

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

– and –

**ATTORNEY GENERAL OF CANADA**

Respondent

– and –

**CANADIAN TRANSPORTATION AGENCY**

Intervener

**AFFIDAVIT OF DR. GÁBOR LUKÁCS  
(Affirmed: February 6, 2022)**

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

1. I am the President and a Director 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.
2. A copy of a letter sent by the Canadian Transportation Agency, dated January 31, 2022, enclosing unredacted copies of two documents that were previously redacted, is attached to this affidavit and marked as **Exhibit “A”**.
3. A revised version of an email dated March 24, 2020, which was previously produced by the CTA on December 14, 2021, is attached to this affidavit and marked as **Exhibit “B”**. The CTA delivered this revised version to the Applicant on February 1, 2022.

**AFFIRMED** remotely by Dr. Gábor Lukács  
at the City of Halifax, Nova Scotia before me  
at the City of Coquitlam, British Columbia  
on February 6, 2022, in accordance with  
O. Reg. 431/20, *Administering Oath or  
Declaration Remotely*.

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Commissioner for Taking Affidavits

**Simon (Pak Hei) Lin, *Barrister & Solicitor***  
**LSO #: 76433W**  
4388 Still Creek Drive, Suite 237  
Burnaby, BC V5C 6C6

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Dr. Gábor Lukács

Halifax, NS

Tel:

*lukacs@AirPassengerRights.ca*

## CERTIFICATE OF COMMISSIONER FOR TAKING AFFIDAVITS

I, Simon Lin, a Commissioner for taking Affidavits in Ontario, certify that:

1. This certificate is provided in accordance with the *COVID-19 Notice No. 2* of the Supreme Court of British Columbia.
2. On February 6, 2022, I commissioned the Affidavit of Dr. Gábor Lukács [**Deponent**] in this matter [**Affidavit**]. The Affidavit was commissioned remotely using video technology and a secure electronic signature platform, as permitted by the Law Society of Ontario and O. Reg. 431/20, *Administering Oath or Declaration Remotely*.
3. I was satisfied that the process was necessary because it was medically unsafe, for reasons associated with COVID-19, for the Deponent and a commissioner to be physically present together.
4. The Affidavit was loaded in PDF format by the commissioner onto a secure electronic signature platform, which:
  - a. does not permit the Deponent to add or remove any of the pages;
  - b. required both the commissioner and Deponent to apply their initials on each page of the Affidavit; and
  - c. required both the commissioner and Deponent to apply their electronic signatures where a signature is required.
5. The Deponent was emailed a link to the platform to securely sign the Affidavit. Thereafter, the following process was followed while the commissioner and Deponent was connected via video technology:
  - a. The Deponent showed me the front and back of the Deponent's current government-issued photo identification [**ID**], which I have retained screenshots of.
  - b. I compared the video image of the Deponent and the information on the ID and was satisfied that it was the same person.
  - c. The copy of the Affidavit before the commissioner and Deponent were on the same electronic platform and are identical.
  - d. I administered the oath to the Deponent who affirmed/swore to the truth of the facts in the Affidavit and the Deponent applied their electronic signature.

February 6, 2022

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Signature of Simon Lin  
Commissioner for Taking Affidavits

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukács  
affirmed before me on February 6, 2022

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Signature



VIA EMAIL: [simonlin@evolinklaw.com](mailto: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**

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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](mailto:barbara.cuber@otc-cta.gc.ca)  
Email: [Servicesjuridiques.LegalServices@otc-cta.gc.ca](mailto: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](mailto:sandy.graham@justice.gc.ca), [Lorne.Ptack@justice.gc.ca](mailto:Lorne.Ptack@justice.gc.ca)

**Salmasi, Aysa**

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**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

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**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**

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**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

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**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](mailto: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](mailto: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

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**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](mailto: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



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**From:** Millette, Vincent  
**Sent:** Sunday, March 22, 2020 2:22 PM  
**To:** 'Caitlin Hurcomb' <[Caitlin.Hurcomb@otc-cta.gc.ca](mailto: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.

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács  
affirmed before me on February 6, 2022

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Signature



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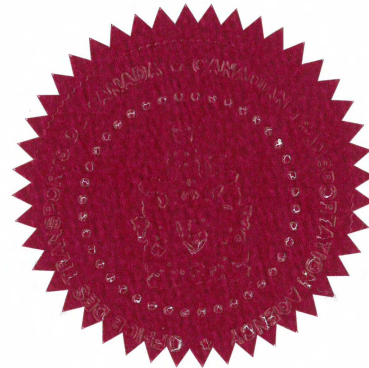
**CERTIFICATION**

I, Patrice Bellerose, of the city of Gatineau, province of Québec, for the Secretary of the Canadian Transportation Agency, **DO HEREBY CERTIFY** that attached hereto are true and correct copies of the following documents which are in the custody of the Secretary:

Fresh version of March 24, 2020 email exchange

**IN WITNESS THEREOF** I have hereunto set my hand and affixed the Official Seal of the Canadian Transportation Agency at Gatineau, province of Québec, this 1st of February 2022.

Patrice Bellerose  
for the Secretary



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| <b>TAB</b> | <b>DOCUMENTS</b>                               |
|------------|------------------------------------------------|
| 1.         | Fresh version of March 24, 2020 email exchange |

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**From:** Scott Streiner  
**Sent:** March 24, 2020 9:15 AM  
**To:** Marcia Jones  
**Cc:** Sébastien Bergeron; Caitlin Hurcomb; Allan Burnside; Valérie Lagacé  
**Subject:** RE: message to carriers - signals check

Hi, Marcia. Good (fast) work. A few tweaks, highlighted below.

We may also need to add something like, "Finally, the timeline for previously-announced special measures – exemptions from certain APPR requirements and a pause to all dispute resolution activities involving air carriers – has been extended from April 30, 2020 to ...", depending on the outcome of the Members call this morning.

Thanks,

S

**From:** Marcia Jones  
**Sent:** Tuesday, March 24, 2020 9:05 AM  
**To:** Scott Streiner  
**Cc:** Sébastien Bergeron ; Caitlin Hurcomb ; Allan Burnside ; Valérie Lagacé  
**Subject:** message to carriers - signals check

Scott, normally I would not ask you to review this type of email, but wanted to be sure you had no issue with the draft message below that I will be sending out this afternoon. Thanks to Cait for preparing this quickly.

The plan is to send it out to carriers en masse, but given the outreach from PIAC/CAA, I could also do a separate send out to each of them.

Thanks  
 Marcia

Good afternoon,

I am writing to provide an update on the latest steps the Canadian Transportation Agency has taken related to the COVID-19 pandemic. Today, the CTA issued **decisions**:

- Temporarily exempting all air carriers holding a domestic licence from the requirement in section 64 of the Canada Transportation Act to provide 120 days' notice and engage in consultations before **temporarily** suspending the operation of air services between points in Canada, **while retaining that requirement for any permanent discontinuation of service**. For more information, see **Order X**.
- Temporarily exempting all air carriers from the *Air Passenger Protection Regulations* deadline for responding to passenger claims for compensation, **while requiring that responses be provided within 120 days of the end of the exemption to certain APPR provisions**. For more information, see **Order Y**.

In addition, the CTA has released a statement providing guidance for addressing the mass flight cancellations taking place worldwide. In order to balance passenger **protection** and airline operating

realities in these extraordinary and unprecedented circumstances, the CTA has indicated 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. Of course, any situation brought forward to the CTA will be evaluated on its own merits. The full statement is available on the CTA's website (insert link).

We will be sure to keep you informed of any further developments. Please don't hesitate to contact me with any questions.

Sincerely,

Marcia Jones  
Dirigeante principale, Stratégies/Chief Strategy Officer  
Office des transports du Canada/Canadian Transportation Agency  
15, rue Eddy/15 Eddy Street  
Gatineau, QC, K1A 0N9  
(819) 953-0327  
[marcia.jones@otc-cta.gc.ca](mailto:marcia.jones@otc-cta.gc.ca)

