

# AVIATION – NEW REGULATIONS REGARDING PASSENGER RIGHTS IN CANADA

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On May 24, 2019, after many months of consultations with various stakeholders, the Canadian Transportation Agency (“**CTA**”) formally adopted the *Air Passenger Protection Regulations* (the “**APPR**”). The APPR will substantially increase the obligations of airlines flying to, from and within Canada towards passengers, in particular, in cases of tarmac delays, delayed or cancelled flights, as well as in situations of denied boarding.

The APPR follows the enactment by Canadian Parliament in 2018 of the *Transportation Modernization Act*<sup>[1]</sup> and the amended *Canada Transportation Act*<sup>[2]</sup>.

Although different from its European counterpart in many respects, the APPR largely follows the general principles set out in the EU Flight Compensation Regulation (EC 261/2004),<sup>[3]</sup> which has been in place in Europe for almost 15 years.

Once it is in force, the APPR will apply to all flights to, from and within Canada, including connecting flights and charter flights where seats are purchased for resale to the public.

## Coming Into Force In Stages

The APPR will come into effect in two stages. Firstly, on July 15, 2019, the new obligations concerning denied boarding (including compensation), tarmac delays and baggage will come into force. Secondly, the obligations regarding delayed and cancelled flights, and the assignment of seats to children under 14 will come into effect on December 15, 2019.

## Tarmac Delays

Under the APPR, when a flight is delayed on the tarmac, whether prior to take-off or after landing, the airline will need to provide food and beverages, functioning lavatories, proper ventilation, cooling or heating of the aircraft and means to communicate with people outside the aircraft (such as free Wi-Fi).

When the tarmac delay exceeds three hours, the carrier will need to allow passengers to disembark, except for reasons of safety, security, customs or air traffic control. Note that this obligation does not apply when take-off

is likely to occur within three hours and 45 minutes after the doors of the aircraft are closed, or after the flight has landed and the carrier is able to continue to provide passengers the requisite services and conditions.

### **Flights Cancelled or Delayed**

The following will apply to flights that are cancelled or delayed:

- in situations beyond the control of the carriers, such as war or political instability, dangerous meteorological conditions, security threats, medical emergencies, airport operational issues, labour disputes within the carrier, or manufacturing defects, carriers will only be responsible for communicating the information to affected passengers and ensuring completion of their itineraries;
- in situations within the control of the carriers, but required for safety purposes, such as mechanical problems, or safety decisions taken by the pilot, carriers will also need to communicate relevant information to passengers and complete their itineraries, but they will also be obliged to provide food, drinks, means of communication and accommodation;
- in situations within the control of the carriers such as overbookings or scheduled maintenance of an aircraft, carriers will be bound to provide standard compensation in addition to the previously noted obligations.

The amount of standard compensation will vary between \$125 and \$1,000, depending on the type of event, the size of the carrier and the length of the delay incurred by the passenger to arrive at destination. Compensation cannot be adjusted to reflect the actual price paid for the ticket or the actual damages suffered.

Passengers will have one year following the date of the flight to file a request for compensation.

In principle, compensation provided to passengers should be paid in the form of money. However, alternative forms of compensation such as vouchers or rebates might be offered, if the alternative form of compensation is of higher value than the required monetary compensation, if it does not expire, and if passengers have a choice between the monetary and the alternative form of compensation.

### **Denied Boarding**

In cases of boarding denials, the APPR requires that carriers ask all passengers if they are willing to give up their seats. If the number of volunteers is not sufficient, the APPR provides instructions on how to determine who should be denied boarding. Importantly, boarding cannot be denied to a passenger who has already boarded the aircraft, unless it is required for security purposes.

All obligations relating to cancelled or delayed flights, are also applicable in cases of denied boarding. However, the scale of compensation will vary between \$900 and \$2,400. Moreover, when compensation is owing

pursuant to denied boarding, it must be paid to the passenger even in the absence of a formal claim from the passenger, and no later than 48 hours after the boarding denial.

## **Other Obligations**

### ***Transport of children under the age of 5 years***

Carriers will not be allowed to transport children under five years old unless they are accompanied by a parent or a person who is at least 16 years old.

### ***Transport and assignment of seats to children under the age of 14 years***

Carriers will be required to facilitate the seating of children under the age of 14 close to their parents, guardians or tutors. The proximity required will depend on the age of the child.

When such assignments are not possible, passengers should be asked to volunteer to change seats. However, if no passenger volunteers to change seats, no additional instructions are provided by the Regulations.

## **Baggage**

Under the Montreal Convention<sup>[4]</sup>, airlines operating international flights can be held liable for lost and damaged baggage for up to approximately \$2,100.

Under the APPR, this protection will apply to internal flights as well. Moreover, in all cases of lost or damaged baggage, carriers will be required to reimburse passengers for any fees paid for carrying such baggage.

## **Communications and Notices**

The new obligations under the APPR will have to be disclosed by carriers as part of their terms and conditions, and made available on all digital platforms used to sell tickets and on all itinerary documents issued to passengers.

Carriers will also be required to display notices on these same platforms and itinerary documents, as well as at check-in counters and boarding gates.

Finally, tariffs filed with CTA will also have to be amended.

## **Complaints**

Only a person adversely affected by a failure to apply the requirements of the APPR may file a complaint with CTA. If this complaint is related to a flight that has been cancelled or delayed, or to a boarding denial, then CTA may apply its decision, or part thereof, to all or some passengers of the same flight.

## Enforcement

Failing to comply with the APPR could lead to **penalties of up to \$5,000 for individuals and \$25,000 for corporations.**

By Éric Vallières, Glenn Grenier and Frédérique Gay

[1] *Transportation Modernization Act*, SC 2018, c 10.

[2] *Canada Transportation Act*, SC 1996, c 10.

[3] *Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.*

[4] *Convention for the Unification of Certain Rules for International Carriage by Air*, 12 October 1929.

## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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