



August 10, 2023

France Pégeot (via e-mail: Consultations-aeriennes.Air-Consultations@otc-cta.gc.ca)
Chair and Chief Executive Officer
Canadian Transportation Agency
15 Rue Eddy
Gatineau, Quebec
K1A 0N9

Re: CAA Comments in Response to the Agency's Pre-Consultation on Proposed Changes to Canada's Air Passenger Protection Regulations (APPR)

Dear Mme. Pégeot,

Founded in 1913, the Canadian Automobile Association (CAA) is a federation of eight clubs providing 7 million Members coast-to-coast with emergency roadside assistance, as well as automotive, insurance, rewards and travel services. CAA is also a not-for-profit that has always advocated on issues of concern to its Members. Today those issues include road safety, the environment, mobility, infrastructure and consumer protection.

Through our store network and online, CAA is also one of Canada's largest leisure travel agencies, with close to 100 retail outlets. We are a member-driven organization that is, at its heart, an advocate for the Canadian traveller.

Our travel agents work with air passengers every day. We understand the business, and we understand the customer experience. This allows us to take a strong, informed position in favour of air passenger rights, while at the same time recognizing that the consumer interest is best served by a healthy and competitive industry.

When Canada's Air Passenger Protection Regulations (APPR) were originally developed, CAA called for an efficient and effective regime that was accessible to the average Canadian. We said the process for passengers to claim their rights needed to be simple and proactive.

The air passenger protection regime in place today, regrettably, is neither efficient nor effective. It offers too many grey areas that both passengers and airlines are left to interpret. In many cases, passengers do not have the necessary information to determine what if anything they are owed under the regime. Stakeholders and

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consumer advocates lack adequate data to know where the regime is falling down or if aspects of it are performing well. And, the Canadian Transportation Agency (CTA) now has a 50,000-plus complaint backlog that will likely take years to process.

When compensation and other care is due, respecting travellers' rights should be the airlines' default approach. The average passenger in this country does not have the protections that come with premium status or full fare tickets. The APPR needs to help these passengers most of all and today, it is missing the mark.

The goal of the system should be to incentivize carriers to take care of passengers without the need to resort to the government's complaint process. And for those cases that do make it to the regulator, the process needs to be simple and clear enough that passengers can determine in advance what they may be owed, and the regulator can deliver answers in a timely manner. Clearer rules will also benefit the carriers by removing uncertainty from the process.

We believe that recently passed changes to the *Canadian Transportation Act*, if supported by strong and well-defined regulations, have the potential to provide meaningful change to help air travellers. The system will never be perfect, but it can be much better.

Before getting to our specific comments, we would also like to acknowledge the joint submission you received from Air Passenger Rights, the Public Interest Advocacy Centre (PIAC) and Marina Pavlovic of the University of Ottawa, as well as the submission from Option Consommateurs. CAA has shared correspondence with these groups and is in general agreement with the majority of comments made in both submissions.

As requested by the Agency, the following is a summary of some of our key comments:

- i. **Exceptional circumstances:**
 - a. Should be defined as follows:
 - i. Exceptional circumstances means foreseeable circumstances that were not inherent to normal operations, were beyond the carrier's control, could not have been avoided even if the carrier had taken all reasonable measures, and were not attributable, in whole or in part, directly or indirectly, to any of the following:
 - a) Unavailability or shortage of flight crew or cabin crew or staff at the carrier;
 - b) aircraft maintenance or safety issues, other than those caused by acts of sabotage or terrorism or a hidden manufacturing defect of the aircraft comprising the carrier's fleet identified by



- the manufacturer or a competent authority that affects flight safety;
 - c) labour disruptions at the airline;
 - d) any situation that was known or should have been known to the carrier at the time the ticket was sold to the passenger; or
 - e) acts or omissions of the carrier, its agents or servants, or any third party with whom the carrier has a contractual relationship.
 - ii. **Airlines' responsibilities regarding claims for compensation:**
 - a. Disclosed "in a prominent area" should be defined as on the Home Page of the airline and no more than one click away for full details.
 - b. We support allowing one adult to claim on behalf of their travelling party.
 - iii. **Rebookings and refunds:**
 - a. CAA supports the proposed changes to rebooking and refunds outlined in the consultation paper. We further underscore the importance of ensuring that refunds and rebooking in the 9/24-hour window apply in exceptional circumstances as well. Also, critically important to the updated regulations is providing clarification to airlines that they should promptly look to competing airlines as soon as they know they cannot offer a flight on their own network or a partner airline within the 9/24-hour timeframe. For certainty, this means before the 9/24-hour threshold has been met.
 - b. CAA agrees with the other consumer groups and recommends that the time permitted for an airline to provide a refund be reduced from 30 days to 7 days for credit card transactions, aligning more closely to other jurisdictions such as the US and EU.
 - iv. **Small vs large carriers:**
 - a. CAA supports changing the definition of "small carrier" so that airlines originally labelled large carriers before COVID are again captured in the large carrier category.
 - v. **Assistance:**
 - a. CAA supports a standard of care to passengers being extended to include disruptions even under exceptional circumstances.
 - b. This standard of care should be the same level of care provided for under the current APPR and should be made available to the passenger as soon as the airline knows it cannot depart within the two-hour threshold.
 - c. That the 12+ hour notification exemption only apply to passengers before departure from their point of origin and not while at their destination or while connecting.



vi. Communications:

- a. CAA believes that the Agency has struck the right balance in its consultation paper to ensure that airlines are requesting and using a passenger's preferred means of communication so timely travel updates can be received. Supporting this primary communication form with notices on carrier websites, in their other digital platforms and with audible announcements at the gate is also reasonable.
- b. However, we note that the consultation document does not clearly indicate that audible announcements at the gate are required to contain information about passenger's entitlements such as food, drink and accommodation, rebooking, refund or compensation following a flight disruption. It appears to leave communication of these potential entitlements to only the preferred method of communication. We believe this is a missed opportunity to clearly communicate entitlements available at that moment.

vii. Knock-on effects:

- a. We recommend restricting the exception to the obligation to pay passengers compensation to:
 - i. the aircraft that actually experiences the exceptional circumstance; and
 - ii. the next flight scheduled to use the same aircraft (not crew as was additionally proposed in the consultation paper).

viii. Refunds for changes to Government Travel Advisories:

- a. CAA fully supports this measure as drafted. If a Government Travel Advisory is published increasing the assessment to, "avoid nonessential travel" or "avoid all travel," it is only fair to offer passengers an option for a refund.
- b. The inclusion of this measure's application to connecting countries in addition to the passenger's destination is also important.

ix. New complaint handling process:

- a. Transparency and data on cases resolved/unresolved satisfactorily, including in the aggregate, will be required to the highest degree possible so interested Canadians can judge whether the new adjudicative system is working.

x. Proactive compensation:

- a. If it is obvious an entire planeload of passengers is owed a particular amount of compensation, the airline should tell all passengers they are owed compensation and provide them with quick payment options. Automatic compensation relating to CTA decisions:



- b. In the event that the CTA renders a decision upholding a passenger complaint that compensation should be paid for an issue affecting the entire plane, that decision should be automatically extended to cover all passengers on the plane. For clarity, this should cover all passengers who travelled on the affected plane and not just those passengers who filed a complaint with the airline.
- xi. **Denied boarding:**
 - a. CAA agrees with the consumer group joint submission which recommends replacing the definition of “denial of boarding” in s. 1(3) of the APPR with language along the lines of:
 - i. **Denial of boarding** means the refusal to carry a passenger on a flight on which they hold a confirmed reservation—or on which they held a confirmed reservation before their itinerary was amended by the carrier without their consent — for a reason other than a failure by the passenger to:
 - 1. present valid travel documentation;
 - 2. present themselves at the airport at the required time for check-in; or
 - 3. comply with health, safety or security requirements;
 - ii. **Confirmed reservation** means when the passenger has been issued a ticket or other document that indicates that the carrier has accepted and registered the reservation.

Our detailed comments follow in the remainder of this submission.



CAA is pleased to provide the following detailed comments in support of the Agency's pre-consultation on changes to Canada's Air Passenger Protection Regulations.

1. Identifying exceptional circumstances

CAA agrees with the consultation paper that, "the current three disruption categories are not clear, especially those required for safety and situations outside the airline's control". We further concur that, "this lack of clarity leaves significant room for differing interpretations, which results in passengers often lacking the information they need to determine whether they are entitled to compensation."

Make no mistake, safety is a serious issue in aviation but there is no evidence to suggest safety has been impacted in other jurisdictions where air passenger protections exist and there is no carve out for 'safety.' We are hopeful that the proposed changes will add greater clarity. However, this will only be true if the list of 'exceptional circumstances' is kept small and as little room as possible is left for interpretation. We suggest expanding the phrase to include the word 'foreseeable'. Airlines work closely with airport operators in a highly inter-related ecosystem and as such it is important that only one-off or unforeseeable issues be considered exceptional circumstances.

In particular, we are concerned that "inherent to normal airline operations" and "took reasonable steps to avoid" are both open to multiple interpretations. What is inherent to one carrier may not be inherent to another. And the bar for what are considered reasonable steps taken to avoid an issue is hardly understandable to passengers, let alone carriers, leading to less transparency and continued confusion.

The specific examples proposed in the chart in the consultation document lean in the right direction but we urge the following issues be given further consideration and definition:

- Weather: What is the threshold for weather that makes it "impossible to safely operate a flight? It would seem reasonable that during a storm, all or most flight traffic would be halted and this would be documented and available to support the use of the exceptional circumstance clause.
- Airport operational issues considered exceptional must be further defined such that foreseeable issues that arise, should not be considered as exceptional circumstances.
- For medical emergency diversions, we agree these should be treated as exceptional circumstances and that the affected flight should resume its flight without unreasonable delay following the offloading of the passenger in question.



- Air traffic management restrictions is quite broad without further definition. Also, what will be the proof provided in these cases to passengers?
- Labour disruptions by the airline's own employees should not be considered exceptional circumstances. Any foreseeable strike by the airline employees should not be considered exceptional.

For circumstances that would not be considered exceptional, CAA generally agrees with the other consumer groups and recommends the following:

exceptional circumstances means foreseeable circumstances that were not inherent to normal operations, were beyond the carrier's control, could not have been avoided even if the carrier had taken all reasonable measures, and were not attributable, in whole or in part, directly or indirectly, to any of the following:

- a) Unavailability or shortage of flight crew or cabin crew or staff at the carrier;
- b) aircraft maintenance or safety issues, other than those caused by acts of sabotage or terrorism or a hidden manufacturing defect of the aircraft comprising the carrier's fleet identified by the manufacturer or a competent authority that affects flight safety;
- c) labour disruptions at the airline;
- d) any situation that was known or should have been known to the carrier at the time the ticket was sold to the passenger; or
- e) acts or omissions of the carrier, its agents or servants, or any third party with whom the carrier has a contractual relationship.

In reference to the proposed text, we do not think that technical problems that are an inherent part of normal airline operations is clear enough. This must be tightly defined so that it does not turn into a new version of the current "within carrier control but required for safety" loophole.

2. Airlines' responsibilities regarding claims for compensation

CAA agrees with the proposed changes outlined in the consultation paper.

Since the original drafting of the APPR, CAA has noted that passengers do not have the necessary details to refute the reasons a carrier provides them. Ensuring airlines provide documentary evidence to the passenger to support a denied claim is a positive step forward but, also must be carefully balanced so the system does not see passengers deluged in hundreds of pages of evidence. There should be enforceable guidelines that ensure this documentary evidence is provided in an efficient, simple and clearly understandable manner.



While we agree that the APPR should be more explicit about the requirement for airlines to explain to passengers how to make a claim for compensation, we have some reservations about the phrase, “in a prominent area”. This can be left open to interpretation. A better approach may be to ensure that the prominent area is on the Home Page with details of the process only one click away. For precision, while this info could also be listed in the FAQs, it should be made clear that a “prominent area” is not buried in the FAQs. A link should also be provided in any communication with the passenger.

CAA is also pleased to see the proposed change that will permit one adult to make a claim on behalf of their travelling party. Simplifying the claims process has been something CAA has called for since the original drafting of the APPR.

3. Rebooking and refunds

Access to a refund in cases where the carrier initiates the change must be at the passenger’s discretion in all cases, including those passengers with a non-refundable ticket, when the airline cannot provide the service purchased. It is unreasonable to force a passenger to travel up to 47 hours later than their scheduled departure while not offering a refund as an alternative, even in cases where the delay is outside the carrier’s control, as is the case under the current rules.

For example, under the current rules, if you were travelling from Ottawa to Toronto on Saturday morning for a wedding that same day, and inclement weather caused your flight to be cancelled, you would not be entitled to a refund if the carrier offered you a flight on Sunday afternoon – even though you had missed the wedding and your travel was no longer necessary.

As such, CAA supports the proposed changes to rebooking and refunds outlined in the consultation paper. We would like to further underscore the importance of ensuring that refunds and rebooking in the 9/24-hour window apply in exceptional circumstances as well. Also, critically important to the updated regulations is providing clarification to airlines that they should promptly look to competing airlines as soon as they know they cannot offer a flight on their own network or a partner airline within the 9/24-hour timeframe. For certainty, this means before the 9/24-hour threshold has been met.

As per the example above, there may have been an option to get to the wedding if the airline had looked earlier to competing carrier flight options and if no options existed, the passenger would be entitled to a refund. It is worth reinforcing that this applies in



situations where the airline did not deliver the service as purchased whether the reason is exceptional or otherwise.

Additionally, the Agency should address current airline rebooking/refunding processes. A recent [media](#) article has raised concerns that, in some cases, passengers are offered a single unsatisfactory rebooking option and if they reject it, the passenger is refunded and provided with the minimum level of compensation, effectively leaving them stranded. Airline processes should always ensure that it is clear to passengers how to accept or reject an offered rebooking option separately from choosing a refund. Otherwise, this situation risks creating a new loophole whereby airlines offer passengers alternative travel options that are unlikely to be satisfactory to the passenger in the hopes they will reject the offer resulting in reduced compensation payable.

CAA agrees with the other consumer groups and recommends that the time permitted for an airline to provide a refund be reduced from 30 days to 7 days for credit card transactions, aligning more closely to other jurisdictions such as the US and EU.

Finally, CAA supports changing the definition of “small carrier” so that airlines originally labelled large carriers before COVID are again captured in the large carrier category. This could be done in several ways:

- a. by changing the 2 million passenger benchmark to something less;
- b. by defining a small carrier as one with only very small aircraft; or,
- c. by defining a large carrier as one that operates at least one large or medium-sized aircraft.

By redefining the small carrier category to cover only the truly small northern and hyper regional carriers, it may provide a degree of flexibility those airlines seek. CAA would be supportive of these measures so long as the redefined small carrier category excludes carriers that were considered large carriers pre-COVID.

4. Assistance

CAA is pleased to see that the standard of care owed during flight disruptions will be extended to passengers even under exceptional circumstances.

It is important that the APPR clearly set the minimum standard of care so passengers understand what they are entitled to, even in cases where the air carrier, for various reasons, may not proactively offer or clearly communicate what assistance is available.

Currently, when due, assistance is made available at the two-hour threshold. The proposed changes maintain this threshold. However, CAA believes, similar to rebooking,



that carriers should offer assistance as soon as they know the flight will not depart within two hours of its original departure. For certainty, this would mean that passengers delayed for three hours could ask for and receive assistance before the two-hour mark. To illustrate the benefit, this process would provide passengers more time to receive and use a food coupon they are offered before their delayed departure.

The Agency's proposed changes note that if the passenger is notified 12+ hours before departure, they are not entitled to any assistance. While this makes sense for passengers who are at home when a notification is received, we have two concerns:

- i) First, for passengers at a destination and about to embark on their return home, we believe that assistance is still warranted under certain circumstances. While it would not make sense in these cases to offer food and drink at the airport, there may be costs associated with another night of accommodation that should be covered by the carrier.
- ii) Second, the 12+ hour threshold where assistance is not due should not apply to connecting passengers. There are many flights in excess of 12 hours whereby, under this rule, the passenger on arrival at their connection point would not be owed any assistance. For example, shortly after take-off a passenger is notified their connecting flight is delayed 3 hours. The passenger may not even receive this message until they land 14 hours later and then, as currently contemplated in the consultation paper, this passenger would not be owed any assistance.

CAA recommends:

- Maintaining the current level of standard of care and making it applicable under exceptional circumstances. Whether due to crew shortage or a blizzard, when a flight is cancelled, a passenger should not have to spend the night sleeping on the floor at the airport.
- That the 12+ hour notification exemption only apply to passengers before departure from your point of origin.

5. Communications

The need for clear communication from carriers to passengers is never more important than when a flight disruption occurs. While we acknowledge the importance of recovering from a flight disruption to the carrier and rebooking passengers, this must also be balanced with the need to advise passengers of their right to assistance during these instances. As the Agency's consultation paper notes, assistance (e.g. food, accommodation) is not always offered proactively to passengers.

CAA believes that the Agency has struck the right balance in its consultation paper to ensure that airlines are requesting and using a passenger's preferred means of



communication so timely travel updates can be received. Supporting this primary communication form with notices on carrier websites, in their other digital platforms and with audible announcements at the gate is also reasonable.

We support the inclusion of a requirement for audible airline disruption announcements so passengers will know about the recourse they have, including their right to make a complaint to the CTA. We believe this will be good for consumers and assist in promoting the existence of the still relatively new passenger protection regime.

However, we note that the consultation document does not clearly indicate that audible announcements at the gate are required to contain information about passenger's entitlements such as food, drink and accommodation, rebooking, refund or compensation following a flight disruption. It appears to leave communication of these potential entitlements to only the preferred method of communication. We believe this is a missed opportunity to clearly communicate entitlements available at that moment.

A passenger may not refer to their email until the delayed plane is ultimately boarding, or have access to wifi, meaning they may not see that they have an entitlement to food and drink while they are waiting. If the preferred communication method and the audible announcement both communicate the opportunity for recourse through the CTA, it stands to reason that someone must know they have entitlements in order to complain about not receiving them.

In our view, it would be sufficient to communicate that these entitlements are available and to refer to your preferred communication method for further details. In the event a message wasn't received by the passenger, they would at least know to ask an employee for assistance.

6. Chain reactions (knock-on effects)

The original Air Passenger Protection Regulations allowed for a cascading effect (knock-on effect) where a delay or cancellation considered "directly attributable" to an earlier delay or cancellation, in situations outside the carrier's control, were exempt from compensation requirements.

The term 'directly attributable' was added to the regulations to create reasonable limits to leveraging the knock-on effect to forgo paying compensation to passengers. However, the regulations did not define what is considered "directly attributable", leaving the term open to carrier interpretation.



It is a reality in Canada that many planes fly multiple legs per day. Where an incoming flight is impacted by a breakdown, it is reasonable that the next flight that aircraft would have performed is 'directly attributable' to the knock-on effect.

CAA agrees with the Agency that limiting the knock-on effect to one subsequent leg flown by the same aircraft is reasonable in exceptional circumstances. However, for certainty, the knock-on effect should only be attached to the actual aircraft and the very next flight operated by the same aircraft (not crew). Also, the knock-on impact should have a reasonable time limit attached to it.

However, we note that there is one other important consideration illustrated by the following example:

- Aircraft A is to fly to London Heathrow.
- Aircraft B is to fly to Winnipeg.
- Aircraft A breaks down.
- Passengers to Winnipeg are told their plane has an exceptional circumstance (hidden manufacturing defect).
- Aircraft B is repositioned to fly to London Heathrow.
- In this example, passengers to Winnipeg are told no compensation is owed yet their aircraft was in perfect working order. It was a business decision by the carrier to reposition Aircraft B and these passengers should be owed compensation.
- Had the carrier simply cancelled the London Heathrow bound plane, those passengers would not be owed compensation due to the exceptional circumstance.
- The protection a carrier gains from the knock-on effect must be limited to only the aircraft impacted and a single subsequent leg flown by the same aircraft (not crew).

We recommend restricting the exception to the obligation to pay passengers compensation to:

- a. the aircraft that actually experiences the exceptional circumstance; and
- b. the next flight scheduled to use the same aircraft (not crew).

We commend the CTA for putting reasonable limits in place with respect to a carrier's ability to leverage the knock-on effect to avoid owing compensation to passengers.



7. Refunds for changes to Government Travel Advisories

CAA fully supports this measure as drafted. If a Government Travel Advisory is published increasing the assessment to, “avoid nonessential travel” or “avoid all travel,” it is only fair to offer passengers an option for a refund.

We believe the Agency’s inclusion of connecting countries in addition to the passenger’s destination is also reasonable as is the limitation that the passenger would have purchased the ticket before the Government Travel Advisory increased its threat assessment.

These measures will also help ease concerns about travel, especially among families, seniors, and those with health concerns, who may be more hesitant to book travel in a post-COVID era. If the government advises against travel for whatever reason, a refund option should exist to permit adherence to the advisory.

8. Other

In addition to the elements outlined in the CTA’s pre-consultation paper, CAA would like to make the following points with regard to the air passenger protection regime.

New complaint handling process at the CTA:

- Transparency and data on cases resolved/unresolved satisfactorily, including in the aggregate, will be required to the highest degree possible so interested Canadians can judge whether the new adjudicative system is working. Without that it risks being a black box that Canadians may not trust or think is worth their time. Statistics such as the number of cases in which the complainant signed-off on with the resolution should be made public.
- CAA shares the concerns of Option Consommateurs that the lack of public details on case disposition will leave interested parties unable to judge whether, for instance, CTA staff may be using precedents from prior cases that may have been badly decided. We believe consumers should have the right to pursue other venues for recourse such as, Small Claims Court, if they are unhappy with a CTA decision.
- The bullets above are particularly important given the CTA is launching a brand new process with largely untried staff and opaque process. Public confidence in the regime is important.



Proactive compensation:

- The current APPR regime is not a proactive one and does not require direct, immediate payments of compensation to passengers in straightforward, clear-cut cases.
- If it is obvious an entire planeload of passengers is owed a particular amount of compensation, the airline should tell all passengers they are owed compensation and provide them with quick payment options.
- An example here, under the current regulations, would be a fully boarded plane sitting at a departure gate suffering a 4-hour delay due to a crew issue within carrier control. In this case for a large airline, each passenger would be owed at least \$400 in compensation.
- The system today requires each passenger to file an individual claim. No claim, no compensation.
- The lack of proactive automatic compensation slows a carrier's ability to process other complaints and has helped choke the CTA with an unacceptable backlog.

Automatic compensation relating to CTA decisions:

- In the event that the CTA renders a decision upholding a passenger complaint that compensation should be paid for an issue affecting the entire plane, that decision should be automatically extended to cover all passengers on the plane. For clarity, this should cover all passengers who travelled on the affected plane and not just those passengers who filed a complaint with the airline.
- Currently, the CTA can only require carriers to communicate to other passengers who filed a complaint that was previously rejected.

Denied boarding:

- The APPR strictly defines denied boarding as applying to only cases where a plane is overbooked, which misses passengers who are denied boarding for other reasons. For example, a case was reported where a gate agent thought a couple didn't have the right documentation for travel, denied them boarding and was ultimately mistaken. The aircraft departed and the passengers were not owed 'denied boarding compensation' under the APPR. Other scenarios could include agents closing a gate early or not having proper staff at baggage drop, causing a passenger to miss their flight. In these cases, the passengers had checked in and properly presented themselves and were denied boarding by no fault of their own.
- It is also possible for an airline to change a passenger's flight and call it a schedule change to avoid having to bump them at the gate and owe the



increased level of compensation for denied boarding. If the delay for that alternate flight is less than three hours, the passenger would get no compensation and in longer delays, any compensation owed would be far less than under the denied boarding regulations.

- To fix this, CAA agrees with the consumer group joint submission which recommends replacing the definition of “denial of boarding” in s. 1(3) of the APPR with language along the lines of:
 - i. **Denial of boarding** means the refusal to carry a passenger on a flight on which they hold a confirmed reservation—or on which they held a confirmed reservation before their itinerary was amended by the carrier without their consent — for a reason other than a failure by the passenger to:
 - a. present valid travel documentation;
 - b. present themselves at the airport at the required time for check-in; or
 - c. comply with health, safety or security requirements;
 - ii. **Confirmed reservation** means when the passenger has been issued a ticket or other document that indicates that the carrier has accepted and registered the reservation.

We thank you for the opportunity to share this input as part of the Agency’s pre-consultation on revisions to the APPR. If there is anything our organization can do to answer your questions or provide further details, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'I. Jack', is positioned above the typed name.

Ian Jack
Vice President, Public Affairs
Canadian Automobile Association (CAA)