

Presentation to the Canadian Transportation Agency Air Passenger Protection Regulations Consultations

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On behalf of the Alternative Dispute Resolution Institute of Manitoba by:

Andrew Wychnenka, Chartered Mediator
Informal Conflict Management System Advisor/Coordinator
Andrew.wychnenka@cbsa.gc.ca
204-983-8877

Tripat Pachu, B.A (Adv.), HRM (Hons)
Mediator and Labour Relations Officer
City of Winnipeg, Corporate Support
tripat18@gmail.com
204-333-2602



Introduction

Thank you for taking the time to hear our thoughts and input on some relevant questions you have posed pertaining to the new air passenger protection regulations. Specifically, we will be speaking to the 'Complaints and Enforcement' discussion.

We are here today to represent the Alternative Dispute Resolution Institute of Manitoba (ADRIM). ADRIM is a volunteer driven, non-profit, non-governmental organization which provides the public with access to Alternative Dispute Resolution or what we also refer to as Appropriate Dispute Resolution. Appropriate Dispute Resolution processes seek to balance the needs for fair, timely, and affordable outcomes to disputes where the relationships between the parties are equally as important as the outcomes. These processes primarily include mediation, facilitation, and arbitration.

We assist the public, businesses, non-profit communities and government bodies at all levels to understand the value of incorporating ADR processes into their dispute resolution mechanisms; and provide guidance on design as they implement and administer alternative dispute resolution strategies, programs and processes. We also act as a regional centre of ADR information, education and research.

Tripat is an ADRIM Board Executive and I am here on behalf of both ADRIM and the ADR Institute of Canada's (ADRIC) Government Relations Committees. ADRIM is a provincial affiliate of our national institute ADR Institute of Canada (ADRIC).

The ADR Institute of Canada (ADRIC) is Canada's **leading** alternative dispute resolution organization, comprised of Alternative Dispute Resolution (ADR) professionals and corporate partners promoting or using ADR in Canada.

The ADRIC Board is made up of representatives from each of the seven corporate member organizations and seven regional affiliates to embrace the balanced perspective of ADR users and practitioners.

ADRIC's Affiliates are: ADRBC (BC), ADRIA (AB), ADRSK (SK), ADRIO (ON), IMAQ (QC) and ADRAI (Atlantic Provinces).

ADRIC offers the public access to connect with more than 2,000 Conflict Resolution professionals through "ADR Connect", Canada's largest database of Conflict Resolution professionals, including accredited Arbitrators, Mediators, ADR professionals, major corporations and law firms dedicated to promoting creative resolution of conflicts and disputes.

ADRIM is the newest ADRIC affiliate representing approximately 100 ADR professionals in Manitoba.

We believe that ADR practices build a better and healthier province.

Our purpose: ADRIM exists to transform dispute resolution culture in Manitoba by...

- Promoting ADR
- Sharing knowledge
- Providing training
- Credentialing
- Being “the hub” for ADR in Manitoba or connecting the ADR Community to each other and their clients in Manitoba

Selected examples of ADRIM collaboration with industry and government include:

- Collaborative Practice Manitoba
- The Province of Manitoba
- Manitoba Bar Association
- The University of Manitoba
- The City of Winnipeg
- Certified Human Resources Professionals (CHPR) Manitoba

Selected examples of ADRIC collaboration with industry and government include:

- Federal Procurement Ombudsman Roster
- Health Canada
- Canadian Transportation Association (CTA)
- Language Rights Support Program (LRSP)
- National Energy Board
- AMEX – Arbitration for Cardholder Disagreements
- Industry Canada
- Department of National Defence/Canadian Forces
- Participation in Condominium Act Review (Ontario)
- Community Care Access Centres (Ontario)

Thank you for allowing us the opportunity to respond to your consultation paper on “Air Passenger Protection Regulations.” Item #13: ‘Complaints and Enforcement’

I am Andrew Wychnenka. I am a Chartered Mediator and work with the public service of the federal government as an internal conflict management specialist.

Also in attendance is Tripat Pachu. Tripat works at City Hall as a Labour Relations Officer and Mediator. She is currently acting in the role of Manager of Human Resources. Several of our regional affiliates have met with you across Canada in partnership with ADRIC who will provide a written response to CTA before the August 28, 2018 deadline.

ADRIIM's response to the specific questions posed in the APPR Discussion Paper

1. What type of guidance would be helpful for passengers on how to make a complaint to the CTA relating to the new air passenger protection regulations?

- The primary considerations in providing guidance on the regulations is to make sure the information is readily available, easy to access and easy to understand. Travelers are from many different backgrounds, use diverse language and have varying social and economic status that impact communication – both access to information and following protocol and/or process. It's paramount that guidance be provided through multiple mediums and at multiple intersections.
- A combination of readily understandable communication tools such as print and on-line brochures (multi language) to be readily available throughout multiple intersections for the traveler. For example, the CTA may mandate that all airline carriers post information on the CTA on their websites, on ticket information upon purchase, on in-flight printed material and entertainment systems to name a few.
- Development of a "Solution Explorer" Tool such as used by the Civil Resolution Tribunal in BC (<https://civilresolutionbc.ca/solution-explorer-growing/>) where the CTA's subject matter expert knowledge is incorporated into guided pathways, legal information, and self-help tools.
- The ability to "talk to someone" is often extremely important for someone who is frustrated and is looking for options. The CTA should consider incorporating a call center that is 24/7 or has extended hours and can cover all time zones in Canada beyond the regular working hours.
- Enhanced use of your existing materials and increased use of video

As examples of your own materials -

Comparison of dispute resolution services

Facilitation for disputes about federal transportation

Resolution of Disputes through Mediation - A Resource Tool

Final Offer Arbitration: A Resource Tool

Annotated Dispute Adjudication Rules

We will not address the substantive elements of the new regulations, but rather the processes that will be used to resolve the complaints.

ADRIC's interest is to encourage the CTA to consider incorporating informal dispute mechanisms into the ADR processes of the air passenger protection regulation.

We value the institutional expertise of the CTA's Dispute Resolution Branch and our recommendations essentially suggest a further extension of that expertise and progressive approach into complaint/conflict management and alternative dispute resolution processes in regard to the Air Passenger Protection Regulations. We recommend the CTA integrate progressive ADR practices and technology to assist in reaching the goals of effectively and efficiently meeting the needs of both air carriers and passengers in assisting in resolving complaints. "Technology is not only changing the way we communicate; it is altering the way we disagree and the way we resolve our disputes. Technology is also changing people's expectations about how disputes should be resolved." (Colin Rule, Technology and the Future of Dispute Resolution in Dispute Resolution Magazine. Winter 2015 pg.4)

We note that Mr. Scott Streiner, CTA Chair and CEO commented in an article published in the Hill Times in October 2017, and in recent news coverage about the significant increase in air travel complaints.

Implementing and promoting the Air Passenger Bill of Rights through various communications formats will increase the volume of ADR use and public access to dispute resolution. This increased volume of complaints will require mechanisms with corresponding efficiency and innovation in order to provide inclusive access and responsiveness to diverse users.

Failure to include efficient, effective and transparent processes will only serve to increase the level of frustration for disputing parties and at the same time lower consumer and stakeholder satisfaction with the process, outcomes, and the CTA itself.

As an example, the New Code of Civil Procedure in Quebec requires the parties to "consider" ADR before referring their dispute to the courts, oblige the parties to act in good faith, to be transparent with each other and to cooperate actively in seeking a solution to their dispute.

The Agency could entrench the above principles into the Air Passenger Protection Regulations to automatically submit complaints to ADR methods, including, but not limited to mediation. By adopting such principles, the Agency would align itself with the current best practices to foster ADR and ensure full and active participation in the various ADR methods.

It is important a distinction is made between “mandatory” mediation and an “automatic” referral to mediation. In some jurisdictions, it has become the practice to make an attempt at mediation a requirement before one can proceed with a rights-based judicial process. This practice is actually contrary to one of the basic principles of mediation: that it is voluntary for all parties to participate in.

ADRIM recommends that the CTA refer all complaints through ADR as a default step in the process. However, parties should have the option to voluntarily withdraw should they wish to proceed with a different approach. No one should be forced to participate in a mediation process.

The current *Public Service Employment Act* (PSEA) empowered the Federal Public Sector Labour Relations and Employment Board (Board) to provide mediation services at any stage of a proceeding in order to resolve the complaint. In addition to the mediation provision of the PSEA, the Board has also adopted the Public Service Staffing Complaints Regulations (SOR/2006-6) wherein the Board is automatically required to schedule a mediation for a complaint that is filed with it – if a party does not want to mediate, it must inform the Board within a prescribed timeframe.

The Board's approach to complaints strongly signal its expectation for parties in dispute to engage in an ADR (i.e. mediation) process prior to accessing the more formal dispute resolution mechanisms.

Bill C-78, the proposed amendments to the *Divorce Act* makes specific reference to family dispute resolution processes including negotiation, mediation and collaborative law.

In Ontario, recent reforms to the *Condominium Act, 1998* has not only reinforced the use of mediation and arbitration as dispute resolution methods already contained in the 1998 act, one of the few examples of legislation in Ontario to contains such provisions, but added the Condominium Authority Tribunal (CAT), which is a fully online tribunal. It is generally accepted that the Condominium Act is primarily consumer protection legislation.

The Civil Resolution Tribunal (CRT) in British Columbia is another example of reform using technology and providing further options to consumers and other disputants. The CRT is expanding its jurisdiction from strata (condo) disputes to small claims court matters and minor automobile insurance claims (2019).

Also to note, when a complaint is received by the Human Rights Commission, they will send the Respondent with an offer and opportunity to mediate, the Respondent in turn is provided with a specified timeframe to accept mediation services or not. Again, this supports the voluntary aspect of mediation for both parties. If opted for by both Complainant and Respondent, the process is executed in good faith and with a qualified 3rd party facilitating the process.

Recommendations to the CTA focus on Section 13 in the Consultation Paper – ‘Complaints and Enforcement’.

Recommendations:

- There should be a clear avenue of recourse for the air carrier and the air passenger and any other stakeholders to engage in managed settlement discussions when they do not agree on the interpretation of the regulations;
- ADRIM suggests that mediation would be the most effective first step in settling such disputes and should be the first avenue offered to resolution in all cases;
- Early and automatic referral to mediation will result in effective and cost-efficient resolution in a high percentage of these disputes;
- The Passenger Protection Regulations will not be able to neatly cover all circumstances (e.g. due to unforeseen circumstances like changes in technology) in the complaints that are filed. Mediation has the flexibility to provide a process for settling these unique situations that may avoid a more lengthy and formal enforcement and appeal processes;
- Online dispute resolution (ODR) including mediation by telephone and video conferencing and more sophisticated software incorporating machine learning and artificial intelligence can be very effective for dealing with high volume/high emotion disputes. ADRIC has recently set up a Task Force on ODR and is willing to provide guidance on its use;
- Those matters not resolved in mediation should be referred to a final and binding arbitration process on a timely basis;
- Consideration should be given to the inclusion of an innovative and industry focused mediation/arbitration (med/arb) process that could provide greater satisfaction and enhance efficiencies. ADRIC is in the forefront of the development of national standards and rules for Med-Arb;
- Entrenching ADR process(es) in the regulations would provide clarity to air passengers, carriers and other parties, rather than referring to other Agency legislation, rules or documents which can be confusing even to the most informed parties;

- At a minimum, the ADR processes should be described in a stand-alone document that is referred to by the regulations;
- The entrenched ADR processes could include mediation, a fast arbitration process, and a med-arb process;
- Entrenchment of these processes in the regulations would still allow the Agency to refine these processes to take advantage of and maximize its legislated transportation enforcement expertise.

2. Should all of the new obligations established by the air passenger protection regulations also be enforceable through Monetary Administrative Penalties (AMP)s? If not, please provide a justification.

Some of the key goals of the CTA is to provide consistency of practice, clear messaging, and fair and equitable processes. AMPs are punitive measures that may be applied upon confirmation that a violation has indeed occurred. The CTA may want to consider a timeframe to allow air carriers to implement any changes as a result of the new standards and obligations arising as a result of the new air passenger protection regulations.

Clear communication about expectations, protocols and a period of Q&A will benefit both parties so that clear messaging is delivered and understood. In the interim, while communication and possibly training is being delivered to cover all aspects of the new standards, the CTA may want to consider a grace period to allow for any infractions be communicated and relayed to the carrier. Corrective measures will take place, punitive AMPs would not, during the grace period. This is a time of adjustment and communication to be delivered clearly and consistently to a vast number of staff and personnel.

The changes that are being instilled by the CTA may require a change of long standing/ past practices that need to be shared with front-line, operational and administrative personnel. Communication should take place verbally at staff meetings, by mass email and/or organization wide via the intranet for example. Sufficient and reasonable time would be provided to allow for clear messaging and changes to current practice take place that may be in violation of the new regulations.

Provided that ADR mechanisms are in place to allow for various pathways towards resolution of complaints and disputes, ADRIM is in support of the enforcement of AMPs.

Thank you