

August 9, 2023

ATAC Comments Re Consultation on Proposed Changes to the Air Passenger Protection Regulations

Introduction

ATAC questions the government's decision to include the proposed changes to the APPR in a budget bill. A dedicated stand-alone bill would have offered greater opportunity to debate the merits of the proposed changes and study the financial and operational consequences of these very significant amendments, including the impact on the cost of flying in Canada and the level of service Canadians expect from air carriers in this country, particularly those serving regional routes in remote and northern regions.

When asked during the presentation of the Consultation document in July if the Canadian Transportation Agency had conducted an economic assessment of the consequences of the APPR on the price of flying in Canada, the CTA indicated that should industry provide the CTA with such an analysis, it would be considered. ATAC fails to understand why the CTA did not consider the economic impact of its measures on the efficiency and costs of running the Canadian air transportation system.

All carriers serving regional routes are already suffering badly with the recently augmented fatigue management regulations which are amplifying the critical shortage of pilots and AMEs. Many of the measures imposed by these changes in regulations are certainly not viable or achievable for carriers serving regional routes with the current HR shortages. While there is a distinction in some cases between large and small airlines, for rebooking and refunds, the distinction does not reflect the operational realities and constraints of airlines. For example, airlines may not have partners with similar schedules or itineraries to be able to promptly rebook passengers in the event of a disruption. There may not be flights available with the time frame specified in regulations, including at nearby airports. In the event of large-scale occurrences all airlines are impacted equally and flight options to rebook will be significantly diminished as was the case with the weather interruption in the December 2022 holiday period.

Overview

The CTA consultation paper does not make the linkage between financial burden and safety and does not recognize the human factors impact to decision making driven by financial constraints. These issues need to be addressed and studied before going forward with the new proposed regulations and amendments under the APPR.

The proposal that the CTA will charge carriers an administration fee for managing compensation requests sent in by passengers with the burden of proof transferring from the passenger to the airline is unacceptable and will be costly to the industry. There are many questions and concerns that will need to be answered by the CTA. For example, “What will the CTA allow for documented proof and how will the industry protect proprietary information from the public domain?” The CTA claims that frivolous requests would be discarded, however airlines are still going to be charged for denied requests after CTA analysis. Not charging passengers for denied applications will only encourage massive unfounded requests and administrative costs with no consequences for the passengers making unfounded claims. In addition, we don’t believe that the Treasury Board of Canada would sanction a regulation that will challenge the CTA’s inability to manage such a growth in workload despite allocating millions of dollars for new hires at the CTA.

Changes to the Canada Transportation Act (2023)

Changes are needed to enhance the accountability and the shared responsibility of all stakeholders dealing with passenger services in the travel continuum, not simply the air carriers. Proposed amendments need to recommend a model where we all share in the responsibility, including the passenger, the carriers and all others involved in managing or impacting air travel in Canada, including airports, CATSA, NAV CANADA, or ground service providers. Also, amendments to the APPR should aim to make their application simple, practical and fiscally responsible for both the passenger and the service providers while maintaining an efficient and safe aviation ecosystem.

The proposed APPR regulatory changes will undoubtedly have a major impact on increasing cost of flying in Canada especially in the northern and remote communities which already have a high cost of essential services. The fundamental flaw with the APPR is the focus on solely targeting airlines leaving other services and infrastructure providers and stakeholders in the aviation ecosystem unaccountable in the event of disruptions. Increasing compensation and making it obligatory unless the airline can prove otherwise, is unwarranted and makes the airlines the de facto “insurance agent” for the entire aviation ecosystem which is not a solution to improving the passenger experience, managing travel costs, or improving safety.

We cannot emphasize enough the negative consequences of increasing administrative fines tenfold, establishing a cost recovery system, defaulting to decisions by CTA staff review only by federal courts, and how this approach will greatly add to the cost of operating an airline, and will unavoidably translate into increased costs to passengers and ultimately to the entire industry.

We challenge the government to identify another sector of the economy which is prejudiced by Canadian lawmakers. Is rail subjected to the same destructive policies?

Identifying the Exceptional Circumstances

What does “not inherent to the normal exercise of the activities of the airlines” include?

Proposed List of Exceptional Circumstances – ATAC Proposal

- Security risks such as war, political instability, illegal acts, sabotage, terrorism, and unruly passengers.
- Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight.
- Airport operational issues for which the airline is not responsible.
- Manufacturing defects that reduce safety and identified by manufacturer or by a competent authority including third party platforms, such as software components or mechanical issues on board an aircraft.
- Health risks or medical emergencies.
- Conflicts with wildfires.
- Air traffic control instructions, restrictions, airspace closures, airport operational issues.
- An official NOTAM as per the Canadian Aviation Regulations sub 101.01(1).
- Orders or instructions from state, law enforcement, or airport security officials.
- Labour disruption at the airline or by essential air service providers like airport managers, air navigation personnel, or ground handlers.
- Technical defect(s) and/or problems, provided the following criteria is fulfilled:
 - the maintenance has been executed in accordance with the approved maintenance programme, including Minimum Equipment List (MEL) and Configuration Deviation List (CDL).
 - the defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate or several defects occur which are listed in the MEL and/or CDL and, in accordance with the Canadian Aviation Regulations, the pilot decides that it is not safe to operate the aircraft with the combination of these defects.
 - A defect or concern discovered via the carrier's, a supplier, or a relevant 3rd party's safety management system or quality assurance program that requires immediate action to ensure the safety of further flight(s).
- System outages or infrastructure breakdown by governmental or essential service providers, essential to the operation of a flight.
- A delay, cancellation or denial of boarding that is directly attributable to earlier delay(s) or cancellation(s) which has occurred within the last 48 hours and that was due to exceptional circumstances, is considered to also be due to situations of exceptional circumstances if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- Any other situation that cannot be reasonably foreseen if the carrier proves that it and its servants and agents took all measures that could reasonably be required to avoid the delay or cancellations or that it was impossible for it or them to take such measures.

Distinction Between Large and Small Airlines Including Care and Assistance

Rebooking and Refunds is the only case in which the CTA makes a distinction between large and small carriers. Two million passengers being the dividing factor between the two categories.

The distinction between large and small airlines is explained in the case of rebooking and refunds. The proposal should be amended to include the recognition that the rebooking regulations only apply when viable options exist. The CTA guidance is still unclear for all other aspects in standards of care and assistance such as communications, accommodations, food, internet services, chain effect of delays etc. The regulations assume that every airport will always have access to the relevant standards of care at any given time. This is clearly not the case especially in northern and remote stations where services and accommodation are limited or non-existent, and communication can be adversely affected by a significant weather event. The regulation does not address the fact that assistance can only be offered if available to do so. Airlines cannot be expected or penalized to provide standards of treatment when the availability of assistance does not exist or is not attainable due to circumstances not within their control. The CTA paper suggests that when disruptions are caused by exceptional circumstances airlines are required to respond with assistance for a certain period which is unclear. The industry is recommending that a limit be defined for services under the exceptional circumstances criteria.

Situations Outside the Airline's Control

"If a flight is cancelled or once a delay has reached 3 hours, the airline must provide the passenger with a confirmed reservation on the next available flight operated by them or a partner airline. The flight must depart within 48 hours after the departure time indicated on the passenger's original ticket.

If the airline cannot rebook the passenger onto a flight that departs within 48 hours, the airline must, at the passenger's choice.

- *Provide a refund, or*
- *Make alternate travel arrangements for the passenger, free of charge..."*

This leads to the following questions:

1. Is the airline obligated to give priority to delayed passengers on the next flight, even if completely booked, thereby removing passengers from that flight?
2. What is the definition of a "partner airline"?
3. The wording of "impossible to safely operate the flight" may be interpreted differently by each carrier. Airlines operating in northern areas deal with numerous variables that affect operations such as weather impacting runway surfaces. Due to lack of infrastructure, many runways and de-icing services are not sufficient for safe operations.

In the case of smaller airlines,

1. What happens when no flight is scheduled by any airline for the next week and there is no other plane available, as is sometimes the case in Northern Canada?
2. What prevents the partner airline from charging huge amounts for taking on those grieved passengers?

Assistance

No distinction between large and small airlines.

Communications

Communication is often covered by SMS, email, or phone. However, many third-party suppliers are responsible for booking passengers for medical travel out of the north. Many community members rely on social media to communicate, rather than by phone or email. Standards need to be established for travel agencies and third-party booking agencies to provide passenger information to airlines to successfully communicate with clients. Implementation of the proposed standardized communication tool will take time and a minimum 12-month implementation will be needed to allow carriers to respond and create the appropriate communication system.

Chain Reaction (Knock on Effects)

The current APPR regime does not put any limit on the number of flights that can claim the original disruption as the reason why they were delayed or cancelled – i.e., in the case of a safety related disruption or a situation outside the airlines' control, there is recognition that one disrupted flight will likely lead to subsequent disrupted flights given the displacement of crew, planes, or other equipment. Allowance for this so-called “knock on effect” is logical and reasonable, as it reflects the realities of an interconnected air travel system.

The CTA has proposed that this so-called “knock on effect” in the case of an exceptional circumstance be limited to two flights, specifically, the originally impacted flight and one additional flight. However, this proposed restrictive measure of two flights is completely unrealistic and clearly proves that the policy maker is not aware of airline operations and in some cases will not permit for operational recovery, a reality that was recognized in the original iteration of the regulations. The chain effects of a delay usually impact all flights using the same equipment for the whole day. For example, an aircraft used on a long-haul flight may only be scheduled to operate on two legs (i.e., a departure and a subsequent return) on a given day. However, aircraft used in short haul operations may be used on multiple legs in some cases exceeding 10 per day and would be severely impacted by any knock on effect that originated from a “primary” event early in the schedule. Furthermore, this proposal unjustly prejudices regional airlines that operate short haul flights.

In order to reflect this operating reality, ATAC recommends that airlines be able to claim knock on effects for a period of 48 hours after the original disruption. This proposed time frame is more realistic to allow airlines to work out operational impacts and to reposition and/or reallocate resources as necessary.

Refunds for Changes to Government Travel Advisories

No comments

Conclusion

The APPR amendments passed by Parliament in June 2023 in an omnibus budget bill, which avoided studying the dire consequences of such changes on the level of service Canadians expect from air carriers in this country, particularly in remote and northern regions, will not benefit the travelling public.

The CTA recommendations and proposed regulations will achieve one very significant outcome, negatively impacting air travel in Canada especially in northern and remote communities which rely on this essential service. Increased administrative burdens and costs for airlines will translate into higher fares for passengers, less service, and a less competitive market. Until the regulations contain a well-defined and well thought out comprehensive, "exceptional circumstances list", the amendments unintended consequence will threaten and penalize airlines for safety related decisions. This is why ATAC is calling on the CTA to work with the airline industry to take the necessary steps and appropriate time to develop regulations that are fair, evidence-based, focused on truly enhancing the traveler's experience, with safety as the primary driver. The regulation must address any significant cost increases and resource burdens which could negatively impact passengers and the viability of the aviation industry.