



July 22, 2022

VIA EMAIL: [FCARegistry-CAFGreffe@cas-satj.gc.ca](mailto:FCARegistry-CAFGreffe@cas-satj.gc.ca)

The Judicial Administrator  
Federal Court of Appeal  
90 Sparks Street, Main Floor  
Ottawa, Ontario K1A 0H9

Dear Sir/Madam:

**Re: *Air Passenger Rights v Attorney General of Canada***  
**Court File No.: A-102-20**

This letter is in response to the Order issued by Gleason J.A. on July 19, 2022, more specifically paragraph 6 of that Order. Please bring this letter to Gleason J.A.'s attention.

Notes taken during the March 24, 2020 call

The Agency's search did not reveal any additional notes taken by CTA Members, its Chairperson or Vice Chairperson during the call beyond those that have already been disclosed. Furthermore, the Agency can confirm that no additional notes were taken. For the sake of clarity, no claim of privilege is being made.

Documents related to the March 24, 2020 call

The search related to the April 11, 2022 Order regarding the call revealed the enclosed email exchanges and their attachments, some of which have already been disclosed. The Agency is voluntarily disclosing them, along with "the scheduler" referred to by Agency counsel in its submissions dated February 1, 2022, also enclosed. No other documents related to the March 24, 2020 call have been identified.

Please note that the phone number and access code to the teleconference system used appear in "the scheduler" and have been redacted. Also, one of the enclosed emails contains an attachment entitled "Asks.docx". The original Word version of the document has been included.

Yours truly,

Kevin Shaar  
Counsel  
Legal Services Directorate

Canadian Transportation Agency  
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Gatineau, Quebec  
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c.c.: Simon Lin, Counsel for the Applicant, via email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

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

## Meredith Desnoyers

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**From:** Sébastien Bergeron  
**Sent:** Tuesday, March 24, 2020 11:22 AM  
**To:** Gerald Dickie; Mary Tobin Oates; Liz Barker; Lenore Duff; Heather Smith; Mark MacKeigan; Scott Streiner  
**Subject:** AC and AT letters  
**Attachments:** L\_Suspension of APPR and ATPDR.pdf; 20-03-22 Scott Streiner.pdf

Dear Members,

Please find attached the AC and the AT letters.

Seb

### **Sébastien Bergeron**

Chef de cabinet | Bureau du président et premier dirigeant  
Office des transports du Canada | Gouvernement du Canada  
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David J. Shapiro

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March 23, 2020

**Private and Confidential  
By E-mail**

**Mr. Scott Streiner**

Office of the CEO  
Canadian Transportation Agency  
15 Eddy Street, 17th Floor  
Gatineau, Quebec J8X 4B3

**RE: Request for Exemption from the *Air Passenger Protection Regulations* ("APPR"), and from the Entry into Force of Certain Provisions of the *Accessible Transportation for Persons with Disabilities Regulations* ("ATPDR")**

Dear Mr. Streiner,

I regret that I have to be writing with the degree of urgency that I am to request immediate relief from the ongoing application of APPR, and the imminent entry into force of ATPDR on June 25, 2020, as a result of the devastating impact that the COVID-19 crisis is having on airlines. These concerns were raised during the Agency's technical briefing on March 19<sup>th</sup>, 2020, and we were invited to put them in writing.

## **1- UNPRECEDENTED IMPACT ON AIRLINES**

As you are well aware, with the world's borders being progressively shut down and a growing proportion of the world's population self-isolating, working from home and practising social distancing, the global airline industry is on the front line and has by and large come to a standstill. The COVID-19 crisis has already had a devastating impact on airline revenues, yet it seems that we may be only in the early stages of the deterioration. Like all airlines, Air Canada has had to implement drastic and unprecedented cost cutting measures, rapidly suspending the majority of its flights, internationally and transborder, and significantly reducing its domestic network as a direct result of the crisis.

## **2- APPR**

### **Inadequacy of Determination No. A-2020-42**

While the Agency's initiative<sup>1</sup> to exempt carriers from certain, specified provisions of APPR is appreciated, it stops well short of what is required to address the magnitude of the crisis we are confronting or to contribute to providing the real and tangible relief that airlines desperately need.

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<sup>1</sup> Determination No. A-2020-42 of March 13, 2020.

First, by not clearly and unequivocally recognising that the scope and magnitude of the crisis is deeply affecting virtually *everything*<sup>2</sup> and that *no* airline operational decision is being made in isolation of it, without regard and responding to it, or without a heavy impact from it, the Agency fails to adequately account for the reality that *all* changes to schedules are measures needed to manage the devastating and overriding impact of the crisis and are a *direct result* of the crisis, as are *all* operational decisions impacting customers. In this environment, which has never been witnessed before and could not have been anticipated, and still cannot be planned for, virtually every operational occurrence addressed by APPR is driven by the crisis and therefore not within carriers' control.

It follows, therefore, that the narrow scope of the exemption (limited as it is to providing relief for situations *within* carriers' control) is equally problematic. Our staff has almost *no* ability to provide alternative travel arrangements, and our Customer Relations team *do not* have the capacity to respond to compensation requests within 30 days<sup>3</sup>.

In these circumstances, compliance with APPR is not only impractical and unrealistic, but is, for the most part, impossible.

## Request

***Therefore, pursuant to s. 80 of the Canada Transportation Act ("Act"), we request that the Agency declare a complete suspension of the application of all obligations under APPR until further notice.***

If this most sensible measure in these unprecedented circumstances is, for whatever reason, deemed not feasible, we request that the Agency at a minimum:

- Clearly recognize that all delays, cancellations, and denied boarding occurring at this time of crisis are **outside of airlines' control**, with no exceptions;
- Clarify that the uncontrollable nature of the crisis means that no refunds to passengers are required under APPR<sup>4</sup>. While this may be clear to the Agency and in Air Canada's tariffs, it is increasingly evident that it is not clear to the general public. Failure to clarify this will inevitably lead to a sharp and unnecessary increase in complaints and meritless lawsuits;
- Exempt airlines from the obligation to respond to compensation claims within 30 days<sup>5</sup>;
- 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, by all accounts, expected to take significantly longer than April 30, 2020, and at the very least, 90 days.

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<sup>2</sup> Surprisingly, the Agency stated that whether "decisions that are influenced by the pandemic, including decisions to cancel and consolidate flights due to dropping passenger volumes (...) are within or outside carrier control would have to be assessed on a case-by-case basis". Given the extent of the pandemic and its impact on the industry, this could potentially result in literally millions of cases for the CTA and small claims courts to assess.

<sup>3</sup> As required under section 19(4) APPR.

<sup>4</sup> While para. 7 of Determination No. A-2020-42 does read that only rebooking obligations apply to situations outside carrier's control, a clear statement that no refunds apply would be extremely helpful in light of the current state of confusion in the public sphere.

<sup>5</sup> Section 19(4) APPR.

### 3- ATPDR

Air Canada has deployed its best efforts and made very significant progress over the intervening months to ensure compliance with ATPDR by June 25, 2020 while also managing many other competing regulatory initiatives<sup>6</sup> and operational urgencies such as the unforeseen and abrupt grounding of the Boeing 737 MAX (which as real and intense as it was, now pales as a crisis in comparison). Air Canada's resources, which have been stretched by these challenges for some time, are now stretched beyond any imaginable limits in managing the present crisis<sup>7</sup>, so that work on necessary ATPDR changes is now, inevitably and definitively severely delayed through no fault of ours. Therefore, we request that the compliance deadlines be suspended (or, otherwise, at least, extended significantly).

Air Canada estimates that it is 95% compliant with the June 25, 2020 requirements. However, the cost and effort needed to comply with the remaining 5% is significant: it includes in-flight entertainment upgrades for systems that are already being phased out in the next few years, as well as training requirements that have such broad impact on front-line staff that costly external consultant support is required.

An essential precursor to adjusting and delivering our training material is the review of a number of policies, procedures and processes throughout many departments. To say that devoting time and resources now to this endeavor is wholly unrealistic is an understatement: in no realm of reality are any of our key resources responsible for these changes available to do so at this time of crisis. That would entail taking them away from managing the current crisis, which simply is not an option. So, irrespective of the cost of training, the initial design of training material is now inevitably significantly delayed.

Even if training were designed and ready to be delivered, the current environment is not one conducive to learning and absorbing new regulations and complex requirements. The purpose of ATPDR is to accomplish a culture change and commitment to accessibility. True change management requires a mindset shift and takes time, energy, focus and investment to achieve. All of these are, understandably, now in short supply.

#### Request

***We therefore request, pursuant to s. 170(3) or 170(4) of the Act, that the Agency extend the deadline for compliance with ATPDR until further notice, or at the very least by 90 days.***

Air Canada remains committed to fully meeting the obligations of ATPDR once the industry has firmly recovered from the COVID-19 crisis. Even during the crisis, Air Canada will attempt to continue its implementation efforts to the extent practicable in the circumstances. In compliance with the test set out in s. 170(4), we *will* take the necessary measures to comply as soon as we are able.

*If for any reason a full suspension is deemed not feasible, even appreciating that we may not fully be in a position to comply, we request that the Agency indefinitely suspend all initiatives that require IT development, sizable investment, new and complex procedures, and significant change management. These are: allowing reservations to be made by email,<sup>8</sup> training,<sup>9</sup> accommodating manual folding*

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<sup>6</sup> Such initiatives include the *Regulations Amending the Transportation Information Regulations (Air Travel Performance Data Collection)*, the *Regulations Amending the Canadian Aviation Regulations (Parts I, VI and VII — Flight Crew Member Hours of Work and Rest Periods)*, and *Air Passenger Protection Regulations*.

<sup>7</sup> Including personnel from the MEDA Desk, AC Medical, Airports, Call Centres, eCommerce, In-Flight Services, System Operations Control, Customer Relations, Operations Excellence, Passenger Movement, Customer Journey Management and Legal

<sup>8</sup> S. 7-8 ATPDR.

<sup>9</sup> S. 15-23 ATPDR.

wheelchairs on board,<sup>10</sup> accessible IFE,<sup>11</sup> written confirmation of services<sup>12</sup>, and retention of medical information or documents.<sup>13</sup>

For the many of the same reasons cited above, **we also request an equivalent extension of the deadline to provide comments on the draft guidance materials on ATPDR, and that all work on Phase II of ATPDR be halted** until the industry has fully recovered from the devastating effects of COVID-19. Any cost-benefit analysis for Phase II will have to recognise airlines' newly constrained capacity to take on additional costs in the current landscape.

#### **4- Enforcement Leniency**

Finally, in addition to the above, **Air Canada requests the implementation of an explicit one-year period of leniency from enforcement action and fines for non-compliance on APPR and ATPDR**, so that our workforce is free to focus on managing the overwhelming crisis at hand without being burdened or slowed by having to balance complex regulatory requirements. The Government of Canada has already established a solid precedent for the type of regulatory relief we are seeking.<sup>14</sup>

We have contacted Transport Canada and the Government of Canada with these requests and hope that all branches of government will work together to protect the sustainability of our industry.

We trust that you are sensitive to the importance and urgency of these matters and look forward to the Agency's full support during these exceedingly difficult times. Please do not hesitate to call to discuss if that might be useful.

Sincerely,



**David J. Shapiro**

cc: The Honorable Minister Marc Garneau, P.C., M.P.  
Ferio Pugliese, Senior Vice President, Air Canada Express and Government Relations

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<sup>10</sup> S. 43 ATPDR.

<sup>11</sup> S. 39 and 81 ATPDR.

<sup>12</sup> S. 58 ATPDR.

<sup>13</sup> S. 59 ATPDR.

<sup>14</sup> On March 13, 2020 the Department of Finance issued a statement of measures to support the economy and the financial sector. In that document, it said "In the face of current global developments, financial institutions should focus on managing this uncertainty rather than devoting resources to previously announced regulatory changes." It also granted other relief from current regulatory requirements, including lowering the Domestic Stability Buffer requirement for domestic systemically important banks OSFI also announced it will suspend all consultations on regulatory matters. <https://www.canada.ca/en/department-finance/news/2020/03/canada-outlines-measures-to-support-the-economy-and-the-financial-sector.html>



March 22, 2020

Transmission by e-mail  
[scott.streiner@otc-cta.gc.ca](mailto: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



...page 3

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.

## **Meredith Desnoyers**

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**From:** Scott Streiner  
**Sent:** Tuesday, March 24, 2020 8:31 AM  
**To:** Liz Barker; Heather Smith; Mary Tobin Oates; Mark MacKeigan; Lenore Duff; Gerald Dickie  
**Cc:** Sébastien Bergeron  
**Subject:** Call

Good morning, colleagues. In addition to simply checking in with one another, I'd like to discuss two things during our teleconference today:

- Special measures in respect of the air industry
- The agenda for Thursday's Members meeting

If there are any additional items you'd like to add to the list in advance of the call, please "reply all". Thanks, and talk to you at 10:30.

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

## Meredith Desnoyers

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**From:** Scott Streiner  
**Sent:** Tuesday, March 24, 2020 8:36 AM  
**To:** Liz Barker; Heather Smith; Mary Tobin Oates; Mark MacKeigan; Lenore Duff; Gerald Dickie  
**Cc:** Sébastien Bergeron  
**Subject:** RE: Call  
**Attachments:** Asks.docx

P.S. The attached table, which outlines some asks from two carriers, will be used for reference during the discussion of special measures.

---

**From:** Scott Streiner  
**Sent:** Tuesday, March 24, 2020 8:31 AM  
**To:** Liz Barker ; Heather Smith ; Mary Tobin Oates ; Mark MacKeigan ; Lenore Duff ; Gerald Dickie  
**Cc:** Sébastien Bergeron  
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**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

| Item  | AT   | AC  |
|---|--|---|
| APPR  |  | Issue a blanket exemption from all APPR, or take the steps below                                    |
| Classification of flight disruptions                  | State that all current disruptions are category 3                              | Same  |
| Refunds   | State that no refunds are owed   | Same  |
| Vouchers  | Signal that vouchers are acceptable in lieu of cash refunds                    |   |
| Response time   | Exempt airlines from the 30 day timeline                                       | Same  |
| Alternative travel arrangements                       | Exempt airlines from any obligation to provide alternative travel arrangements | Same  |
| April 30  | Extend the current exemptions for at least 90 days                             | Same  |
| ATPDR   |  | Provide a 90-day or longer delay to the "deadline for compliance" for, at least, certain provisions |
| Enforcement of APPR and ATPDR                         | Suspend for 1 year   | Same  |
| Advance notice for service changes on domestic routes |  | Exempt AC from the 120-day notice requirement   |

## Meredith Desnoyers

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**From:** Heather Smith  
**Sent:** Tuesday, March 24, 2020 10:33 AM  
**To:** Scott Streiner  
**Subject:** Re: Call

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Having trouble dialing in

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

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

**From:** Scott Streiner  
**Date:** 2020-03-24 8:35 AM (GMT-05:00)  
**To:** Liz Barker , Heather Smith , Mary Tobin Oates , Mark MacKeigan , Lenore Duff , Gerald Dickie  
**Cc:** Sébastien Bergeron  
**Subject:** RE: Call

P.S. The attached table, which outlines some asks from two carriers, will be used for reference during the discussion of special measures.

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**From:** Scott Streiner  
**Sent:** Tuesday, March 24, 2020 8:31 AM  
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S

**Scott Streiner**

Président et premier dirigeant, Office des transports du Canada  
Chair and Chief Executive Officer, Canadian Transportation Agency  
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## Lesley Robertson

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**Subject:** Special Members Committee In Camera - COVID19 - weekly updates  
**Location:** [REDACTED] (then press #) (Scott will host)

**Start:** Tue 3/24/2020 11:00 AM  
**End:** Tue 3/24/2020 11:45 AM  
**Show Time As:** Tentative

**Recurrence:** (none)

**Meeting Status:** Not yet responded

**Organizer:** Lesley Robertson

CBCI teleconference: dial [REDACTED] call ID: [REDACTED] # then # again

Seb will HOST