

February 2021

Withheld Passenger Refunds: A Failure by Design

*Submissions to the House of Commons' Standing
Committee on Transport, Infrastructure and Communities*



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About *Air Passenger Rights*

Air Passenger Rights [APR] is an independent nonprofit organization of volunteers, devoted to empowering travellers through education, advocacy, investigation, and litigation. APR is in a unique position to comment on behalf of the public interest on the impact of the COVID-19 pandemic on air travel:

- **Experience based.** APR’s submissions are based on the expertise and experience accumulated through assisting passengers daily in enforcing their rights.
- **Independence.** APR takes no government or business funding.
- **No business interest.** APR has no business interest in the aviation sector.

APR’s presence on social media includes the [Air Passenger Rights \(Canada\)](#) Facebook group, with **over 38,700 members**, and the [@AirPassRightsCA](#) Twitter feed.

APR was founded and is led by Dr. Gábor Lukács, a Canadian air passenger rights advocate, who volunteers his time and expertise for the benefit of the travelling public.

Gábor Lukács, PhD (President)

Since 2008, Dr. Lukács has filed **more than two dozen successful complaints**¹ with the Canadian Transportation Agency [Agency], challenging the terms, conditions, and practices of air carriers, resulting in orders directing them to amend their conditions of carriage and offer better protection to passengers.

Dr. Lukács’s advocacy in the public interest and his expertise and experience in the area of passenger rights have been recognized by the transportation bar,² the academic community,³ and the judiciary.⁴ Dr. Lukács has appeared before courts across Canada, including the Federal Court of Appeal and the Supreme Court of Canada,⁵ in respect of air passenger rights. He successfully challenged the Agency’s lack of transparency and the reasonableness of the Agency’s decisions. In 2020, the Federal Court of Appeal allowed Dr. Lukács to intervene in the airlines’ challenge to the *Air Passenger Protection Regulations*, noting that he “would defend the interests of airline passengers in a way that the parties cannot.”⁶

In 2013, the Consumers’ Association of Canada awarded Dr. Lukács its Order of Merit for singlehandedly initiating legal action resulting in the revision of Air Canada’s unfair practices regarding overbooking.

¹ See Appendix A.

² Carlos Martins: Aviation Practice Area Review (September 2013), WHO’S WHOLEGAL.

³ [Air Passenger Rights Advocate Dr. Gabor Lukacs lectures at the IASL](#), Institute for Air and Space Law, October 2018.

⁴ *Lukács v. Canada*, 2015 FCA 140 at para. 1; *Lukács v. Canada*, 2015 FCA 269 at para. 43; and *Lukács v. Canada*, 2016 FCA 174 at para. 6.

⁵ *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2.

⁶ Order of the Federal Court of Appeal (Near, J.A.), dated March 3, 2020 in File No. A-311-19.

1. Fundamental Right: Refund for Cancelled Flights

It is settled law that passengers whose flights were cancelled by the airline are entitled to a refund of all amounts paid. A “refund” means return of all monies paid in the original form payment. This principle, coined a “fundamental right,”⁷ is deeply rooted in the common law and provincial and federal legislation.

The fundamental right to a refund does not apply to passengers whose flight did operate, but who nevertheless chose not to travel (“no show”). A “non-refundable ticket” means that if the passenger is a “no show,” the airline may not have to refund their ticket; however, if it is the airline that cancels a flight, then there are no “no show” passengers, and therefore all tickets must be refunded.

General Principles. A key element of consumer contracts is “consideration”: goods or services received by the consumer in exchange for the money the consumer had paid. If a supplier does not deliver for any reason, the supplier must refund the consumer all monies the consumer had paid. A refund of monies paid is separate and apart from compensation for damages caused by the supplier’s failure to deliver: *force majeure* is a defence to a claim for compensation, but it is not a defence for a claim for a refund.

A consumer contract that purports to allow a supplier to keep monies received for goods or services that were not delivered is illusory. Provisions purporting to grant such a broad relief from liability reduce the contract to “a mere declaration of intent.”⁸

Provincial Legislation. Most Canadian provinces have codified these principles in their respective consumer protection statutes, which guarantee consumers the right to cancel contracts and receive a full refund in the event the supplier does not deliver the goods or services the consumer had paid for. British Columbia, Newfoundland and Labrador, and Quebec have such provisions for distance sales contracts, while Ontario has provisions for future performance contracts.⁹ Alberta, Manitoba, Nova Scotia, and Saskatchewan have codified these principles for goods and services purchased using the Internet.¹⁰

These provincial legislation not only reaffirm the norm that suppliers must refund consumers all monies paid for goods or services not delivered, regardless of the reasons for the non-delivery,¹¹ but also provide passengers with an additional layer of protection. Indeed, while airlines are federally regulated, they are nevertheless subject to provincial laws of general applicability.¹²

⁷ *Lukács v. Sunwing Airlines*, [Decision No. 313-C-A-2013](#) at para. 15.

⁸ *Suisse Atlantique Societe d’Armement v. NV Rotterdamsche Kolen Centrale*, [1967] 1 A.C. 361 at 432 (*per* Lord Wilberforce).

⁹ *Business Practices and Consumer Protection Act*, SBC 2004, c. 2, ss. 49(1)(d) and 50; *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, ss. 32-33; *Consumer Protection Act*, CQLR c. P-40.1, ss. 54.9-54.13; and *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A, ss. 26 and 92-96.

¹⁰ *Internet Sales Contract Regulation*, Alta Reg 81/2001, ss. s. 6(2)(b) and 10(1); *Consumer Protection Act*, CCSM c C200, ss. 130(1) and 133(1)(b); *Internet Sales Contract Regulations*, NS Reg 91/2002, ss. 6(c)(ii) and 7 and *Consumer Protection Act*, RSNS 1989, c. 92, s. 21AC(1); and *The Consumer Protection Act*, SS 1996, c C-30.1, ss. 75.61(2)(b) and 75.72(1).

¹¹ The only exception being when the consumer evades delivery.

¹² *Bank of Montreal v. Marcotte*, 2014 SCC 55 at para. 84.

Federal Legislation. Passengers’ fundamental right to a refund had already been established well before the much spoken of *Air Passenger Protection Regulations* [APPR]. The legislative provisions giving effect to this right are found in the *Canada Transportation Act* and the *Air Transportation Regulations*.

Every air carrier operating an air service within, to, and from Canada must establish a “tariff,”¹³ setting out clearly the airlines’ policies with respect to certain enumerated matters, including:

refunds for services purchased but not used, whether in whole or in part, either as a result of the client’s unwillingness or inability to continue or the air carrier’s inability to provide the service for any reason,¹⁴

The tariff operates as the contract of carriage between the air carrier and passengers. The terms and conditions set out in the tariff are legally binding on the air carrier.¹⁵ The terms and conditions are subject to the statutory requirement that they must be just and reasonable.¹⁶

In 2004, some 15 years before the APPR, the Canadian Transportation Agency [Agency] recognized that the aforementioned legislative provisions give rise to a right to a refund for passengers whose flights were cancelled by the airline for any reason.¹⁷ In 2013, the Agency reaffirmed this right, and held that:

[...] it is unreasonable for [the airline] to refuse to refund the fare paid by a passenger because of its cancellation of a flight, even if the cause is an event beyond [the airline’s] control.¹⁸

In subsequent decisions, the Agency reaffirmed this right again, and coined it a “fundamental right.”¹⁹

At the time the APPR were drafted, we expressed serious concerns about the APPR’s silence on passengers’ fundamental right to a refund.²⁰ Regrettably, the Canadian Transportation Agency failed to follow APR’s recommendation to consolidate this right into the APPR, claiming lack of statutory mandate.

The omission of passengers’ fundamental right to a refund from the APPR does not negate that right, because the APPR is not a complete statutory code. The provisions of the *Canada Transportation Act* and the *Air Transportation Regulations* giving rise to passengers’ fundamental right to a refund were not amended or negated by the *Transportation Modernization Act* nor by the APPR, and remain in full force.

Therefore, passengers’ fundamental right to a refund remains the law and part of the parties’ contracts.

¹³ *Canada Transportation Act*, s. 67(1); *Air Transportation Regulations*, SOR/88-58, s. 110(1).

¹⁴ *Air Transportation Regulations*, SOR/88-58, ss. 107(1)(n)(xii) and 122(c)(xii) (emphasis added).

¹⁵ *Canada Transportation Act*, s. 67(3); *Air Transportation Regulations*, SOR/88-58, s. 110(4).

¹⁶ *Canada Transportation Act*, s. 67.2(1); *Air Transportation Regulations*, SOR/88-58, s. 111(1).

¹⁷ *Re: Air Transat*, Decision No. 28-A-2004.

¹⁸ *Lukács v. Porter*, Decision No. 344-C-A-2013 at para. 88 (emphasis added).

¹⁹ *Lukács v. Sunwing Airlines*, Decision No. 313-C-A-2013 at para. 15; and *Lukács v. Porter*, Decision No. 31-C-A-2014 at paras. 33 and 137.

²⁰ *Deficiencies of the Proposed Air Passenger Protection Regulations*, pp. 42-44 (February 2019).

2. Withheld Refunds: Magnitude and Impact

Since March 2020, Canadian air passengers have witnessed an unprecedented assault on their private property and the collapse of consumer protection. Airlines whose revenues were decimated by the pandemic have helped themselves to passengers' money, and pocketed airfares paid in advance without providing any services in return.

Airlines helping themselves to passengers' money to make up for lost income has been a global problem. What sets Canada apart from other western countries is the response of the state authorities. On March 18, 2020, the European Commission issued interpretive guidelines reaffirming passengers' fundamental right to a refund.²¹ On April 3, 2020, the US Department of Transportation issued an enforcement notice, reminding airlines that "passengers should be refunded promptly when their scheduled flights are cancelled or significantly delayed."²² On May 15, 2020, the UK Civil Aviation Authority reminded airlines that "under the law, consumers are entitled to receive a refund for their cancelled flights, despite the challenges the industry is currently facing."²³ In July 2020, the European Commission commenced legal action against 10 of its member states to enforce passengers' fundamental right to a refund.²⁴

In sharp contrast, the Government of Canada took no steps to hold airlines accountable criminally or otherwise for their actions, which may well amount to theft.²⁵ On the contrary, the government has been aiding and abetting the airlines in their efforts to misappropriate passengers' money.

Instead of protecting consumers, the Canadian Transportation Agency [**Agency**] mounted a disinformation campaign on Twitter and on its own website. On March 25, 2020, the Agency published its "Statement on Vouchers" that told the public, without any basis or authority, that airlines do not have to refund cancelled flights, but may provide an I-owe-you instead.

The Agency has been advancing pseudolegal propositions that conflate a "refund" with "compensation for inconvenience." First, the Agency says that an airline can cancel a flight for "reasons outside the carrier's control" and keep passengers' money so long as the ticket was marked "non-refundable." Second, the Agency blames lawmakers for ostensibly tying its hands and taking away its power to order airlines to refund passengers.

The Agency's contentions are devoid of any merit. The *Transportation Modernization Act* imposed additional obligations on airlines to pay "compensation for inconvenience" for flight cancellations that are "within the carrier's control," but it did not alter passengers' fundamental right to a refund.

²¹ [Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19.](#)

²² [Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel](#), US Department of Transportation (April 3, 2020).

²³ ["UK Civil Aviation Authority reviewing airline refunds"](#) (May 15, 2020).

²⁴ ["Coronavirus: EU launches legal action against 10 countries over cancelled flights compensation,"](#) Euronews (July 3, 2020).

²⁵ *Criminal Code*, RSC 1985, c. C-46, s. 322.

The Agency conceded that the “Statement on Vouchers” was not legally binding and did not alter passengers’ rights to a refund only after it was directed to explain itself by the Federal Court of Appeal. Yet, the Agency continues to display an amended version of the “Statement on Vouchers” on its website.

The Agency’s conduct has undermined consumers’ confidence in the Canadian travel industry and the government to respect private property and protect consumer rights. Not only the airlines but also travel agents, credit card issuers, and even travel insurers used the Agency’s statement as an excuse to deprive passengers of refunds for flights the **airlines themselves** cancelled.

The Minister of Transport or the Cabinet could have put an end to the Agency’s and the airlines’ running amok by promptly issuing policy directions under s. 43 of the *Canada Transportation Act*, making an order under s. 47, or issuing a ministerial direction under s. 86.11(2). Instead, Minister Marc Garneau washed his hands, and told the COVI Committee that the Agency “has ruled” on the refunds controversy.²⁶

The Agency’s callous conduct encouraged airlines to upgrade their cashgrab scheme to a full-fledged “bait-and-switch”: Drumming up demand contrary to federal health guidance,²⁷ selling tickets on flights the airlines do not genuinely intend to operate, and then canceling the flights later without any consequences, while keeping passengers’ cash, free and clear. For example, over 80% of the flights scheduled in July-September 2020 were cancelled by the airlines.²⁸

While the number of victims of the airlines withholding refunds owed to passengers is within the airlines’ exclusive knowledge, APR’s conservative estimate is that as of September 30, 2020, **3,870,000 passengers** were affected.²⁹ The refunds controversy has therefore affected a significant portion of consumers.

Canadian airlines have demonstrated economic short-sightedness, and have done a disservice to themselves, to the entire Canadian travel industry, and to the Canadian population by alienating their customers and the public. The harm may well outlive the pandemic.

APR believes that sooner or later the airlines will have to be brought into compliance with the law, including honouring passengers’ fundamental right to a refund, and returning the monies the airlines have misappropriated from the travelling public. The longer this process takes, the greater the long-term economic damage for the sector, damage that is entirely caused by loss of consumer confidence and goodwill.

²⁶ “[...] the Canadian Transportation Agency has ruled on this issue and has ruled that, in the present circumstances and in a non-binding way, it is acceptable for airlines to offer credits for up to two years. In the case of Air Canada, the credit has no expiry date.” – COVI Committee, Evidence (43rd Parl., 1st Sess., No. 013), p. 14 (emphasis added).

²⁷ “Air Canada hires influencers to promote vacation travel even as federal guidelines urge people to stay home” (Globe and Mail, January 5, 2021).

²⁸ Consultation paper on requested temporary adjustments to the Air Passenger Protection Regulations, Annex “A” (APR disputes the accuracy and completeness of the data).

²⁹ This estimate is based on Air Canada reportedly holding \$2.322 billion in advance ticket sales (Air Canada’s Third Quarter 2020 Interim Unaudited Condensed Consolidated Financial Statements and Notes, p. 2.), while having an (over)estimated market share of 60%, and an overestimated average round-trip ticket cost of \$1,000. If Air Canada’s market share is only 50% and the average round trip ticket costs only \$800, then the estimate would be 5,805,000 affected passengers.

3. Captured Regulator: Canadian Transportation Agency

Lawmakers entrusted the The Canadian Transportation Agency [**Agency**] with administering the regulatory scheme created by the *Canada Transportation Act*, including numerous consumer protection provisions. In respect of air travel, the Agency has two main roles: (i) as a quasi-judicial tribunal, it adjudicates consumer disputes between passengers and carriers; and (ii) as the economic regulator, it regulates entrants into the air travel industry through its statutory powers to issue operating licenses or permits to airlines.³⁰

Organizational Structure. The Agency is composed exclusively of its appointed members, appointed by the Governor in Council. Appointed members exercise the powers conferred upon the Agency by its enabling statute.³¹ Appointed members of the Agency are assisted by a roster of civil service staff, who are supervised directly or indirectly by the appointed members.³² Civil service staff are not appointed members, and have no authority act on the Agency’s behalf. It is the Agency’s appointed members who are ultimately responsible for the Agency’s actions and the work performed by the civil service staff.

Code of Conduct for the Agency’s Members. As a quasi-judicial body, the Agency’s appointed members are held to a high standard of professional and ethical conduct, akin to judicial members of a court. The Agency’s *Code of Conduct* further reinforces the standard statutory and common law rules with specific safeguards of the members’ independence, and prohibitions against outside influence and conduct that might create an apprehension of bias:

(39) Members shall not communicate with political actors or officials of other federal departments and agencies, provincial or foreign governments, or international organizations regarding a matter that is, was, or could be before the Agency.

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.³³

The Agency’s “Statement on Vouchers” violates the *Code of Conduct*, because it is a public expression of an opinion on a matter that “could be before the Agency” and also on “potential cases”; indeed, on the face of the “Statement on Vouchers” the Agency contemplates that it would receive consumer complaints about airlines withholding refunds owed to passengers.

The Agency initially claimed that there was no evidence that its appointed members approved, supported, or otherwise endorsed the “Statement on Vouchers;”³⁴ however, the opposite is the truth. On October 5, 2020, a Transport Canada policy adviser confirmed to MP Nathaniel Erskine-Smith that the “Statement on

³⁰ *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at paras. 50-52.

³¹ *Canada Transportation Act*, ss. 7(2) and 16.

³² *Canada Transportation Act*, s. 19.

³³ *Code of Conduct for Members of the Agency*, paras. 39 and 40 (emphasis added).

³⁴ *Air Passengers Rights v. Canada (Transportation Agency)*, 2020 FCA 92 at para. 35.

Vouchers” was issued in the name of the Agency, with the approval of the Agency’s members.³⁵ On December 1, 2020, Mr. Scott Streiner, the Agency’s Chairperson, testified before this Committee. In response to a question about Mr. Streiner’s involvement with the Statement on Vouchers, he replied, “as head of the organization, I am always involved, of course.”³⁶ Mr. Streiner stated that the Statement on Vouchers was also “reviewed by senior members of the organization.”³⁷ Redacted Agency records disclosed on December 23, 2020 under the *Access to Information Act* [ATIA] strongly support an inference that at least the chairperson and vice-chairperson approved the “Statement on Vouchers” prior to its issuance.

APR is challenging the “Statement on Vouchers” before the Federal Court of Appeal on the grounds that, among other things, it gives rise to a reasonable apprehension of bias. Two justices of that court have already confirmed that this ground presents a *serious issue to be tried* on its merits.³⁸

The Agency’s “Statement on Vouchers” also raises concerns and runs afoul of the *Code of Conduct* in that the Agency was not acting independently, but had input from the airlines and Transport Canada during the drafting process. On March 11, 2020, an individual from WestJet’s “Government Relations and Regulatory Affairs” team sent a lengthy email to Ms. Marcia Jones, the Agency’s Chief Strategy Officer, with the subject line “by way of example,” which was circulated within the Agency as part of the drafting of the Statement on Vouchers.³⁹ On March 12, 2020, Mr. George Petsikas, Air Transat’s Senior Director of Government and Industry Affairs, emailed Ms. Jones with the subject line “APPR Guidelines - COVID-19,” thanked her for a verbal discussion “re the above-mentioned matter” earlier that morning, and urged the Agency to issue guidance to assist Air Transat in dealing with passenger refunds and protecting employment levels. On the morning of March 22, 2020, the Agency held an “EC” (Executive Committee) meeting. At 2:22pm on the same day, Transport Canada’s manager for national air services policy commenced an email chain with the Agency using the subject line “CTA announcement tomorrow,” which continued until March 24, 2020.⁴⁰ The “Statement on Vouchers” was issued on March 25, 2020.

APR believes that the Agency’s drafting, issuance, and wide dissemination of the misleading “Statement on Vouchers” create the perception and support the conclusion that the Agency has abdicated its consumer protection mandate, given up even the appearance of independence and impartiality, and instead has become beholden to the industry it is supposed to regulate, doing its bidding.

APR recommends that the Committee not only ask the Agency to produce all records in respect of the “Statement on Vouchers,” including but not limited to emails, meeting agendas, meeting minutes, notes, draft documents, and memos, but more broadly inquire into its cozy relationship with the airlines.

³⁵ Email exchange between Ms. Blake Oliver and MP Nathaniel Erskine-Smith, dated October 5, 2020.

³⁶ [TRAN Committee, Evidence \(43rd Parl., 2nd Sess., No. 008\)](#), p. 11.

³⁷ *Ibid.*

³⁸ *Air Passengers Rights v. Canada (Transportation Agency)*, 2020 FCA 92 at para. 17; and *Air Passengers Rights v. Canada (Transportation Agency)*, 2020 FCA 155 at para. 33.

³⁹ In the copy disclosed under the ATIA, the Agency redacted the entire content of that email save for one line.

⁴⁰ This heavily redacted email chain was disclosed by the Agency under the ATIA, as part of a response to a request for records relating to the drafting of the Statement on Vouchers.

4. Airline Bankruptcy: Reality Check

The possibility of bankruptcy of Canadian airlines has been regularly floated in the media as an excuse for withholding refunds owed to passengers. It has also been argued that in the event of such bankruptcy, passengers would be left with nothing as unsecured creditors. APR believes these concerns are ill-founded.

The publicly available financial data suggest that Canadian airlines do have cash reserves, and are nowhere near insolvency.⁴¹

Withholding refunds owed to passengers does not assist airlines to avert insolvency or escape being petitioned into bankruptcy. If an airline is unable to or fails to meet its financial obligations, including its obligations to refund passengers, then the airline is insolvent in the eyes of the law.⁴²

In the unlikely event that a Canadian airline would become insolvent, it would most likely apply for and be granted creditor protection under the *CCAA*⁴³ to allow it to restructure, while maximizing returns for creditors and preserving both jobs and the airline's value as a functioning business. Unlike the current chaotic situation, a *CCAA* proceeding is carried out under the supervision of a superior court justice, who ensures that all creditors, including passengers, are treated fairly. In many cases, this would be an improvement over the *status quo*.

It might be easier for passengers to get their refunds in the event of the creditor protection or a bankruptcy. In many cases, monies paid in advance for services to be performed in the future must be held in trust, and the supplier (airline) is deemed to be the trustee.⁴⁴ A creditor protection or a bankruptcy could ensure that the funds held in trust are promptly returned to their rightful owners (passengers). Furthermore, if the airline helped itself to the trust funds or if it obtained funds by false pretenses,⁴⁵ then debts and liabilities arising from these acts would survive the creditor protection or a bankruptcy.⁴⁶

While APR hopes that no airline will have to be put through a *CCAA* proceeding or be petitioned into bankruptcy to enforce compliance with its obligations to passengers, such court-supervised proceedings would likely bring much-needed transparency into the airlines' finances and a rapid closure to the refunds controversy.

⁴¹ [Air Canada's Third Quarter 2020 Interim Unaudited Condensed Consolidated Financial Statements and Notes](#), p. 2.

⁴² *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 2.

⁴³ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

⁴⁴ *Consumer Protection Act*, CQLR c P-40.1, s. 256.

⁴⁵ Such as misrepresenting its intent to operate flights that were never meant to take off.

⁴⁶ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, ss. 19(2)(c) and 19(2)(d); and *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, ss. 178(1)(d) and 178(1)(e).

5. Path to Recovery: Restoring Consumer Confidence

Consumer confidence and goodwill is the lifeblood for every airline and the travel industry as a whole, which depends on consumers paying in advance for services to be rendered at a later date. Consumers will pay for services in advance only if they have confidence that they will receive the services they had paid for, or, if the services are not provided, a full refund of their hard-earned money. In the absence of such assurances, consumers will vote with their wallets: travel less, or whenever possible, take their business to airlines based in jurisdictions that do offer such guarantees, such as the US or the EU.

In the past eleven months, Canadian airlines and their travel industry partners have squandered their most precious assets: consumer confidence and goodwill. The Government of Canada's actions and omissions, and in particular those of the Canadian Transportation Agency, have compounded the loss by eroding consumers' confidence in the government's willingness to protect private property and consumer rights.

APR is of the view that this loss of confidence will slow the entire sector's recovery. To mitigate the long-term economic harm, it is therefore imperative to enact measures that guarantee that money the public pays in advance to airlines would never be misappropriated again. In addition, the serious shortcomings of enforcement of passengers' rights and the regulatory capture of the Canadian Transportation Agency by the industry it is supposed to regulate must also be remedied.

APR therefore recommends the following measures:

1. Passing a declaratory legislation, such as Bill C-249, to reaffirm passengers' right to a refund, in the original form of payment, for cancelled flights—regardless of the reason for the cancellation.

Legislation by Parliament is necessary to protect this fundamental right, because otherwise the Canadian Transportation Agency or Cabinet could attempt to negate these rights at their whim by issuing regulatory exemptions, as we have recently seen with respect to certain provisions of the *Air Passenger Protection Regulations*.⁴⁷

2. Passing a legislation similar to [s. 256 of the Quebec Consumer Protection Act](#), requiring all airlines to hold all advance ticket sales in a trust account.

3. Studying the regulatory capture of the Canadian Transportation Agency by the airline industry.

The Canadian Transportation Agency's conduct during the pandemic, and the issuance of the controversial "Statement on Vouchers" in particular, confirm that the Agency has lost its independence, and its consumer protection activities have been compromised. This must be remedied.

Strict and consistent enforcement of passenger rights, while unpopular with airlines in the short-term, is vital for the Canadian travel industry's long-term prosperity.

⁴⁷ See [Determination No. A-2020-42](#) and [Determination No. A-2020-47](#).

Appendix

A. Final Decisions Arising from Dr. Lukács's Successful Complaints (Highlights)

1. *Lukács v. Air Canada*, Decision No. 208-C-A-2009;
2. *Lukács v. WestJet*, Decision No. 313-C-A-2010;
3. *Lukács v. WestJet*, Decision No. 477-C-A-2010
(leave to appeal denied, Federal Court of Appeal File No.: 10-A-41);
4. *Lukács v. WestJet*, Decision No. 483-C-A-2010
(leave to appeal denied, Federal Court of Appeal File No.: 10-A-42);
5. *Lukács v. Air Canada*, Decision No. 291-C-A-2011;
6. *Lukács v. WestJet*, Decision No. 418-C-A-2011;
7. *Lukács v. United Airlines*, Decision No. 182-C-A-2012;
8. *Lukács v. Air Canada*, Decision No. 250-C-A-2012;
9. *Lukács v. Air Canada*, Decision No. 251-C-A-2012;
10. *Lukács v. Air Transat*, Decision No. 248-C-A-2012;
11. *Lukács v. WestJet*, Decision No. 249-C-A-2012;
12. *Lukács v. WestJet*, Decision No. 252-C-A-2012;
13. *Lukács v. United Airlines*, Decision No. 467-C-A-2012;
14. *Lukács v. Porter Airlines*, Decision No. 16-C-A-2013;
15. *Lukács v. Air Canada*, Decision No. 204-C-A-2013;
16. *Lukács v. WestJet*, Decision No. 227-C-A-2013;
17. *Lukács v. Sunwing Airlines*, Decision No. 249-C-A-2013;
18. *Lukács v. Sunwing Airlines*, Decision No. 313-C-A-2013;
19. *Lukács v. Air Transat*, Decision No. 327-C-A-2013;
20. *Lukács v. Air Canada*, Decision No. 342-C-A-2013;
21. *Lukács v. Porter Airlines*, Decision No. 344-C-A-2013;
22. *Lukács v. British Airways*, Decision No. 10-C-A-2014;
23. *Lukács v. Porter Airlines*, Decision No. 31-C-A-2014;
24. *Lukács v. Porter Airlines*, Decision No. 249-C-A-2014;
25. *Lukács v. WestJet*, Decision No. 420-C-A-2014; and
26. *Lukács v. British Airways*, Decision No. 49-C-A-2016.