

## **Submitted to the Canadian Transportation Agency (Form submission)**

**Subject:** Consultation on proposed changes to strengthen the Air Passenger Protection Regulations

**Name:** AirHelp Germany GmbH

**Organization:** Advocate

**Date:** 2023-08-09

Dear Sirs,

Please find enclosed the document covering the Consultation to the proposed changes to Canada's Air Passenger Rights Regulation.

Thank you.

Best regards

# **Input on the proposed changes to Canada's Air Passenger Protection Regulations**

As a global advocate of air passenger rights, AirHelp is supportive of efforts to improve the Canadian Air Passenger Protection Regulations (APPR), particularly where the intention is to ensure stronger and more easily accessible protection for passengers. On review of the proposals, it is our view that overall they will strengthen the passenger protection. The proposals will clarify and simplify some areas of the current Protections, which is essential to ensuring passengers can apply them. However we do also note that proposals could go further, particularly in regard to making sure that the regulations are enforced.

## **Further modifications to the regulations:**

### **Enforce a deadline for a response by the CTA**

To our knowledge there is currently a backlog of over 52,000 cases waiting for CTA assessment. A number which has only grown since the regulations were introduced, and means that passengers may wait up to 2 years for a response on their claim.

None of the proposals have addressed this issue, that this is an unacceptable amount of time for passengers to wait to have their dispute against the airline independently assessed.

Under the current regulation, airlines have 30 days to respond, but the time frame for the CTA is only a suggestion. We propose that a time limit is introduced, to ensure that passengers can be guaranteed a prompt response.

## **Bring in third-party specialists to handle complaint volume and independent claim assessment.**

Given the current backlog it is clear that the CTA lacks the resources to assess airline complaints effectively. Considerable investment is needed to clear the backlog, and in our view it is preferable that an independent arbitrator, capable of handling the large volume of complaints efficiently, step in to help the CTA regain credibility with the public.

## **Raise Administrative Monetary Penalties to a maximum of \$250,000 for big airlines.**

The current maximum fine (\$25,000) doesn't amount to a real deterrent when taking into consideration major airlines' annual revenue. In their December 2022 position paper, the advocacy group Air Passenger Rights suggests the maximum be raised to \$250,000 to act as a real deterrent to airlines<sup>1</sup>.

## **Add clear definitions for flight delay, cancellation, denied boarding, and other disruptions.**

This is important to ensure that airlines can't avoid their obligations simply through creative renaming of their disruptions.

## **Compensate passengers for flights cancelled less than 8 weeks before departure.**

Cancellations mean major disruption to passengers plans, with many having to reschedule entire vacations and losing non-refundable costs. The current limit of 2 weeks means very few passengers receive compensation for this. We recommend that passengers should be entitled to compensation when flights are canceled 8 weeks before departure or less.

## **Eliminate the "Contact Airline First" clause**

Airlines are attempting to undermine the regulation by requiring passengers to submit

their claims in a certain manner. This practice must be eliminated and air passengers must be able to pursue their claim in whatever way they wish.

## Impact on the industry

Based on our 10 years of experience, it is our option that strong air passenger rights ultimately benefit all players in the travel industry. Evidence from Europe is that the equivalent regulation, EC 261, improves on-time performance by an average of 5 minutes<sup>2</sup>, and we know that reducing flight irregularities improves consumer satisfaction<sup>3</sup>.

However the impact of regulations hinges on them being enforceable. Which is precisely what we'd like to see further steps taken to improve enforcement of APPR in the proposals.

Further, in depth, feedback on the proposals is provided below.

### 1. Identifying the exceptional circumstances

We approve of proposed simplification of the regulation, which brings it into alignment with other international passenger protection regulations.

We are particularly encouraged by the removal of the "required for safety" category, which introduced an unnecessary loophole by which airlines could justify a flight disruption and avoid paying passengers the compensation they should be entitled to. Compensation should be the norm in the event of flight delays, cancellations, and overbookings, and only disruptions the airline can demonstrate were caused by exceptional circumstances which they could not have avoided should be exempt.

Question 1: What are your views on the proposed criteria for exceptional circumstances?

In general we approve of the proposed changes, but we recommend that even clearer definitions are added in some cases.

Question 2: Are there circumstances that should be added or removed from either list?

**Recategorize: “Labour disruptions at the airline”**

While Labour disruptions by external service providers can be considered an exceptional circumstance, “Labour disruptions at the airline” must be added to the list of Circumstances that would not be considered exceptional.

We refer to the criteria specified for an exceptional circumstance:

- The event that caused the disruption must have been outside the airline's control, and not inherent to the normal exercise of the activities of the airline; and
- The event could not be avoided even if the airline took all reasonable measures to do so.

An airline’s workforce is certainly within an airline’s control, and labour conditions, including any resulting disputes and disruptions, are a normal part of airline activities. Disruptions can be avoided through airlines taking reasonable measures to ensure the wellbeing and competitive working conditions of their workforce.

**Redefine: “Hidden manufacturing defects that come to light and affect flight safety”**

We recommend that this clause include who has the authority to identify such a defect, (e.g. the aircraft's manufacturer or a competent state authority).

## **2. Airlines' responsibilities regarding claims for compensation**

We approve of the proposal to place the burden of proof with the airline.

The current process poses a major obstacle for passengers trying to obtain the compensation they are due, as it is impossible for passengers to know the true cause of a disruption. The requirement that airlines must provide the passenger with documentary proof that a disruption was caused by an exceptional circumstance in order to refuse a compensation claim is fair.

### 3. Rebooking and refunds

In general we approve of the proposals. They simplify the existing regulation, removing the different rights based on the cause of disruption. They also strengthen the regulation as more passengers can get a refund should the flight no longer serve its original purpose, and passengers have more options for rebooking.

The clarification that airlines must rebook on competitor airlines as soon as it's apparent they cannot rebook the passenger on their own network within the relevant time frame is important. We hope this clarification will ensure airlines act more promptly to rebook passengers and protect passengers against uncertainty.

We would like to see the following modifications added to the proposal:

- a) For the avoidance of doubt we recommend that the wording “regardless of the reason for the disruption” be added, to clarify that passengers are entitled to assistance regardless of whether or not exceptional circumstances are in play.
- b) The amount of time passengers have to receive a refund should be set within the regulation. We propose airlines should refund passengers within 7 days.
- c) We recommend a further simplification with the removal of the 48 hour rebooking at an alternative airports deadline. If there is a suitable airport nearby with flights available, passengers should be offered these flights with no undue delay. We recommend that if airlines are unable to find an alternative flight on their own network within the current deadlines (9 hours for large airlines, 24 hours for small airlines) they must offer passengers any alternatives available — including both flights with other airlines and flights from other airports.

### 4. Assistance

We approve the proposed changes and the move to ensure passengers receive a minimum standard of assistance, regardless of the cause of the disruption.

We would like to see a clearer definition of “a certain period of time” to remove uncertainty for both airlines and passengers.

## 5. Communications

Question 3: Is there any better or more efficient way that information (including the communications requirements included in section 2 - “Compensation” of this document) can be shared with passengers other than as proposed?

Airlines could be required to share their data on their disruptions publicly. We propose that the CTA should develop requirements for airlines to all collect and share data on their own flight disruptions. This should include the cause of the disruption.

## 6. Chain reactions (knock-on effects)

We approve the proposal which takes a practical approach to tackling the problem of a disruption’s knock-on effects. This proposal incentivises airlines to take action to eliminate knock-on effects within a reasonable time, and ensures passengers receive fair compensation if they don’t.

## 7. Refunds for changes to Government Travel Advisories

We approve this proposal, which protects passengers who are unable to travel on flights they booked for reasons outside of their control.

The changing travel advisories and flight cancellations during Covid-19 demonstrate how essential this right is, as many passengers struggled to get a refund from their airline, causing a loss of trust in the industry.



## About AirHelp:

AirHelp is the world's largest company dedicated to helping passengers understand their rights and receive the compensation they are entitled to. We help passengers worldwide using passenger protections in the EU, UK, Brazil, Canada, Turkey, as well as the international Montreal Convention.

Since our foundation in 2013 we've helped over 1.5M passengers get compensation, and countless others understand their rights. On a monthly basis we typically assess over 50,000 unique claims using innovative technical solutions such as our AI lawyers, and an extensive flight database designed to assist our specialist staff make faster and more accurate decisions.

## Sources:

- 1) Lukasz, 2022, From the Ground Up: Revamping Canada's Air Passenger Protection Regime.
- 2) Gnutzmann, Hinnerk & Spiewanowski, Piotr, 2018, Consumer Rights Improve Service Quality: Evidence From EU Air Passenger Rights, CEPOB #13.18.
- 3) <https://tnmt.com/the-biggest-pain-points-in-air-travel/>