



VIA E-mail: simonlin@evolinklaw.com

December 24, 2021

Simon Lin
Evolink Law Group
4388 Still Creek Drive, Suite 237
Burnaby, B.C.
V5C 6C6

Re: *Air Passenger Rights v Attorney General of Canada and Canadian Transportation Agency*
Federal Court of Appeal Court File No.: A-102-20

Dear Mr. Lin,

This is in response to your letter of December 17, 2021 in the above-referenced matter. In that letter, you requested the disclosure of additional documents beyond those provided in the Agency's December 14, 2021 disclosure package. That package was sent in fulfillment of the Federal Court of Appeal's order dated October 15, 2021 ([2021 FCA 201](#)).

The Agency is providing the following responses and attachments. Where the Agency has not specifically addressed a document requested in your letter, it is because the Agency has not found such documents.

The Agency has taken all reasonable steps to comply with the Court's order. The disclosed material is the result of several searches, consultations with several persons within the Agency, and a review of thousands of pages of material.

CTA MEMBER CORRESPONDENCE

The Agency is providing the following attachments, noting that these are versions of documents already disclosed by the Agency in its December 14 disclosure package:

1. Regarding p. 15 of the package:

Two versions more fully showing the changes made to the document are attached. There are no comments in this document.

2. Regarding p. 17 of the package:

The attachment is on p. 66 of the December 14 package. Two versions more fully showing the changes made to the document are attached. There are no comments in this document.

3. Regarding p. 31 of the package:

The document that was disclosed on December 14 is complete. There are no "Track Changes" or comments in the document. We are nevertheless providing the document to you anew.

THIRD PARTY CORRESPONDENCE

The Agency has provided the documents in its possession relating to third party correspondence, with the exception of the following:

Regarding p. 163-165 of the package:

On December 14, the Agency disclosed a letter from Air Transat to Scott Streiner dated March 22, 2020. However, the Agency has possession of an email string in connection with this letter that was not previously disclosed. This email string consists of a covering email from Air Transat, and a message dated March 22, 2020 showing that Scott Streiner forwarded this letter to the Executive Committee of the Agency. This document should have been included in the disclosure package, it was overlooked and is being provided now. The Agency requests that the parties treat this document as forming part of the disclosure package.

In relation to p. 136 of the package:

You have requested that the Agency disclose inquiries to the CTA's "info@" account and on Twitter, and responses to these inquiries.

The Agency did not include all messages between March 9 and 25, 2020 from its Twitter account or inquiries to or responses from its general email account, info@otc-cta.gc.ca, in the disclosure package.

There was a high volume of messages and inquiries from individuals concerning their personal air travel situations between March 9 and March 25 on these accounts. The Agency did not consider that such messages, inquiries or responses fell within the scope of the order insofar as that order targets documents relevant to the Applicant's bias claims concerning the Statement on Vouchers.

The Agency notes that in this proceeding, the President of Air Passenger Rights has filed an affidavit attaching excerpts of the Agency's Twitter feed, indicating that access to this material is already available. The Applicant's affiant has also provided messages from the "info@" account to support its claim that the Statement on Vouchers became widely disseminated after it was published.ⁱ

Please note that the absence of these documents from the disclosure package is not the result of a decision to hide these documents but is rather a question of interpretation as to the scope of the Court's order.

Please also note that in its December 14 package, the Agency provided responsive messages found in its searches involving journalists.

MEETING DOCUMENTS

The Agency has possession of the following meeting minutes, meeting and discussion notes, meeting agendas or voice recordings for relevant meetings held during this time period:

A redacted document associated with a March 20 EC meeting, which can be found in the Motion Record of the Attorney General of Canada: Informal motion to claim privilege over portions of two documents, at Exhibit B, which was served and filed with the Court on December 14.

I trust the foregoing is satisfactory.

Sincerely,



Barbara Cuber
Senior Counsel
Canadian Transportation Agency
Legal Services Directorate
15 Rue Eddy, 19th Floor
Gatineau, Québec J8X 4B3
Tel: 613-301-8322
Email: barbara.cuber@otc-cta.gc.ca
Email: Servicesjuridiques.LegalServices@otc-cta.gc.ca

c.c.: Air Passenger Rights, Applicant, via email: lukacs@airpassengerrights.ca

c.c.: Sandy Graham and Lorne Ptack, Counsel for the Attorney General of Canada,
via email: sandy.graham@justice.gc.ca, Lorne.Ptack@justice.gc.ca

ⁱ Motion Record of the Moving Party, Air Passenger Rights, Motion under Rules 41 and 318 of the *Federal Courts Rules*, vol. 1, Affidavit of Gabor Lukacs, affirmed on January 3, 2021, Exhibits N and O at pages 89-110 and Written Representations of the Moving Party at p. 396, para. 19.

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.

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Deleted: airline

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.

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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.

Deleted: and must find other ways of getting home

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.

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

From: Marcia Jones
Sent: March 23, 2020 9:47 AM
To: Liz Barker; Sébastien Bergeron; Valérie Lagacé; Tom Oommen; Scott Streiner; +_EC
Subject: RE: Revised statement
Attachments: Rebooking and Refund Requirements.docx

Hi all, I wanted to share this info sheet prepared by my team on what the legal regimes are in the different jurisdictions (prior to COVID-19).

I believe this situation has accentuated what we already noted, that the APPR framework "should" provide for refund in situations outside the carrier's control, or reimbursement, however, it does not currently. Based on all my discussions to date, I would be concerned about the Agency attempting to layer on new requirements. I think we need to proceed with some caution here when doing what we can to signal that passengers should be treated fairly, which is of course very important.

Thanks,
Marcia

From: Liz Barker
Sent: Monday, March 23, 2020 9:38 AM
To: Sébastien Bergeron ; Valérie Lagacé ; Tom Oommen ; Scott Streiner ; +_EC
Subject: RE: Revised statement

I think the EU has landed on something different:
https://ec.europa.eu/commission/presscorner/detail/en/ip_20_485

From: Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>
Sent: March-23-20 9:29 AM
To: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>; Tom Oommen <Tom.Oommen@otc-cta.gc.ca>; Scott Streiner <Scott.Streiner@otc-cta.gc.ca>; +_EC <_EC@otc-cta.gc.ca>
Subject: RE: Revised statement

I agree with Valerie : my least favorite option is to say nothing and let air carriers issue useless vouchers.

Having said this, my preference would be to give these vouchers no expiration date or something like a 5 years expiration date. Allowing airlines to give vouchers instead of cash is already a big move. For reference, the EU, at the exception of Belgium, hasn't gone that far yet. So, in the interest of striking a balance, I would be tempted to give passengers more time to use these vouchers.

Seb

Sébastien Bergeron
Chef de cabinet | Bureau du président et premier dirigeant
Office des transports du Canada | Gouvernement du Canada
sebastien.bergeron@otc-cta.gc.ca | Tél. 819-712-0827

De : Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Envoyé : 23 mars 2020 09:23

À : Tom Oommen <Tom.Oommen@otc-cta.gc.ca>; Scott Streiner <Scott.Streiner@otc-cta.gc.ca>; +_EC <EC@otc-cta.gc.ca>

Objet : RE: Revised statement

I agree with Tom on this. my least favorite option is to say nothing and let air carriers issue useless vouchers.

De : Tom Oommen <Tom.Oommen@otc-cta.gc.ca>

Envoyé : 23 mars 2020 09:21

À : Scott Streiner <Scott.Streiner@otc-cta.gc.ca>; +_EC <EC@otc-cta.gc.ca>

Objet : RE: Revised statement

In my view, given the nature of the statement, suggesting that 24 months could be considered reasonable, is a good approach. Tom

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Scott Streiner <Scott.Streiner@otc-cta.gc.ca>

Date: 2020-03-23 9:09 AM (GMT-05:00)

To: +_EC <EC@otc-cta.gc.ca>

Subject: RE: Revised statement

Hi again, everyone. One issue that's been raised by a Member: should we retain language on expiry dates and if so, is the current text the best approach? While it comes across as balanced, it may be a bit vague and beg immediate questions on what we'd see as reasonable. Alternatives:

- Say vouchers/credits shouldn't have any expiry date. This would be consistent with the APPR and spread people travelling on vouchers over a longer period, but might be seen negatively by carriers who are trying to manage liabilities as losses pile up.
- Indicate more specifically what we think is reasonable – perhaps 24 months. This would provide clarity, but might seem a bit arbitrary in a highly fluid situation. Passengers might also object, given that the APPR prohibit expiry dates (albeit for different circumstances).
- Remain silent on the matter. This would avoid the complications noted above, but we know short expiry periods are being used by some carriers and that passengers find this frustrating and inconsistent with the spirit (if not the letter) of the APPR.

Please email any views on this question in the next hour or so.

Thanks,

S

From: Scott Streiner
Sent: Sunday, March 22, 2020 2:57 PM
To: +_EC <EC@otc-cta.gc.ca>
Subject: Revised statement

Hi, all. The attached version reflects feedback from Members. Please let me know this afternoon if you have any additional comments.

Valérie, let's have the secretariat ready to translate the statement and a s.64 decision tomorrow morning.

Thanks,

S

Scott Streiner
Président et premier dirigeant, Office des transports du Canada
Chair and Chief Executive Officer, Canadian Transportation Agency
scott.streiner@otc-cta.gc.ca - Tél. : 819-997-9233 - ATS/TTY: 1-800-669-5575

Rebooking and Refund Requirements

Airline cancellations		
	EC261 (EU)	APPR (with current exemptions)
Rebooking/ refund requirements	<p>Regardless of the reason for a cancellation, the carrier must give the passenger the choice of:</p> <ul style="list-style-type: none"> • reimbursement (refund); • re-routing at the earliest opportunity, or • re-routing at a later date at the passenger's convenience. 	<p>Situations within carrier control (incl. required for safety):</p> <ul style="list-style-type: none"> • The carrier must rebook the passenger on the next available flight operated by them or a partner airline. • If that rebooking does not meet the passenger's needs, the passenger must be given a refund. <p>Situations outside carrier control:</p> <ul style="list-style-type: none"> • The carrier must rebook the passenger on the next available flight operated by them or a partner airline • No refund obligation (per legislative framework) • Whether or not a passenger is reimbursed would depend on the airline's terms and conditions (tariff/fare rules)
Method of refund	<p>By cash, electronic bank transfer, bank orders or bank cheques or, <u>with the signed agreement of the passenger</u>, in travel vouchers and/or other services.</p> <p>EU guidance: If the carrier proposes a voucher, this offer cannot affect the passenger's right to opt for reimbursement instead.</p>	<p>Refunds required under the APPR (situations within carrier control) must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.</p>
Passenger cancellation		
Rebooking/ refund requirements	<p>Not addressed in regulations.</p> <p>Whether or not a passenger is reimbursed would depend on the airline's terms and conditions (tariff/fare rules)</p> <p>Note: Certain jurisdictions (e.g., Italy) put in place their own requirements to provide a refund or voucher when a passenger cancels their own travel.</p>	<p>Not addressed in regulations.</p> <p>Whether or not a passenger is reimbursed would depend on the airline's terms and conditions (tariff/fare rules)</p>

From: Scott Streiner
Sent: March 22, 2020 1:59 PM
To: +_EC
Subject: FW: Letter from Jean-Marc Eustache
Attachments: 20-03-22 Scott Streiner.pdf.DRF

Importance: High

Hi, all. Some of these items were covered in our discussion on Friday or the call I have with several of you this morning. Others weren't. We'll talk about all of them tomorrow.

S

From: Jean-Marc Eustache <Jean-Marc.Eustache@transat.com>
Sent: Sunday, March 22, 2020 1:52 PM
To: Scott Streiner <Scott.Streiner@otc-cta.gc.ca>
Cc: mintc@tc.gc.ca; Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; miled.hill@tc.gc.ca; lawrence.hanson@tc.gc.ca; colin.stacey@tc.gc.ca; George Petsikas <George.Petsikas@transat.com>; Jean-Marc Eustache <Jean-Marc.Eustache@transat.com>
Subject: Letter from Jean-Marc Eustache
Importance: High

Dear Mr. Streiner,

Please find enclosed a letter from Mr. Jean-Marc Eustache.

Best Regards,

Francine Giroux

Adjointe au président
Assistant to the President
T 514-987-1660, 4055



Transat A.T. inc.
300, rue Léo-Pariseau, bureau 600
Montréal (Québec) H2X 4C2

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March 22, 2020

Transmission by e-mail
scott.streiner@otc-cta.gc.ca

Mr. Scott Streiner
Chairman and Chief Executive Officer
Canadian Transportation Agency
15 Eddy Street, 17th Floor
Gatineau, Quebec J8X 4B3

RE: Request for further public clarification of air carrier obligations per the *Air Passenger Protection Regulations* ("APPR") in the context of the current extraordinary circumstances

Dear Mr. Streiner:

As you are aware, the global air transport and tourism industries are dealing with a wholly-unprecedented collapse in world travel demand, as well as with the resulting operational and financial calamity in terms of drastically cutting capacity and preserving liquidity in an attempt to prevent our businesses from failing and putting tens of thousands of Canadians out of work. Obviously, Transat A.T. and our subsidiary travel units, including Air Transat and Transat Holidays, have not been spared the brunt of this disaster.

Indeed, we have recently announced, as a result of borders closing, the suspension of all outbound travel sales on our flights and the imminent grounding of almost all of our fleet until April 30, 2020, except for the small remainder of our flights that are conducting emergency repatriation operations of Canadians abroad in coordination with the federal government. Furthermore, we are confronted to making extremely difficult decisions where an important number of employees will be put on leave until the situation stabilizes and until we can hopefully and eventually contemplate a return to some sense of normalcy in the future.

In the meantime, while our industry fights to survive, we urgently need the federal government and our oversight authorities such as the CTA to provide assistance, both in the form of financial support and relief in terms of the substantial easing of existing regulatory costs and burdens. I have already written to Ministers Garneau and Morneau with regards to the first objective, and I am now hereby addressing myself to you with respect to the second.

Please be assured that I appreciated the Agency's efforts on March 13, 2020 to provide much-needed clarification to both industry and consumers concerning the application and enforcement of certain provisions of the APPR in the context of the current extraordinary circumstances.



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However, we need more to be done on an urgent basis in order to establish proper certainty and support the industry's impact mitigation efforts to date.

Specifically, I hereby request that the Agency publicly and unequivocally recognize the uncontrollable nature of the crisis and that all changes to schedules and capacity reductions are measures needed to manage the devastating losses this crisis is causing. Quite simply, these changes are not within the control of air carriers and our regulator should be clear to this end, as well as for the purposes of the application of the APPR.

Furthermore, the limited scope of the exemption on March 13, 2020 is problematic as our personnel have almost no ability to provide alternative travel arrangements at this time given the above-mentioned folding of flight schedules. Consequently, and as additional support and relief, I hereby request the following:

- Clearly recognize that all delays, cancellations, and denied boarding occurring at this time of crisis are outside of Air Transat's control;
- Clarify that the uncontrollable nature of the crisis means that no refunds to passengers are required under the APPR. This is essential to avoid unnecessary confusion among consumers and to pre-empt a spike in the increase of complaints and lawsuits;
- Recognize the offering of travel voucher options in lieu of cash refunds as an acceptable means to address consumer requests for refunds which, in turn, would allow credit card companies and their processors to deny customer chargeback claims and thereafter cease otherwise resulting and destructive financial guarantee demands on air carrier merchants;
- Exempt airlines from the obligation to respond to compensation claims within 30 days;
- Exempt airlines from all obligations to provide alternate travel arrangements; and
- Ensure that all exemptions ordered by the Agency, including those found in Determination No. A-2020-42, are in effect until such time as the industry has fully recovered, which is expected to take longer than April 30, 2020, and at the very least, 90 days.

I would also like to take this opportunity to request a minimum one-year suspension of enforcement action and the levying of fines for non-compliance per the APPR and ATPDR. Again, we are not trying to conveniently avoid our obligations *in normal circumstances*, but rather to ensure that our reduced levels of human resources going forward are able to focus on actively



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managing the crisis and minimizing as much as possible disruptions to the system and our eventual efforts at recovery.

I wish to thank you in advance for your understanding and expeditious consideration of the present request. Also, please accept my best wishes for the continued health and well-being of yourself, your loved ones and your staff in these unimaginably difficult times.

Sincerely,

Jean-Marc Eustache
Chairman, President and
Chief Executive Officer

c.c. Hon. Marc Garneau, PC, MP – Minister of Transport
Marcia Jones, Chief Strategy Officer - CTA
Miled Hill, Office of the Hon. Marc Garneau, PC, MP
Lawrence Hanson, Assistant Deputy Minister of Transport (Policy)
Colin Stacey, Director General of Air Policy – Transport Canada
George Petsikas, Senior Director, Government and Industry Affairs – Transat A.T. Inc.