoted to empowering travellers through education, advocacy, investigation, and litigation.

- **Educate** passengers about their rights and enforcement of those rights.
- **Advocate** for the enforcement of the existing rights of passengers and for better consumer protection for travel by air within, to, and from Canada.
- **Investigate and expose** anomalies affecting travellers, including, but not limited to: non-compliance of airlines with their own terms and conditions or the law; misinformation and deception of passengers by airlines; practices that put passengers' safety at risk; and collusion between the airline industry and regulatory or administrative bodies mandated to oversee the activities of airlines.
- **Litigate** to foster: compliance of airlines with their own terms and conditions and the law; conformity of the terms and conditions of airlines with the law; transparency, reasonableness, and legality of the actions of regulatory and administrative bodies in their dealings with passengers and airlines; and reasonable and correct interpretation of legislation affecting the rights of passengers.

APR was founded and is coordinated by Dr. Gábor Lukács, a Canadian air passenger rights advocate, who volunteers his time and expertise for the benefit of the travelling public.

Gábor Lukács, PhD (Founder and Coordinator)

Since 2008, Dr. Lukács has filed **more than two dozen successful complaints**¹ with the Canadian Transportation Agency (Agency), challenging the terms, conditions, and practices of air carriers, resulting in orders directing them to amend their conditions of carriage and offer better protection to passengers. He has also appeared before the Federal Court of Appeal, and successfully challenged the Agency's lack of transparency and the reasonableness of the Agency's decisions.

In 2013, the Consumers' Association of Canada awarded Dr. Lukács its Order of Merit for singlehandedly initiating legal action resulting in the revision of Air Canada's unfair practices regarding overbooking. His advocacy in the public interest and expertise in the area of air passenger rights have also been recognized by both the Federal Court of Appeal² and the legal profession.³

¹ See Appendix A.

² *Lukács v. Canada*, 2015 FCA 140 at para. 1; *Lukács v. Canada*, 2015 FCA 269 at para. 43; and *Lukács v. Canada*, 2016 FCA 174 at para. 6.

³ Carlos Martins: Aviation Practice Area Review (September 2013), WHO'SWHOLEGAL.

Appendix

A. Final Decisions Arising from Dr. Lukács's Successful Complaints (Highlights)

1. *Lukács v. Air Canada*, Decision No. 208-C-A-2009;
2. *Lukács v. WestJet*, Decision No. 313-C-A-2010;
3. *Lukács v. WestJet*, Decision No. 477-C-A-2010
(leave to appeal denied, Federal Court of Appeal File No.: 10-A-41);
4. *Lukács v. WestJet*, Decision No. 483-C-A-2010
(leave to appeal denied, Federal Court of Appeal File No.: 10-A-42);
5. *Lukács v. Air Canada*, Decision No. 291-C-A-2011;
6. *Lukács v. WestJet*, Decision No. 418-C-A-2011;
7. *Lukács v. United Airlines*, Decision No. 182-C-A-2012;
8. *Lukács v. Air Canada*, Decision No. 250-C-A-2012;
9. *Lukács v. Air Canada*, Decision No. 251-C-A-2012;
10. *Lukács v. Air Transat*, Decision No. 248-C-A-2012;
11. *Lukács v. WestJet*, Decision No. 249-C-A-2012;
12. *Lukács v. WestJet*, Decision No. 252-C-A-2012;
13. *Lukács v. United Airlines*, Decision No. 467-C-A-2012;
14. *Lukács v. Porter Airlines*, Decision No. 16-C-A-2013;
15. *Lukács v. Air Canada*, Decision No. 204-C-A-2013;
16. *Lukács v. WestJet*, Decision No. 227-C-A-2013;
17. *Lukács v. Sunwing Airlines*, Decision No. 249-C-A-2013;
18. *Lukács v. Sunwing Airlines*, Decision No. 313-C-A-2013;
19. *Lukács v. Air Transat*, Decision No. 327-C-A-2013;
20. *Lukács v. Air Canada*, Decision No. 342-C-A-2013;
21. *Lukács v. Porter Airlines*, Decision No. 344-C-A-2013;
22. *Lukács v. British Airways*, Decision No. 10-C-A-2014;
23. *Lukács v. Porter Airlines*, Decision No. 31-C-A-2014;
24. *Lukács v. Porter Airlines*, Decision No. 249-C-A-2014;
25. *Lukács v. WestJet*, Decision No. 420-C-A-2014; and
26. *Lukács v. British Airways*, Decision No. 49-C-A-2016.

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

WHO'S WHO LEGAL

AVIATION PRACTICE AREA REVIEW

SEPTEMBER 2013

Carlos Martins of Bersenas Jacobsen Chouest Thomson Blackburn outlines recent developments in aviation law in Canada.



There have been a number of developments in Canada in the realm of aviation law that promise to make for interesting times in the months ahead. In this review, we will consider some of these decisions, their implications and how they may play out in the coming year.

Warsaw/Montreal Liability

On the airline liability front, the Supreme Court of Canada will hear the appeal of the Federal Court of Appeal's decision in *Thibodeau v Air Canada*, 2012 FCA 246. This case involves a complaint by Michel and Lynda Thibodeau, passengers on a series of Air Canada flights between Canada and the United States in 2009. On some of the transborder legs of those journeys, Air Canada was not able to provide the Thibodeaus with French-language services at check-in, on board the aircraft or at airport baggage carousels. The substantive aspect of the case is of limited interest to air carriers because the requirement that air passengers be served in both official languages applies only to Air Canada as a result of the Official Languages Act (Canada), an idiosyncratic piece of legislation that continues to apply to Air Canada even though it was privatised in 1988.

However, from the perspective of other air carriers, the most notable facet of the Supreme Court's decision will be whether that Court will uphold the Federal Court of Appeal's "strong exclusivity" interpretation of the Warsaw/Montreal Conventions. If it does, it will incontrovertibly bring the Canadian law in line with that of the United States and the United Kingdom – meaning that passengers involved in international air travel to which either of the Conventions apply are restricted to only those remedies explicitly provided for in the Conventions. At present, the Federal Court of Appeal's decision in *Thibodeau* provides the most definitive statement to date that "strong exclusivity" is the rule in Canada.

YQ Fares Class Action

The battle over "YQ Fares" is expected to continue in a British Columbia class action. The case relates to the practice of several air carriers identifying the fuel surcharge levied on their tickets in a manner that may cause their passengers to believe that these charges are taxes collected on behalf of a third party when, in fact, fuel surcharges are collected by the air carrier for its own benefit. In the British Columbia action, the plaintiffs complain that this practice contravenes the provincial consumer protection legislation which provides that service providers shall not engage in a "deceptive act or practice".

Last year, an issue arose as to whether air carriers can be subject to the provincial legislation given that, in Canada, matters relating to aeronautics are in the domain of the federal government. Most recently, in *Unlu v Air Canada*, 2013 BCCA 112, the British Columbia Court of Appeal held that the complaint should be allowed to proceed on the basis that, among other things, there was no operational conflict between the workings of the provincial legislation and the regime imposed under the federal Air Transportation Regulations, SOR/88-58, that deal with airfare advertising. Leave to appeal the Court of Appeal's decision to the Supreme Court of Canada was denied in August 2013.

Regulatory/Passenger Complaints

In the consumer protection landscape, for the last several years, the field has largely been occupied by Gabor Lukács, a Canadian mathematician who has taken an interest in challenging various aspects of the tariffs filed by air carriers with the regulator, the Canadian Transportation Agency (the Agency). The majority of Mr Lukács' complaints centre on the clarity and reasonableness of the content of the filed tariffs, as well as the extent to which air carriers are applying their tariffs, as filed, in the ordinary course of business.

Mr Lukács' efforts have created a significant body of jurisprudence from the Agency – to the extent that his more recent decisions often rely heavily upon principles enunciated in previous complaints launched by him.

Since 2012, Mr Lukács has been involved in complaints arising from, among other things:

- air carriers' online and airport communications to the public as to the extent to which baggage claims involving "wear and tear" must be paid (*Lukács v United Airlines*, CTA Decision Nos. 182/200-C-A-2012);
- lack of compliance of tariff liability provisions with the Montreal liability regime (*Lukács v Porter Airlines*, CTA Decision No. 16-C-A-2013);

- the reasonableness of imposing releases of liability as a precondition for the payment of compensation provided for in a tariff (*Lukács v WestJet*, CTA Decision No. 227-C-A-2013);
- the reasonableness of air carriers engaging in overselling flights for commercial reasons (*Lukács v Air Canada*, CTA Decision No. 204-C-A-2013);
- the amount of denied boarding compensation to be paid to involuntarily bumped passengers in the event of a commercial overbooking (*Lukács v Air Canada*, CTA Decision No. 342-C-A-2013);
- the amount of compensation to be paid to passengers who miss their flight as a result of an early departure (*Lukács v Air Transat*, CTA Decision No. 327-C-A-2013); and
- the use of cameras by passengers onboard aircraft (*Lukács v United Airlines*, CTA Decision No. 311-C-A-2013)

It is expected that, in 2014, Mr Lukács will continue in his quest to ensure that air carrier tariffs are reasonable, clear and faithfully applied.

Although it may not be initiated by Mr Lukács, we expect that, in 2014, the Agency will consider the issue of whether air carriers should be able to charge a fee for booking a specific seat for a child travelling with a parent or guardian.

Regulatory/ Notices to Industry

Wet Leasing

On 30 August 2013, the Agency released its new policy on wet leasing of foreign aircraft. It applies to operators who wet lease foreign aircraft for use on international passenger services for arrangements of more than 30 days. The key changes are that, in order for the Agency to approve such an arrangement:

- the number of aircraft leased by an operator is capped at 20 per cent of the number of Canadian-registered aircraft on the lessees' Air Operator Certificate at the time the application was made;
- small aircraft are excluded from the number of Canadian-registered aircraft described above; and
- small aircraft is defined as an aircraft equipped for the carriage of passengers and having a certificated maximum carrying capacity of not more than 39 passengers.

In addition to the above, the lessee is required to provide a rationale as to why the wetlease arrangement (or its renewal) is necessary. The Agency has stated that it:

- will not deny an application solely on the basis of the rationale for the use of foreign aircraft with flight crew, as long as the cap is not exceeded; and
- may renew approvals of wet-lease applications of more than 30 days as long as the cap is not exceeded.

There is some flexibility for short-term arrangements and where unexpected events require an exception.

All-Inclusive Fare Advertising

In December 2012, the Agency approved new regulations with respect to all-inclusive fare advertising. Initially, the regulations were enforced through a "proactive and collaborative educational approach". The Agency has recently released a notice to the industry advising that it will now take a firmer stance in ensuring compliance. It has recently issued administrative monetary penalties (AMPs) against two online travel retailers for not advertising the total all-inclusive price on their online booking systems. In one case, the AMP amounted to \$40,000 due to the lack of initial response from the retailer. In another, the AMP was \$8,000 in a situation where that retailer complied in the case of booking through its main website, but not with respect to booking on its mobile website.

Baggage Rules

The Agency has recently completed a consultation process with the industry and with the public with respect to the issue of baggage rules. The issues under contemplation include à la carte pricing, regulatory change and carriers' attempts to further monetize the transportation of baggage. At present, there are two regimes being used in Canada: one of which was adopted by the International Air Transport Association (Resolution 302) and the other by way of recently promulgated

regulations to be enforced by the United States Department of Transportation (14 CFR part 399.87). The Agency has gone on the record to state that it expects to make a decision on the appropriate approach to apply for baggage being transported to/from Canada in the fall of 2013.

Defining the Boundaries of Regulation

In the arena of business aviation, the Appeal Panel of the Transportation Appeal Tribunal of Canada is expected to revisit the extent to which the Canadian Transportation Agency should regulate business-related aviation in Canada. The facts arise from the practice of a casino based in Atlantic City, New Jersey, offering voluntary air transfers to the casino to some of its most valued clients. In evidence that has already been led in these proceedings, the casino has asserted that the complimentary flights are at the sole discretion of the casino; no customer was entitled to such a service; and the provision of the flights is not based on the amount spent by the customers at the casino.

The core of the issue is whether the casino requires a licence from the Agency in order to offer this benefit to its customers. Under the applicable legislation, those who offer a "publicly available air service" in Canada require such a licence and are subject to all of the requirements imposed on licensees. In *Marina District Development Company v Attorney General of Canada*, 2013 FC 800, the Federal Court was asked by the casino, on a judicial review, to overturn the Appeal's panel's previous finding that the casino's air service did, in fact, trigger the Agency's oversight. The Federal Court found that the legal test imposed by the Appeal Panel for determining whether an air service was publicly available bordered on tautological but declined to answer the question itself. The matter was sent back to the Appeal Panel for reconsideration. A new decision is expected in 2014. In our view, it is likely that the matter will be sent back to the Federal Court, possibly before the end of 2014 as well, regardless of which party prevails.

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This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200303

Docket: A-311-19

Ottawa, Ontario, March 3, 2020

Present: NEAR J.A.

BETWEEN:

**INTERNATIONAL AIR TRANSPORT ASSOCIATION,
AIR TRANSPORTATION ASSOCIATION OF AMERICA DBA
AIRLINES FOR AMERICA, DEUTSCHE LUFTHANSA AG,
SOCIÉTÉ AIR FRANCE, S.A., BRITISH AIRWAYS PLC,
AIR CHINA LIMITED, ALL NIPPON AIRWAYS CO., LTD.,
CATHAY PACIFIC AIRWAYS LIMITED,
SWISS INTERNATIONAL AIRLINES LTD.,
QATAR AIRWAYS GROUP Q.C.S.C., AIR CANADA,
PORTER AIRLINES INC., AMERICAN AIRLINES INC.,
UNITED AIRLINES INC., DELTA AIR LINES INC.,
ALASKA AIRLINES INC., HAWAIIAN AIRLINES, INC. and
JETBLUE AIRWAYS CORPORATION**

Appellants

and

**CANADIAN TRANSPORTATION AGENCY and
THE ATTORNEY GENERAL OF CANADA**

Respondents

and

DR. GÁBOR LUKÁCS

Intervener

ORDER

WHEREAS Dr. Gábor Lukács moves for an order permitting him to intervene in this appeal;

AND WHEREAS the Court has read the proposed intervener's motion record, the appellants' responding motion record in response to the motion to intervene, correspondence from the respondent Canadian Transportation Agency, and the proposed intervener's reply;

AND WHEREAS the appellants oppose the proposed intervener's motion, and the respondents take no position;

AND WHEREAS the Court has considered the factors relevant to granting leave to intervene under rule 109 of the *Federal Courts Rules*, SOR/98-106;

AND WHEREAS the Court is of the view that the case engages the public interest, that the proposed intervener would defend the interests of airline passengers in a way that the parties cannot, that the interests of justice favour allowing the proposed intervention in the appeal, and that the proposed intervention would be of assistance to the Court in deciding the appeal;

AND WHEREAS the Court is nevertheless of the view that the proposed intervention in the motion for a stay is not in the interests of justice, and would not be of assistance to the Court;

THIS COURT ORDERS that:

1. Dr. Lukács's motion to intervene in this appeal is granted in part. Dr. Lukács may intervene in the appeal subject to the terms described below. Dr. Lukács may not intervene in the motion for a stay.

2. The style of cause shall be amended by including Dr. Lukács as an intervener as appears in this Order, and shall be used on all further documents in this appeal.
3. Dr. Lukács's intervention in the appeal shall be subject to the following terms:
 - i. Dr. Lukács may serve and file a memorandum of fact and law of no more than twenty (20) pages with respect to the appeal within twenty (20) days of the service of the Respondents' memoranda;
 - ii. Dr. Lukács shall have the right to make oral submissions at the hearing of the appeal for no more than twenty (20) minutes; and
 - iii. Dr. Lukács may not seek costs, nor shall costs be awarded against him.

"D. G. Near"

J.A.

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



Form 4001
Articles of Incorporation
Canada Not-for-profit Corporations
Act (NFP Act)

Formulaire 4001
Statuts constitutifs
Loi canadienne sur les
organisations à but non lucratif
(Loi BNL)

- 1 Corporate name
Dénomination de l'organisation
Air Passenger Rights
- 2 The province or territory in Canada where the registered office is situated
La province ou le territoire au Canada où est maintenu le siège
NS
- 3 Minimum and maximum number of directors
Nombres minimal et maximal d'administrateurs
Min. 3 Max. 9
- 4 Statement of the purpose of the corporation
Déclaration d'intention de l'organisation
See attached schedule / Voir l'annexe ci-jointe
- 5 Restrictions on the activities that the corporation may carry on, if any
Limites imposées aux activités de l'organisation, le cas échéant
See attached schedule / Voir l'annexe ci-jointe
- 6 The classes, or regional or other groups, of members that the corporation is authorized to establish
Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir
See attached schedule / Voir l'annexe ci-jointe
- 7 Statement regarding the distribution of property remaining on liquidation
Déclaration relative à la répartition du reliquat des biens lors de la liquidation
See attached schedule / Voir l'annexe ci-jointe
- 8 Additional provisions, if any
Dispositions supplémentaires, le cas échéant
See attached schedule / Voir l'annexe ci-jointe
- 9 **Declaration:** I hereby certify that I am an incorporator of the corporation.
Déclaration : J'atteste que je suis un fondateur de l'organisation.

Name(s) - Nom(s)

Gabor Lukacs

Signature

Gabor Lukacs

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).

La personne qui fait une déclaration fautive ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).

You are providing information required by the NFP Act. Note that both the NFP Act and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la Loi BNL. Il est à noter que la Loi BNL et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Schedule / Annexe**Purpose Of Corporation / Déclaration d'intention de l'organisation**

1. To educate air passengers and the public at large as to their rights and the means for the enforcement of these rights, by researching and making available the results of such research on the matter of the law relating to air passenger rights on domestic and international flights.
2. To act as a liaison between other public interest or citizens' groups engaged in public interest advocacy.
3. To assist in and promote the activity of public interest group representation throughout Canada and elsewhere.
4. To make representations to governing authorities on behalf of the public at large and on behalf of public interest groups with respect to matters of public concern and interest with respect to air passenger rights, and to teach public interest advocacy skills and techniques.

Schedule / Annexe

Restrictions On Activities / Limites imposées aux activités de l'organisation

The Corporation shall have all the powers permissible by the Canada Not-for-profit Corporations Act, save as limited by the by-laws of the Corporation.

Nothing in the above purposes, however, shall be construed or interpreted as in any way empowering the Corporation to undertake functions normally carried out by barristers and solicitors.

Schedule / Annexe
Classes of Members / Catégories de membres

There shall be two classes of members: Ordinary Members and voting General Members. The criteria for admission to both classes shall be governed by the by-laws of the Corporation.

Schedule / Annexe**Distribution of Property on Liquidation / Répartition du reliquat des biens lors de la liquidation**

Upon liquidation, the property of the Corporation shall be disposed of by being donated to an eligible donee, as defined in the Income Tax Act (Canada).

Schedule / Annexe
Additional Provisions / Dispositions supplémentaires

a) Any amendment or repeal of the Corporation's By-Laws shall require confirmation by a Special Resolution of two-thirds of the General Membership prior to taking effect.

b) The Corporation shall be carried on without the purpose of gain for its Members, and any profits or other accretions shall be used in furtherance of its purposes.

c) Directors shall serve without remuneration, and no Director shall directly or indirectly receive any profit from his or her position as such, provided that Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020

11 March 2020

Good afternoon.

In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled.

There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives.

Thousands more are fighting for their lives in hospitals.

In the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher.

WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction.

We have therefore made the assessment that COVID-19 can be characterized as a pandemic.

Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.

Describing the situation as a pandemic does not change WHO's assessment of the threat posed by this virus. It doesn't change what WHO is doing, and it doesn't change what countries should do.

We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.

And we have never before seen a pandemic that can be controlled, at the same time.

WHO has been in full response mode since we were notified of the first cases.

And we have called every day for countries to take urgent and aggressive action.

We have rung the alarm bell loud and clear.

===

As I said on Monday, just looking at the number of cases and the number of countries affected does not tell the full story.

Of the 118,000 cases reported globally in 114 countries, more than 90 percent of cases are in just four countries, and two of those – China and the Republic of Korea - have significantly declining epidemics.

81 countries have not reported any cases, and 57 countries have reported 10 cases or less.

We cannot say this loudly enough, or clearly enough, or often enough: all countries can still change the course of this pandemic.

If countries detect, test, treat, isolate, trace, and mobilize their people in the response, those with a handful of cases can prevent those cases becoming clusters, and those clusters becoming community transmission.

Even those countries with community transmission or large clusters can turn the tide on this virus.

Several countries have demonstrated that this virus can be suppressed and controlled.

The challenge for many countries who are now dealing with large clusters or community transmission is not whether they **can** do the same – it's whether they **will**.

Some countries are struggling with a lack of capacity.

Some countries are struggling with a lack of resources.

Some countries are struggling with a lack of resolve.

We are grateful for the measures being taken in Iran, Italy and the Republic of Korea to slow the virus and control their epidemics.

We know that these measures are taking a heavy toll on societies and economies, just as they did in China.

All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

WHO's mandate is public health. But we're working with many partners across all sectors to mitigate the social and economic consequences of this pandemic.

This is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight.

I have said from the beginning that countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact.

Let me summarize it in four key areas.

First, prepare and be ready.

Second, detect, protect and treat.

Third, reduce transmission.

Fourth, innovate and learn.

I remind all countries that we are calling on you to activate and scale up your emergency response mechanisms;

Communicate with your people about the risks and how they can protect themselves – this is everybody's business;

Find, isolate, test and treat every case and trace every contact;

Ready your hospitals;

Protect and train your health workers.

And let's all look out for each other, because we need each other.

===

There's been so much attention on one word.

Let me give you some other words that matter much more, and that are much more actionable.

Prevention.

Preparedness.

Public health.

Political leadership.

And most of all, people.

We're in this together, to do the right things with calm and protect the citizens of the world. It's doable.

I thank you.

[Subscribe to the WHO newsletter →](#)

This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukács
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[Home](#) > [Global Affairs Canada](#)

Government of Canada advises Canadians to avoid non-essential travel abroad

From: [Global Affairs Canada](#)

News release

March 13, 2020 - Ottawa, Ontario - Global Affairs Canada

The Honourable François-Philippe Champagne, Minister of Foreign Affairs, today announced that Canada has issued an official global travel advisory to avoid non-essential travel abroad.

In an attempt to limit the spread of the coronavirus (COVID-19), many governments have implemented special entry and exit and movement restrictions for their territories. New restrictions could be imposed, and could severely disrupt Canadians' travel plans.

As a result, the Government of Canada is advising Canadians to avoid non-essential travel outside of Canada until further notice.

Canadians currently outside the country should find out what commercial options are still available and consider returning to Canada earlier than planned if these options are becoming more limited.

We encourage Canadians abroad to register with the [Registration of Canadians Abroad](#) service.

Canadians abroad in need of emergency consular assistance can call Global Affairs Canada's 24/7 Emergency Watch and Response Centre in Ottawa at +1 613-996-8885 (collect calls are accepted where available) or email sos@international.gc.ca.

Quotes

“We are monitoring the situation abroad to provide credible and timely information to Canadians to help them make well-informed decisions regarding their travel. We also continue to work around the clock to provide assistance and consular services to Canadians abroad affected by COVID-19.”

- *François-Philippe Champagne, Minister of Foreign Affairs*

Associated links

- [Travel Advice and Advisories](#)
- [Canadian travellers: Avoid all cruise ship travel due to COVID-19](#)
- [Coronavirus disease \(COVID-19\): Outbreak update](#)
- [Coronavirus disease \(COVID-19\): Resources for Canadian businesses](#)

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This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukács
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Canada closes borders, says people should stay at home to stop virus- PM Trudeau



REUTERS

March 16, 2020
2:06 PM EDT

Filed under
[PMN Health](#)

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OTTAWA — Canada closed its borders to all foreign nationals, except U.S. citizens, on Monday, and Prime Minister Justin Trudeau urged people to stay at home to help stem the spread of the new coronavirus.

"We will be denying entry into Canada to people who are not Canadian citizens or permanent residents," Trudeau told reporters at a news conference outside his home, where he is under quarantine. (Reporting by Kelsey Johnson and David Ljunggren, writing by Steve Scherer Editing by Chizu Nomiya)

RELATED STORIES:

[Trudeau remaining in isolation longer despite wife recovering from COVID-19](#)

[Canada faces 'critical week' in coronavirus crisis, death toll jumps](#)

[Canada's Trudeau wants to recall MPs to back massive coronavirus aid package](#)

1 Comments

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Determination No. A-2020-42

March 13, 2020

DETERMINATION by the Canadian Transportation Agency relating to COVID-19 pandemic – Temporary exemptions to certain provisions of the *Air Passenger Protection Regulations*, SOR/2019-150 (APPR).

Case number: 20-02750

[1] On March 11, 2020, the World Health Organization assessed the outbreak of COVID-19 as a pandemic.

[2] Since the outbreak of the virus, a number of countries, including Canada, have imposed travel bans, restrictions, or advisories.

[3] Public health experts have also recommended behaviours, such as enhanced hygiene practices and social distancing, to mitigate the spread of the virus.

[4] The situation is evolving rapidly, and further restrictions relating to travel may be implemented.

[5] The pandemic is causing a significant decrease in demand for air travel. Flying with many empty aircraft seats can result in significant financial difficulties for air carriers, which may therefore decide to cancel or consolidate flights. Due to the evolving nature of the situation and public behaviours, these decisions may need to be made much closer to a scheduled flight day than would normally be the case.

[6] Other aspects of air carrier operations may also be impacted by the pandemic, including but not limited to staff shortages due to quarantines or refusals to work, additional hygiene practices onboard the aircraft, and passenger health screenings. These factors may result in flight delays.

[7] Under the APPR, air carriers have minimum obligations to passengers when flights are cancelled or delayed. Those obligations depend on whether the disruption was within the control of the air carrier, within the air carrier's control but required for safety, or outside the carrier's control:

- Situations within the air carrier's control: keep the passenger informed, provide standards of treatment (such as food and water), compensate the passenger for inconvenience, and rebook or refund the passenger.
- Situations within the air carrier's control but required for safety: keep the passenger informed, provide standards of treatment, and rebook or refund the passenger.
- Situations outside the air carrier's control: keep the passenger informed and rebook the passenger so the passenger can complete their itinerary.

[8] Section 10 of the APPR provides a non-exhaustive list of situations considered outside the air carrier's

control (the third category above). These include medical emergencies and orders or instructions from state officials. In the context of the COVID-19 pandemic, the following would be considered outside a carrier's control:

- 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;
- employee refusal to work under Part II of the *Canada Labour Code*, R.S.C, 1985, c. L-2, (or equivalent law) due to COVID-19; and
- additional hygiene or passenger health screening processes put in place due to COVID-19.

[9] Beyond such situations, air carriers may make decisions that are influenced by the pandemic, including decisions to cancel and consolidate flights due to dropping passenger volumes. Whether such situations are within or outside carrier control would have to be assessed on a case-by-case basis. If the disruption was within the air carrier's control, the air carrier would be subject to more onerous obligations.

[10] In the extraordinary context of this pandemic, reasonable expectations regarding air travel have changed, taking into account government travel bans, restrictions, and advisories; public health practices; and impacts on travel demand and air carrier operations.

CONCLUSION

[11] The Agency finds that, in the context of the significant declines in passenger volumes and disruptions to air carrier operations caused by the COVID-19 pandemic, temporary exemptions to the APPR should be made to provide air carriers with increased flexibility to adjust flight schedules without facing prohibitive costs.

[12] Specifically, the Agency finds it undesirable, in the current extraordinary circumstances, that carriers be obligated to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation more than 72 hours before their original scheduled departure or to passengers who were delayed at destination by less than six hours. The Agency further finds it undesirable that carriers be required to offer alternative travel arrangements that include flights on other air carriers with which they have no commercial agreement.

ORDER

[13] The Agency orders that all air carriers be exempted from:

- the obligation, under paragraphs 19(1)(a) and 19(1)(b) of the APPR, to pay compensation for inconvenience
 - if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket; or,
 - if the flight delay or the flight cancellation is communicated to the passengers within 72 hours of the departure time indicated on the original ticket, on condition that the carrier pays the passengers the following compensation for inconvenience; in the case of a large carrier,
 - in the case of a large carrier,
 - \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

- \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and
- in the case of a small carrier,
 - \$125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.
- the obligation, under subsection 19(2) of the APPR to pay compensation for inconvenience to passengers who opted to obtain a refund instead of alternative travel arrangement, if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket;
- the obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the carrier does not have any commercial agreement.

[14] The exemption is effective immediately, will remain valid until April 30, 2020, and may be extended by a further determination of the Agency, if required.

Member(s)

Scott Streiner
Elizabeth C. Barker

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Determination No. A-2020-47

March 25, 2020

DETERMINATION by the Canadian Transportation Agency relating to COVID-19 pandemic – Additional temporary exemptions to certain provisions of the *Air Passenger Protection Regulations*, SOR/2019-150 (APPR) and extension of the temporary exemption period.

Case number: 20-03254

[1] On March 11, 2020, the World Health Organization assessed the outbreak of COVID-19 as a pandemic.

[2] On March 13, 2020, the Canadian Transportation Agency (Agency) found in Determination No. [A-2020-42](#) that it is undesirable that carriers be obligated to follow certain requirements of the APPR in these circumstances.

[3] Specifically, in the context of the significant declines in passenger volumes and disruptions to air carrier operations caused by the COVID-19 pandemic, the Agency granted temporary exemptions from APPR requirements related to compensation for inconvenience and to rebooking with competitors, to provide air carriers with increased flexibility to adjust flight schedules without facing prohibitive costs.

[4] To allow air carriers to continue focusing on immediate and urgent operational demands, including bringing Canadians home from abroad, the Agency considers it temporarily undesirable for air carriers to have to meet the APPR's 30-day deadline to respond to passengers' claims for the payment of compensation for inconvenience.

[5] Further, considering that the major impacts of the COVID-19 pandemic on the air sector are unlikely to be resolved by April 30, 2020, the Agency finds it appropriate to extend the duration of the exemptions in Determination No. [A-2020-42](#).

ORDER

[6] Pursuant to subsection 80(1) of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended, the Agency orders that all air carriers be exempted from the requirement under subsection 19(4) of the APPR to respond to requests for compensation, on the condition that air carriers respond to such requests within 120 day of the expiry of this order.

[7] This Order is effective immediately and will remain valid until June 30, 2020.

[8] The Agency further orders that the exemptions granted by Determination No. [A-2020-42](#) remain valid until June 30, 2020.

[9] Exemptions granted under this determination and Determination No. A-2020-42 may be extended by a further determination of the Agency, if required.

Member(s)

Scott Streiner
Elizabeth C. Barker

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Order No. 2020-A-32

March 18, 2020

IN THE MATTER OF an immediate and temporary stay of all dispute proceedings involving air carriers.

Case number: 20-02915

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. On March 13, 2020, in Determination No. [A-2020-42](#), the Agency ordered that all air carriers be temporarily exempted from certain provisions of the *Air Passenger Protection Regulations*, SOR/2019-150. On March 16, 2020, the Government of Canada announced several new COVID 19 responses which directly affect air carriers. Air carriers are now required to conduct a basic health assessment of all passengers, and to deny boarding for international flights to Canada to passengers who present COVID-19 symptoms, and to many non citizens and non-residents. As of March 18, 2020, arrivals of international flights are restricted to four airports in Canada.

The impact of the COVID-19 pandemic on air carriers and passengers is significant and continues to evolve. Air carrier resources are highly stretched as carriers work to bring Canadians home from abroad, implement new Government of Canada directions, and adjust to rapidly dropping passenger volumes and travel restrictions.

The Agency finds that in light of these extraordinary circumstances, it would be just and reasonable to temporarily stay dispute proceedings involving air carriers to permit them to focus on immediate and urgent operational demands.

ORDER

Pursuant to subsection 5(2), paragraph 41(1)(d), and section 6 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104, the Agency, on its own motion, orders that all dispute proceedings before the Agency involving air carriers be stayed until April 30, 2020. The stay is effective immediately and applies to all current applications currently before the Agency, as well as any applications received for dispute adjudication during the stay period. On or before April 30, 2020, the Agency will determine if the stay should end on that date or be extended to a later date. In exceptional circumstances, the Agency may lift the stay on individual cases sooner, where necessary in the interests of justice.

Member(s)

Scott Streiner
Elizabeth C. Barker
J. Mark MacKeigan
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Order No. 2020-A-37

March 25, 2020

IN THE MATTER OF an extension of the stay of proceedings ordered in Order No. 2020-A-32.

Case number: 20-03246

On March 11, 2020, the World Health Organization assessed the outbreak of COVID-19 as a pandemic.

On March 18, 2020, the Canadian Transportation Agency (Agency) found that in light of these extraordinary circumstances related to the pandemic, it would be just and reasonable to temporarily stay dispute proceedings involving air carriers to permit them to focus on immediate and urgent operational demands.

Considering that the major impacts of the COVID-19 pandemic on the air sector are unlikely to be resolved by April 30, 2020, the Agency finds it is just and reasonable to extend the duration of the stay of proceedings ordered in Order No. 2020 A-32 until June 30, 2020.

ORDER

Pursuant to subsection 5(2), paragraph 41(1)(d), and section 6 of the Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings), SOR/2014-104, the Agency, on its own motion, orders that all dispute proceedings before the Agency involving air carriers be stayed until June 30, 2020, including any applications received for dispute adjudication during the stay period.

On or before June 30, 2020, the Agency will determine if the stay should end on that date or be extended to a later date. In exceptional circumstances, the Agency may lift the stay on individual cases sooner, where necessary in the interests of justice.

Member(s)

Scott Streiner
Elizabeth C. Barker
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[Accueil](#)

Message concernant les crédits

La pandémie de COVID-19 a gravement perturbé le transport aérien intérieur et international.

En ce qui concerne les perturbations de vol indépendantes de la volonté de la compagnie aérienne, la *Loi sur les transports au Canada* et le *Règlement sur la protection des passagers aériens* exigent seulement que la compagnie aérienne veille à ce que les passagers effectuent leur itinéraire au complet. Certaines compagnies aériennes ont intégré dans leurs tarifs des règles prévoyant des remboursements dans certaines situations. Elles peuvent également y avoir prévu des dispositions par lesquelles elles se croient exemptées de telles obligations dans des cas de force majeure.

Les différentes dispositions législatives, réglementaires et tarifaires ont été rédigées pour des perturbations à court terme relativement localisées. Aucune n'a été envisagée pour les types d'annulations de vols massives à l'échelle de la planète qui sont survenues au cours des dernières semaines en conséquence de la pandémie. Il est important de tenir compte de la façon dont nous devons établir un équilibre qui soit juste et rationnel entre les mesures visant à protéger les passagers et les réalités opérationnelles des compagnies aériennes dans ces circonstances extraordinaires et sans précédent.

D'une part, les passagers qui n'ont aucune possibilité d'effectuer au complet l'itinéraire prévu avec l'assistance d'une compagnie aérienne ne devraient pas avoir à assumer des dépenses pour des vols annulés. D'autre part, on ne peut pas s'attendre à ce que les compagnies aériennes qui voient leurs volumes de passagers et leurs revenus baisser de façon vertigineuse prennent des mesures qui risqueraient de menacer leur viabilité économique.

L'Office des transports du Canada (OTC) examinera le bien-fondé de chaque situation précise qui lui sera présentée, mais il estime que, de façon générale, une solution qui serait convenable dans le contexte actuel serait que les compagnies aériennes fournissent aux passagers touchés des bons ou des crédits pour des vols futurs qui n'expireront pas dans un délai déraisonnablement court (un délai de 24 mois serait jugé raisonnable dans la plupart des cas).

L'OTC continuera de fournir des renseignements, des conseils et des services aux passagers et aux compagnies aériennes, à mesure que nous passerons à travers cette période difficile.

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Statement on Vouchers

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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“Simon Lin”

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From: GuestFeedback <guestfeedback@westjet.com>
Sent: April 5, 2020 11:43 AM
To: jeff_chamberlain@hotmail.com <jeff_chamberlain@hotmail.com>
Subject: DXHICF

Thank you for contacting WestJet.
To ensure you receive emails from WestJet, please add us to your contacts.



Mr. Chamberlain

Re: DXHICF

Thank you for calling WestJet.

It is unfortunate that our views on what WestJet is required to do regarding the refund of reservations during the unfolding COVID-19 pandemic. As I attempted to explain, our executive leadership team is currently focused on the necessary steps to address the repatriation of Canadians abroad.

We recognize that the cancellation of flights and the current economic uncertainty for many of our guests has created a great deal of frustration. A viable and consistent decision was reached in conjunction with the Canada Transportation Agency regarding the refund of itineraries immediately affected by the COVID-19 crisis period.

We appreciate that your view is that the Canadian Transportation Agency has issued two different initiatives however they act as the governing agency for all Canadian agencies and we operate within the policies that they set out.

We assure you that should future discussions result in an alternate policy adjustment that you will be contacted via email to advise you of such.

Should this not be acceptable to you, we respectfully direct you to contact the CTA directly once they have placed notice on their website that they are entertaining complaints again.

Thank you

Paula | Guest Support Specialist



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“Simon Lin”

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[Accueil](#)

Information importante pour les voyageurs pour la période de la COVID-19

ⓘ Avertissement officiel global aux voyageurs du gouvernement du Canada

⚠ Suspension des activités liées aux règlements des différends aériens

Pendant cette période difficile, et malgré la pratique de nos employés pour favoriser la distanciation sociale, l'Office des transports du Canada (OTC) demeure en opération. Nos employés dévoués travaillent à distance et sont disponibles par moyen électronique pour continuer à fournir nos services. Vous pouvez continuer à nous acheminer vos demandes de services, dépôts d'applications et effectuer des opérations normales à travers nos canaux.

Par contre, veuillez noter que l'OTC a temporairement suspendu toutes instances de règlement des différends concernant les compagnies aériennes jusqu'au 30 juin 2020, afin de permettre à celles-ci de se concentrer sur leurs exigences opérationnelles immédiates et urgentes. Bien que vous pouvez toujours déposer une plainte avec nous et que toute plainte sera traitée en temps opportun, il se peut que nous ne pouvons répondre rapidement. L'OTC déterminera, au plus tard le 30 juin 2020, si la suspension doit se terminer à cette date ou si elle doit être prolongée jusqu'à une date ultérieure.

Obligations en matière de protection des passagers aériens durant la pandémie de COVID-19

Le 11 mars 2020, l'Organisation mondiale de la santé a décrété que la COVID-19 était devenue pandémique. Depuis l'écllosion du virus, plusieurs pays, y compris le Canada, ont imposé des interdictions, des restrictions ou des avis concernant les voyages. Des autorités ont également recommandé certains comportements, comme de meilleures pratiques d'hygiène et des mesures de distanciation sociale, dans le but d'atténuer la propagation du virus. La situation évolue rapidement et d'autres restrictions concernant les déplacements pourraient être mises en place.

L'Office des transports du Canada (OTC), soucieux d'atténuer les graves conséquences de la pandémie de COVID-19 sur l'industrie du transport aérien, a accordé des exemptions temporaires à l'application de certaines dispositions du *Règlement sur la protection des passagers aériens* (RPPA) qui seront en vigueur **du 13 mars au 30 juin 2020**.

Le présent document explique ces changements temporaires et comment le RPPA s'applique à certaines perturbations de vol attribuables à la COVID-19.

En plus de respecter le RPPA, les compagnies aériennes doivent aussi respecter leur tarifs. À la lumière de la pandémie de la COVID-19, l'OTC a publié un [message concernant les crédits](#).

Liens

[Transporteurs aériens – exemptions relativement à la pandémie de la COVID-19](#)

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

[Air Canada exerçant également son activité sous le nom d'Air Canada rouge et d'Air Canada Cargo - obtenir une exemption temporaire de l'obligation de fournir le préavis exigé à l'article 64 de la LTC](#)

[2020-A-36 | Arrêté | 2020-03-25](#)

[Prolongement de la suspension - COVID-19 - suspension immédiate et temporaire de toutes les instances de règlement des différends concernant les transporteurs aériens](#)

[2020-A-37 | Arrêté | 2020-03-25](#)

[Transporteurs aériens – exemptions prolongées relativement à la pandémie de la COVID-19](#)

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

Retards et annulations

Le RPPA définit les obligations des compagnies aériennes envers les passagers. Ces obligations varient selon que la situation **est attribuable à la compagnie aérienne, attribuable à la compagnie aérienne, mais nécessaire par souci de sécurité**, ou encore **indépendante de la volonté de la compagnie aérienne**. Ces différentes catégories sont décrites dans le [Guide sur les types et catégories de perturbations de vol](#).

L'OTC a indiqué un certain nombre de situations liées à cette pandémie qui sont considérées comme étant indépendantes de la volonté de la compagnie aérienne, notamment :

- Perturbation de vols vers des lieux indiqués dans un avis du gouvernement interdisant les voyages ou les voyages non essentiels en raison de la COVID-19;
- Quarantaine ou isolement volontaire d'employés en raison de la COVID-19;
- Ajouts de mesures de contrôle sanitaire ou de processus de dépistage auprès de passagers en raison de la COVID-19.

Des compagnies aériennes pourraient décider d'annuler ou de retarder des vols pour d'autres raisons. Il faudrait évaluer les situations au cas par cas afin de déterminer si de telles situations sont attribuables aux compagnies aériennes ou indépendantes de leur volonté.

Obligations des compagnies aériennes

En cas de retard ou d'annulation de vol, les compagnies aériennes doivent toujours tenir les passagers informés de leurs droits et de la cause de la perturbation du vol. Elles doivent également les aider à effectuer leur itinéraire complet (en leur réservant un siège sur d'autres vols).

Si la cause de la perturbation lui est attribuable, les compagnies aériennes auront des obligations additionnelles (plus de détails ci-après).

Situations indépendantes de la volonté des compagnies aériennes (y compris les situations susmentionnées liées à la COVID-19)

Dans de telles situations, les compagnies aériennes doivent :

- Réacheminer les passagers à bord d'un prochain vol exploité par elles ou un partenaire.
 - *En ce qui concerne les perturbations de vol qui surviennent entre le 13 mars et le 30 juin 2020, les compagnies aériennes n'ont pas à suivre les obligations du RPPA qui consistent à réacheminer les passagers à bord de vols de compagnies aériennes avec lesquelles elles n'ont pas d'entente commerciale.*
 - Veuillez vous référer au message concernant les crédits.
 - Cette obligation ne requiert pas que les compagnies aériennes réacheminent les passagers qui ont déjà complété leur itinéraire (incluant d'autres moyens tels les vols rapatriement).

Situations attribuables à la compagnie aérienne

Dans ces situations, les compagnies aériennes doivent :

- **Appliquer des** normes de traitement
- Réacheminer les passagers à bord d'un prochain vol exploité par elles ou un partenaire, ou accorder un remboursement si les nouveaux arrangements ne répondent plus aux besoins du passager;
 - *En ce qui concerne les perturbations de vol qui surviennent entre le 13 mars et le 30 juin 2020, les compagnies aériennes n'ont pas à suivre les obligations du RPPA qui consistent à réacheminer les passagers à bord de vols de compagnies aériennes avec lesquelles elles n'ont pas d'entente commerciale.*
 - Veuillez vous référer au message concernant les crédits.
 - Cette obligation ne requiert pas que les compagnies aériennes réacheminent les passagers qui ont déjà complété leur itinéraire (incluant d'autres moyens tels les vols rapatriement).

Fournir des indemnités : *En ce qui concerne les perturbations de vol qui surviennent entre le 13 mars et le 30 juin 2020, différentes obligations au titre des indemnités sont en vigueur.* Si la compagnie aérienne a avisé les passagers d'un retard ou d'une annulation moins de 72 heures d'avance, elle doit fournir des indemnités qui varieront en fonction du nombre d'heures de retard à l'arrivée du passager à destination (sauf si le passager a accepté le remboursement de son billet) :

- *Grande compagnie aérienne :*
 - 6-9 heures : 400 \$
 - 9+ heures : 700 \$
- *Petite compagnie aérienne :*
 - 6-9 heures : 125 \$
 - 9+ heures : 250 \$
- À compter du 25 mars 2020, le délai pour un transporteur de répondre aux demandes d'indemnisation pour un inconvénient déposé par un passager est suspendu jusqu'au 30 juin 2020 (ou toute autre période ultérieure que l'Office pourrait ordonner). Une fois la suspension terminée, les transporteurs auront 120 jours pour répondre aux demandes reçues avant ou pendant la suspension.

Situations attribuables à la compagnie aérienne, mais nécessaires par souci de sécurité

Dans ces situations, les compagnies aériennes doivent :

- **Appliquer des** normes de traitement;

- Réacheminer les passagers à bord d'un prochain vol exploité par elles ou un partenaire, ou accorder un remboursement si les nouveaux arrangements ne répondent plus aux besoins du passager.
 - *En ce qui concerne les perturbations de vol qui surviennent entre le 13 mars et le 30 juin 2020, les compagnies aériennes n'ont pas à suivre les obligations du RPPA qui consistent à réacheminer les passagers à bord de vols de compagnies aériennes avec lesquelles elles n'ont pas d'entente commerciale.*
 - Veuillez vous référer au message concernant les crédits.
 - Cette obligation ne requiert pas que les compagnies aériennes réacheminent les passagers qui ont déjà complété leur itinéraire (incluant d'autres moyens tels les vols rapatriement).

Autres exigences du RPPA

Tous les autres droits des passagers prévus dans le RPPA restent en vigueur, notamment ceux concernant les communications claires, les retards sur l'aire de trafic et l'attribution de sièges aux enfants. Pour plus d'information, consultez la page de l'OTC intitulée [Connaissez vos droits](#).

Refus de transport

Le gouvernement du Canada a interdit aux étrangers provenant de tout pays, à l'exception des États-Unis, d'entrer au Canada (avec quelques exceptions). De plus, les compagnies aériennes ont reçu pour instruction d'interdire aux voyageurs de toute nationalité qui présentent des symptômes de la COVID-19 de monter à bord des vols internationaux à destination du Canada.

Les obligations prévues dans le RPPA visant les perturbations de vol ne s'appliqueraient pas dans ces situations.

 Partagez cette page

Date de modification :
2020-03-18

This is **Exhibit “P”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



[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.

 Share this page

Date modified:

2020-03-18

This is **Exhibit “Q”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



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CTA.gc.ca @CTA_gc · Mar 25

Replying to @johnpeterc88 @TV_SteveWilks and @AirCanada
Good afternoon, **please refer to this link that will answer your question:** otc-cta.gc.ca/eng/statement-... Thank you. CTA social media



1



CTA.gc.ca @CTA_gc · Mar 25

Replying to @asha_jibril @TravelGoC and 2 others
Good afternoon, **please refer to this link that will answer your question:** otc-cta.gc.ca/eng/statement-... Thank you. CTA social media

2



CTA.gc.ca @CTA_gc · Mar 25

Replying to @FerrisCatWheel @libbyconser and 5 others
Good afternoon, **please refer to this link that will answer your question:** otc-cta.gc.ca/eng/statement-... Thank you. CTA social media

2



CTA.gc.ca @CTA_gc · Mar 25

Replying to @ungraceful_mi and @airtransat
Good afternoon, **please refer to this link that will answer your question:** otc-cta.gc.ca/eng/statement-... Thank you. CTA social media

1



CTA.gc.ca @CTA_gc · Mar 25

Replying to @lan_saucy and @Westjet
Good afternoon, **please refer to this link that will answer your question:** otc-cta.gc.ca/eng/statement-... Thank you. CTA social media





This is **Exhibit “R”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

From: Info <Info@otc-cta.gc.ca>
Date: March 27, 2020 at 10:25:26 AM PDT
To: Tammy 2019 <tammylyn2019@gmail.com>
Subject: RE: SWOOP AIRLINES

Hello Tammy,

Thanks for following up.

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 may relieve the airline of such obligations in force majeure situations.

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).

Best,

info@ Team
Office des transports du Canada / Gouvernement du Canada
info@otc-cta.gc.ca / Tél: 1-888-222-2592 / ATS: 1-800-669-5575
Suivez-nous : Twitter / YouTube

Canadian Transportation Agency / Government of Canada
info@otc-cta.gc.ca / Telephone 1-888-222-2592
Follow us: Twitter / YouTube

-----Original Message-----

From: Tammy 2019 <tammylyn2019@gmail.com>
Sent: Friday, March 20, 2020 11:25 AM
To: Info <Info@otc-cta.gc.ca>
Subject: Re: SWOOP AIRLINES

Hello,

Thank you for your response, but I don't understand the answer.

"However, they would have to make sure the passenger completes their itinerary." If the carrier doesn't - what form of compensation am I entitled to? A refund in the form of a future credit or a refund in the original form of payment?

I have them my money in exchange for a service they are unable to provide. This is also outside of my control and a financial burden to me. All I want is my money returned.

Any info/clarification would be appreciated.

Thank you.

Sent from my iPhone

On Mar 20, 2020, at 7:43 AM, Info <Info@otc-cta.gc.ca> wrote:

Hello Tammy,

Thanks for contacting the Canadian Transportation Agency.

Air Passenger Protection Regulations provide a list of situations considered 'outside the air carrier's control', including medical emergencies and orders or instructions from state officials. The CTA has identified a number of situations related to this pandemic that are considered 'outside of the air carrier's control'. These include flight disruptions to locations that are covered by a government advisory against travel or unnecessary travel due to COVID-19; <https://rppa-appr.ca/eng/obligations-and-level-control>

In these situations, air carriers would not be required to provide standards of treatment or compensation for inconvenience. However, they would have to make sure the passenger completes their itinerary.

Until April 30th, the time at which passengers will be entitled to compensation for inconvenience related to flight cancellations or delays will be adjusted, to provide air carriers with more flexibility to modify schedules and combine flights. Air carriers will be allowed to make schedule changes without owing compensation to passengers until 72 hours before a scheduled departure time (instead of 14 days), and air carriers will be obligated to compensate passengers for delays on arrival that are fully within the air carrier's control once those delays are 6 hours or more in length (instead of 3 hours).

The CTA has also exempted air carriers from offering alternative travel arrangements that include flights on other air carrier's with which they have no commercial agreement.

Best,

info@ Team

Office des transports du Canada / Gouvernement du Canada

info@otc-cta.gc.ca / Tél: 1-888-222-2592 / ATS: 1-800-669-5575

Suivez-nous : Twitter / YouTube

Canadian Transportation Agency / Government of Canada

info@otc-cta.gc.ca / Telephone 1-888-222-2592

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| -----Original Message-----

| From: Tammy 2019 <tammylyn2019@gmail.com>

| Sent: Friday, March 20, 2020 1:08 AM

| To: Info <Info@otc-cta.gc.ca>

| Subject: SWOOP AIRLINES

| Hello,

| I booked a flight with Swoop Airlines for next month and they are cancelling the flight and only offering me a future credit. The flight is from Abbotsford, B.C. to Las Vegas, Nevada and return.

| Am I not entitled to a refund back to my card?

| Thank you,

| Tammy Pedersen

| 604-308-6926

This is **Exhibit “S”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

From: Info <Info@otc-cta.gc.ca>
Date: March 27, 2020 at 1:57:05 PM EDT
To: Jenn Mossey <themosseys@rogers.com>
Subject: RE: trip cancelled

Hello,

Thanks for contacting the Canadian Transportation Agency.

The CTA has taken steps to address the major impact that the COVID-19 pandemic is having on the airlines industry by making [temporary exemptions](#) to certain requirements of the Air Passenger Protection Regulations (APPR). These exemptions apply to flight disruptions that occur from March 13, 2020 until June 30, 2020.

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 may relieve the airline of such obligations in force majeure situations.

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 \(24 months would be considered reasonable in most cases\)](#).

You should first contact your airline to try and resolve the issues you have raised. Given circumstances, please be patient and provide your airline time to respond to you – a minimum of 30 days. If you do not hear back from your airline, or you are dissatisfied with the response you receive, you may file a complaint with the CTA.

If you decide to file, or have already filed, a complaint with the CTA, please note that in light of the extraordinary circumstances resulting from the COVID-19 pandemic, the CTA has decided to [temporarily pause communications](#) with airlines on complaints against them. This includes all new complaints received, as well as those currently in the facilitation process. The pause is currently set to continue until June 30, and is aimed at allowing the airlines to focus on immediate and urgent operational demands, like getting Canadians home.

Also, 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.

Rest assured that once the pause is lifted, we will deal with every complaint. The delay will not change the outcome of our review.

Best,

[info@ Team](#)

Office des transports du Canada / Gouvernement du Canada

info@otc-cta.gc.ca / Tél: 1-888-222-2592 / ATS: 1-800-669-5575

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Canadian Transportation Agency / Government of Canada

info@otc-cta.gc.ca / Telephone 1-888-222-2592

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From: Jenn Mossey <themosseys@rogers.com>

Sent: Friday, March 27, 2020 1:08 PM

To: Info <Info@otc-cta.gc.ca>

Subject: trip cancelled

Good Afternoon,

My trip was cancelled by Sunwing vacations. At which point they were offering a refund (they did this for ONE day).

I filled out the form online and got confirmation that I would be

getting a refund as did I get the same paperwork from I-travel 2000.

They are now telling me that I will not be getting a refund but a voucher.

This was BEFORE you changed the policy to (in my opinion) suit the airlines.

We need our money back since we can't afford to have that money tied up right now because my husband may lose his job permanently after all of this, so there will be no vacations.

Once something is in writing (an email) and they post the policy and you do what you are told during the posted policy you are owed the money.

I am attaching my documentation of confirmation and the policy that was posted when I completed my refund request.

I would like your assistance during these uncertain times.

My husband and I both work in trucking and are currently still working to keep goods flowing.

Jennifer Mossey

519-471-9949

Sent from my iPhone

This is **Exhibit “T”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



[Home](#)

Code of Conduct for Members of the Agency

A. CONTEXT

Mandate of the Agency

(1) The Canadian Transportation Agency (Agency) is an independent, quasi-judicial, expert tribunal and regulator which has, with respect to all matters necessary for the exercise of its jurisdiction, all the powers of a superior court.

(2) The Agency and has three core mandates:

- a. Helping ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians: those who work and invest in it; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.
- b. Protecting the fundamental human right of persons with disabilities to an accessible transportation network.
- c. Providing consumer protection for air passengers.

Roles of the Agency's Chair, Vice-Chair, Members, and staff

(3) The Agency is comprised of up to five regular Members appointed by the Governor in Council (GIC), including the Agency's Chair and Vice-Chair, and up to three temporary Members appointed by the Minister of Transport from a roster approved by the GIC.

(4) Members make adjudicative decisions and regulatory determinations¹. Their responsibilities in these regards cannot be delegated.

(5) The Chair, who is the also Chief Executive Officer (CEO) and a Member, is responsible for overall leadership of the Agency. He or she sets the Agency's strategic priorities, serves as its public voice, reports on its plans and results to Parliament through the Minister of Transport, and handles relations with Ministers, Parliamentarians, Deputy Ministers, and analogous bodies in other jurisdictions. He or she assigns cases to Members, supervises and directs their work, and chairs regular Members meetings. And as CEO, he or she is the most senior manager of the public servants working in the organization, serves as Deputy Head and Accounting Officer with a broad range of related responsibilities under the Financial Administration Act and other statutes, and chairs the Executive Committee.

(6) The Vice-Chair, who is also a Member, sits on the Executive Committee and assumes the responsibilities of the Chair if the Chair is absent or incapacitated.

(7) Members other than the Chair and Vice-Chair do not have any managerial functions within the Agency.

(8) All Members are supported in the discharge of their decision-making duties by the Agency's public servants, who are responsible for giving Members frank, impartial, evidence-based advice; fully implementing Members' direction; and other tasks assigned to them by the Chair, their managers, or legislation.

B. GENERAL PROVISIONS

Purpose, guiding principles, and application of the Code

(9) This Code establishes the standards for the conduct of Members and applies to all regular and temporary Members. It supplements, and should be read in conjunction with, any applicable requirements and standards set out in the Canada Transportation Act; other legislation administered by the Agency; other legislation establishing ethical and conduct obligations, such as the Conflict of Interest Act; relevant regulations, policies, and guidelines; other relevant codes; and letters of appointment.

(10) The Code reflects:

- a. the Agency's commitment to independent, impartial, fair, transparent, credible, and efficient decision making; and
- b. the Agency's organizational values of respect for democracy, respect for people, integrity, stewardship, and excellence.

(11) Members shall:

- a. adhere to all elements of the Code and other applicable instruments;
- b. uphold the highest ethical standards at all times;
- c. arrange their private affairs in a manner that ensures they have no conflicts of interest;
- d. conduct themselves with integrity, avoid impropriety or the appearance of impropriety, and eschew any action that could cast doubt on their ability to perform their duties with impartiality;
- e. not accept gifts, hospitality, or other advantages or benefits from any party that has an interest in matters handled by the Agency;
- f. recuse themselves from any proceeding where they know or reasonably should know that, in the making of the decision, they would be in a conflict of interest, or where their participation might create a reasonable apprehension of bias. In such case, they shall immediately inform the Chair and provide reason for their recusal. Members are encouraged to seek the advice of the Chair and the General Counsel when dealing with any situation where recusal is contemplated; and
- g. immediately inform to the Chair if they become aware of a situation that may adversely affect the integrity or the credibility of the Agency, including possible non-compliance with the Code.

(12) The Chair is responsible for the administration of the Code, including any matters regarding its interpretation. Members are accountable to the Chair for their compliance with the Code.

Members' expertise and work arrangements

(13) Members have a responsibility to maintain the highest levels of professional competence and expertise required to fulfil their duties. Members are expected to pursue the development of knowledge and skills related to their work, including participation in training provided by the Agency.

(14) Regular, full-time Members must devote at least 37.5 hours per week to the performance of their duties during their term of appointment. If a regular Member is authorized by the Chair to continue to hear

one or more matters before them upon expiry of their term, they shall only request remuneration for actual time worked during the period of continuation.

(15) When temporary Members are appointed on a full-time basis, they must devote at least 37.5 hours per week to the performance of their duties. When temporary Members are appointed on a part-time basis, they shall only request remuneration for actual time worked.

(16) Members' designated workplace is at the Agency's head office. They shall only work from home or other off-site locations with the prior written approval of the Chair.

C. DECISION MAKING

Impartiality

(17) Members must approach each case with an open mind and must be, and be seen to be, impartial and objective at all times.

Natural justice and fairness

(18) Members must respect the rules of natural justice and procedural fairness.

(19) Members must ensure that proceedings are conducted in a manner that is transparent, fair, and seen to be fair.

(20) Members shall render each decision on the merits of the case, based on the application of the relevant legislation and jurisprudence to the evidence presented during the proceeding.

(21) Members shall not be influenced by extraneous or improper considerations in their decision making. Members shall make their decisions free from the improper influence of any other person, institution, stakeholder or interest group, or political actor.

Preparation

(22) Members shall carefully review and consider relevant material – including applications, pleadings, briefing notes, and draft decisions – before attending case-related briefing sessions, meetings, or oral hearings.

Timeliness

(23) Members shall take all reasonable steps to ensure that proceedings progress in a timely fashion, avoiding unnecessary delays but always complying with the rules of natural justice and procedural fairness. Members shall render decisions as soon as possible after pleadings have closed and ensure, to the greatest extent possible, that statutory timelines and internal service standards for the issuance of decisions are met.

Quality

(24) Members shall ensure that their decisions are written in a manner that is clear, logical, complete without being unnecessarily repetitive or lengthy, and consistent with any guidelines or standards established by the Agency regarding the quality and format of decisions.

Consistency

(25) Members shall be cognizant of the importance of consistency in Agency decisions, notwithstanding the fact that prior decisions on similar matters do not constitute binding precedents. Members should not depart from the principles established in previous decisions unless they have a reasonable basis, and provide well-articulated reasons, for doing so.

Respect for parties and participants

(26) Members shall conduct proceedings, including oral hearings, in a courteous and respectful manner, while ensuring that proceedings are orderly and efficient.

(27) Members shall conduct proceedings such that those who have cases before the Agency understand its procedures and practices and can participate meaningfully, whether or not they are represented by counsel.

(28) Members must be responsive to accessibility-related needs and implement reasonable accommodation measures to facilitate meaningful participation of parties and other participants with disabilities in Agency hearings.

(29) Members shall be responsive to diversity, gender, and other human rights considerations when conducting proceedings; for example, in the affirmation/swearing in of witnesses and the scheduling of oral hearings. Members shall avoid words, phrases, and actions that could be understood to manifest bias or prejudice based on factors such as disability, race, age, national origin, gender, religion, sexual orientation, or socio-economic status, and shall never draw inferences on a person's credibility on the basis of such factors.

Case-related communications

(30) Members shall not communicate directly or indirectly with any party, counsel, witness, or other non-Agency participants appearing before them in a proceeding with respect to that proceeding, except in the presence of all parties or their counsel.

(31) Members shall not disclose information about a case or discuss any matter that has been or is in the process of being decided by them or the Agency, except as required in the performance of, and in the circumstances appropriate to, the formal conduct of their duties. Members shall refrain from discussing any case or Agency-related matter in public places.

D. WORKING RELATIONS AND INTERACTIONS

Relations with other Members

(32) Members shall foster civil, collegial relations with other Members.

(33) Members should have frank discussions and openly debate issues, while showing respect for one another's expertise, opinions, and roles. Members shall not comment on another Member's views, decisions, or conduct, except directly and privately to that Member himself or herself, or to the Chair pursuant to subsection 11.g of this Code.

(34) Members assigned together to a Panel should strive to reach consensus decisions whenever

possible, but respectfully agree to disagree and prepare a majority opinion and a dissenting opinion where consensus cannot be achieved within a reasonable time period.

(35) Members should share their knowledge and expertise with other Members as requested and appropriate, without attempting to influence decisions in cases to which they are not assigned.

Relation with Agency staff

(36) Members shall at all times treat Agency staff with courtesy and be respectful of their views and recommendations, recognizing that staff are professional public servants who are required to offer their best advice to Members, who make the final decisions.

(37) Any concerns about staff performance should not be communicated directly to working-level employees but rather should be shared with the relevant Branch Head if the concerns are relatively minor and with the Chair if they are significant or systemic.

Interactions with non-Agency individuals and organizations

(38) Members shall not communicate with the news media. Enquiries from the media or members of the public shall be referred to the Chair's Office.

(39) Members shall not communicate with political actors or officials of other federal departments and agencies, provincial or foreign governments, or international organizations regarding a matter that is, was, or could be before the Agency.

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

(41) Members shall not disclose or make known, either publicly or privately, any information of a confidential nature that was obtained in their capacity as a Member.

(42) Members shall not use their position or the Agency's resources (e.g., an Agency email account or letterhead) for personal gain.

(43) Members should exercise caution when using social media for personal purposes, and should not identify themselves as Members of the Agency on social media sites, except professional sites such as LinkedIn.

E. OUTSIDE ACTIVITIES

(44) Members shall not accept invitations to attend social events such as receptions or dinners with stakeholder representatives or with persons who are, or may become, a party, counsel, witness, or other non-Agency participants in an Agency proceeding, except in rare instances where there is a compelling justification and the Chair provides prior written approval.

(45) Members may take part in other outside activities that are not incompatible with their official duties and responsibilities and do not call into question their ability to perform their duties objectively, with the prior written approval of the Chair. Such activities may include participation in conferences and training seminars, speeches, teaching assignments, and volunteering.

(46) Requests for the Chair's approval of participation in social events or other outside activities must be

made in writing at least two weeks before those events or activities begin, and must fully disclose all relevant details. Members are also responsible for obtaining any other approval required by applicable legislation, guidelines, codes, or other instruments.

(47) Notwithstanding the foregoing, the Chair may, from time to time, confer with stakeholder representatives, counsel, or other parties in his role as the Agency's public voice, to discuss matters unrelated to any specific proceeding.

F. AFFIRMATION

(48) Members shall review and affirm their commitment to and compliance with the Code upon initial appointment and every year thereafter on or near the anniversary of their appointment.

1
.... In this Code, "decisions" shall be understood to refer to both adjudicative decisions, which deal with disputes between parties, and regulatory determinations, which deal typically involve a single party.

- Code of Conduct for Members of the Agency last update: March 26, 2018

 Share this page

Date modified:
2014-01-22

This is **Exhibit “U”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



Dear travel agents,

We would like to thank you for your continued support and patience. As you can imagine, we are moving quickly during this unprecedented time. That is why, as part of our efforts to keep our employees and customers safe, we were the first airline in Canada to suspend all southbound flights and focus solely on bringing our customers home.

Last week, we expanded our repatriation efforts to offer vacant seats free to any Canadian stranded in destination on our ongoing northbound flights. On March 23rd, we completed our repatriation efforts by bringing home more than 60,000 people including 3,300 stranded Canadians that were non-Sunwing customers.

Initially, we offered customers booked on our flights during this suspension the choice between a future travel credit valid for 12 months and a full cash refund. However, after the Government of Canada's non-essential travel advisory, we adjusted our policy to be aligned with all other Canadian airlines and tour operators. This decision is also consistent with the ruling made by the Canadian Transportation Agency on March 26, 2020. All customers booked on our flights will receive a future travel credit and, as a further gesture, we have extended the validity of this credit for two years. Your commission for bookings will be protected; however, no further commission will be paid when customers re-book using their future travel credit.

While we understand that some customers would have preferred a refund, we are confident that during the next two years they will be able to take the flights or vacations they had planned.

We want to reiterate that any customer who purchased travel insurance is still eligible for a refund in accordance with the terms of their policy. Customers that purchased the Worry Free Cancellation Waiver may be entitled to a partial refund with their future travel credit. These partial refunds will be processed as quickly as possible as we continue to work through adjusting thousands of backlogged files. We ask for your patience as we work through our backlog.

As a reminder, all our southbound flights up to and including April 30, 2020, have been cancelled. We have introduced a new flexible policy for departures between May 1 and June 30, 2020 where final payments can be provided up to 25 days before the departure date (as opposed to the standard 45 days).

Please continue to check our website for important updates.

Thank you for your continued support and stay well.

This is **Exhibit “V”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

COVID-19 Frequently Asked Questions

Where can I find more information about COVID-19?

Canadians are encouraged to consult the destination page on www.travel.gc.ca for the latest advice – the Public Health Agency of Canada (PHAC) is constantly updating this page with advice for travellers based on the latest science available. Anyone travelling should also register with the Government of Canada at www.travel.gc.ca/register prior to travel.

I've tried emailing and calling, why is it taking so long for someone to get back to me?

We know that it can be frustrating waiting for a reply, and we apologize for the long delays. As you can imagine, we have been inundated with calls and emails from concerned customers. Over the past few weeks we have handled over 77,000 calls. Our focus has been ensuring the safety of all our passengers and staff during this challenging time and bringing Canadians home. All our operations were moved from our head offices in Toronto and Montreal to be home-based in order to keep our employees safe per government recommendations regarding social distancing. Now that our repatriation efforts are completed and we have ensured the safety of our employees, we're answering your calls and messages as quickly as possible. Please note that all files with departures between March 17th and April 30th are being processed by our finance team as quickly as possible and there is no need to contact us.

My clients are scheduled to travel between now and April 30, 2020 – what do I need to do?

Customers with departure dates for flights or vacation packages between March 17th and April 30th are

eligible to receive a future travel credit in the value of the original amount paid. No action is needed from you or your customers to receive this. Their original booking number will be the code of their future travel credit. We will communicate formally via the email address we have on file (including group travel bookings). You and your client do not need to contact us. This credit can be redeemed against future travel for travel up to 24 months from original departure date to anywhere Sunwing Airlines operates.

Why are my clients receiving a future travel voucher instead of a full cash refund?

While we initially offered customers booked on our flights a choice between a future travel credit valid for 12 months and a full cash refund, after the announcement of the Government of Canada's non-essential travel advisory, we adjusted our policy to be aligned with all other Canadian airlines and tour operators. This decision is also consistent with the ruling made by the Canadian Transportation Agency on March 26, 2020. All customers booked on our flights will be offered a future travel credit, and as a further gesture, we have extended the validity of this credit to two years.

My clients submitted a request for a refund before the policies changed – will they still receive a refund?

All non-processed refund requests were automatically transferred over to our new policy and customers will be receiving a future travel credit. We understand that some customers would have preferred a refund, but we are confident that during the next two years they will be able to take the flights or vacations they had planned.



COVID-19 Frequently Asked Questions

What is the future travel credit process and how does it work?

We've made the travel credit process quite simple for our customers to redeem. When your clients are ready to rebook their vacation, the previous booking number is the key to their credit. Customers will only need to answer security questions to access and apply this credit to their new booking. If they do not use the full amount, it will remain as a credit on file and can be used at a later date.

When will booking cancellations be processed?

Our finance team has been working around the clock to process thousands of files. We hope to have the majority of them complete by April 9, 2020.

My clients purchased the Worry Free Cancellation Waiver – will they receive a refund?

Sunwing's Worry Free Cancellation Waiver lets customers cancel their vacation for any reason up to three hours prior to departure. Depending on when your clients cancelled, they may be entitled to a partial refund in combination with a future travel voucher. Please see our [website](#) for full terms and conditions. These partial refunds will be processed as quickly as possible as we continue to work through adjusting thousands of backlogged files. We ask for your patience as we work through our backlog.

What are my clients' next steps if they purchased travel insurance through an insurance provider?

Once your clients' file has been processed, we will let them know via the email address on file. At that point, they can then provide this document to their insurance provider who will guide them through next steps.

My clients made a deposit on a vacation departing after May 1 – what are their options?

We have adjusted our policy to make it more flexible for customers on final payment. We have introduced a new flexible policy for departures between May 1 and June 30, 2020 where final payments can be provided up to 25 days before the departure date (as opposed to the standard 45 days). By extending our final payment window, your clients can make a more informed decision about their travel. Please note that all other terms and conditions apply and cancelling will result in the loss of your clients' deposit.

When will I receive my commission?

All commissions are paid 21 days prior to departure dates and all bookings with unpaid commissions will be looked at in the next couple of weeks. We need to finalize all booking cancellations before we can issue commissions payments and we appreciate your patience.

Is my commission protected with future travel credits?

Your commission for bookings will be protected; however, no further commission will be paid when customers rebook using their future travel credit.

Can my clients still make a future booking?

Of course! Our sales centre and website are fully operational with our schedule for the upcoming summer and winter seasons in place and up to date. Our team is also ready to assist with all you group and wedding bookings. New bookings can be made on available packages departing from May 1, 2020 onwards.

This is **Exhibit “W”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

10:02 PM Tue Mar 31

Chats

Search

Your Story Donald Chrystal Karina

WestJet
We understand the c... · 10:01 pm

FlySwoop
To talk to an agent, pl... · 3:29 pm

Maureen Bowman
sorry the link won't w... · 3:13 pm

Alan Jackson
Alan sent a photo. · 1:55 pm

Kalpna Joshi
Kalpna sent a photo. · 8:15 am

Dave Christopher
Dave sent an attachment. · Mon

WestJet

canceled these flights and have actually broken our contract for the services we agreed to when I booked. It's in your service agreement for my refund,the Ontario service laws and the new government laws too. Please I do understand it's a crazy time for all of you too,but I am requesting a refund because my children are having to also deal with the fallout of this through thier employment . Yes things are changing daily so if we have to help them we would like to,since we are retired and on a budget too

We understand the challenges our guest have been faced with. However, the Canadian Transport Agency has approved us to issue refunds to travel bank. We have extended the travel bank to 24-months, when normally it is 12 months, therefore giving guest more flexibility to book with us in the future.

Sooo | I | Thanks

Q W E R T Y U I O P

A S D F G H J K L return

↑ Z X C V B N M ! , . ↑

.?123 😊 🎤 .?123 📄

10:22 PM Tue Mar 31

Chats

Search

Your Story Donald Chrystal Andrea

WestJet
You: I would also like... · 10:21 pm

FlySwoop
To talk to an agent, pl... · 3:29 pm

Maureen Bowman
sorry the link won't w... · 3:13 pm

Alan Jackson
Alan sent a photo. · 1:55 pm

Kalpna Joshi
Kalpna sent a photo. · 8:15 am

Dave Christopher
Dave sent an attachment. · Mon

WestJet

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10:19 PM

They have not gone before parliament to change it yet just because they have thought it's fair doesn't change the business laws of Canada really I am not impressed with your response it's all over the news again I'm sooo sorry you're having to deal with all this craziness but I'm respectfully as for a refund to original payment please

I would also like to see the link to the CTA show me this new approval

Sooo | I | Thanks

Q W E R T Y U I O P

A S D F G H J K L return

↑ Z X C V B N M ! , . ↑

.?123 😊 🎤 .?123 📄

10:22 PM Tue Mar 31



Chats



Search



Your Story



Donald



Chrystal



Sue



WestJet

Sure, one second pl... · 10:22 pm



FlySwoop

To talk to an agent, pl... · 3:29 pm



Maureen Bowman

sorry the link won't w... · 3:13 pm



Alan Jackson

Alan sent a photo. · 1:55 pm



Kalpna Joshi

Kalpna sent a photo. · 8:15 am



Dave Christopher

Dave sent an attachment. · Mon

84%



WestJet



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10:19 PM

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I would also like to see the link to the CTA show me this new approval

Our apologies, but we are unable to accept that request. If you wish to further discuss, you may reach out to the Canadian Transport Agency, or your insurance provider. Thank you.



Sure, one second please.

Camera, App Store, GIF, Text input (Aa), Smiley, More options

Mobile keyboard with predictive text: Sooo, I, Thanks

10:24 PM Tue Mar 31

Chats

Search

Your Story Sue Chrystal Audrey

WestJet
<https://ms.spr.ly/618...> · 10:23 pm

FlySwoop
 To talk to an agent, pl... · 3:29 pm

Maureen Bowman
 sorry the link won't w... · 3:13 pm

Alan Jackson
 Alan sent a photo. · 1:55 pm

Kalpna Joshi
 Kalpna sent a photo. · 8:15 am

Dave Christopher
 Dave sent an attachment. · Mon

Cindy Hamilton
 Cindy sent a video. · Fri

Donald Waybrant
 You: Yup and we also have l... · Fri

Linda Louise Payeur
 You sent a photo. · Fri

Trish Desjardins
 Trish sent an attachment. · Thu

Chats People

83%

WestJet

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Our apologies, but we are unable to accept that request. If you wish to further discuss, you may reach out to the Canadian Transport Agency, or your insurance provider. Thank you.

Sure, one second please.

<https://ms.spr.ly/6189TeO4T>

Camera GIF Aa Smiley Menu



Steffany Christopher
9 mins

When I opened it

Home

1 Comment

Statement on Vouchers

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.

Share this page

Date modified: 2020-03-25



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About us



Like



Comment

News



Options

Send in Message

This is **Exhibit “X”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

From: Air Canada Concierge <concierge@aircanada.ca>
Date: April 1, 2020 at 12:29:49 EDT
To: Michael Foulkes <Michael.foulkes@rogers.com>
Subject: Re: Booking MMHHTM

Hello / Bonjour Mr. Foulkes,

I would like to attach two links from the Canadian Transportation Agency website as they may help clarify some of your questions. The CTA has issued temporary exemptions to the Air Passenger Protection Regulations regarding refund request and extension of ticket validity.

<https://www.otc-cta.gc.ca/eng/content/canadian-transportation-agency-issues-temporary-exemptions-certain-air-passenger-protection>

<https://otc-cta.gc.ca/eng/statement-vouchers>

Kind Regards.

Yda

Air Canada
Concierge Desk / Bureau Concierge
concierge@aircanada.ca

From: Michael Foulkes <michael.foulkes@rogers.com>
Sent: Wednesday, April 1, 2020 12:24
To: Air Canada Concierge <concierge@aircanada.ca>
Subject: Re: Booking MMHHTM

Thank you for your prompt reply.

I don't believe these options are in accordance with applicable tariffs or Canadian or EU regulations. Before choosing which way to proceed I will look into this more closely, as well as consult with both the Expedia for TD and TD Visa where the booking was made.

Thank you again for your response. Best personal regards for your well-being.

Michael Foulkes

MICHAEL A FOULKES | 67 THORNCREST ROAD ETOBICOKE ONTARIO CANADA M9A 1S8 | TEL: +1-416-999-9422 | FAX: +1-416-234-9618 | MICHAEL.FOULKES@ROGERS.COM

On Apr 1, 2020, at 9:53 AM, Air Canada Concierge <concierge@aircanada.ca> wrote:

Hello / Bonjour Mr. Foulkes,

Thank you for contacting the Air Canada Concierge Desk.

I am sorry hear that your return flight was cancelled. Due to the COVID-19 crisis, our schedule change policy has been modified. Itineraries that have been affected by an schedule change (in your case cancel flight) actioned after the 19th of March are not refunded. Your flight was cancelled on the 27th of March. We can offer you two options:

- Put your reservation aside for future use. You will have no change fee for the first re-booking (which is 500cad per passenger). You have 24 months to use this credit since the day of the schedule change; in this case 27 March 2022.
- Refund your ticket with a cancellation penalty of 600cad per passenger.

Please let me know how you will like to proceed.

Kind Regards.

Yda

Air Canada

Concierge Desk / Bureau Concierge
concierge@aircanada.ca

From: Michael Foulkes <michael.foulkes@rogers.com>
Sent: Wednesday, April 1, 2020 09:32
To: Air Canada Concierge <concierge@aircanada.ca>
Subject: Booking MMHHTM

I received the attached email from Air Canada on Monday regarding a previously booked flight. I would appreciate your assistance in having this reservation refunded.

I request a full refund for this reservation as the return portion has apparently already been cancelled by Air Canada. I have not received any formal notification of the cancellation, but the May 31 return from Dublin Ireland (on the same booking reference) has disappeared from my Air Canada App itinerary and is no longer shown on your schedule. It is my understanding that under these circumstances, a cash refund is applicable and I would appreciate it you could direct this request to the appropriate area to have it processed.

If this is not possible, I would appreciate a written explanation.

Thank you.

Michael Foulkes
718-542-434

MICHAEL A FOULKES | 67 THORNCREST ROAD ETOBICOKE ONTARIO CANADA M9A 1S8 | TEL: +1-416-999-9422 | FAX: +1-416-234-9618 | MICHAEL.FOULKES@ROGERS.COM

Begin forwarded message:

From: "Air Canada" <communications@Mail.aircanada.com>
Subject: Confirm or cancel your booking / Confirmation ou annulation de votre réservation
Date: March 30, 2020 at 8:00:16 PM EDT
To: <MICHAEL.FOULKES@ROGERS.COM>
Reply-To: "Air Canada" <communications@Mail.aircanada.com>

[Web version](#)



VERSION FRANÇAISE ↓

Confirm or cancel your booking

Booking reference: MMHHTM

As the global impact of COVID-19 continues to evolve, we would like to know whether this has impacted your travel plans.

I wish to confirm my booking

If you still plan to fly from Toronto (YYZ) to London (LHR), please review any applicable entry requirements [here](#). If you are eligible to fly, please confirm below:

CONFIRM MY BOOKING

I wish to cancel my booking

Alternatively, we can appreciate that you may wish to alter your upcoming trip from Toronto (YYZ) to London (LHR), or are not able to travel due to new entry restrictions found [here](#).

To give you more flexibility, we've waived change fees and are making an exception on non-refundable fares by providing the unused ticket value to be used towards a future ticket purchase. If you would like to cancel your booking but have been unable to reach your travel agency, you may be able to do so directly on our easy Air Canada self-service form.

Can I cancel my Travel Agency flight booking online with Air Canada directly?

I purchased a flight only:

- Yes, you can cancel your flight and receive **100% of the unused value of your ticket** as a future travel credit. This credit is valid for travel before March 31, 2021.

CANCEL MY BOOKING

I purchased a package (flight + hotel, car rental, etc.):

- No, unfortunately you will need to connect directly with your travel agency.

Your patience and understanding is greatly appreciated as we continue to adapt to this dynamic situation.

ENGLISH VERSION ↑

Confirmation ou annulation de votre réservation

Numéro de réservation : MMHHTM

Alors que l'impact mondial de la COVID-19 continue d'évoluer, nous souhaitons savoir si la pandémie a des conséquences sur vos plans de voyage.

Je souhaite confirmer ma réservation

Si vous prévoyez toujours de voyager au départ de Toronto (YYZ) et à destination de Londres (LHR), veuillez passer en revue [ici](#) les exigences d'entrée applicables. Si vous êtes autorisé à voyager, veuillez le confirmer ci-dessous :

CONFIRMER MA RÉSERVATION

Je souhaite annuler ma réservation

Il se peut aussi que vous souhaitiez annuler la réservation de votre voyage à venir au départ de Toronto (YYZ) et à destination de Londres (LHR), ou que vous ne puissiez voyager en raison des nouvelles restrictions d'entrée que vous trouverez [ici](#).

Pour vous donner plus de flexibilité, nous avons annulé les frais de modification et faisons une exception pour les tarifs non remboursables : vous pouvez obtenir un crédit intégral à utiliser pour un prochain voyage. Si vous souhaitez annuler votre réservation, mais que vous n'êtes pas en mesure de communiquer avec votre agence de voyages, vous pouvez le faire directement au moyen du formulaire en libre-service d'Air Canada, facile à utiliser.

Puis-je annuler en ligne, directement auprès d'Air Canada, ma réservation faite à l'origine par une agence de voyages?

J'ai uniquement acheté un billet d'avion :

- Oui, vous pouvez annuler votre vol et recevoir **la valeur intégrale de votre billet inutilisé** sous la forme d'un crédit pour un voyage effectué d'ici le 31 mars 2021.

ANNULER MA RÉSERVATION

J'ai acheté un forfait (vol + hôtel, voiture de location, etc.) :

- Non, vous devez malheureusement communiquer directement avec votre agence de voyages.

Nous vous remercions de votre patience et de votre compréhension dans ce contexte de changements rapides.

If you have made changes to your flights within the past 48 hours, this email may not reflect your current booking. Please refer to your booking reference for current flight information.

Please do not reply to this email, as this inbox is not monitored. If you have any questions please visit aircanada.com.

Si vous avez apporté des modifications à vos vols au cours des 48 dernières heures, ce courriel peut ne pas être pertinent pour votre réservation actuelle. Veuillez vous reporter à votre source de réservation pour les informations sur le vol à jour.

To ensure delivery to your inbox, please add communications@Mail.aircanada.com to your address book or safe list.

This service email was sent by Air Canada to MICHAEL.FOULKES@ROGERS.COM because you purchased an Air Canada flight and provides important flight information that must be communicated to you. This service email is not a promotional email.

Your privacy is important to us. To learn how Air Canada collects, uses, and protects the personal information you provide, please view our [Privacy Policy](#).

Please do not reply to this email, as this inbox is not monitored. If you have any questions please visit aircanada.com.

Air Canada, PO Box 64239, RPO Thorncliffe, Calgary, Alberta, T2K 6J7

Pour assurer la livraison de vos courriels, veuillez ajouter communications@Mail.aircanada.com à votre carnet d'adresses ou liste de contacts.

Ce courriel de service a été envoyé par Air Canada à MICHAEL.FOULKES@ROGERS.COM parce que vous avez acheté un vol Air Canada et il vous fournit d'importants renseignements sur votre vol. Ce courriel de service n'est pas un courriel promotionnel.

Votre vie privée est importante pour nous. Pour savoir comment Air Canada collecte, utilise et protège les informations privées que vous nous transmettez, veuillez consulter la politique d'Air Canada sur [la protection des renseignements personnels](#).

Veuillez ne pas répondre à ce courriel, car cette boîte de réception n'est pas surveillée. Si vous avez des questions, veuillez visiter aircanada.com.

Air Canada, C.P. 64239, RPO Thorncliffe, Calgary (Alberta) T2K 6J7.

This is **Exhibit “Y”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

From: **AC Medical** <acmedical@aircanada.ca>
Date: Fri., Mar. 27, 2020, 1:30 p.m.
Subject: 21MAR BELISLE AHREN N4N4CA additional information
To: Ahren Belisle <belisle.ahren@gmail.com>

Good day Mr. Belisle,

Thank you for your email.

Please be advised that we will not be able to accommodate your request.

As mention previously the maximum we can provide is to keep your ticket as a credit for 24 months (2 years).

If I look at this link you provided this seems to be a law for resale agency we are an direct seller and provider as an airline.

The policy we follow at the moment is supported by the CTA (Canadian air transportation agency).

Please contact customer relation directly for any additional question as this is not something the medical desk can assist you with any further.

<https://acc-prod.microsoftcrmportals.com/en-CA/air-canada-contact-us/>

Best regards,

Nancy

AC_logo

Medical Desk/ Bureau Médical

T 1-800-667-4732 | 514-369-7039 | F 1-888-334-7717

MON-FRI: 6AM – 8PM ET | SAT-SUN: 6AM - 6PM ET

LUN-VEN: 0600-2000 | SAM-DIM: 0600-1800 heure de l'est

ACmedical@aircanada.ca

From: Ahren Belisle <belisle.ahren@gmail.com>
Sent: Thursday, March 26, 2020 3:11 PM
To: AC Medical <acmedical@aircanada.ca>
Subject: Re: Verbal disability NANCY WILL SPEAK TO GABE ON 27MAR

How do I get this cert? What tangible Code do I get?

I request a refund or a gift card with no expiry instead.

I've attached the law

Kind Regards,

Ahren Belisle

On Wed., Mar. 25, 2020, 2:11 p.m. AC Medical, <acmedical@aircanada.ca> wrote:

Good day,

The credit is valid for **24 Months (2 years)**.

This is the policy we have been given, if you wish to communicate with customer relations in regards to this policy you can do so by emailing then via the Air Canada website.

Regards,

Jesyka

From: Ahren Belisle <belisle.ahren@gmail.com>
Sent: Wednesday, March 25, 2020 11:53 AM
To: AC Medical <acmedical@aircanada.ca>
Subject: Re: Verbal disability

I actually meant 2021 in my original email. A voucher that is only good until December 2020 is not sufficient in this crisis as I will not be traveling by then.

My flights got cancelled by the airline and as per the law, I am entitled to a full refund.

I will accept a gift card with no expiry date, or a refund. A voucher that must be used by December is not sufficient. Please respond.

Kind Regards,

Ahren Belisle

On Mon., Mar. 16, 2020, 4:46 p.m. AC Medical, <acmedical@aircanada.ca> wrote:

Good day,

Thank you for your email.

Air Canada's good will policy is applicable.

We are waiving a 1 time change fee, any fare difference is applicable.

You must begin travel by 18 December 2020.

The flights have been cancelled, and the ticket is being held as a credit.

You may refer to your booking reference N4N4C when rebooking.

Best regards,

Linda

Medical Desk/ Bureau Médical

T 1-800-667-4732 | 514-369-7039 | F 1-888-334-7717

MON-FRI: 6AM – 8PM ET | SAT-SUN: 6AM - 6PM ET

LUN-VEN: 0600-2000 | SAM-DIM: 0600-1800 heure de l'est

ACmedical.aircanada.ca

From: Ahren Belisle <belisle.ahren@gmail.com>

Sent: Monday, March 16, 2020 4:37 PM

To: AC Medical <acmedical@aircanada.ca>

Subject: Verbal disability

Hello, I have a speech disability and I would like to cancel my flight from yyz to yvr on Saturday.

Reservation code n4n4ca

Last name Belisle.

I will accept credit for future travel in 2020. Can you help me in this medium?

cheers,

Ahren Belisle

3 attachments

Duty of registrant who resells travel services

46. If a registrant acquires rights to travel services for resale to other registrants or to customers and the supplier fails to provide the travel services paid for by a customer, the registrant who acquired the rights for resale shall reimburse the customer or provide comparable alternate travel services acceptable to the customer. O. Reg. 26/05, s. 46.

FB_IMG_1585249781078.jpg

18K



image001.jpg

4K



This is **Exhibit “Z”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



Air Transat (@airtransat) has sent you a Direct Message on Twitter!

1 message

Air Transat (via Twitter) <notify@twitter.com>
To: Adam Bacour <flitox@laposte.net>

Thu, Mar 26, 2020 at 3:55 PM



Air Transat sent you a Direct Message.

Hello, Sorry for the late reply. As you can imagine, we've been receiving high volumes of messages in the past few days, and we're working hard to respond as soon as possible. We strongly believe that the 24-month credit offered to our customers to compensate for their cancelled travel plans is a flexible proposition in these exceptional circumstances. We also continue to be flexible in our payment terms to meet the needs of our customers. In this regard, the Canadian Transportation Agency recently issued an opinion on the subject, which supports our decision and emphasizes that the solution proposed by Transat, among others,

is appropriate given the current²¹⁷
situation. Jessica_AirTransat

Reply

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Twitter, Inc. 1355 Market Street, Suite 900 San Francisco, CA 94103

This is **Exhibit “AA”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

From: Swoop <support@flyswoop.freshdesk.com>
Sent: March 28, 2020 4:44 AM
To: susanannsimpson@msn.com <susanannsimpson@msn.com>
Subject: Re: REFUND ON CREDIT CARD NOT A CREDIT VOUCHER

Hi Susan,

Thank you for reaching out.

We do understand that a refund would be preferred, however we are only offering Swoop credits at this time for cancelled flights.

On March 25, the Canadian Transportation Agency clarified its position on providing credit for travel due to the uncertain times we are in. This clarification stated that airlines could offer travel credit for cancelled flights, and the credit should be valid for a reasonable amount of time, which was indicated to be 24 months. If you would like more information please visit the CTA's website here: <https://otc-cta.gc.ca/eng/statement-vouchers>

Kind regards,



Aris
 Traveller Support
 Swoop Inc. | [FlySwoop.com](https://flyswoop.com)



On Wed, 25 Mar at 9:00 AM , Susan Simpson

<susanannsimpson@msn.com> wrote:

I have e-mailed you 8 times to privacy@flyswoop.com and as of today, Wednesday March 25th I have not heard a word from you either by e-mail or phone.

I HAD NOT PURCHASED A TRAVEL CREDIT/VOUCHER. TRAVEL CREDIT IS IRRELEVANT TO THIS DISCUSSION. THE GOVERNMENT HAS ISSUED A WARNING TO ALL NOT TO TRAVEL ... I AM TAKING THIS SERIOUSLY ALONG WITH EVERYONE ELSE. I HAVE COPIES OF ALL MY OTHER E-MAILS THAT I HAVE SENT TO YOU AND WOULD GLADLY FORWARD THEM ON TO YOU. MY E-MAIL ADDRESS IS:

susanannsimpson@msn.com

Here is a copy of my last e-mail I sent you on March 23rd at 10:57a.m.

Susan Simpson

Mon 2020-03-23 10:57 AM



- privacy@flyswoop.com



Here I am again....still no reply from you on my other 7 e-mails.

I called you again this morning and on hold for 31 minutes and was

then cut off.

I can't afford these calls from Cambridge, Ontario to Calgary.

I am really angry now and so frustrated with your Public Relations...

As I've said before I totally understand you are overwhelmed with all of this Covid-19.

But even an e-mail or call to say that you will at least look into my file would be common courtesy.

I will not be travelling to Tampa or anywhere that Swoop flies so therefore I would like my FULL REFUND that I am entitled to.

Under the advice from the Government we have been told NOT to travel and I am taking that seriously like many others.

As I mentioned before I accepted the Terms and Conditions when I cancelled my flight for Sunday, March 22nd (you cancelled my return on April 6) because I had no other choice. YOU CAN HAVE YOUR VOUCHER BACK ALL I WANT IS MY REFUND ON MY CREDIT CARD.

I have been given counsel and I am ENTITLED to a FULL REFUND ON MY CREDIT CARD.

The Ontario's Frustrated Contracts Act states that I should be able to get a FULL REFUND on my credit card and NOT a CREDIT VOUCHER, that will be of no use to me at all.

I WOULD GREATLY APPRECIATE A REPLY FROM A SUPERVISOR!!

Thank you

Susan Simpson

1-519-623-7610

Reservation Code: X4K2RF

This is **Exhibit “AB”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



TravelOnly @travelonly

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TravelOnly March 25 at 5:12 PM

To all of our amazing clients - thank you for putting your trust in TravelOnly and our amazing advisors. Over the course of the past two weeks, our advisors have been on hold for upwards of 12+ hours to help you get home or cancel or rebook your trips. No doubt this will continue for the foreseeable future -- we are here for you and hope that you will remember the value of using a travel advisor in the future!

Some of you have reached out to enquire how the new Air Passenger Protection Regulations would impact the requirements of airlines when flights were cancelled and/or rebooked.

The Canadian Transportation Agency has provided a statement which provides direction for you and your travel advisor regarding the issuing of future travel vouchers. In summary, the CTA believes that providing affected passengers with vouchers or credits for future travel is appropriate and reasonable. We understand that you may have questions on your voucher and how to use it for future travel and we encourage you to reach out to your TravelOnly advisor or our offices for assistance at any time. Please note that most vouchers will be issued within the next 4-6 weeks depending on the airline and travel supplier.

https://otc-cta.gc.ca/eng/statement-vouchers



OTC-CTA.GC.CA Statement on Vouchers | Canadian Transportation Agency The COVID-19 pandemic has caused major disruptions in domestic and international air travel. For flight disruptions that are outside an airline's...

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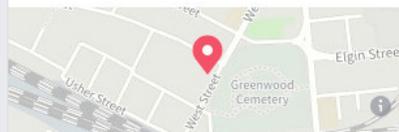
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www.travelonly.com

Travel Service · Cruise Agency

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“Simon Lin”

Signature



ONTARIO'S
TRAVEL
REGULATOR

(<https://www.tico.ca/>)

Registrar Bulletin: Vouchers or Similar Documents

TICO has been receiving questions from registrants and customers about the use of vouchers or similar documents as a form of reimbursement for travel services that have been cancelled or indefinitely delayed.

Registrants' obligations depend on the details of the travel services that were sold. These protections only apply to customers who purchased travel services through a TICO-registered travel agency or tour operator:

If you have engaged suppliers to bundle multiple travel services (e.g., airfare, accommodations, cruise and/or ground transportation), which you advertised and re-sold to either other registrants or customers for a single price:

In this scenario, if one of the suppliers fails to provide the travel service (e.g., airline, cruise line, coach operator), the registrant is required to provide one of the following to the customer:

a refund;

comparable alternate travel services acceptable to the customer; or

a voucher or similar document that is acceptable to the customer for future redemption towards travel services.

During this unprecedented global pandemic, there is a time-limited exemption under section 46, which allows registrants to elect to only provide a voucher or similar document for future redemption towards travel services where a supplier fails to provide the travel services on or after these changes came into effect and that supplier's failure to provide travel services is related to COVID-19. If the exemption is applicable, the voucher or similar document issued must meet specified requirements. This time-limited exemption is revoked on April 1, 2021.

If the voucher or similar document is issued by the registrant on or after March 30, 2020 due to the supplier failing to provide a travel service and that failure is related to COVID-19:

The voucher or similar document must be for at least equivalent value to the travel services that were not provided to the customer and must be redeemable for a minimum of one year from the date the voucher or similar document was issued. The travel can happen beyond the one year mark.

A voucher provided by the registrant or an end supplier is considered acceptable so long as the equivalent value of the travel services is provided. The registrant shall provide a voucher to the customer where a voucher, if any, from the supplier is less than the original value of the travel services.

Registrants cannot add additional fees unless disclosed at the time of booking (e.g., a fee for issuing the voucher).

Where a registrant has only sold another registrant's package, and not acquired any rights to those components for resale, the registrant that sells to the customer is not subject to this provision.

Relevant section of the Regulation: 36 (<https://www.ontario.ca/laws/regulation/050026#BK39>), 38 (<https://www.ontario.ca/laws/regulation/050026#BK41>), 46 (<https://www.ontario.ca/laws/regulation/050026#BK49>) (prior to March 30, 2020) 46 (<https://www.ontario.ca/laws/regulation/r20101?search=101%2F20>) (after March 30, 2020)

If you sold travel services that did not form part of a pre-bundled package (e.g., accommodations and/or cruise):

Customers who have travel bookings that are affected by COVID-19 are subject to the terms and conditions of the booking from the registrant and applicable suppliers (e.g., hotel or cruise line) and the policies in effect. Some suppliers may choose to issue a voucher or similar document to their customers. TICO does not have jurisdiction over end-suppliers.

In addition to the terms and conditions from suppliers, customers are also subject to the terms and conditions of either the retail travel agency and/or tour operator from whom they purchased their travel services from. These terms and conditions would need to be disclosed to the customer at the time of booking and included on the registrant's invoice to the customer.

TICO expects and requires registrants to honour all of their contractual obligations made with customers. Registrants must fully consider all of their contractual and legal obligations in determining how to address the situation. Please note: terms and conditions of travel services sold cannot override your obligations under the *Travel Industry Act, 2002* and Ontario Regulation 26/05.

Relevant sections of the Regulation: 36 (<https://www.ontario.ca/laws/regulation/050026#BK39>) and 38 (<https://www.ontario.ca/laws/regulation/050026#BK41>)

If you sold only air transportation on an airline regulated by the Canadian Transportation Agency (CTA):

The CTA has indicated that to sustain the economic viability of the airline industry, the airlines under their jurisdiction may issue vouchers for future travel in lieu of refunds. Please click here (<https://otc-cta.gc.ca/eng/statement-vouchers>) for the CTA's statement. Please note that TICO does not have jurisdiction over airlines, which are federally regulated.

Registrants issuing vouchers or similar documents for future travel should consider having a dialogue with customers to determine if a full or partial reimbursement has been processed by other means (e.g., travel insurance).

Additional information

Full text or regulatory changes on e-laws (<https://www.ontario.ca/laws/regulation/r20101?search=101%2F20>)

Registrar Bulletin (<https://www.tico.ca/news/registrar-bulletins/398-registrar-bulletin-ontario-government-to-provide-burden-relief-to-ontario-s-registered-travel-agencies-and-tour-operators-in-response-to-the-covid-19-pandemic.html>): Ontario government to provide burden relief to Ontario's registered travel agencies and tour operators in response to the COVID-19 pandemic

Additional Registrar Bulletins (<https://www.tico.ca/news/registrar-bulletins.html>) concerning COVID-19

Customer information (<https://www.tico.ca/blog/happens-health-incident-like-coronavirus-impacts-travel-plans>): FAQs that you can share with your clients

To contact TICO

TICO is operating remotely, but we are here to assist you. For more information, [please click here \(https://www.tico.ca/news/registrar-bulletins/393-registrar-bulletin.html\)](https://www.tico.ca/news/registrar-bulletins/393-registrar-bulletin.html).

Any questions can be directed to [tico@tico.ca \(mailto:tico@tico.ca\)](mailto:tico@tico.ca) or 1-888-451-TICO (8426).

Richard Smart

Registrar, *Travel Industry Act, 2002*

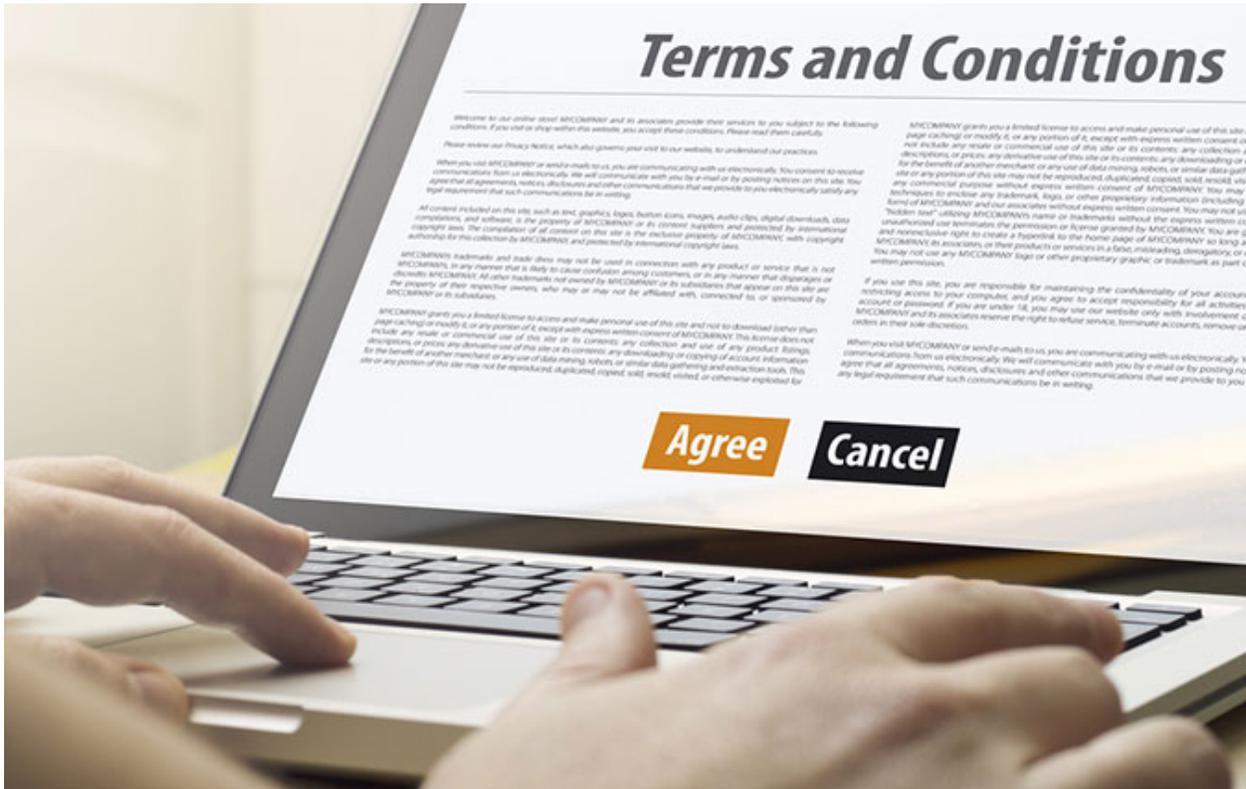
This is **Exhibit “AD”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

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Tactful and tough, agents have effective strategies for dealing with refund demands

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Friday, April 3, 2020
Posted by Kathryn Folliott

This story originally ran in the April 2, 2020 issue of Travelweek magazine. To get Travelweek delivered to your agency for free, subscribe here.

TORONTO — Financial concerns are mounting. Work and stress levels are at all-time highs. The retail travel sector is facing never-before-seen challenges amid the coronavirus pandemic. And unbelievably this has all come to a head in just a few short weeks.

Not surprising then that the last thing any travel agent wants to hear from a client right now is ‘forget the voucher, I want a refund’.

Thankfully unprecedented times call for unprecedented measures and in recent days both the Canadian Transportation Agency (CTA) and the Ontario government have come out with new directives in favour of vouchers / future travel credits, aimed at mitigating the impact of the hundreds of thousands of cancellations brought on by the coronavirus pandemic.

Travel agents understand that clients want refunds. They also understand that if suppliers and retailers are on the hook for refunds amid a global health crisis, with all of the worldwide border closures and travel restrictions that have followed in its wake, then an entire industry will be on the brink of collapse.

Some say travel advisors who have been in the habit of taking the client’s side in any dispute with a supplier may have to think twice before doing that this time, adding that there’s a fine line to be walked, between client and supplier, if the advisor’s relationship with both is to survive this pandemic.

Agents facing a financial hit with commission recalls or worse when clients pursue refunds or credit card chargebacks say they’re using every skill at their disposal, from tact to tough talk, to deal with refund requests.

“SUPPLIERS HAVE BEEN VERY GENEROUS, ESPECIALLY THE CRUISE LINES”

Uniglobe Travel’s Michelle Whalen knows first-hand the disappointment of missing out on a trip. Her own anniversary cruise was cancelled amid the coronavirus pandemic. “I see all these suppliers and their staff layoffs and partners I’ve come to have a good rapport with, they will lose their jobs. The Caribbean countries who rely on tourism dollars. My heart goes out to them. I’m not in any way going to demand a refund.”

Whalen says most of her clients are willing to accept vouchers and even happier when they saw that some suppliers were extending the expiry date to up to 24

months. “Many of my clients are keen travellers and will be travelling again at some point. Suppliers have been very generous, especially the cruise lines.”

The downside of the vouchers is that the pricing, itinerary and availability “may not be as desirable” as when clients first booked. Explaining the situation to a client, Whalen says: “I gently said I know it’s disappointing you’re not getting the same trip next time at the same price but they are being flexible, they’re offering a 10% bonus.”

Whalen adds: “I explained that [suppliers] can’t possibly refund everyone’s money at once or the companies would be bankrupt making future travel even more difficult. I’ve tried to highlight to clients that it’s not about the almighty dollar – these suppliers really do care about helping people.”

[More news: Air Canada to reduce capacity and temporarily reduce workforce in Q2](#)

“Airline staff, tour operator staff are experiencing layoffs just like my clients’ workplaces – they have bills to pay, families to feed as well.”

“NONE CONTEMPLATED THE WORLDWIDE MASS FLIGHT CANCELLATIONS”

The small but vocal minority of travellers pursuing refunds has made its case for refunds in consumer media and Facebook groups. Earlier this week came word of a class action suit against airlines including Air Canada, WestJet, Swoop, Sunwing and Transat.

On March 25 the Canadian Transportation Agency waded into the fray, issuing a special statement saying that while specific cases may get further analysis, in general, vouchers are appropriate in these extraordinary circumstances.

The CTA added that legislation, regulations, and tariffs currently on the books “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.”

Striking a fair and sensible balance between passenger protection and airlines’ operational realities is key, said the CTA.

COMP FUND IS STILL OUT OF DATE AND INADEQUATE: ACTA

This week in Ontario the provincial government announced a number of regulatory amendments to the Travel Industry Act, 2002. In addition to measures aimed at reducing the burden on TICO registrants, the updates include a time-limited exemption that would allow registrants to choose to provide only a voucher in cases where a supplier failed to provide travel services. Also new, eligibility for Comp Fund reimbursements will be expanded to cover consumers with vouchers who do not receive their travel services, potentially due to the failure of a registrant.

ACTA applauded the moves, while cautioning that the funding model for the Comp Fund is still out of date and inadequate. “The COVID-19 pandemic has highlighted the vulnerability of the significantly inadequate Fund, and as such, ACTA will continue to lobby for recommended changes for the benefit of Ontario travel agencies, and the consumers they represent,” says ACTA President Wendy Paradis.

“IT IS NOT POSSIBLE FOR OUR SUPPLIERS TO ABSORB THESE LOSSES”

Tripcentral.ca President Richard Vanderlubbe says: “While it is understandable that customers are expecting refunds, and from a ‘moral’ point of view, they have paid for something that they have not received, this is not how the global travel industry functions.”

Vanderlubbe, who served on the TICO board for many years and who is a long-time advocate for modernizing the Comp Fund, adds: “It is not possible for our suppliers to absorb these losses, and if they were required to provide refunds, it would bankrupt most of them. Bankrupt suppliers will cause cascading losses for travel agencies due to non-payment of outstanding commissions, and damage future travel plans on the books. Further, bankruptcies will hurt us all by reducing consumer confidence.”

More news: [Holland America CEO speaks out as Zaandam, Rotterdam still stranded](#)

For this reason, he says, “we support suppliers policies of future travel credit, and point out that the federal government, TICO and others are supporting. The

best thing for our customers and the industry is that all of our businesses remain solvent.”

“YOU HAD THE OPPORTUNITY TO PURCHASE CANCELLATION INSURANCE ... AND YOU DECLINED TO DO SO”

A letter that Vanderlubbe and his team have ready for any client making persistent refund requests or launching credit card chargebacks is strongly worded but fair, and explains the situation from the retailer’s side. The letter cites the CTA statement and reads, in part: “We too are experiencing financial damage from the COVID19 pandemic, paying our staff for more than 5 weeks now with little or no revenue coming, in order to help our customers return home, process future travel credits, and we will be re-booking for months later.”

The letter also notes: “The Federal Government has issued a plain language statement which you can read from the link below [<https://otc-cta.gc.ca/eng/statement-vouchers>] that states that, as far as the air travellers protection regime goes, it was never intended to cover acts of God, or a force majeure situation. In short, they state that a future travel credit for 2 years is sufficient compensation under this circumstance.

“Further, the Travel Industry Council of Ontario, that administers the Ontario Travel Industry Act, has issued a statement that ‘under Ontario law, there is no requirement for a travel company to refund or offer alternative travel services if a government travel advisory is in effect’. In short, our suppliers are not even obligated to provide a future travel credit, but they are.

“Your chargeback through your credit card is unreasonable given that you are being offered a travel credit good for two years, and that you had the opportunity to purchase cancellation insurance at the time of booking, and you declined to do so.

“We ask that you contact your credit card company and ‘reverse the chargeback request’. We need evidence of this in order to process your future travel credit.”

TICO has issued a FAQ for consumers inquiring about voucher use, a FAQ that’s helpful for retailer and supplier registrants as well. The FAQ can be found at

TICO's website at tico.ca.

Tags: [COVID-19](#), [TICO](#)

Next Post >>

This is **Exhibit “AE”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**ENFORCEMENT NOTICE REGARDING REFUNDS BY CARRIERS
GIVEN THE UNPRECEDENTED IMPACT OF THE
COVID-19 PUBLIC HEALTH EMERGENCY ON AIR TRAVEL**

The U.S. Department of Transportation’s Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office), a unit within the Office of the General Counsel, is issuing this notice to remind the traveling public, and U.S. and foreign carriers, operating at least one aircraft having a seating capacity of 30 or more seats, that passengers should be refunded promptly when their scheduled flights are cancelled or significantly delayed. Airlines have long provided such refunds, including during periods when air travel has been disrupted on a large scale, such as the aftermath of the September 11, 2001 attacks, Hurricane Katrina, and presidentially declared natural disasters. Although the COVID-19 public health emergency has had an unprecedented impact on air travel, the airlines’ obligation to refund passengers for cancelled or significantly delayed flights remains unchanged.

The Department is receiving an increasing number of complaints and inquiries from ticketed passengers, including many with non-refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed. In many of these cases, the passengers stated that the carrier informed them that they would receive vouchers or credits for future travel. But many airlines are dramatically reducing their travel schedules in the wake of the COVID-19 public health emergency. As a result, passengers are left with cancelled or significantly delayed flights and vouchers and credits for future travel that are not readily usable.

Carriers have a longstanding obligation to provide a prompt refund to a ticketed passenger when the carrier cancels the passenger’s flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier.¹ The longstanding obligation of carriers to provide refunds for flights that carriers cancel or significantly delay does not cease when the flight disruptions are outside of the carrier’s control (e.g., a result of government restrictions).² The focus is not on whether the flight disruptions are within or outside the carrier’s

¹ See Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011) (“We reject . . . assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel.”)

² U.S. Dept. of Transportation, Aviation Consumer Protection, Refunds, <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds> (March 4, 2020) (“Am I Entitled to a Refund? When the airline is at fault: Passengers are often entitled to a refund of the ticket price and associated fees when the airline is at fault. . . . Cancelled Flight – A passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to be rebooked on a new flight on that airline. . . . Schedule Change/Significant Delay – A passenger is entitled to a refund if the airline made a significant schedule change and/or significantly delays a flight and the passenger chooses not to travel.”).

control, but rather on the fact that the cancellation is through no fault of the passenger.³ Accordingly, the Department continues to view any contract of carriage provision or airline policy that purports to deny refunds to passengers when the carrier cancels a flight, makes a significant schedule change, or significantly delays a flight to be a violation of the carriers' obligation that could subject the carrier to an enforcement action.⁴

In recognition of the fact that the COVID-19 public health emergency has had major impacts on the airline industry, the Aviation Enforcement Office will exercise its prosecutorial discretion and provide carriers an opportunity to become compliant before taking further action. Specifically, the Aviation Enforcement Office will refrain from pursuing an enforcement action against a carrier that provided passengers vouchers for future travel in lieu of refunds for cancelled or significantly delayed flights during the COVID-19 public health emergency so long as: (1) the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund; (2) the carrier updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change; and (3) the carrier reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

The Aviation Enforcement Office will monitor airline policies and practices and take enforcement action as necessary.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

Blane A. Workie
*Assistant General Counsel for
Aviation Enforcement and Proceedings*

Dated: April 3, 2020

An electronic version of this document is available at <http://www.dot.gov/airconsumer>

³ *Id.*

⁴ See Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011) (*citing* July 15, 1996 Industry Letter which advises carriers that “applying . . . nonrefundability/penalty provisions in situations in which the change of flight time or travel date has been necessitated by carrier action or ‘an act of god’, e.g., where the carrier cancels a flight for weather or mechanical reasons . . . is grossly unfair and it violates 49 U.S.C. 41712, as would any contract of carriage or tariff provision mandating such a result” and putting carriers on notice that the Department “will aggressively pursue any cases of this type that come to our attention”).

This is **Exhibit “AF”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature



Source: Canadian Life and Health Insurance Association

April 01, 2020 16:34 ET

Advisory: Travel cancellation insurance and airline vouchers or credits

TORONTO, April 01, 2020 (GLOBE NEWSWIRE) -- Some travel insurance policies provide coverage that may pay for costs that consumers cannot recover when trips are cancelled. In past, travel service providers usually provided consumers with refunds where the service provider was unable to provide service. Over the past month, many service providers have changed this practice and are now offering vouchers or credits that consumers can use for future travel.

On March 25, 2020, the Canadian Transportation Agency updated its endorsement of the use of vouchers or credits as an appropriate approach for Canada's airlines as long as these vouchers or credits do not expire in an unreasonably short period of time.

Travel insurers are advising policyholders that if you have been offered this type of full credit, or voucher for future use by an airline, train or other travel provider, in many instances, under the terms of your insurance policy you will not be considered to have suffered an insurable loss.

Customers are encouraged to consider the above and review the terms of your policy prior to submitting a claim for trip cancellation coverage. You should also check your insurer's website for guidance that may be posted. Each insurer will assess the particulars of each circumstance in accordance with the terms and conditions of your policy.

Disputes over refunds and credits should be directed to your travel service provider, transportation carrier or the Canadian Transportation Agency.

You can find the contact information for your insurer in your contract or at: <https://www.olhi.ca/for-insurers/member-list/>

About the CLHIA

The CLHIA is a voluntary association whose member companies account for 99 per cent of Canada's life and health insurance business. The industry provides a wide range of financial security products such as life insurance, annuities (including RRSPs, RRIFs and pensions) and supplementary health insurance to almost 29 million Canadians. It

also holds over \$850 billion in assets in Canada and employs more than 156,000 Canadians.

For more information:

Kevin Dorse
Assistant Vice President, Strategic Communications and Public Affairs
(613) 691-6001 / kdorse@clhia.ca

This is **Exhibit “AG”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

Halifax, NS

lukacs@AirPassengerRights.ca



March 30, 2020

VIA EMAIL and FAX

Canadian Transportation Agency

Dear Madam or Sir:

Re: "Statement on Vouchers" – Cease and Desist

It has come to our attention that on or around March 25, 2020, the Canadian Transportation Agency [CTA] published a "Statement on Vouchers" on its website purporting to offer unsolicited opinions on an ongoing controversy between passengers and airlines:

<https://otc-cta.gc.ca/eng/statement-vouchers>

Said statement creates the false impression of a legally binding determination by the CTA, and misleads consumers about their rights. Indeed, it has been represented and/or used in such a manner by various air carriers in their dealings with passengers.

This is unacceptable.

We request that the CTA remove the aforementioned statement from its website without delay and inform the public that the statement is not a legal ruling whatsoever, by no later than **Tuesday, March 31, 2020** at noon Eastern Time.

We look forward to hearing from you.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Gábor Lukács".
Dr. Gábor Lukács

Enclosed: "Statement on Vouchers"

<https://otc-cta.gc.ca/eng/statement-vouchers>

3/30/20, 4:07 PM

[Home](#)

Statement on Vouchers

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.

[Share this page](#)**Date modified:**
2020-03-25

This is **Exhibit “AH”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

RE: "Statement of Vouchers" -- Cease and Desist

secretariat <Secretariat.Secretariat@otc-cta.gc.ca>

Mon, Mar 30, 2020 at 5:35 PM

To: Gabor Lukacs <lukacs@airpassengerrights.ca>

Cc: "Services Juridiques / Legal Services (OTC/CTA)" <Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca>, Scott Streiner <Scott.Streiner@otc-cta.gc.ca>

The Agency acknowledges receipt of your submission.

Your submission will be reviewed and you will be contacted if it is incomplete or otherwise inadequate.

Kind regards,

Secrétariat

Office des transports du Canada / Gouvernement du Canada

secretariat@otc-cta.gc.ca / Site Web www.otc-cta.gc.ca

Tél. : 819-997-7047 / Télécopieur 819-953-5253 / ATS : 1-800-669-5575

Secretariat

Canadian Transportation Agency / Government of Canada

secretariat@otc-cta.gc.ca / Web site www.otc-cta.gc.ca

Tel: 819-997-7047 / Facsimile 819-953-5253 / TTY: 1-800-669-5575

-----Original Message-----

From: Gabor Lukacs <lukacs@AirPassengerRights.ca>

Sent: Monday, March 30, 2020 3:43 PM

To: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>; Services Juridiques / Legal Services (OTC/CTA) <Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca>; Scott Streiner <Scott.Streiner@otc-cta.gc.ca>

Subject: "Statement of Vouchers" -- Cease and Desist

Dear Madam or Sir,

Please refer to the attached letter.

Yours very truly,
Dr. Gabor Lukacs

--

Dr. Gabor Lukacs, Founder and Coordinator

Air Passenger Rights

Tel : (647) 724 1727

Web : <http://AirPassengerRights.ca>

Twitter : @AirPassRightsCA

Facebook: <https://www.facebook.com/AirPassengerRights/>

This is **Exhibit “AI”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on April 7, 2020

“Simon Lin”

Signature

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court of Appeal in **Vancouver, British Columbia**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date: April 6, 2020

Issued by: _____

Address of

local office: Federal Court of Appeal
90 Sparks Street, 5th floor
Ottawa, Ontario, K1A 0H9

TO: CANADIAN TRANSPORTATION AGENCY

APPLICATION

This is an application for judicial review pursuant to section 28 of the *Federal Courts Act* in respect of two public statements issued on or about March 25, 2020 by the Canadian Transportation Agency [**Agency**], entitled “Statement on Vouchers” [**Statement**] and the “Important Information for Travellers During COVID-19” page [**COVID-19 Agency Page**] that cites the Statement.

These public statements, individually or collectively, purport to provide an unsolicited advance ruling on how the Agency will treat and rule upon complaints of passengers about refunds from air carriers relating to the COVID-19 pandemic.

The Statement was issued without hearing the perspective of passengers whatsoever.

The Applicant makes application for:

1. 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;
 - (b) the issuance of the Statement on or about March 25, 2020, referencing of the Statement within the COVID-19 Agency Page, and the subsequent distribution of those publications is contrary to the Agency’s own *Code of Conduct* and/or gives rise to a reasonable apprehension of bias for:
 - i. the Agency as a whole, or
 - ii. alternatively, the appointed members of the Agency who supported the Statement;
 - (c) further, the Agency, or alternatively the appointed members of the Agency who supported the Statement, exceeded and/or lost its (their) jurisdiction under the *Canada Transportation Act*, S.C. 1996, c. 10 to rule upon any complaints of passengers about refunds from carriers relating to the COVID-19 pandemic;

2. an interim order (*ex-parte*) that:
 - (a) upon service of this Court's interim order, the Agency shall prominently post the interim clarification (below) at the top portion of both the French and English versions of the "Statement on Vouchers" [**Statement**] and the "Important Information for Travellers During COVID-19" page [**COVID-19 Agency Page**] (both defined in paragraphs 11-12 of the Notice of Application):

The Canadian Transportation Agency's "Statement on Vouchers" is not a decision, order, determination, or any legal ruling of the Canadian Transportation Agency. It does **not** have the force of law. The "Statement on Vouchers" is currently pending judicial review by the Federal Court of Appeal. This notice is posted by Order [insert URL link to PDF of order] of the Federal Court of Appeal.;
 - (b) starting from the date of service of this Court's interim order, the Agency shall bring the above interim clarification to the attention of anyone that contacts the Agency with a formal complaint and/or informal inquiry regarding air carriers' refusal to refund arising from the COVID-19 pandemic;
 - (c) the Agency shall not issue any decision, order, determination, or any other ruling with respect to refunds from air carriers in relation to the COVID-19 pandemic; and
 - (d) this interim order is valid for fourteen days from the date of service of this Court's interim order on the Agency, and may be renewed by the Applicant under Rule 374(2);
3. an interlocutory order that:
 - (a) the Agency shall forthwith completely remove the Statement from the Agency's website including any references to the Statement within the COVID-19 Agency Page and substitute it with this Court's interlocutory order, or alternatively the order renewing the interim clarification (subparagraph 2(a) above), until final disposition of the Application;

- (b) the interim orders in subparagraphs 1(b)-(c) above are maintained until final disposition of the Application;
 - (c) the Agency shall forthwith communicate with persons that the Agency has previously communicated with regarding the Statement and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement; and
 - (d) the Agency shall forthwith communicate with air carriers under the Agency's jurisdiction, the Association of Canadian Travel Agencies, and Travel Pulse and bring those persons' attention to this Court's interlocutory order and the removal or clarification of the Statement;
4. a permanent order that:
- (a) the Agency prominently post at the top portion of the COVID-19 Agency Page that the Agency's Statement has been ordered to be removed by this Court;
 - (b) the Agency remove the Statement, and references to the Statement within the COVID-19 Agency Page, from its website and replace the Statement with a copy of this Court's judgment;
 - (c) in the event the Agency receives any formal complaint or informal inquiry regarding air carriers' refusal to refund in respect of the COVID-19 pandemic, promptly and prominently inform the complainant of this Court's judgment; and
 - (d) the Agency, or alternatively the appointed members of the Agency who supported the Statement, be enjoined from dealing with any complaints involving air carriers' refusal to refund passengers in respect of the COVID-19 pandemic, and enjoined from issuing any decision, order, determination or any other ruling with respect to refunds from air carriers for the COVID-19 pandemic;
5. costs and/or reasonable out-of-pocket expenses of this Application; and

6. such further and other relief or directions as the Applicant may request and this Honourable Court deems just.

The grounds for the application are as follows:

A. Overview

1. The present Application challenges the illegality of the Canadian Transportation Agency's Statement, which purports to provide an unsolicited advance ruling in favour of air carriers without having heard the perspective of passengers beforehand.
2. The Statement and the COVID-19 Agency Page preemptively suggest that the Agency is leaning heavily towards permitting the issuance of vouchers in lieu of refunds. They further suggest that the Agency will very likely dismiss passengers' complaints to the Agency for air carriers' failure to refund during the COVID-19 pandemic, irrespective of the reason for flight cancellation.
3. Despite the Agency having already determined in a number of binding legal decisions throughout the years that passengers have a fundamental right to a refund in cases where the passengers could not travel for events outside of their control, the Agency now purports to grant air carriers a blanket immunity from the law via the Statement, without even first hearing passengers' submissions or perspective as to why a refund is **mandated** by law. This is inappropriate.
4. The Agency, as a quasi-judicial tribunal, must at all times act with impartiality. That impartiality, unfortunately, has clearly been lost, as demonstrated by the Agency's issuance of the unsolicited Statement and usage thereof.
5. The fundamental precept of our justice system is that "*justice should not only be done, but should manifestly and undoubtedly be seen to be done*" (*R. v. Yumnu*, 2012 SCC 73 at para. 39). This fundamental precept leaves no room for any exception, even during difficult times like the COVID-19 pandemic.
6. Impartiality is further emphasized in the Agency's own *Code of Conduct* stipulating that the appointed members of the Agency shall not express an opinion on potential cases.

B. The COVID-19 Pandemic

7. The coronavirus [**COVID-19**] is a highly contagious virus that originated from the province of Hubei in the Peoples Republic of China, and began spreading outside of the Peoples Republic of China on or around January 2020.
8. On or about March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.
9. On or about March 13, 2020, the Government of Canada issued a blanket travel advisory against non-essential travel outside of Canada until further notice and restricting entry of foreign nationals into Canada, akin to a “declaration of war” against COVID-19, and that those in Canada should remain at home unless absolutely necessary to be outside of their homes [**Declaration**].
10. COVID-19 has disrupted air travel to, from, and within Canada. The disruption was brought about by the COVID-19 pandemic and/or the Declaration, such as:
 - (a) closure of borders by a number of countries, resulting in cancellation of flights by air carriers;
 - (b) passengers adhering strictly to government travel advisories (such as the Declaration) and refraining from air travel (and other forms of travel) unless absolutely necessary; and
 - (c) air carriers cancelling flights on their own initiative to save costs, in anticipation of a decrease in demand for air travel.

C. The Agency’s Actions in Relation to COVID-19, Including the “Statement on Vouchers”

11. Since March 13, 2020 and up to the date of filing this Application, the Agency has taken a number of steps in relation to COVID-19. Those listed in the four sub-paragraphs below are **not** the subject of review in this Application.
 - (a) **On March 13, 2020**, the Agency issued [Determination No. A-2020-42](#) providing, *inter alia*, that various obligations under the *Air Passen-*

ger Protection Regulations, SOR/2019-150 [**APPR**] are suspended until April 30, 2020:

- i. Compensation for Delays and Inconvenience for those that travel: compensation to passengers for inconvenience has been reduced and/or relaxed (an air carrier's obligation imposed under paragraphs 19(1)(a) and 19(1)(b) of the *APPR*);
 - ii. Compensation for Inconvenience to those that do not travel: the air carrier's obligation, under subsection 19(2) of the *APPR* to pay compensation for inconvenience to passengers who opted to obtain a refund instead of alternative travel arrangement, if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket; and
 - iii. Obligation to Rebook Passengers on Other Carriers: the air carrier's obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the *APPR*.
- (b) **On or about March 25, 2020**, the Agency issued [Determination No. A-2020-47](#) extending the exemptions under Decision No. A-2020-42 (above) to June 30, 2020. This Determination further exempted air carriers from responding to compensation requests within 30 days (s. 19(4) of *APPR*). Instead, air carriers would be permitted to respond to compensation requests 120 days *after* June 30, 2020 (e.g. October 28, 2020).
 - (c) **On or about March 18, 2020**, the Agency issued [Order No. 2020-A-32](#), suspending **all** dispute proceedings until April 30, 2020.
 - (d) **On or about March 25, 2020**, the Agency issued [Order No. 2020-A-37](#), extending the suspension (above) to June 30, 2020.
12. On or about March 25, 2020, almost concurrently with the Order and Determination on the same date (above), the Agency publicly posted the Statement on its website (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **En-**

glish: <https://otc-cta.gc.ca/eng/statement-vouchers>) providing that:

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.

13. On or about March 25, 2020, concurrently with the Statement, the Agency posted an amendment to the COVID-19 Agency Page on its website, adding four references to the Statement (French: **Information importante pour les voyageurs pour la période de la COVID-19** [<https://otc-cta.gc.ca/fra/information->

[importante-pour-voyageurs-pour-periode-covid-19](https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19)]; English: **Important Information for Travellers During COVID-19** [<https://otc-cta.gc.ca/eng/important-information-travellers-during-covid-19>]).

14. The COVID-19 Agency Page cites and purports to apply the Statement in the context of an air carrier's legal obligation in three circumstances: (1) situations outside airline control (including COVID-19 situations); (2) situations within airline control; and (3) situations within airline control, but required for safety.
15. In effect, the COVID-19 Agency Page purports to have relieved air carriers from providing passengers with refunds in practically **every** imaginable scenario for cancellation of flight(s), contrary to the Agency's own jurisprudence and the minimum passenger protections under the *APPR*.

D. Jurisprudence on Refunds for Passengers

16. Since 2004, in a number of decisions, the Agency confirmed passengers' fundamental right to a refund when, for whatever reason, an air carrier is unable to provide the air transportation, including those outside of the air carrier's control:
 - (a) *Re: Air Transat*, [Decision No. 28-A-2004](#);
 - (b) *Lukács v. Porter*, [Decision No. 344-C-A-2013](#), para. 88;
 - (c) *Lukács v. Sunwing*, [Decision No. 313-C-A-2013](#), para. 15; and
 - (d) *Lukács v. Porter*, [Decision No. 31-C-A-2014](#), paras. 33 and 137.
17. The Agency's jurisprudence was entirely consistent with the common law doctrine of frustration, the civil law doctrine of *force majeure*, and, most importantly, common sense.
18. The *APPR*, which has been in force since 2019, merely provides **minimum** protection to passengers. The *APPR* does not negate or overrule the passengers' fundamental right to a refund for cancellations in situations outside of a carrier's control.
19. Furthermore, the COVID-19 Agency Page also suggests that the Statement *would* apply to cancellations that are within airline control, or within airline control but required for safety purposes, squarely contradicting the provisions

of subsection 17(7) of the *APPR*. Subsection 17(7) clearly mandates that any refund be in the original form of payment, leaving no room for the novel idea of issuing a voucher or credit.

20. Finally, whether an air carrier's flight cancellation could be characterized as outside their control, or within their control, remains to be seen. For example, if a cancellation was to save costs in light of shrinking demand, it may be considered a situation within an air carrier's control. However, the Statement and the COVID-19 Agency Page presuppose that **any and all** cancellations at this time should be considered outside an air carrier's control.
21. The combined effect of the Statement and the COVID-19 Agency Page purports to ignore decade old and firmly established jurisprudence of the Agency. This all occurred without any formal hearing, adjudication, determination, or otherwise, or even a single legal submission or input from the passengers.
22. As described further below, the Agency does not even outline its legal basis or provide any support for those public statements.
23. The Agency's public statements are tantamount to endorsing air carriers in illegally withholding the passengers' monies, all without having to provide the services that were contracted for. The air carriers all seek to then issue vouchers with varying expiry dates and usage conditions to every passenger, effectively depriving all the passengers of their fundamental right to a refund, which is a right the Agency itself firmly recognized.

E. The Agency's Conduct Gives Rise to a Reasonable Apprehension of Bias

24. The Agency is a quasi-judicial tribunal that is subject to the same rules of impartiality that apply to courts and judges of the courts.
25. Tribunals, like courts, speak through their legal judgments and not media postings or "statements."
26. The Statement and/or the COVID-19 Agency Page is not a legal judgment. They give an informed member of the public the perception that it would be more

likely than not that the Agency, or the members that supported the Statement, will not be able to fairly decide the issue of refunds relating to COVID-19.

27. The Agency has already stipulated a general rule, outside the context of a legal judgment, that refunds need not be provided. No support was provided for this radical departure from the fundamental rights of passengers. The Agency merely provided a bald assertion or conclusion that passengers are not entitled to any refund.
28. The Agency's own Code of Conduct expressly prohibits members of the Agency from expressing an opinion about potential cases or any other issue related to the Agency's work, or comments that may create a reasonable apprehension of bias:

(40) Members **shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency**, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

[Emphasis added.]

29. Although neither the Statement, nor the COVID-19 Agency Page, contain the signature or names of any specific member of the Agency, given the circumstances and considering the Agency's own Code of Conduct providing that the professional civilian staff's role are to **fully** implement the appointed member(s)' directions, the Statement and the COVID-19 Agency Page ought to be attributed to the member(s) who supported the Statement either before or after its posting on the internet.
30. In these circumstances, the Court must proactively step in to protect the passengers, to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done," and to ensure that the administration of justice is not put to disrepute.
31. The Court ought to issue an interim, interlocutory, and/or permanent order restricting the Agency's involvement with passengers' COVID-19 related refunds against air carriers.

F. The Applicant

32. The Applicant is a non-profit corporation under the *Canada Not-for-profit Corporations Act*, SC 2009 that is an advocacy group representing the rights of air passengers.
33. Air Passenger Rights is led by a Canadian air passenger rights advocate, Dr. Gábor Lukács, whose work and public interest litigation has been recognized by this Honourable Court in a number of judgments:
- (a) *International Air Transport Assn et al. v. AGC et al.* (Federal Court of Appeal File No. A-311-19, Order of Near J.A., dated March 3, 2020) that:
- [...] the Court is of the view that the case engages the public interest, that the proposed intervener [Dr. Gábor Lukács] would defend the interests of airline passengers in a way that the parties [the Agency, the Attorney General of Canada, and an airlines trade association] cannot, that the interests of justice favour allowing the proposed intervention in the appeal, and that the proposed intervention would be of assistance to the Court in deciding the appeal [...]
- (b) *Lukács v. Canada (Transportation Agency)* [2016 FCA 174 at para. 6](#);
- (c) *Lukács v. Canada (Transport, Infrastructure and Communities)*, [2015 FCA 269 at para. 43](#);
- (d) *Lukács v. Canada (Transport, Infrastructure and Communities)*, [2015 FCA 140 at para. 1](#); and
- (e) *Lukács v. Canada (Transportation Agency)*, [2014 FCA 76 at para. 62](#).

G. Statutory provisions

34. The Applicant will also rely on the following statutory provisions:
- (a) *Canada Transportation Act*, S.C. 1996, c. 10 and, in particular, sections

25, 37, and 85.1;

(b) *Federal Courts Act*, R.S.C. 1985, c. F-7, and in particular, sections 18.1, 18.2, 28, and 44; and

(c) *Federal Courts Rules*, S.O.R./98-106, and in particular, Rules 300, 369, and 372-374; and

35. Such further and other grounds as counsel may advise and this Honourable Court permits.

This application will be supported by the following material:

1. Affidavit of Dr. Gábor Lukács, to be served.
2. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

The Applicant requests the Canadian Transportation Agency to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Canadian Transportation Agency to the Registry and to the Applicant:

1. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents involving the appointed members of the Agency relating to the Statement and/or issuance of vouchers or credits in relation to the COVID-19 incident, including both before and after publication of the Statement;
2. The number of times the URLs for the Statements were accessed (**French:** <https://otc-cta.gc.ca/fra/message-concernant-credits>; **English:** <https://otc-cta.gc.ca/eng/statement-vouchers>) from March 24, 2020 onward;
3. Complete and unredacted copies of all correspondences, meetings, notes, and/or documents between the Canadian Transportation Agency and the travel industry (including but not limited to any travel agencies, commercial airlines, industry groups, etc.) from February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected

by COVID-19; and

4. Complete and unredacted copies of all correspondences, e-mails, and/or complaints that the Agency received from passengers between February 15, 2020 to the present in respect to issuing of credits, coupons, or vouchers to passengers in lieu of a refund for travel affected by COVID-19.

April 6, 2020

“Simon Lin”

SIMON LIN

Evolink Law Group

4388 Still Creek Drive, Suite 237

Burnaby, British Columbia, V5C 6C6

Tel: 604-620-2666

Fax: 888-509-8168

simonlin@evolinklaw.com

**Counsel for the Applicant,
Air Passenger Rights**



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 1st SESSION

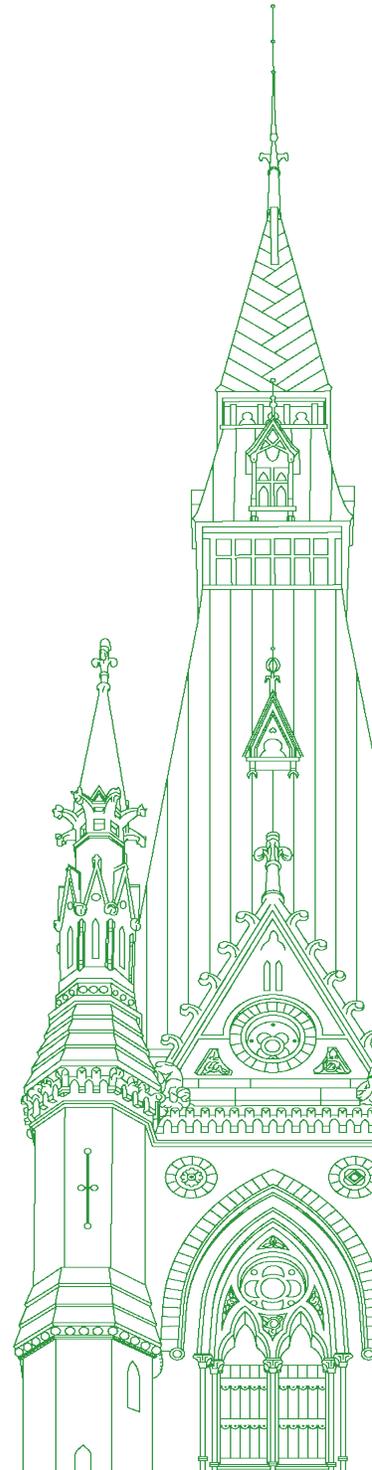
Special Committee on the COVID-19 Pandemic

EVIDENCE

NUMBER 013

Thursday, May 28, 2020

Chair: The Honourable Anthony Rota



At the beginning of the crisis, the government called on entrepreneurs in Quebec and Canada, inviting them to set an example in the situation we are experiencing. Many of them turned to the supplemental unemployment benefit (SUB) plan to maintain the employment relationship and to preserve some security, enabling their employees to get through this difficult period with more peace of mind.

However, on May 22, despite the fact that these entrepreneurs had made sure that the SUB program would still be in place when the CERB was introduced, they were surprised. Employees were told at that time that they would have to repay the CERB because of the alleged gains they had made under the SUB program. At SO-PREMA, one of the large employers in the Drummondville region, 150 employees are affected. At Bridgestone, in Joliette, 1,100 employees are affected by this decision. At Goodyear, in Valleyfield, 150 employees are affected, and there are dozens more.

Does the minister intend to correct this mistake so that employers who are able and willing to do so can treat their employees better during this difficult period?

• (1315)

[English]

Hon. Carla Qualtrough: When we put in place the Canada emergency response benefit, the underlying goal was to make sure that every worker who needed it had access to income support as they were losing their employment for COVID reasons. We understood that meant some workers would not have access moving forward, although let me clarify that SUB plans that existed prior to March 15 are definitely in place. We consider the fact that workers have access to \$1,000 a month in addition to CERB—and we've spoken with employers about this—to permit employers to assist their employees in an equitable way.

[Translation]

The Chair: Mr. Champoux, you have 15 seconds for your question.

Mr. Martin Champoux: Mr. Chair, employers received absolutely no news from the government before this measure was implemented, despite the fact that they were assured that this measure would be transferred to the CERB. That's not an answer when those folks acted honestly and in good faith. They feel cheated, and rightly so.

Does the government intend to fix this mistake, which would simply be the right thing to do?

[English]

Hon. Carla Qualtrough: Mr. Chair, I can assure the member opposite that the SUB plans that were in place prior to March 15 are indeed in place now. In addition, employees who are now on the CERB as an alternative have access to \$1,000 of income in addition to their CERB. We are working with employers to perhaps provide the \$1,000 in lieu of the SUB plans.

[Translation]

The Chair: We will continue with you, Mr. Barsalou-Duval.

Mr. Xavier Barsalou-Duval (Pierre-Boucher—Les Patriotes—Verchères, BQ): Thank you, Mr. Chair.

On April 27, Option consommateurs sent a letter to the Minister of Transport to warn him that the airlines' refusal to reimburse their customers for cancelled flights was contrary to Quebec's laws.

What is the minister going to do to put an end to this situation?

Hon. Marc Garneau (Minister of Transport): Mr. Chair, I sympathize with the people who would have preferred to get a refund, and I understand their frustration. It is not an ideal situation. The airlines are going through a very difficult time right now. If they were forced to refund their customers immediately, many of them would go bankrupt.

Mr. Xavier Barsalou-Duval: Mr. Chair, the minister sounds like a broken record.

A few hours ago, the following motion was passed unanimously: "THAT the National Assembly ask the Government of Canada to order airlines and other carriers under federal jurisdiction to allow customers whose trips have been cancelled because of the current pandemic to obtain a refund."

What will the Minister of Transport tell the National Assembly of Quebec?

Hon. Marc Garneau: Mr. Chair, as my hon. colleague knows, the Canadian Transportation Agency has ruled on this issue and has ruled that, in the present circumstances and in a non-binding way, it is acceptable for airlines to offer credits for up to two years. In the case of Air Canada, the credit has no expiry date.

The Chair: Mr. Barsalou-Duval, you have about 15 seconds for a question.

Mr. Xavier Barsalou-Duval: Mr. Chair, I find it rather odd that the Minister of Transport and the Canadian Transportation Agency are telling the airlines that Quebec's regulations and laws are not important and that they can override them. It seems to me that this is a strange way to operate. Theoretically, under the famous Canadian Constitution, which they imposed on us, that is not how it should work.

Can they uphold their own constitution?

The Chair: The hon. minister can answer in 15 seconds or less, please.

Hon. Marc Garneau: Mr. Chair, as my hon. colleague probably knows, the Canadian Transportation Agency is a quasi-judicial body that operates at arm's length from Transport Canada and the Government of Canada.

The Chair: We will now take a short break.

[English]

We're going to take a short break to allow employees supporting the meeting to switch in safety, including myself.

The Acting Chair (Mr. Bruce Stanton (Simcoe North, CPC)): We will now carry on with Mr. Baker for Etobicoke Centre.

Mr. Baker, go ahead.

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Chapter 9

Misinformation and Disinformation

“Facts have been replaced by opinions. Information has been replaced by entertainment. Reporters have become stenographers. I can’t be the only one who’s sick of what passes for the news today.”

– Superman Clark Kent (2012)

“There’s an old economic principle, that bad money drives out good. One thing that worries me is that bad information is driving out good.”

– Professor Frank Farley (2012)

“The loudest voices should be particularly careful not to rush to conclusions.”

– Former U.S. Secretary of Education William J. Bennett (2012)

“The Internet is so full of junk and not-researched material.”

– American populist historian and TV commentator
David Wallechinsky (2014)

“For me having to explain every day that I am not a prostitute is a daily complication. I am in favor of freedom of expression, but not the kind of freedom of expression built on lies.”

– Argentine model María Belén Rodríguez (2014)

“Information is power. Disinformation is abuse of power.”

– Newton Lee

9.1 The War of the Worlds

On Sunday, October 30, 1938, millions of radio listeners were stunned by the CBS radio “news” on the Martian invasion of Earth:

“Good heavens! Something’s wriggling out of the shadow like a gray snake. Now it’s another, and another. They look like tentacles to me. There, I can see the thing’s body. It’s large as a bear and it glistens like wet leather. But that face. It ... It’s indescribable. I can hardly force myself to keep looking at it. The eyes are black and gleam like a serpent. The mouth is V-shaped with saliva dripping from its rimless lips that seem to quiver and pulsate. ... The thing is raising up. The crowd falls back. They’ve seen enough. This is the most extraordinary experience. I can’t find

words. ... I'll have to stop the description until I've taken a new position. Hold on, will you please. I'll be back in a minute" (1).

Orson Welles' radio adaption of H.G. Wells' novel *The War of the Worlds* (1898) caused widespread panic in America. Thousands of people called the police about the Martian landing in central New Jersey. Some residents loaded up their cars and fled their homes as the radio broadcasted a statement from the U.S. Secretary of the Interior voiced by an actor who sounded like President Franklin D. Roosevelt:

"Citizens of the nation: I shall not try to conceal the gravity of the situation that confronts the country, nor the concern of your government in protecting the lives and property of its people. However, I wish to impress upon you – private citizens and public officials, all of you – the urgent need of calm and resourceful action. Fortunately, this formidable enemy is still confined to a comparatively small area, and we may place our faith in the military forces to keep them there. In the meantime placing our faith in God we must continue the performance of our duties each and every one of us, so that we may confront this destructive adversary with a nation united, courageous, and consecrated to the preservation of human supremacy on this earth. I thank you" (2).

Surprisingly, the Federal Communications Commission decided not to fine CBS Radio or Orson Welles for the stunt that fooled countless numbers of American citizens as well as some officials at the New York City Department of Health (3). Ironically, the department was later revamped and renamed as the New York City Department of Health and Mental Hygiene (4).

9.2 Misinformation and Disinformation on Twitter and Facebook

Fast-forwarding 74 years from the old radio days to March 2012, American film director Spike Lee retweeted to his 250,000 followers the wrong address of George Zimmerman, the man who shot and killed 17-year-old Trayvon Martin in February (5). The tweet took off on a life of its own. Consequentially, the homeowners at the address – Elaine McClain, 70, and her husband David McClain, 72 – started receiving hate mail and death threats that eventually drove them out of their home and into a hotel (6). Realizing his gross mistake, Lee apologized to the McClains and reached a settlement deal with them. The rush to judgment in the Trayvon Martin case in the world of immediacy via Twitter, Facebook, and other social networks can be chaotic and downright dangerous. Former U.S. Secretary of Education William J. Bennett warned about the behavior of influential people and celebrities, "The loudest voices should be particularly careful not to rush to conclusions" (7).

Users of Twitter, Facebook, and social networks often follow the Chinese maxim "Say all you know and say it without reserve" and ignore the Japanese proverb "Never let an opportunity pass by, but always think twice before acting." In a world of immediacy, Twitter has become the perfect tool for instant gratification and rapid dissemination of information as well as misinformation. Every day, information is being circulated on the Internet without verification or clear thoughts.



Fig. 9.1 “Get a real job” Hoax – Photoshopped Receipt vs. Real Receipt

In February 2012, one of the strangest receipts from America’s restaurants went viral on Twitter and Facebook. Twitterer @FutureExBanker sent Receiptrocity at eater.com a picture of the receipt showing that his boss left the waitress a miniscule 1% tip, \$1.33, on a \$133.54 bill with the message, “Get a real job” (8). As it turned out, it was a Photoshopped hoax. The restaurant spokesperson was able to locate the merchant copy of the real receipt that showed a \$7 tip for a \$33.54 bill (9). (See Fig. 9.1).

On May 8, 2012, Blogger Nate St. Pierre wrote an amusingly elaborate hoax article about U.S. President Abraham Lincoln filing a patent for Facebook in 1845 (10). The story deliberately raised a few red flags by mentioning the infamous prankster P.T. Barnum and inserting a poorly Photoshopped copy of the December 24, 1845 newspaper *Springfield Gazette*.

St. Pierre put out one tweet and posted a link on Facebook. Within 36 hours, he got 16,000 Facebook “Likes” and 104,463 unique pageviews to his blog. He was interviewed by reporters from *CNN*, *The Atlantic*, and *The Washington Post*.

On May 10, St. Pierre deconstructed the entire experience and expounded on the hoax, “It’s a tip of the hat to P.T. Barnum’s celebrated hoaxes (or humbugs) and Abe Lincoln’s tall tales. ... there are clues throughout the entire article telling you it’s a hoax ... I wanted to illustrate one of the drawbacks to our ‘first and fastest’ news aggregation and reporting mentality, especially online. ... In addition to social media and bloggers, it ran as fact on a lot of big-name sites and news aggregators. That’s the thing that surprised me the most. ... I can tell you that virtually nobody checked with me to ask if it was true” (11).



Fig. 9.2 Nolan Daniels' "Lotto Ticket" Hoax

In spite of the numerous red flags throughout St. Pierre's story, *Forbes* posted his story under the headline "Abraham Lincoln Filed a Patent for a Dead-Tree Facebook in 1845" for a day before pulling it down. "A *Forbes* contributor took Nate St. Pierre's story at face value," said a *Forbes* spokeswoman. "Once *Forbes* realized it was a prank, the article was pulled from the site" (12). Nevertheless, *ZDNet* kept the story "Abraham Lincoln tried to patent Facebook in 1845, but failed?" on its website, but the *ZDNet* reporter Emil Protalinski crossed out some of the fake information and added an apology: "Update: Sorry everyone but this was indeed a hoax" (13).

In November 2012, software developer Nolan Daniels tricked more than two million Facebook users into sharing his fake lotto ticket on the social network. He posted on Facebook a picture of himself holding a Photoshopped multimillion-dollar winning lotto ticket with a catchy status update: "Looks like I won't be going to work EVER!!!! Share this photo and I will give a random person 1 million dollars!" (See Fig. 9.2) (14). To redeem himself from the shenanigans, Daniels said, "Instead of

thinking of ways to profit from a hoax or eating up media attention, I spent the weekend setting up a fundraiser for Brooke and was determined to use my short-term fame to reach out to 1 person in need and if at minimum bring awareness for her and other with her condition [of brain disorder known as Chiari malformation]” (15).

9.3 Ramifications and Repercussions of Misinformation and Disinformation

Misinformation and disinformation abound in the digital information world on social media and news broadcast. They can lead to serious ramifications and repercussions.

In November 2010, a Nicaraguan general cited Google’s map of the border with Costa Rica to justify a reported raid in a disputed area (16). Costa Rica had written to Google about its map asking for changes, but the Nicaraguan Embassy in London said, “The Government of Nicaragua has formally requested to Google not to accept the petition of Costa Rica to modify the border demarcation presented on Google Maps service, which recognizes Harbour Head as Nicaraguan territory. The path presented by Google corresponds to the various treaties that define the Nicaragua-Costa Rica border” (17).

In May 2012, Iran threatened to sue Google for not labeling the Persian Gulf, whereas nearby bodies of water – including the Gulf of Oman, Arabian Sea, Gulf of Aden and Red Sea – are labeled. “Toying with modern technologies in political issues is among the new measures by the enemies against Iran, (and) in this regard, Google has been treated as a plaything,” said Iran Foreign Ministry spokesman Ramin Mehmanparast (18).

In July 2012, then Kenyan President Mwai Kibaki’s party was blamed for stoking xenophobic sentiment when the Kenyan Twitterati began writing about Somali refugees as culpable for a host of Kenya’s domestic problems and terrorist attack (19).

In the midst of the Aurora, Colorado shooting rampage in July 2012, *ABC News*’ Brian Ross speculated on air that suspect might be Jim Holmes of a Colorado Tea Party organization. *ABC News* later apologized, “*ABC News* and Brian Ross apologize for the mistake, and for disseminating that information before it was properly vetted” (20).

In October 2012, hedge fund analyst and campaign manager Shashank Tripathi (@ComfortablySmug) sent his 6,500 followers tweets of fake reports on flooding and destruction intended to spread confusion and fear when Hurricane Sandy was approaching New York City. Tripathi later apologized for his action and resigned from the campaign of New York Republican Christopher Wight. “While some would use the anonymity and instant feedback of social media as an excuse,” he said, “I take full responsibility for my actions. I deeply regret any distress or harm they may have caused” (21).

In the aftermath of the Sandy Hook Elementary School shooting in Newtown, Connecticut in December 2012, *Buzzfeed*, *CNN*, *Fox News*, and *Gawker* identified the wrong person, Ryan Lanza, as the shooting suspect (22). Harassment outpacing verification in the social media space, Lanza fanatically tried to undo the reputational damage online. Lanza's Facebook friend Matt Bors, a political cartoonist, was also inundated with angry and bizarre messages like "Why are you friends with a monster?" and "Looks like this killer is a fan of yours." Bors wrote in *Salon*, "We have a problem with rushing to judgment. News organizations racing to be first know that an article with a snappy headline thrown up when people are hungry for information can bring in incredible amounts of traffic – forget glory or prestige, keep the servers running ads. But accuracy and being first seem to conflict" (23).

In April 2013, Syrian Electronic Army hacked into the official Associated Press Twitter account (@AP) and tweeted, "Breaking: Two Explosions in the White House and Barack Obama is injured." The message was re-tweeted more than 3,000 times before Twitter took the account offline, and the Dow Jones Industrial Average dropped sharply on the news but regained its losses when the report was deemed false (24).

After the Boston Marathon bombings on April 15, 2013, well-meaning Reddit users joined the hunt for the Boston bombers but ended up diverting attention and suspicion on innocent bystanders. After police had apprehended the true suspect Dzhokhar Tsarnaev, Reddit's General Manager Erik Martin wrote in a blog, "During the tragedy and the aftermath, people found many different avenues to help on reddit. The vast majority of these activities were positive. They provided a way for people to stay informed, as well as a place to just discuss, cope, and try to make sense of what happened. Primarily, reddit served as a great clearinghouse for information. ... However, though started with noble intentions, some of the activity on reddit fueled online witch hunts and dangerous speculation which spiraled into very negative consequences for innocent parties. The reddit staff and the millions of people on reddit around the world deeply regret that this happened. We have apologized privately to the family of missing college student Sunil Tripathi, as have various users and moderators. We want to take this opportunity to apologize publicly for the pain they have had to endure. ... A few years ago, reddit enacted a policy to not allow personal information on the site. This was because 'let's find out who this is' events frequently result in witch hunts, often incorrectly identifying innocent suspects and disrupting or ruining their lives. We hoped that the crowdsourced search for new information would not spark exactly this type of witch hunt. We were wrong" (25).

When a subreddit community page "FindNavyYardShooters" appeared in September 2013 after the Washington Navy Yard shooting, Reddit shut it down almost immediately so that the social media site would not make the same mistake twice (26).

9.4 Trustworthiness of Wikipedia

When Encyclopedia Britannica decided in 2012 to cease production of its iconic multi-volume print book sets, Britannica president Jorge Cauz conceded, “Google’s algorithm doesn’t know what’s fact or what’s fiction. So Wikipedia is often the No. 1 or No. 2 result on search. But I’d bet a lot of money that most people would rather use Britannica than Wikipedia. Wikipedia is a wonderful technology for collecting everything from great insights to lies and innuendos. It’s not all bad or all good, just uneven. It’s the murmur of society, a million voices rather than a single informed one. As a result, consumers are craving accuracy and are willing to pay for it [Encyclopedia Britannica]” (27). Prof. James S. O’Rourke at the University of Notre Dame concurred, “The problem with crowdsourcing the answer to any particular question is, of course, that you’re as likely to find ideologically driven opinion as hard fact. You also have little in the way of support for judgments about credibility, reliability, and accuracy” (28).

Prof. Yochai Benkler, co-director of the Berkman Center for Internet & Society at Harvard University, pointed out that “Wikipedia’s organizational innovation is in problem solving more than innovation: how to maintain quality contributions together with potentially limitless expansion, a problem that scarcity absolved Britannica from solving” (29).

In the age of big data, Wikipedia has become the de facto encyclopedia. Its online content is searchable, revisable, and up-to-date. Its credibility, reliability, and accuracy depend mostly on citations from trusted sources. Wikipedia flags articles for incompleteness and biases by displaying warning messages on the content pages. For example, “This biographical article needs additional citations for verification. Please help by adding reliable sources. Contentious material about living persons that is unsourced or poorly sourced must be removed immediately, especially if potentially libelous or harmful” (30).

Given the open crowdsourcing nature of Wikipedia, unverifiable content can be misleading at best or malicious at worst. In November 2005, American journalist John Seigenthaler – who was Robert Kennedy’s administrative assistant in the early 1960s – told his story about Internet character assassination on *USA Today*. An anonymous user with IP address 65.81.97.208 created a defamatory biography of the 78-year-old Seigenthaler on Wikipedia, scurrilously claiming that “for a brief time, he was thought to have been directly involved in the Kennedy assassinations of both John, and his brother, Bobby. Nothing was ever proven” (31). Seigenthaler phoned Wikipedia’s founder Jimmy Wales and asked, “Do you ... have any way to know who wrote that?” To which Wales replied, “No, we don’t. We have trouble with people posting abusive things over and over and over. We block their IP numbers, and they sneak in another way. So we contact the service providers, and they are not very responsive.”

My own biographical article was vandalized on November 15, 2011 when someone by the login name “Newyorker1” revised the article. Apart from the vile changes that he made, he also updated my name to “Newton Shrimp Fried Rice Lee,” my picture to that of President George Bush, and my book title *Disney Stories: Getting to Digital* to *Disney Stories: Getting to XXX Shop By Midnight* (32). Fortunately, Wikipedia’s ClueBot NG detected the vandalism almost immediately and reverted all the changes automatically. ClueBot NG’s vandalism detection algorithm uses machine learning techniques, Bayesian classifiers, artificial neural networks, threshold calculation, and post-processing filters (33).

In May 2013, someone with an IP address 86.166.188.231 proposed that my biographical article be deleted because of the concern: “Autobiography entirely written by subject” (34). However, long-time Wikipedian and librarian David Goodman (DGG) saved the article with the remark: “Not necessarily a reason for deletion; First look for reviews of his books, & if not found, only then nominate for deletion” (35).

In July 2014, someone changed the U.S. Secretary of Defense entry on Wikipedia from Chuck Hagel to American soccer goalkeeper Tim Howard who had a record-setting 16 saves in the 2014 FIFA World Cup match between USA and Belgium. In praise of Howard, the revised entry also credited him with “the destruction of terrorism and the advent of lasting peace” (36). (See Fig. 9.3). With a sense of humor, Hagel told Howard on the phone that with some training, he could someday become the real secretary of defense (37).

Notwithstanding the potential risk of misinformation and disinformation, Internet-powered crowdsourcing is being wholeheartedly embraced by both Generation X and the Millennials. Yahoo! CEO Marissa Mayer and husband Zack Bogue crowdsourced their newborn baby’s name in an email to their friends (38). More than a million couples have crowdsourced their wedding photos through WedPics, Capsule, Wedding Party, Guest Shots and AppilyWed (39). A 2013 Rally Fighter race car built by Local Motors is believed to be the first production vehicle to be designed through crowdsourcing (40). And in 2014, Stanford University researchers released “Twitch” – a crowdsourcing app that ask its user to answer a roughly one-second question about their surroundings in order to build a map of human activity in the world (41).

“I love to collect information, and I love that I get to share that information with the world,” said Emily Temple-Wood who started editing Wikipedia entries at the age of 12 (42). Now a molecular biology student at Loyola University, Temple-Wood has made it her mission to ensure that female scientists get their due recognition on Wikipedia. She shares her views and personal experiences in the following chapter titled “Wikipedia and the New Web.”

Secretary of Defense of the United States of America



Flag of the Secretary of Defense ^[1]



Seal of the Department of Defense ^[2]



Incumbent
Tim Howard
since July 1, 2014

Department of Defense
Office of the Secretary of Defense

Style	<i>Mister Secretary</i>
Member of	Cabinet National Security Council
Reports to	The President

Line 41:

The current Secretary of Defense is [\[\[Chuck Hagel\]\]](#), who assumed office on [February 27, 2013](#).

The current Secretary of Defense is [\[\[Tim Howard|Sir Tim Howard\]\]](#). He assumed office on [July 1, 2014](#) after protecting the USA from the [Belgians](#), [Germans](#) and other evil empires. On [July 2, 2014](#), the day after Sir Howard assumed office, the [\[\[al-Qaeda\]\]](#), the [\[\[Taliban\]\]](#) and other major global terrorist organizations disbanded with their members surrendering to the [\[\[US Armed Forces\]\]](#) due to Mr Howard taking office. This behavior has been termed "Howanoia" and has resulted in the destruction of terrorism and the advent of lasting peace. In recognition of Mr.Howard's efforts, the [\[\[Nobel Committee\]\]](#) has decided to bestow upon him the [\[\[Nobel Peace Prize\]\]](#). He has also received a [\[\[Medal of Honor\]\]](#) from the US President Barack Obama in recognition of his valour, bravery and defence of the United States.

Fig. 9.3 Tim Howard as U.S. Secretary of Defense on Wikipedia (July 2, 2014)

9.5 Google Search Sabotage

Unlike Wikipedia, Google search sabotage is a lot trickier to deal with. For many years, former Pennsylvania Senator and 2012 GOP presidential hopeful Rick Santorum has been battling his Google search results. In November 2003, gay newspaper advice columnist Dan Savage created the blog "Spreading Santorum" in retaliation for Santorum's ultraconservative views and anti-gay comments (43). Because of the prank, people saw a vulgar term for anal sex as the first result when they searched the word "Santorum" on Google. Santorum contacted Google to protest but to no avail.

In an e-mail to *CNN*, a Google spokeswoman said, “Google’s search results are a reflection of the content and information that is available on the Web. Users who want content removed from the Internet should contact the webmaster of the page directly. Once the webmaster takes the page down from the Web, it will be removed from Google’s search results through our usual crawling process” (44).

Obviously, contacting the webmaster Dan Savage is out of the question for Rick Santorum, who fired back at Google, “I suspect if something was up there like that about Joe Biden, they’d get rid of it. If you’re a responsible business, you don’t let things like that happen in your business that have an impact on the country” (45). Nonetheless, Santorum’s active political campaign activities in 2012 helped improve the rankings of his Wikipedia page and Google news just enough for them to be displaced above the “Spreading Santorum” blog in Google search results.

In February 2014, based on Edward Snowden’s NSA leaks, journalist Glenn Greenwald published in *The Intercept* a comprehensive report on the tactics of online sabotage by British intelligence agency GCHQ. The two main tactics are “(1) to inject all sorts of false material onto the internet in order to destroy the reputation of its targets; and (2) to use social sciences and other techniques to manipulate online discourse and activism to generate outcomes it considers desirable.” Greenwald wrote, “To see how extremist these programs are, just consider the tactics they boast of using to achieve those ends: ‘false flag operations’ (posting material to the internet and falsely attributing it to someone else), fake victim blog posts (pretending to be a victim of the individual whose reputation they want to destroy), and posting ‘negative information’ on various forums” (46).

In May 2014, Argentine model María Belén Rodríguez took to the Supreme Court of Argentina to sue Google and Yahoo! over images of her that link to porn sites. “For me having to explain every day that I am not a prostitute is a daily complication,” said Rodríguez through a translator. “I am in favor of freedom of expression, but not the kind of freedom of expression built on lies” (47). Google’s response was that “search engines are neutral platforms that do not create nor control content on the web” (48).

During the 2014 election season, the National Republican Congressional Committee (NRCC) created at least 15 fake websites that appeared to be the official campaign sites for Democratic candidates. “The idea is people who are looking for information on the candidate, one of the places we all go now is online and so this is a way for folks to find out more about the candidates and information they may not find on the candidate’s own site,” said NRCC press secretary Daniel Scarpinato. “I think that sites are clear in terms of the disclosure and the content where were coming from. And I also think it’s important for voters to get all the perspectives on the candidates. So just as a candidate is going to put information out about themselves, we’re going to put out information about the candidate that they are not putting out that we think is important for voters to know” (49).

While Google, Microsoft’s Bing, Facebook, Twitter, and other social media are excellent sources of information in the age of big data, it is up to the readers to decipher what is true and what is false. Information, misinformation, and disinformation are more mingled and harder to differentiate today than ever in the history of

humankind. Pulitzer Prize nominee Nicholas Carr wrote an insightful article “Is Google Making Us Stupid?” in the July/August 2008 issue of the *Atlantic Magazine*:

“Thanks to the ubiquity of text on the Internet, not to mention the popularity of text-messaging on cell phones, we may well be reading more today than we did in the 1970s or 1980s, when television was our medium of choice. But it’s a different kind of reading, and behind it lies a different kind of thinking – perhaps even a new sense of the self. ‘We are not only what we read,’ says Maryanne Wolf, a developmental psychologist at Tufts University and the author of *Proust and the Squid: The Story and Science of the Reading Brain*. ‘We are how we read.’ Wolf worries that the style of reading promoted by the Net, a style that puts ‘efficiency’ and ‘immediacy’ above all else, may be weakening our capacity for the kind of deep reading that emerged when an earlier technology, the printing press, made long and complex works of prose commonplace. When we read online, she says, we tend to become ‘mere decoders of information.’ Our ability to interpret text, to make the rich mental connections that form when we read deeply and without distraction, remains largely disengaged” (50).

9.6 Advertising Misinformation and Disinformation

Celebrities do not always believe in the products and services that they are paid to endorse. For instance, Weight Watchers spokesman and NBA player Charles Barkley was caught disparaging his endorsement deal on air when he thought the microphone was off. He said, “I thought this was the greatest scam going—getting paid for watching sports—this Weight Watchers thing is a bigger scam” (51).

In teen and women’s magazines, advertisements for diets and weight loss programs are 10 times more common than they are in men’s magazines (52). A fashion trend is often the result of deliberate promotion of certain images online and in print to create a mass following – starting from runways, magazines, TV, movies, and the Internet to shopping malls. Like everything else, there are plenty of competitions.

Occidental University associate professor Caroline Heldman said, “The number of images out there means advertisers have a much more difficult time breaking through the clutter, causing the content to be much more violent and sexualized to get consumers’ attention” (53).

As a result, misinformation and disinformation are widespread in advertisements. Between 2010 and 2012, the U.K. Advertising Standards Authority has banned eight misleading ads due to excessive Photoshop, social irresponsibility, and marketing deception (54). The “misleadingly exaggerated” ads included Rachel Weisz’s L’Oréal Revitalift Repair 10 and Julia Roberts’ L’ancome Teint Miracle; the deceptive ad was for Reebok’s EasyTone sneakers; and the “socially irresponsible” ads included Hailee Steinfeld for Miu Miu Fall 2011 collection, Dakota Fanning for Marc Jacobs Oh Lola! Perfume, and campaigns for Levi’s Jeans “Go Forth” and Diesel “Be Stupid.”

Some American teenagers are calling for an end to the digitally enhanced, unrealistic “beauty” in the pages of teen fashion magazines. In July 2012, 14-year-old Julia Bluhm from Maine hand-delivered a petition signed by 84,000+ people to the executive editor of *Seventeen* magazine, urging the publisher not to alter the body size or face shape of the girls and models in the magazine. Bluhm wrote on change.org, “*Seventeen* listened! They’re saying they won’t use Photoshop to digitally alter their models! This is a huge victory, and I’m so unbelievably happy. Another petition is being started by SPARK activists Emma [Stydahar] and Carina [Cruz], targeting *Teen Vogue* and I will sign it. If we can be heard by one magazine, we can do it with another. We are sparking a change!” (55)

9.7 Authenticity of Facebook Profiles, Twitter Accounts, and YouTube Videos

Exaggerated images and sensationalized news are no strangers to mass media. The Internet, with its efficiency and immediacy, serves to exacerbate the potential danger of misinformation and disinformation. Sadly, the public is simply unaware of the authenticity of Facebook profiles, Twitter accounts, and YouTube videos:

- In 2006, “lonelygirl15” appeared as a home-schooled and confused 16-year-old teenager “Bree” on her wildly popular YouTube videos with over a million views. For four months, she fooled viewers into believing her real struggles with her estranged parents and dysfunctional family, until *Los Angeles Times* reporter Richard Rushfield revealed that Bree was a 19-year-old American-New Zealand actress Jessica Lee Rose. Rushfield reported, “Three lonelygirl15-obsessed amateur Web sleuths set up a sting using tracking software that appears to show that e-mails sent from a lonelygirl15 account came from inside the offices of the Beverly Hills-based talent agency Creative Artists Agency” (56).
- In 2009, a group of students at Millburn High School in New Jersey created a fake Facebook account for a fictional new student “Lauren” in their school, and almost 120 students and 55 others added her as a friend (57).
- In 2010, Indiana University professor Filippo Menczer and other researchers launched the Truthy project to detect political smears, astroturfing, misinformation, and other social pollution (58). They found evidence that political campaigns and special interest groups are using fake Twitter accounts to create the false impression of grassroots movements. Repeated and retweeted messages from a score of fake users would show up as “trending” topics on Twitter and would ultimately influence Google’s search results (59).
- In 2011, a classmate of 11-year-old Ashley Berry took photos of her and created an entire Facebook page without her consent. “It had things like where I went to school, and where my family was from and my birthday, and there were no security settings at all, so it was pretty scary,” said Berry who had to deal with unintended consequences such as friends uninviting her to birthday parties and leaving her at the lunch table in school (60).

- In 2011, a student at Rancho Bernardo High School created a Facebook account using another teen's name, and posted threats of a mass shooting at the high school (61). Police arrested the student for making terrorist threats and impersonating another on the Internet.
- In 2011, GOP Presidential hopeful Newt Gingrich had over 1.38 million Twitter followers, more than twice the number of Twitter followers for former Vice Presidential candidate Sarah Palin, and 10 times more than that for his main GOP rival Mitt Romney. Gingrich's Twitter presence looked impressive, until a New York search company PeekYou discovered that only 8% of Gingrich's Twitter followers were verifiable humans (62). In other words, about 1.27 million phony Twitter accounts were created by Gingrich-hired campaign agencies.
- In 2012, media mogul Rupert Murdoch signed up for Twitter and started to follow four people on the social network including Google's co-founder and CEO Larry Page. Unbeknownst to Murdoch, he followed a fake Larry Page – a parody account created by Virginia Tech for university project (63).

In the amended S-1 filing on March 7, 2012, Facebook disclosed that 5 to 6% of Facebook accounts were either fake or duplicated based on an internal review of a limited sample of accounts (64). Similarly, Twitter reported in its securities filings that fake accounts represented fewer than 5% of its 230 million active users in October 2013 (65).

Nevertheless, 5 or 6% is likely a gross underestimate. Some industry watchers claimed that nearly 50% of social network users could be fake or empty user accounts (66). Facebook admitted in its first quarterly report in August 2012 that 83 million Facebook profiles were fake and millions of Facebook accounts were created for users' pets (67). Jason Ding, a research scientist at Barracuda Labs, told *NBC News* that the number of Twitter accounts that were fake was "at least 10%, maybe more" in November 2013 (68).

Fake accounts are usually created by fake followers for hire who are paid to like a Facebook page, follow someone on Twitter, or comment on a YouTube video. Prof. Ben Zhao at UC Santa Barbara coined the term "crowdturfing" to describe the phenomenon of "crowdsourcing" and "astroturfing" – recruiting a large number of people to fake a grassroots support (69).

9.8 Facebook Account Verification

To help reduce spam, fake, and multiple accounts, Facebook encourages a user to "verify" their account by adding a mobile number to it (70). The "Confirm Your Phone" page states, "Facebook uses security tests to ensure that the people on the site are real. Having a mobile phone helps us establish your identity. Please verify your account by confirming your phone here. We'll text you a confirmation code" (71). After verification, a user may add a username (e.g. myusername) to the account and customize the Facebook web address (e.g. www.facebook.com/myusername) (72).

Facebook's mobile number verification constitutes a very basic security. Everyone in the U.S. can purchase a cheap, disposable prepaid cell phone for temporary use. In order for Facebook to step up its security, Facebook began to roll out in February 2012 "verified accounts" whose owners have submitted a government ID to prove their identities. However, the new security update is currently restricted to Facebook users with a large number of subscribers. "This update makes it even easier for subscribers to find and keep up with journalists, celebrities and other public figures they want to connect to," said a Facebook spokesman (73).

However, it gets tricky when you have the same name as a celebrity. In May 2011, Mark S. Zuckerberg's Facebook account was deleted for the reason of "false identity." A bankruptcy attorney in Indianapolis, Zuckerberg received hundreds of friend request and inquiries from people who thought he was Facebook's CEO. "Our reviewers look at thousands of pieces of content a day that are reported to them and of course make an occasional mistake," said a Facebook spokesperson. "When this happens, and we're notified about it, we work quickly to restore the content. We have reactivated this person's account and sent him an email apologizing for the inconvenience" (74).

Similarly in August 2012, 18-year-old Selena M. Gomez in New Mexico was distraught when Facebook denied her access to her account with the message "Disabled – Inauthentic Account." Gomez told *TMZ*, "I AM NOT AN IMPOSTOR ... My name is not hers on my page. In fact, I even put my middle name on my FB to clear up any confusion. I did not have one single famous friend. I did not refer to myself as [the famous Selena], and I did not have any pictures of her on my page!" (75) The story had a happy ending: Facebook apologized to Gomez and reactivated her account within a day after mistakenly disabling her profile (76).

9.9 Twitter Verified Accounts

Unlike Facebook, Twitter does not accept public requests for account verification. Since the launch of verified accounts in June 2009, Twitter has stated on its help center, "Any account with a blue verified badge on their Twitter profile is a verified account. Verification is currently used to establish authenticity of identities on Twitter. The verified badge helps users discover high-quality sources of information and trust that a legitimate source is authoring the account's Tweets. Twitter proactively verifies accounts on an ongoing basis to make it easier for users to find who they're looking for. We concentrate on highly sought users in music, acting, fashion, government, politics, religion, journalism, media, advertising, business, and other key interest areas. We verify business partners from time to time and individuals at high risk of impersonation. We do not accept requests for verification from the general public. If you fall under one of the above categories and your Twitter account meets our qualifications for verification, we may reach out to you in the future" (77).

According to *Advertising Age*, Twitter reaches out to advertisers who have spent at least \$15,000 over three months and get their accounts verified (78). The Twitter business practice leaves many smaller businesses out in the cold. *The Wall Street Journal* reported that celebrities such as Britney Spears had their managers contact the head of Twitter to obtain account verifications (79).

In spite of the verification process, Twitter has made quite a few mistakes in its nearly 17,000 verified accounts. In a high-profile error, Twitter apologized in January 2012 for incorrectly verifying a false account for Wendi Deng, the wife of News Corp CEO Rupert Murdoch (80). The @Wendi_Deng account had racked up more than 10,000 followers before it was discovered to be a faux one created by a British man to poke fun at Deng (81).

9.10 Abuse of Power

CNN reporter Todd Leopold wrote in his March 2012 article about online missteps and misinformation: “In an increasingly connected world where social networking has made us all news sources, that means missteps and misinformation get issued – and repeated – more quickly than ever. Gabrielle Giffords is declared dead, Chris Brown lets fly with profane rants, and it all makes the rounds before anyone has time to think” (82).

Frank Farley, Temple University professor and former president of the American Psychological Association, made this chilling conclusion: “Everyone now has a global platform on which they can shout their opinions and voice their beliefs. There’s an old economic principle, that bad money drives out good. One thing that worries me is that bad information is driving out good” (82).

“The Internet is so full of junk and not-researched material,” concurred David Wallechinsky, author of the bestseller *Book of Lists*. Wallechinsky created the website AllGov.com to disseminate information about the business of government in the United States, France, and India. He told *CNN* in a 2014 interview, “We pride ourselves on accuracy, double-checking. ... We try to emphasize policy instead of politics” (83).

In an October 2012 Superman comic, an outraged Clark Kent quitted his job at *The Daily Planet* in protest: “I was taught to believe you could use words to change the course of rivers – that even the darkest secrets would fall under the harsh light of the sun. But facts have been replaced by opinions. Information has been replaced by entertainment. Reporters have become stenographers. I can’t be the only one who’s sick of what passes for the news today” (84).

In June 2014, the revelation of Facebook’s secret psychological mood experiment had infuriated some users. In a massive experiment conducted in January 2012, Facebook manipulated 689,003 users’ News Feed intentionally for a week to study the effect of “emotional contagion” via social networks. By filtering the news feeds, one test reduced users’ exposure to their friends’ “positive emotional content” whereas another test reduced exposure to “negative emotional content” (85).

Jim Sheridan of the U.K. Parliament said, “They are manipulating material from people’s personal lives and I am worried about the ability of Facebook and others to manipulate people’s thoughts in politics or other areas. If people are being thought-controlled in this kind of way there needs to be protection and they at least need to know about it” (86).

Information is power. Disinformation is abuse of power. Even a good cause can be marred by dishonesty. Somaly Mam appeared on the Oprah Winfrey Show, a PBS documentary, *TIME Magazine’s* 100 Most Influential People of 2009, and CNN Heroes in 2007. She was the world’s crusader against the trafficking of girls for sex in Cambodia. However, her extraordinary personal tale chronicled in her bestselling autobiography about being a village girl sold into sex slavery turned out to be pure fabrication. She also coached other women to lie in front of cameras about being child sex slaves. Mam resigned from her charity foundation in May 2014 after a *Newsweek* exposé by Simon Marks. The revelation potentially weakens the foundation’s future work in combating human trafficking.

On a lighter note, *Los Angeles Times* playfully called the 2006 “lonelygirl15” YouTube mystery the “Web’s Watergate” (87). The real Watergate scandal culminated in the resignation of President Richard Nixon in August 1974 (88). Watergate has had a profound influence on American journalism and politics. In the new era of digital information with the proliferation of Twitter, Facebook, and YouTube, inquisitive citizens and accidental journalists will radically transform the landscape of journalism and politics in the years to come.

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