



VIA EMAIL: simonlin@evolinklaw.com

January 31, 2022

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 Counsel,

This is in response to the Respondent, Attorney General of Canada ("AGC")'s informal motion dated December 14, 2021 and Justice Gleason's Order dated January 26, 2022 in the above-referenced matter.

The Respondent is no longer seeking to maintain redactions on the two documents over which the AGC sought an extension of time to claim privilege and therefore, the Agency is disclosing those two documents to you in their unredacted form.

I trust the foregoing to be satisfactory.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Barbara Cuber', with a horizontal line underneath.

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

Encl.

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

Salmasi, Aysa

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Wednesday, March 18, 2020 5:28 PM
To: Stacey, Colin
Cc: Caitlin Hurcomb; Allan Burnside; Davis, Mark; Millette, Vincent
Subject: RE: From MinO: Air Transat

Categories: ATIP Retrieval Notice A-2020-00167BB, ATIP Retrieval Notice / A-2020-00091

Hi Colin,

I am sending this unencrypted as our remote network access is patchy and we are not able to open encrypted emails on our Samsungs at the Agency.

I would note that for situations outside of the carrier's control, no refunds are required under the APPR. As you know, the Agency issued a determination on Friday to clarify some situations flowing from COVID-19 that are considered to be in that category.

I would assume that writ large this situation is outside of the carrier's control.

If a flight cancellation is within the carrier's control, or within the carrier's control but required for safety, a refund is required and a voucher would not be compliant. Again, this does not seem to be relevant here.

Looping in Cait in case she has anything to add.

I hope this is helpful.

Thanks,
Marcia

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:57 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Hi Marcia,

Air Transat are telling us that they are getting pressure from creditors who are pushing on the airlines for cash. They will request that we officially let them to provide vouchers to passengers instead of providing them cash because they literally do not have enough cash to give refunds.

Have you heard anything about this? Are you available to discuss?

Thanks,

cs

Nadine Landry

From: Millette, Vincent <vincent.millette@tc.gc.ca>
Sent: Tuesday, March 24, 2020 12:40 PM
To: Caitlin Hurcomb
Subject: RE: CTA announcement tomorrow

thanks

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Tuesday, March 24, 2020 12:31 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

At this point, I've not received confirmation of what the timing will be.

From: Millette, Vincent [mailto:vincent.millette@tc.gc.ca]
Sent: Tuesday, March 24, 2020 12:28 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Just out of my personal curiosity, do you know why it is delayed?

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Tuesday, March 24, 2020 12:25 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,
I anticipate it will be in the next day or two, but I've not received confirmation.

From: Millette, Vincent [mailto:vincent.millette@tc.gc.ca]
Sent: Tuesday, March 24, 2020 12:07 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Cait – do you know when the Agency will be issuing this statement?

Thanks

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Monday, March 23, 2020 11:04 AM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,
This statement indicates what the CTA views as appropriate given this situation – an approach that would ensure passengers aren't totally out of pocket while taking into account concerns from airlines.

The statement indicates that the CTA would consider vouchers acceptable "refunds" for those airlines that do require reimbursement in their tariff.

The statement does not force other airlines – whose tariffs do not require reimbursement in force majeure situations – to provide passengers with vouchers or credits. It indicates what we view as a good practice that would help make passengers whole. It's not our intention to take enforcement actions against one of these airlines if this practice is not followed, in alignment with their tariff.

If a complaint were brought forward to the CTA, it would be assessed on its own merits, of course.

Happy to discuss further,
Cait

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Monday, March 23, 2020 10:20 AM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Would your approach force in any way carriers that do not have refunds specified in their tariff to start refunding or their current tariff still apply?

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]
Sent: Monday, March 23, 2020 10:15 AM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,

I understand there is a plan to release a statement indicating that, generally speaking, for cancelled flights, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel. This was discussed between the Chair, the DM and the Minister's Chief of Staff and Marcia spoke with your ADM over the weekend as well.

It has been noted, though, that some airlines may not wish to provide vouchers, if their tariffs do not have any reimbursement requirement for force majeure situations.

Let me know if you'd like to discuss further.

Cait

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Monday, March 23, 2020 10:02 AM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Cait – I am on a Min/DM call and I'm sure the question will come up. Any insight you can provide quickly?

Thanks

From: Millette, Vincent
Sent: Sunday, March 22, 2020 2:22 PM
To: 'Caitlin Hurcomb' <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: CTA announcement tomorrow

Hi Cait - I was just on a conference call with Lawrence, our ADM, where he briefed us on an announcement the Agency would do tomorrow regarding the refund and voucher issue.

He understood, based on a conversation with Marcia, that the measure you would announce may have an adverse impact on the larger carriers like AC or WestJet.

We are not entirely sure we understand this. Can you explain?

Feel free to call me if easier 343-996-9858

Thanks!

Sent from my BlackBerry 10 smartphone on the Rogers network.