

# CHANGE IS IN THE AIR: GOVERNMENT OF CANADA PROPOSING CHANGES TO AIR PASSENGER PROTECTION REGULATIONS

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On March 14, 2023, Minister of Transport Omar Alghabra [announced](#) \$75.9 million in additional funding for the Canadian Transportation Agency (“**CTA**”) over the next three years to help clear the backlog of complaints brought by air passengers who experienced travel disruptions. The [2023 federal budget](#), announced on March 28, 2023, proposed to amend the *Canada Transportation Act* [\[1\]](#) to strengthen obligations on airlines to compensate travelers for disruptions, expedite the complaint adjudication process and give the Minister of Transport authority to impose a charge on airlines to help foot the bill of resolving passenger grievances. Alongside the monetary pledge, the federal government announced its intention to make significant reforms to strengthen the *Air Passenger Protection Regulations* (“**APPR**”). While we await the details of the reform package, any changes to the APPR are likely to result in increased compliance measures for airlines, which could translate into higher fares for air travel for Canadians.

## **Background: Air Passenger Rights under the APPR**

The CTA adopted the APPR in May 2019, substantially enhancing the obligations on all airlines operating flights to, from and within Canada, including non-Canadian carriers. Although Canada’s passenger rights framework has been in place for nearly four years, Canada’s experience with this framework has been limited given the low volume of flying during the COVID-19 pandemic.

The regulatory framework, similar to the European Union’s Flight Compensation Regulation (EC 261/2004) (the “**EU Regulation**”), imposes obligations on airlines to compensate passengers in cases of delayed or cancelled flights, tarmac delays, denied boarding, and lost or damaged baggage.

The regulations differentiate between three types of disruptions: (1) situations that are purely within the airline’s control, such as overbooking; (2) situations that are within the airline’s control but required for safety purposes, such as mechanical malfunctions that went undetected during scheduled maintenance; and (3) situations that are outside of the airline’s control, such as weather-related events. Where passengers experience disruptions within the airline’s control and not required for safety, they can claim compensation ranging from \$125 to \$2,400, depending on the size of the airline and the length and type of disruption experienced.

Additional refund regulations amending the APPR [came into effect](#) in September 2022, requiring airlines to provide passengers with a refund when there is a flight cancellation or lengthy delay due to a situation outside of the airline's control and a rebooking cannot be provided within 48 hours.

Airlines [failing to comply](#) with the regulations may be subject to administrative penalties of up to \$25,000. In February 2023, the CTA announced penalties against two carriers resulting from flight disruptions, bringing the total number of carriers [tagged with penalties](#) to 13 since January 2022.

### **More Changes Are Coming**

The budget announcement signaled the Canadian government's willingness to move ahead with changes to the APPR. Consumer rights advocates argue that the Canadian government should amend the APPR to align more closely with the structure and content of the EU Regulation. While the APPR differentiates between situations that are within the airline's control, within the airline's control but required for safety and those outside the airline's control, the EU Regulation does not. Instead, the EU Regulation excludes compensation only where there are extraordinary situations that "could not have been avoided even if all reasonable measures had been taken". In a sense, this makes the EU Regulation simpler to apply. Moreover, carriers bear the burden of proving that extraordinary circumstances existed, arguably simplifying the complaint process for passengers.

Under the EU Regulation, air passengers have the option of being reimbursed or re-routed upfront, regardless of the reason for the travel disruption or whether rebooking can be provided in a timely manner. Alternatively, as the APPR currently stands, in situations outside of the carrier's control, no refund option is available in case of boarding denial and, in case of delay and cancellation, a refund or re-routing is only available where a passenger cannot be rebooked within 48 hours.

The EU Regulation also provides a broader definition of denied boarding, encompassing all refusals to carry passengers except where there are reasonable grounds to deny boarding, such as reasons of health, safety or security, or inadequate travel documentation.

In addition to changing the travel disruption categorization in the APPR to align with the EU Regulation, some consumer rights advocates have proposed automatic compensation for all passengers on for flights affected by travel disruptions, replacing the current complaints process driven by individual passengers. They have also supported more active regulatory monitoring by the CTA and enhanced administrative monetary penalties for violations of the APPR.

### **Reform Carries Risk**

While smoother air travel is a common goal for passengers and regulatory agencies, adopting a European-style

model may come at a significant cost to Canadians. Placing additional regulatory obligations on airlines to compensate, refund and/or rebook customers during a fragile recovery period can jeopardize the normalization of flight operations in Canada. More immediately, the added burdens would be expected to result in increased prices for consumers as airlines attempt to recoup the costs of enhanced APPR obligations upfront. If carriers cannot make scheduling changes for safety reasons without compensating passengers, it is possible that carriers might choose to bear the safety risk and take off anyway, which creates other systemic risk concerns for passengers, crew and the industry.

At present, airlines are the only stakeholder in the national transportation network directly accountable to compensate consumers under the APPR. However, the national aviation network is a complex ecosystem and, any combination of participants – including the airport authorities, customs officials, NAV Canada, baggage handling operations, and the Canada Border Services Agency – can contribute to travel disruptions.

Due to the potential cost implications arising from an enhanced APPR, any additional regulatory burden would reduce the incentive for carriers to offer service to smaller centres and northern communities, which could reduce connectivity in some Canadian regions. Accordingly, other models (such as mandatory insurance) might prove to be more effective in balancing the interests of consumers, airlines and the government, while reducing the regulatory burden and backlog.

We will continue to monitor developments as they unfold and provide regular updates. For more information on possible reforms to the APPR and your other aviation-related needs, please reach out to a member of McMillan's [Aviation group](#) or your usual McMillan contact.

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[1] Canada Transportation Act, S.C. 1996, c. 10.

### **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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