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By Email: [Information@fca-caf.gc.ca](mailto:Information@fca-caf.gc.ca)

April 30, 2020

The Judicial Administrator  
Federal Court of Appeal  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

**Re: *Air Passenger Rights v Canadian Transportation Agency***  
**Court File No.: A-102-20**

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We are writing to request Direction from the Court regarding additional steps in the existing timetable related to the Applicant's motion for an interlocutory injunction. Unfortunately, we have not been able to secure the Applicant's agreement to what, in our view, should be relatively simple matters.

As the Court is aware, Mr. Lukacs, the directing mind of the newly incorporated Applicant, has commenced numerous applications before this Court in the last 7 years. He had previously filed as a self-represented litigant. In this latest case, Mr. Lukacs is now operating as "Air Passenger Rights", and is represented by Counsel.

With the intervention of Counsel, we had hoped that this application, unlike previous proceedings, could proceed more efficiently and that Counsel could extend reasonable courtesies, that do not adversely affect his client, to move the matter forward. Unfortunately, this has not materialized, and we are forced to seek Direction from the Court.

### **A. Factual Background**

#### **(i) The Timetable**

In accordance with the Court's Order dated April 16, 2020, the responding record on behalf of the Canadian Transportation Agency ("Agency") was filed yesterday, April 29, 2020. The Applicant's reply is due May 7, 2020.

There is a pending motion for leave to intervene and responses thereto from the parties are due today.

No other steps in relation to the Applicant's motion for interlocutory relief are provided for in the Court's Order.

(ii) Cross Examination of the Agency's Affiant

Before the Agency had even selected an affiant, the Applicant indicated that it *may* wish to conduct a cross-examination. Counsel for the Applicant asked for our availabilities between April 30, 2020 and May 6, 2020.<sup>1</sup> Despite the fact that the current timetable does not provide for cross-examinations, we responded and indicated that any day during the week of May 4<sup>th</sup> would likely be workable. We asked that Counsel advise once he had the affidavit whether he wishes to cross-examine and what dates would be most convenient. We also indicated that if the Applicant did decide to cross-examine the Agency's affiant then the parties should discuss a timetable for additional submissions since both parties should be able to address the transcript.<sup>2</sup>

By letter dated April 22, 2020, Counsel for the Applicant indicated, despite our email, that he wished to proceed with the cross-examination on May 1, 2020, rather than the week of May 4, 2020, to allow time to provide written submissions in reply. The Applicant indicated that it would not consent to the Agency being provided an opportunity to address the transcript since this is not provided for in the *Federal Courts Rules* nor the Court's Order of April 16, 2020.<sup>3</sup>

By email dated April 23, 2020, we advised Counsel for the Applicant that it was agreed that the cross-examination could be scheduled tentatively for May 1, 2020, if the Applicant wished to do so. The Agency reserved its right to request leave to file additional submissions to address the transcript.<sup>4</sup> In response, Counsel for the Applicant indicated in an email dated April 24, 2020, that the cross-examination had been scheduled for May 1, 2020, by videoconference. Counsel also expressed his view that if the Agency wanted to provide additional submissions, that should have been requested at the outset when the Court was addressing the timetable.<sup>5</sup>

Counsel for the Applicant then indicated that it was his intention to rely on additional evidence not included in the Applicant's record. As a result of this, and because the Applicant would not agree to both parties having the opportunity to address this evidence or the transcript from any cross-examination, we advised Counsel for the Applicant to cancel the tentative date for cross-examination. We suggested that once the Applicant was in receipt of our affidavit it could advise if it wished to proceed to cross-examination and further direction could be sought from the Court.<sup>6</sup>

By letter dated April 27, 2020, Counsel advised, again before seeing the Agency's affidavit, and despite the agreement that the date was tentative, that the cross-examination would proceed on May 1, 2020. Counsel for the Applicant further took the position that if the Agency's affiant did

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<sup>1</sup> Letter from S. Lin dated April 21, 2020, Appendix "C".

<sup>2</sup> Email from A. Matte dated April 22, 2020 at p. 3-4, Appendix "B".

<sup>3</sup> Letter from Mr. Lin dated April 22, 2020, Appendix "D".

<sup>4</sup> Email from A. Matte dated April 23, 2020 at p. 1-2, Appendix "B".

<sup>5</sup> Email from S. Lin dated April 24, 2020 at p. 1, Appendix "B".

<sup>6</sup> Email from A. Matte dated April 27, 2020 at p. 2, Appendix "A".

not appear, a certificate of non-attendance would be obtained, and the Applicant would seek an Order striking the Agency's affidavit.<sup>7</sup>

The Agency filed its responding record on April 29, 2020, in accordance with the timetable set by the Court. This record includes the Affidavit of Meredith Desnoyers, a Hearings Co-Ordinator with the Agency's legal department, affirmed the 28<sup>th</sup> day of April 2020. Ms. Desnoyers' affidavit merely puts into evidence documents available on the internet and provides links thereto.<sup>8</sup>

By letter dated April 29<sup>th</sup>, 2020, Counsel for the Applicant Mr. Lin indicated that the cross-examination would proceed on May 1, 2020 "as agreed", and enclosed a Direction to Attend. This letter was sent despite the fact that we had specifically indicated, initially, that the date was tentative and, subsequently, that we did not agree to proceed on that date. The Direction to Attend improperly directs Ms. Desnoyers to produce documents unrelated to her affidavit.<sup>9</sup>

We can confirm for Counsel that, as previously indicated, we will not be attending the cross-examination tomorrow.

## **B. Issues to be addressed**

Both parties agree that the subject matter of this Application is a statement of the Agency on its website which has no legal effect. The Applicant has conceded, more specifically, that the statement does not affect the rights of passengers. Judicial review is not available in this case. The Agency's responding record includes a request that the entire application be dismissed.

This is the context in which the Agency submits the Court should address the procedural issues raised herein.

### **(i) Cross-examination of Ms. Desnoyers**

Cross-examination of Ms. Desnoyers will serve no purpose other than to waste time and resources. The Agency agreed to cross-examination, tentatively, because it normally flows from the filing of an affidavit. However, in this case the Direction to Attend is improper and an abuse of process.

Firstly, the parties never agreed to the May 1<sup>st</sup> date, it was tentative and only discussed in the event that the Applicant, after reviewing the affidavit, determined that it wished to cross-examine. After this agreement, Counsel for the Applicant changed position and made it clear that cross-examination would proceed on that date regardless of the contents of the affidavit. This revealed quite plainly that the purpose of the cross-examination is not to test the evidence but to put the Agency to unnecessary effort and expense.

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<sup>7</sup> Letter from S. Lin dated April 27, 2020, Appendix "E".

<sup>8</sup> Affidavit of Meredith Desnoyers, affirmed the 28<sup>th</sup> day of April, 2020, Exhibit "F".

<sup>9</sup> Letter from S. Lin dated April 29, 2020, Exhibit "G".

Secondly, the Court's timetable does not provide for cross-examinations. This does not mean that it should not proceed. However, the current timetable did not allow for this process nor the opportunity for both parties to address the transcript in submissions. If cross-examination proceeds basic fairness suggests that both parties should have the opportunity to address the transcript.

Thirdly, the Respondent's affiant is an employee of the Agency's legal department and simply puts into evidence information available on the internet. It is inconceivable that the Applicant would have any relevant questions to put to Ms. Desnoyers based on her affidavit.

Fourthly, the Direction to Attend lists documents unrelated to the affidavit, and constitutes a fishing expedition. The Direction to Attend should be struck.

The Direction to Attend is an abuse of process and if this matter proceeds the Agency requests that the timetable provide for the filing of a motion to strike the Direction to Attend.

(ii) The Applicant's motion to introduce new evidence

As referenced above, the other issue which has arisen is the Applicant's expressed intention to file additional evidence, which complicates whether or not the parties could proceed to cross-examination on affidavits at this time.

Applicant's Counsel advised by email dated April 24, 2020, of the Applicant's intention to rely on additional evidence not included in its original materials.<sup>10</sup> We responded by indicating that if the Applicant intended to provide additional evidence then leave of the Court would be required. We suggested that the parties write to the Court to propose a timetable for the motion, cross-examination on any affidavits, and submissions.<sup>11</sup>

Applicant's Counsel responded by letter dated April 26, 2020, and refused to do this. In this letter Counsel for the Applicant seems to suggest that the Agency is under the "duty" to address the Applicant's new evidence (not yet in the record) in its responding materials instead of forcing the Applicant to bring a motion for leave to submit it.<sup>12</sup>

If the Applicant intends to file an additional affidavit as part of its reply, it is submitted that it must seek leave of the Court.<sup>13</sup> If the Applicant does file additional evidence, then cross-examination should not proceed until all of the Applicant's affidavits have been filed.<sup>14</sup>

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<sup>10</sup> Email from S. Lin dated April 24, 2020 at p. 4-5, Appendix "A"

<sup>11</sup> Email from A. Matte dated April 26, 2020 at p. 3, Appendix "A"

<sup>12</sup> Letter from S. Lin dated April 26, 2020, Appendix "H"

<sup>13</sup> *O'Grady v Canada (Attorney General)*, [2016 FCA 221](#) (CanLII) at para 7; *Amgen Canada Inc. v Apotex Inc.*, [2016 FCA 121](#) (CanLII) at para 7.

<sup>14</sup> *Federal Courts Rules*, [SOR/98-106](#), Rule 84(2).

**C. Direction sought**

We therefore ask the Court to adjust the current timeline to require, firstly, that the Applicant bring a motion for leave to file additional evidence.

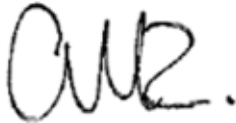
If the Court is of the view that the Applicant should be entitled to cross-examine the Agency's affiant, then we would ask for leave to bring a motion to strike the Direction to Attend as it is currently drafted.

We would ask that, if it proceeds, cross-examination of the Agency's affiant not occur until after the Applicant's motion for leave to file additional evidence is determined and, if applicable, the additional evidence is filed.

We would further submit that the Applicant should be given a period of time to provide submissions addressing the new evidence, if leave is granted, and the transcript of the cross-examination, if it is allowed to proceed. We would then ask for the right to provide responding submissions within two (2) days of service of the Applicant's submissions.

We hope the intervention of the Court can assist in moving this matter forward.

Yours truly,



Allan Matte  
Senior Counsel  
Legal Services Directorate  
Canadian Transportation Agency  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0N9

Tel: (819) 953-0611

Fax: (819) 953-9269

Email: [Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)

Email: [Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca](mailto:Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca)

c.c.: Simon Lin

Counsel for the Applicant, Air Passengers Rights

[simonlin@evolink.com](mailto:simonlin@evolink.com)

# **Appendix A**

## Allan Matte

---

**From:** Simon Lin <simonlin@evolinklaw.com>  
**Sent:** Tuesday, April 28, 2020 12:55 PM  
**To:** Allan Matte  
**Cc:** Services Juridiques / Legal Services (OTC/CTA)  
**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Hello Mr. Matte,

Please kindly provide us the name of the Agency's affiant and a copy of the draft affidavit so that we can provide to you in a timely manner the list of documents that we request the affiant to provide for the cross-examination on May 1.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**  
237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: [604-620-2666](tel:604-620-2666)

F: [888-509-8168](tel:888-509-8168)

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On Mon, Apr 27, 2020 at 1:00 PM Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)> wrote:

Dear Mr. Matte,

Please see enclosed.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**  
237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: [604-620-2666](tel:604-620-2666)

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On Mon, Apr 27, 2020 at 7:04 AM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Hi Mr. Lin,

Please cancel the appointment for May 1, we will not be appearing. Once you have our responding materials, please advise if you wish to cross-examine our affiant and if you intend to bring a motion for leave to file additional evidence. If necessary, we will write to the Court for further directions regarding these additional steps.

Regards,

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)



**From:** Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Sent:** Sunday, April 26, 2020 11:42 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Cc:** Services Juridiques / Legal Services (OTC/CTA) <[Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca](mailto:Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca)>

**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Hello Mr. Matte,

Please see enclosed letter. Thank you.

Kind Regards,

**Simon Lin**

Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

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On Sun, Apr 26, 2020 at 6:03 AM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Mr. Lin,

If you intend to refer to this additional evidence, you will need leave of the Court to file it. If leave is granted and new evidence is filed, both parties should be entitled to make submissions with respect thereto. If you do intend to file this new evidence, I suggest we write to the Court and propose a timetable for your motion, cross examination (if any) on affidavits and then submissions following the receipt of any transcripts.

Please advise.

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

**From:** Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Sent:** Friday, April 24, 2020 2:15 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Cc:** Services Juridiques / Legal Services (OTC/CTA) <[Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca](mailto:Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca)>

**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Dear Mr. Matte,

We write to inform you that for purposes of the motion we may refer to the enclosed article that was published today (<https://www.travelweek.ca/news/acta-weighs-in-on-ctas-new-voucher-vs-refund-faq-post/>). To the extent the Agency has any submissions on this particular article, we trust that the Agency will make those submissions in its response on April 29, 2020.

Thank you.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**  
237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

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On Fri, Apr 24, 2020 at 9:27 AM Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)> wrote:

Dear Mr. Matte,

We write to inform you that 1PM EST on May 1, 2020 has been reserved with Gillespie's. The cross-examination will be by video conference using Zoom. Please advise if there are any concerns.

If you intend to seek leave for further submissions, that should have been done at the outset (i.e. at the time that the Court was addressing the timetable), not afterwards. The Agency knows precisely what their own affiant's evidence is and any representations can and should be included in their motion record due on April 29.

Thank you.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

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237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

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On Thu, Apr 23, 2020 at 9:55 AM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Hi Mr. Lin,

I attach a Consent for Electronic Service as promised.

I agree to tentatively booking May 1<sup>st</sup> at 1:00 pm for the cross-examination of our affiant, if you wish to do so.

If you do cross-examine our affiant we reserve the right to ask the Court for leave to file submissions addressing this evidence once we have the transcript. We understand that you object.

We will not be amending the Agency's website as you have requested pending the motion.

Regards,

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

**From:** Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Sent:** Wednesday, April 22, 2020 9:17 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Dear Mr. Matte,

Please see enclosed. Thank you.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

# evolink LAW

Evolink Law Group

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: [604-620-2666](tel:604-620-2666)

F: [888-509-8168](tel:888-509-8168)

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On Wed, Apr 22, 2020 at 3:30 PM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Hi Mr. Lin,

Further to my emails below, I did not hear back from you regarding electronic service. In the meantime, I have asked that a Consent to electronic service be prepared and will provide it to you shortly. Hopefully you could attach future documents to an email so I am able to open it more readily.

I am prepared to discuss a timetable for cross-examination of the Agency's affiant. I anticipate that any day during the week of May 4<sup>th</sup> would be workable, my schedule is flexible assuming that the examination will proceed by videoconference, or in writing. I am confident that our affiant could be made available at a convenient time that week. Once you have the affidavit please let me know if you wish to cross-examine and what dates would be most convenient. I can advise that we do not intend to cross-examine Mr. Lukacs.

If you do proceed to cross-examine the Agency's affiant, we should discuss a timetable for the filing of additional submissions. As I am sure you can appreciate, both parties should be entitled to address this additional evidence.

On your last point, and as you correctly point out, the Court's decision did not enjoin the Agency from continuing to post the Agency's Statement on Vouchers.

Regards,

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat  
and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

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Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Allan Matte

**Sent:** Wednesday, April 22, 2020 7:56 AM

**To:** 'Simon Lin' <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Subject:** RE: Air Passenger Rights v. Canadian Transportation Agency (Federal  
Court of Appeal A-102-20)

Hi Mr. Lin,

Ignore my previous message, after additional efforts I was able to open the letter.  
I will be in touch today.

Regards,

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal,  
Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Allan Matte

**Sent:** Wednesday, April 22, 2020 6:31 AM

**To:** 'Simon Lin' <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Subject:** RE: Air Passenger Rights v. Canadian Transportation Agency  
(Federal Court of Appeal A-102-20)

Hi Mr. Lin,

Would you be able to send me your letter as an attachment please? I was not able to open it through the link.



I can send you a Consent to electronic service right away if you are concerned about service.

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

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Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Simon Lin <[noreply@lexop.com](mailto:noreply@lexop.com)>

**Sent:** Tuesday, April 21, 2020 12:10 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Subject:** Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

ELECTRONIC SERVICE

*Certified by Lexop*

**Court file number:** A-102-20

**Case name:** Air Passenger Rights v. Canadian Transportation Agency

Hello Allan Matte, you are hereby notified with the attached document(s). A confirmation report with a proof of notification has been provided to Simon Lin.

**Document(s)**

[2020-04-21-lt-mr-matte.pdf](#)

**Your options**

[REPLY TO SENDER](#)

[PROOF REPORT](#)

Evolink Law Group  
4388 STILL CREEK DRIVE  
BURNABY, BC, CA  
V5C 6C6

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# **Appendix B**

## Allan Matte

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**From:** Simon Lin <simonlin@evolinklaw.com>  
**Sent:** Friday, April 24, 2020 12:27 PM  
**To:** Allan Matte  
**Cc:** Services Juridiques / Legal Services (OTC/CTA)  
**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Dear Mr. Matte,

We write to inform you that 1PM EST on May 1, 2020 has been reserved with Gillespie's. The cross-examination will be by video conference using Zoom. Please advise if there are any concerns.

If you intend to seek leave for further submissions, that should have been done at the outset (i.e. at the time that the Court was addressing the timetable), not afterwards. The Agency knows precisely what their own affiant's evidence is and any representations can and should be included in their motion record due on April 29.

Thank you.

Kind Regards,

**Simon Lin**  
Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: [604-620-2666](tel:604-620-2666)

F: [888-509-8168](tel:888-509-8168)

[www.evolinklaw.com](http://www.evolinklaw.com)

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On Thu, Apr 23, 2020 at 9:55 AM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Hi Mr. Lin,

I attach a Consent for Electronic Service as promised.

I agree to tentatively booking May 1<sup>st</sup> at 1:00 pm for the cross-examination of our affiant, if you wish to do so.

If you do cross-examine our affiant we reserve the right to ask the Court for leave to file submissions addressing this evidence once we have the transcript. We understand that you object.

We will not be amending the Agency's website as you have requested pending the motion.

Regards,

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

**From:** Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Sent:** Wednesday, April 22, 2020 9:17 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Subject:** Re: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Dear Mr. Matte,

Please see enclosed. Thank you.

Kind Regards,

**Simon Lin**

Barrister & Solicitor (British Columbia/Ontario), Attorney (California)

**evolink** LAW

**Evolink Law Group**

237-4388 Still Creek Drive, Burnaby, B.C. V5C 6C6

T: [604-620-2666](tel:604-620-2666)

F: [888-509-8168](tel:888-509-8168)

[www.evolinklaw.com](http://www.evolinklaw.com)

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On Wed, Apr 22, 2020 at 3:30 PM Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)> wrote:

Hi Mr. Lin,

Further to my emails below, I did not hear back from you regarding electronic service. In the meantime, I have asked that a Consent to electronic service be prepared and will provide it to you shortly. Hopefully you could attach future documents to an email so I am able to open it more readily.

I am prepared to discuss a timetable for cross-examination of the Agency's affiant. I anticipate that any day during the week of May 4<sup>th</sup> would be workable, my schedule is flexible assuming that the examination will proceed by videoconference, or in writing. I am confident that our affiant could be made available at a convenient time that week. Once you have the affidavit please let me know if you wish to cross-examine and what dates would be most convenient. I can advise that we do not intend to cross-examine Mr. Lukacs.

If you do proceed to cross-examine the Agency's affiant, we should discuss a timetable for the filing of additional submissions. As I am sure you can appreciate, both parties should be entitled to address this additional evidence.

On your last point, and as you correctly point out, the Court's decision did not enjoin the Agency from continuing to post the Agency's Statement on Vouchers.

Regards,

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Allan Matte

**Sent:** Wednesday, April 22, 2020 7:56 AM

**To:** 'Simon Lin' <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Subject:** RE: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)

Hi Mr. Lin,

Ignore my previous message, after additional efforts I was able to open the letter. I will be in touch today.

Regards,

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Allan Matte

**Sent:** Wednesday, April 22, 2020 6:31 AM

**To:** 'Simon Lin' <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>

**Subject:** RE: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)



Hi Mr. Lin,

Would you be able to send me your letter as an attachment please? I was not able to open it through the link.

I can send you a Consent to electronic service right away if you are concerned about service.

Allan

Allan Matte

Senior Counsel/Avocat principal

Direction générale des services juridiques, de Secrétariat et de registraire/Legal, Secretariat and Registrar Services Branch

Direction des services juridiques/Legal Services Directorate

Office des transports du Canada/Canadian Transportation Agency

15 Rue Eddy  
Gatineau, Québec J8X 4B3

Tél./Tel: 819-953-0611

[allan.matte@otc-cta.gc.ca](mailto:allan.matte@otc-cta.gc.ca)

---

**From:** Simon Lin <[noreply@lexop.com](mailto:noreply@lexop.com)>

**Sent:** Tuesday, April 21, 2020 12:10 PM

**To:** Allan Matte <[Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)>

**Subject:** Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal A-102-20)



ID: B7104D02B8D2

**Court file number:** A-102-20**Case name:** Air Passenger Rights v. Canadian Transportation Agency

Hello Allan Matte, you are hereby notified with the attached document(s). A confirmation report with a proof of notification has been provided to Simon Lin.

**Document(s)**[2020-04-21-lt-mr-matte.pdf](#)**Your options**[REPLY TO SENDER](#)[PROOF REPORT](#)

Evolink Law Group  
4388 STILL CREEK DRIVE  
BURNABY, BC, CA  
V5C 6C6

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# **Appendix C**

**VIA EMAIL <ALLAN.MATTE@OTC-CTA.GC.CA>**

April 21, 2020

Canadian Transportation Agency  
**ATTN: Mr. Allan Matte, Senior Counsel**  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Québec  
K1A 0N9

Dear Mr. Matte,

**RE: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal File No : A-102-20)**

---

We write in response to your e-mail on April 21, 2020 acknowledging receipt of our letter from April 17, 2020. Your e-mail did not address our request to set a timetable for the cross-examinations to ensure that all parties can fully comply with the expedited schedule. The Court expects that the parties can set the timetable on their own without court intervention. We note that the Agency has already been served with the motion record twelve days ago on April 9, 2020, which is well beyond the usual timelines for a written motion. Your refusal to discuss a timetable at this time is unreasonable in the circumstances.

We look forward to receiving your response by close of business tomorrow (April 22) to provide availabilities for the cross-examination for the Agency's affiant, whoever it may be, between April 30 to May 6. Otherwise, we will have no choice but to set down the cross-examination dates unilaterally. Similarly, by tomorrow (April 22), we request that you propose a tentative date for the cross-examination of Dr. Lukács and to make the necessary booking with a court reporter. Failing that, we will take the position that the Agency has waived its right to a cross-examination.

Furthermore, it has come to our attention that the Agency has continued to actively disseminate the Statement on Vouchers to passengers directly via email, all after the Applicant's Motion Record was served (on April 9, 2020) and even after the Court's decision on April 16, 2020. We enclose two sample emails for your reference. Although the Court has not issued an order enjoining distribution of the Statement on Vouchers at this time, the Agency's recent emails are themselves highly misleading when they fail to mention the fact that the Statement on Vouchers is now before the Federal Court of Appeal, and the Agency has already been served with a motion for an injunction.

Should the Agency choose to continue disseminating the Statement on Vouchers, we trust that the Agency will clearly inform the recipients that the Statement on Vouchers is now presently before the Federal Court of Appeal and there is an injunction motion pending. We also reserve the right to seek leave from the Court to introduce a further affidavit documenting the Agency's conduct after the Agency was served with our motion record.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN

Barrister & Solicitor (Ontario/BC)

Avocat (Québec – Permis temporaire)

[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

Encls: Emails sent by the Agency dated April 14, 2020 and April 20, 2020

**From:** Info <[Info@otc-cta.gc.ca](mailto:Info@otc-cta.gc.ca)>  
**Date:** April 14, 2020 at 10:23:15 AM MDT  
**To:** dale smith <[smith\\_d@shaw.ca](mailto:smith_d@shaw.ca)>  
**Subject:** RE: Airtransat Will not Refund \$\$\$ Formal complaint

Hello Dale,

Thank you for sharing your concerns with us. We understand that air passengers are experiencing challenges and frustrations during these difficult times.

The situation passengers and airlines face as a result of the COVID-19 pandemic is without precedent. When the existing legislation, regulations, and airline tariffs were developed, none anticipated a once-in-a-century pandemic, worldwide disruptions in air travel, huge drops in passenger volumes, and mass layoffs across the airline sector.

Canada's legislative framework, which differs from those of other jurisdictions such as the United States and European Union, does not impose as a minimum obligation the requirement to refund passengers if a flight is cancelled due to situations outside of the airline's control, such as a global pandemic. We recognize, however, that in the context of widespread flight cancellations, passengers who have no prospect of completing their planned travels could be left out-of-pocket for the cost of cancelled flights.

In these extraordinary circumstances, it would not be unreasonable for airlines to provide vouchers or credits, even if this is not clearly required in certain situations, and for passengers to accept them.

This approach strikes a balance between passenger protection and airlines' operational realities during this unprecedented situation. It could help ensure that passengers do not simply lose the full value of their flights and that, over the longer term, the air sector is able to continue providing diverse services.

Any complaint filed with the CTA will, of course, be assessed on its merits, taking into consideration all relevant facts and the law. If you would like to file an air travel complaint with the CTA, you may do so here; <https://rppa-appr.ca/eng/file-air-travel-complaint>

If you would like more information, please consult the statement the CTA issued on March 25, 2020; <https://otc-cta.gc.ca/eng/statement-vouchers>

Thank you again for your message.

Yours truly,  
The CTA Team

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

**From:** dale smith <[smith\\_d@shaw.ca](mailto:smith_d@shaw.ca)>  
**Sent:** Sunday, April 5, 2020 2:52 PM  
**To:** Info <[Info@otc-cta.gc.ca](mailto:Info@otc-cta.gc.ca)>  
**Subject:** Airtransat Will not Refund \$\$\$ Formal complaint

o Whom It May Concern:

My Wife and I had a Holiday booked through Amore Away Travel Consultant Cherie Weber and Air Transat for the booking of April 10, 2002 to April 17, 2020 to Cancun Mexico.

Obviously the flight was cancelled by Air Transat due to the Convid Pandemic and they are not refunding our monies in the amount of \$4,160.00.

I would like to point out the the US issued the following ruling to the Air Lines to refund customers due to flight cancellations:

<https://www.transportation.gov/briefing-room/us-department-transportation-issues-enforcement-notice-clarifying-air-carrier-refund>

I would like to submit this formal complaint to Canadian Transportation Agency and have them look into the Flight Cancellations for many Canadians and rule that the Canadian Airlines refund clients in which their flights were cancelled.

I have submitted a registered letter the Air Transat requesting a refund but have not heard anything back as of yet. They are saying they will issue travel vouchers, this should not be the only option as they have received our monies and we should expect a refund as they have cancelled our Flights and this was out of our control.

Thank-You,  
Dale Smith  
Medicine ,Alberta  
[smith\\_d@shaw.ca](mailto:smith_d@shaw.ca)

**From:** Info <[Info@otc-cta.gc.ca](mailto:Info@otc-cta.gc.ca)>  
**Date:** April 20, 2020 at 11:56:45 AM EDT  
**To:** Paola Ferguson <[fergusonpjc@hotmail.com](mailto:fergusonpjc@hotmail.com)>  
**Subject:** RE: Airlines refusing refund in original form of payment

Hello,

Thank you for sharing your concerns with us. We understand that air passengers are experiencing challenges and frustrations during these difficult times.

The situation passengers and airlines face as a result of the COVID-19 pandemic is without precedent. When the existing legislation, regulations, and airline tariffs were developed, none anticipated a once-in-a-century pandemic, worldwide disruptions in air travel, huge drops in passenger volumes, and mass layoffs across the airline sector.

Canada's legislative framework, which differs from those of other jurisdictions such as the United States and European Union, does not impose as a minimum obligation the requirement to refund passengers if a flight is cancelled due to situations outside of the airline's control, such as a global pandemic. We recognize, however, that in the context of widespread flight cancellations, passengers who have no prospect of completing their planned travels could be left out-of-pocket for the cost of cancelled flights.

In these extraordinary circumstances, it would not be unreasonable for airlines to provide vouchers or credits, even if this is not clearly required in certain situations, and for passengers to accept them.

This approach strikes a balance between passenger protection and airlines' operational realities during this unprecedented situation. It could help ensure that passengers do not simply lose the full value of their flights and that, over the longer term, the air sector is able to continue providing diverse services.

Any complaint filed with the CTA will, of course, be assessed on its merits, taking into consideration all relevant facts and the law.

If you would like more information, please consult the statement the CTA issued on March 25, 2020; <https://otc-cta.gc.ca/eng/statement-vouchers>

Thank you again for your message.

Yours truly,  
The CTA Team

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

**From:** Paola Ferguson <[fergusonpjc@hotmail.com](mailto:fergusonpjc@hotmail.com)>  
**Sent:** Thursday, April 16, 2020 3:56 PM  
**To:** Info <[Info@otc-cta.gc.ca](mailto:Info@otc-cta.gc.ca)>  
**Subject:** Airlines refusing refund in original form of payment

Good Afternoon,

I am writing to you about the issue regarding airlines refusing to issue a refund to Canadian consumers who either have had their flights cancelled or who no longer wish to travel due to the current pandemic. Other federal governments in other countries, like the United States, have already directed airlines to refund money to consumers in the original form of payment as is outlined in the signed contracts all consumers possess.  
<https://www.cnn.com/2020/04/03/politics/airlines-canceled-flights-refunds/index.html>



Your organization can help all Canadians deal with the economic hardships this pandemic has caused. Many people have lost jobs and airlines, who are protecting their businesses, are holding these funds unfairly. What is the plan of the CTA to address this issue?

Thank you for your attention to this matter. Please email me at [fergusonpjic@hotmail.com](mailto:fergusonpjic@hotmail.com) or call me at the number below.

Sent from my iPhone

# **Appendix D**

**VIA FAX < 1-819-953-9269 >**

**VIA EMAIL <ALLAN.MATTE@OTC-CTA.GC.CA >**

April 22, 2020

Canadian Transportation Agency  
**ATTN: Mr. Allan Matte, Senior Counsel**  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Québec  
K1A 0N9

Dear Mr. Matte,

**RE: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal File No : A-102-20)**

---

We write in response to your e-mail on April 22, 2020 at 15:30 PST. We are deeply confused why your e-mail contains an assertion that we failed to respond to your correspondence. Your e-mail from this morning (04:55 PST) made clear that we are to ignore your earlier message from 03:31 PST. You also stated that you will contact us again later today. There was no outstanding correspondence requiring a response from our office.

With respect to the Notice of Consent to Electronic Service, we look forward to receiving the Agency's at your earliest convenience.

Since you indicated previously that the Agency will not provide us a copy of the affidavit in advance, the week of May 4 may leave little time for my client's written representations in reply. From your email, it appears that the Agency's affiant is available on April 30 or May 1. As such, we propose tentatively reserving May 1 at 1PM EST for the cross-examination of the Agency's affiant, via video conference. We will make arrangement with a court reporter tomorrow morning. Please advise if this does date and time does not work.

Again, we urge the Agency to provide us their affidavit a few days in advance, especially considering the Agency has already been served with our motion record weeks ago.

With respect to your request for additional written submissions after the cross-examination of the Agency's affiant (i.e. a sur-reply), our client will not be consenting to the Agency's request. Filing of further written representations by the Agency is not permitted under the *Federal Courts Rules*, nor is it permitted under the Court's order of April 16, 2020.

It has come to our attention that the Agency has posted to its website today a “FAQs: Statement on Vouchers” (<https://otc-cta.gc.ca/eng/faqs-statement-vouchers>). It is our client’s position that the Agency has continued to mislead passengers on the status of the Statement on Vouchers, and also the passengers’ legal rights vis-à-vis the airlines.

Firstly, regarding the status of the Statement on Vouchers, it is misleading to any audience when the Agency fails to mention that a judicial review is presently before the Court. The Agency’s failure to include this material fact is inexplicable.

Secondly, with respect to the passengers’ legal rights vis-à-vis the airlines, we note that the Agency continues to be silent about the existence of the Agency’s own legally binding decisions, despite those decisions having been specifically brought to the Agency’s attention. The Agency’s legally binding decisions provides that passengers have a fundamental right to a refund (see Decision No. 313-C-A-2013, which is cited in paragraph 27 of our Memorandum of Fact and Law), as excerpted below. Passengers have a right to know about these rights that have long been recognized in the law.

*[15] In terms of passengers’ right to refunds, in Decision No. 28-A-2004, the Agency recognized the fundamental right of passengers to be refunded for the unused portions of their tickets if the carrier is unable to provide transportation on its services or on the services of other carrier(s) within a reasonable period of time.*

The Agency’s continued representations on the *Air Passenger Protection Regulations*, all while completely ignoring the existence of other binding legal authorities, is misleading and inexplicable. Should the Agency choose to continue posting the Statement on Vouchers in the interim, we demand that the Agency revise the Statement to specifically and prominently refer to the legally binding decisions that we cited in our motion record, namely those referred to in paragraphs 25-29 of our Memorandum of Fact and Law, particularly the authority mentioned above. For greater certainty, the Applicant is not agreeing that the Agency’s posting of the FAQs is in any way proper.

We look forward to receiving the Agency’s response by close of business on April 24, 2020.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN

Barrister & Solicitor (Ontario/BC)

Avocat (Québec – Permis temporaire)

[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

# **Appendix E**

**VIA FAX < 1-819-953-9269> AND EMAIL <ALLAN.MATTE@OTC-CTA.GC.CA>**

April 27, 2020

Canadian Transportation Agency  
**ATTN: Mr. Allan Matte, Senior Counsel**  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Québec K1A 0N9

Dear Mr. Matte,

**RE : Air Passenger Rights v. Canadian Transportation Agency (FCA File No : A-102-20)**

We write in response to your e-mail on April 27, 2020 stating that you will not produce the Agency's affiant for cross-examination. We confirm that the cross-examination will proceed as agreed by the parties, on May 1, 2020 at 1:00PM via video-conference. The dial-in information is (<https://us02web.zoom.us/j/84298973091?pwd=VmRSbIVjYUVBdDFGbmJDTFpidU90UT09>), Meeting ID: 842 9897 3091, Password: 030007.

Should the Agency's affiant fail to attend the cross-examination, a certificate of non-attendance will be obtained. Our client will be requesting the Court to apply Rule 97(c) to strike all or part of the Agency's affidavit, or otherwise give no weight to the affidavit. Furthermore, we will also request the Court to address costs after the substantive motion is determined. Our client will be relying on Rule 400, 401, and 404 in respect of costs.

With respect to your point about "additional evidence", as we noted earlier, this is not a situation where the moving party omitted or overlooked existing evidence. The three items we specifically brought to your attention arose *after the fact*, all owing to the Agency's conduct, and did not exist at the time our client's motion was filed. We will inform you in due course whether we will rely on that "additional evidence". We expect that will depend, in part, on whether the Agency appropriately fulfills their obligation in presenting a proper responding affidavit and whether the Agency will continue to refuse producing their affiant for cross-examination.

We trust that all is in order and we look forward to the cross-examination on May 1, 2020.

Yours truly,

**EVOLINK LAW GROUP**



SIMON LIN  
Barrister & Solicitor

# **Appendix F**

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

– and –

**CANADIAN TRANSPORTATION AGENCY**

Respondent

---

**AFFIDAVIT OF MEREDITH DESNOYERS  
SWORN THE 28<sup>TH</sup> DAY OF APRIL, 2020  
(Motion for Mandatory Interlocutory Injunction)**

---

**I, Meredith Desnoyers, of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:**

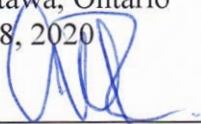
1. I am the Hearing Registrar employed in the Legal Services Unit of the Canadian Transportation Agency, and, as such, I have knowledge of the matters to which I hereinafter depose.
2. Attached and marked as "Exhibit A" is a copy of the Organization and Mandate of the Canadian Transportation Agency webpage posted on the Agency's website at <https://www.otc-cta.gc.ca/eng/organization-and-mandate>.
3. Attached and marked as Exhibit "B" is a copy of the Agency's Interline Baggage Rules for Canada Interpretation Note posted on the Agency's website at <https://otc-cta.gc.ca/eng/publication/interline-baggage-rules-canada-interpretation-note>.
4. Attached and marked as Exhibit "C" is a copy of the Agency's Notice to Industry: Applications for Exemptions from Section 59 of the *Canada Transportation Act* posted on the Agency's website at <https://otc-cta.gc.ca/eng/publication/notice-industry-applications-exemptions-section-59-canada-transportation-act-sc-1996-c>.



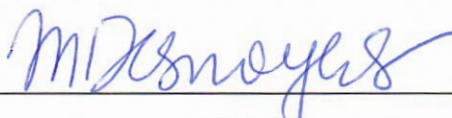
5. Attached and marked as Exhibit "D" is a copy of the Agency's Guide to Canadian Ownership and Control in Fact for Air Transportation posted on the Agency's website at [https://otc-cta.gc.ca/sites/default/files/new\\_guide\\_to\\_canadian\\_ownership\\_requirement\\_and\\_control\\_in\\_fact.pdf](https://otc-cta.gc.ca/sites/default/files/new_guide_to_canadian_ownership_requirement_and_control_in_fact.pdf).
6. Attached and marked as Exhibit "E" is a copy of the World Health Organization's "Events As They Happen" webpage posted at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> with the summary, the December 31, 2019, the January 13, 2020, the January 30, 2020 and March 11, 2020 entries highlighted.
7. Attached and marked as Exhibit "F" is a copy of the Government of Canada "Coronavirus disease (COVID-19): Outbreak" webpage posted at <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink> with the March 22, 2020 dropdown menu highlighted.
8. Attached and marked as Exhibit "G" is a copy of the International Air Transportation Association press release dated April 14, 2020 entitled "COVID-19 Puts Over Half of 2020 Passenger Revenues at Risk" posted at <https://www.iata.org/en/pressroom/pr/2020-04-14-01/>.
9. Attached and marked as Exhibit "H" is a copy of an Air Canada press release dated March 30, 2020, posted at <https://aircanada.mediaroom.com/2020-03-30-Air-Canada-Provides-Update-in-Response-to-Covid-19>.
10. Attached and marked as Exhibit "I" is a copy of WestJet's COVID-19 webpage posted on its website at <https://www.westjet.com/en-ca/travel-info/coronavirus>.
11. Attached and marked as Exhibit "J" is a copy of Air Transat's COVID-19 page posted on its website at <https://www.airtransat.com/en-CA/travel-information/coronavirus>.
12. Attached and marked as Exhibit "K" is a copy of Sunwing press release entitled "Sunwing announces shift to focus on repatriating Canadians in destination" as posted on its website at <https://www.sunwingtravelgroup.com/en/news/sunwing-announces-shift-to-focus-on-repatriating-canadians-in-destination>.

13. Attached and marked as Exhibit "L" is a Porter Airlines News Release dated March 18, 2020 posted on its website at <https://www.flyporter.com/en-ca/about-us/news-details?title=Porter+Airlines+temporarily+suspending+flights+to+support+COVID-19+relief+efforts+2020+03>.
14. Attached and marked as Exhibit "M" is a European Commission communication dated March 18, 2020. Posted on its website at [https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830\\_en.pdf](https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830_en.pdf).
15. Attached and marked as Exhibit "N" is a statement by the Dutch Human Environment and Transport Inspectorate concerning coronavirus (COVID-19) and air passenger rights and posted on its website at <https://english.ilent.nl/themes/c/coronavirus-covid-19-and-air-passenger-rights--ec261-2004-and-corona-covid-19>.
16. Attached and marked as Exhibit "O" is a copy of the FAQ's: Statement on Vouchers webpage posted on the Agency's website at <https://otc-cta.gc.ca/eng/faqs-statement-vouchers>.
17. Attached and marked as Exhibit "P" is a copy of a Global news article entitled "Canadian Transportation Agency clarifies statement on travel vouchers during COVID-19 pandemic" dated April 24, 2020, and posted on its website at <https://globalnews.ca/news/6861073/cta-travel-voucher-statement/>.

AFFIRMED before me at )  
 City of Ottawa, Ontario )  
 on April 28, 2020 )  
 )  
 )



\_\_\_\_\_  
 Allan Matte (LSUC #41535U)



\_\_\_\_\_  
 Meredith Desnoyers

**Allan Matte, Senior Counsel**  
 Canadian Transportation Agency  
 Legal Services Directorate  
 15 Eddy Street, 19<sup>th</sup> Floor  
 Gatineau, Quebec K1A 0N9  
 Tel: (819) 953-0611 Fax: (819) 953-9269  
 Email: [Allan.Matte@otc-cta.gc.ca](mailto:Allan.Matte@otc-cta.gc.ca)  
 Email: [Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca](mailto:Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca)  
 Counsel for the Respondent, Canadian Transportation Agency

# **Appendix G**

**VIA FAX < 1-819-953-9269> AND EMAIL <ALLAN.MATTE@OTC-CTA.GC.CA>**

April 29, 2020

Canadian Transportation Agency  
**ATTN: Mr. Allan Matte, Senior Counsel**  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Québec K1A 0N9

Dear Mr. Matte,

**RE : Air Passenger Rights v. Canadian Transportation Agency (FCA File No : A-102-20)**

We write to confirm receipt of the Agency's motion record in response. We will proceed with the cross-examination on May 1, 2020 at 1:00PM EST via video-conference, as we have agreed.

Enclosed for service please find a duly completed Direction to Attend listing the documents that we require Ms. Desnoyers to provide for the cross-examination. We request that the Agency provide those documents electronically via email by tomorrow afternoon (April 30, 2020).

We trust that all is in order and we look forward to the cross-examination on May 1, 2020.

Yours truly,  
**EVOLINK LAW GROUP**

  
SIMON LIN  
Barrister & Solicitor

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

– and –

**CANADIAN TRANSPORTATION AGENCY**

Respondent

**DIRECTION TO ATTEND**

TO: Meredith Desnoyers

YOU ARE REQUIRED TO ATTEND A CROSS-EXAMINATION for your affidavit affirmed/sworn on April 28, 2020 on behalf of the Respondent, on **Friday, May 1, 2020 at 1:00 pm (Eastern Time)** via Zoom (connection details already been provided in the letter to the Agency dated April 27, 2020).

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:

1. Printout of the Canadian Transportation Agency's website's daily statistics, showing the number of times the French and English versions of the "Statement on Vouchers" were accessed since its times of publication from March 24, 2020 to April 29, 2020.
2. Copies of all Canadian Transportation Agency (CTA) emails, correspondences, internal notes, and any other documents in respect of the "Statement on Vouchers," including but not limited to its drafting, publication, and/or modifications, and the cease and desist letter in Exhibit "AG" of the Affidavit of Dr. Gábor Lukács, affirmed on April 7, 2020.
3. Any emails, correspondences, internal notes, and any other documents relating to any meetings that the CTA had with any of the following persons in respect of the Statement on Vouchers: Minister of Transport, Clerk of the Privy Council, the Prime Minister, and/or these persons' designate.

TRAVEL EXPENSES for 1 day of attendance is served with this direction, calculated in accordance with Tariff A of the Federal Courts Rules, as follows:

Transportation allowance \$0

Overnight accommodations and meal allowance \$0

TOTAL \$0

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN ENGLISH. If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to Simon Lin (simonlin@evolinklaw.com).

April 29, 2020



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**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**

# **Appendix H**

**VIA FAX < 1-819-953-9269 >**

**VIA EMAIL <ALLAN.MATTE@OTC-CTA.GC.CA >**

April 26, 2020

Canadian Transportation Agency  
**ATTN: Mr. Allan Matte, Senior Counsel**  
15 Eddy Street, 19<sup>th</sup> Floor  
Gatineau, Québec  
K1A 0N9

Dear Mr. Matte,

**RE: Air Passenger Rights v. Canadian Transportation Agency (Federal Court of Appeal File No : A-102-20)**

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We write in response to your e-mail on April 26, 2020 referred to below:

*If you intend to refer to this additional evidence, you will need leave of the Court to file it. If leave is granted and new evidence is filed, both parties should be entitled to make submissions with respect thereto. If you do intend to file this new evidence, I suggest we write to the Court and propose a timetable for your motion, cross examination (if any) on affidavits and then submissions following the receipt of any transcripts.*

The Agency has repeatedly proposed a sur-reply, after the Court has already ordered an expedited schedule. Respectfully, we already stated that there is a court-ordered timetable and the Agency's submissions are to be addressed in the Agency's April 29 response. It is highly unusual for a respondent to be granted a right of sur-reply merely because of cross-examinations of that respondent's affiant. It appears that the Agency is seeking to split its case, despite being granted a generous deadline for serving a responding motion record.

Moreover, as we noted previously, the Agency's request should have been brought to Locke JA's attention when His Lordship was considering the issue of an expedited schedule. Unfortunately, the Agency has failed to do. The Agency cannot "overturn" or delay the court-ordered expedited schedule under the guise of raising other scheduling matters that should have been raised promptly, back then.

With respect to the Agency's request for a timetable for cross-examinations, we are confused by that request. Earlier this week, the parties have already agreed to a timetable. The Agency has stated that they will not examine Dr. Lukács. The Agency also agreed that the Agency's affiant



will be cross-examined on their affidavit on May 1, 2020 at 1:00PM Eastern Time via video-conference.

Regarding the alleged “new evidence”, we trust that you are aware that the rule for motions is that the Court generally does not consider a party’s conduct that occurs *after* the service of a notice of motion (i.e. *post-facto* conduct). It is our client’s position that whatever the Agency did after April 9, 2020 is not relevant to the motion, and inadmissible.

*However*, considering your earlier correspondences and the Agency’s publication one week after Locke JA.’s Order of a new “Frequently Asked Questions” backtracking on its March 25 Statement on Vouchers, we wrote to you on April 21 and 24 out of professional courtesy to bring to your attention that the Agency must properly address their *post facto* conduct, assuming the Agency seeks to rely that as a defense of some sort. Our client’s position on any *post-facto* conduct is stated in the preceding paragraph; they are not to be considered and also inadmissible.

Our April 21, 2020, we brought to your attention the Agency’s *own* e-mails to passengers on April 14 and 20, 2020 regarding the Statement on Vouchers. On April 24, 2020, we brought to the Agency’s attention about a publication that relates to the Agency’s *post-facto* conduct (i.e. the “Frequently Asked Questions”).

The purpose of our correspondences was that if the Agency seeks rely on any *post-facto* conduct that occurred after April 9, 2020, the Agency is under a duty to present an accurate and complete picture to the Court on that *post facto* conduct. The Agency cannot disrupt the court-ordered expedited schedule by selectively including evidence on that *post facto* conduct, thereby forcing the Applicant to seek leave to file an affidavit in reply. Otherwise, there will be never-ending submissions to the Court when a respondent, directly or indirectly, causes new matters to arise.

We trust this adequately addresses any remaining concerns and that the Agency will fully comply with the Court’s order and its duty to present a complete, accurate, and impartial affidavit in response.

Yours truly,  
**EVOLINK LAW GROUP**



SIMON LIN  
Barrister & Solicitor (Ontario/BC)  
Avocat (Québec – Permis temporaire)  
[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)