



January 29, 2021

Scott Streiner (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

Subject: Consultation on Potential Temporary Adjustments to the Air Passenger Protection Regulations

Dear Mr. Streiner,

As you know, the Canadian Automobile Association (CAA) is a not-for-profit federation of eight clubs representing approximately 6.5 million Canadians, providing Members with emergency roadside services, a leading rewards program, and automotive, insurance and travel services.

CAA has also, since its founding in 1913, advocated on issues of concern to its Members. Today those issues include road safety, the environment, mobility, infrastructure and consumer protection. In 2020, CAA was recognized by the Gustavson School of Business at the University of Victoria as Canada's most trusted brand for the second time in three years.

CAA is more than just the country's largest consumer advocacy organization. We also understand the air travel business from the consumer perspective. This allows us to take a strong, informed position in favour of air passenger rights, while at the same time recognizing a viable post-COVID industry is in the consumer interest.

Through our store network and online, CAA is one of Canada's largest leisure travel agencies, with over 100 retail outlets. Prior to the COVID-19 pandemic, our travel counsellors worked with air passengers every day assisting them through all stages of their travel - before, during and after. And, when Canada heightened its travel advisory to Level 4 in late March, our travel agents helped bring passengers home. The value and expertise gained by using a travel agent was never more evident to passengers who were stranded overseas by pandemic travel restrictions.

The establishment of Canada's Air Passenger Protection Regulations (APPR) in 2019 brought Canada, after ten years, close to a level playing field with other major jurisdictions. However, it is important to note that Phase II of the APPR, which implemented the elements of most interest to travellers (e.g. compensation for delays and cancellations), only launched on December 15, 2019, just 3 short months before COVID-19 caused mass travel restrictions and cancellations.

500-1545 ave Carling Ave, Ottawa, ON K1Z 8P9 Tel/Tél 613.247.0117 Fax/Télec 613.247.0118 CAA.ca



While the APPR is not perfect, it is also true that the regime has not been in place long enough to gauge whether it is truly working for passengers. On March 13, 2020 and again on March 25, 2020, the Canadian Transportation Agency (CTA) rendered two determinations that implemented what amounted to an APPR holiday for airlines. CAA was not consulted, nor to our knowledge were other stakeholders, on the original exemption provided by the CTA.

Notwithstanding the original determinations that provided a regulatory holiday to the carriers, CAA did appreciate the CTA's follow-up Determination No. [A-2020-122](#) where it was emphasized that, "The purpose of the temporary measures in Determination No. [A-2020-42](#) and Determination No. [A-2020-47](#) (the original determinations) was not to relieve financial pressures on carriers, but rather, to give them increased ability to deal with operational imperatives—particularly the need to repatriate Canadians from abroad—in the context of circumstances that changed suddenly, drastically, and repeatedly as the crisis unfolded [emphasis added]."

It was clear to knowledgeable industry observers, including CAA, that some latitude was required in the early days of the crisis. In the immediate chaos during March/April 2020, carriers were given extraordinary concessions, which expired June 30, 2020. Carriers have now had months of experience operating under a 'new normal'. Notably, the EU and US regimes remain in force, each of them tougher in some respects than the APPR, and carriers there are coping.

CAA would also like to take this opportunity to reiterate our position that the CTA Statement on Vouchers of March 25, 2020, even after the issuance one month later of an FAQ, caused major confusion in the marketplace, much to the detriment of consumers. The practical impact was that those carriers that had been offering credits stopped and suppliers stopped offering refunds, citing the CTA statement.

CAA is pleased to see the federal government's commitment to ensuring that consumers with COVID-19 related travel cancellations will be able to get refunds as part of any federal airline pandemic financial support package. We are further delighted to see that the CTA has been charged with closing the APPR loophole that currently leaves Canadians with no assurance they can access a refund for pandemic-related airline cancellations. But the fact remains that thousands of Canadians to this day have yet to receive a penny in refunds.

While we understand that air travel is not likely to return to pre-COVID times soon, carriers are still offering flights freely, regulations permit air travel and passengers who choose to travel are entitled to the consumer protections established under the APPR. All industries have had to adapt to operating under the 'new normal' and there must be differentiation between how a carrier operates its business during a pandemic (within control) versus a sudden pandemic travel restriction that influences a delay or cancellation (outside control). It is within the carrier's control to decide how many flights they plan to offer to a destination which may later lead to a business preference to consolidate flights. COVID-19 should not and is not a free pass on APPR. We see no



reason to give an indefinite regulatory holiday on consumer protections to carriers on matters that remain within their control and that were considered key to the regime just last year.

The APPR sets out protections for travellers to ensure they are given fair notice of itinerary changes, a minimum standard of treatment, and even compensation in limited circumstances. These measures are specifically designed to get all travellers, even those without airline frequent flyer status, to their destination with options that ensure the least delay possible.

In 2017, CAA opinion polling showed that, among those that had travelled in the previous two years by air, 94% believed that a national air passenger consumer protection code was needed. There is a reason why other regimes around the world established air traveller protections and despite great delay, Canada eventually followed suit.

Specifically, in reference to the Agency's consultation considering temporary adjustments to the APPR, the CAA respectfully submits the following:

- 1. Removing the requirement for air carriers, in certain circumstances, to rebook passengers on other air carriers with which they have a commercial agreement**
- 2. Removing the requirement for air carriers, in certain circumstances, to rebook passengers on other air carriers with which they have no commercial agreement**

CAA will address consultation questions 1 and 2 together as our point of view on this item draws no distinction between competing airlines with or without commercial agreements.

In reviewing the airline industry stakeholder requests published by the CTA, carriers have voiced concern that requiring them to rebook a passenger on a partner air carrier would not only hinder their recovery but could also be worse for consumers, citing the high number of cancellations and the risk that travellers could get stranded mid-trip.

From CAA's perspective, we do not agree with these views. Currently, Canadians are being asked only to travel for essential reasons and those choosing to travel by air should be afforded protections to ensure that if a ticket is sold to them, they can complete their journey. At this time, completing their journey is the **only** protection passengers have when the airline cancels their flight and labels the reason as, 'outside carrier control,' as it would be if directly caused by pandemic travel restrictions. We recognize that this is soon to change significantly with the direction the CTA has received from the Minister of Transport to close the refund loophole.

It is important to highlight that in this scenario, depending on the airline and class of ticket purchased, a passenger may not even be entitled to a refund. The only card they have to play in the game is to proceed with their travel. Making the case stronger is that



some airlines have cancelled service altogether to certain regions meaning that the only way forward is to access a competing airline.

It is clear to us that the enacted regulations were never designed to offer consumers a single protection in cases 'outside carrier control' that could be indefinitely delayed. For example, when a hurricane impacts a region, it may take days to clean up but shortly thereafter, flights resume. As the APPR was crafted, no one ever considered the consequence of a near global shutdown of air travel for an extended, indefinite period. In a December 21 statement, then federal Transport Minister Marc Garneau noted that the, pandemic highlighted a gap in Canada's protections for airline passengers, which weren't designed to cover such lengthy delays. We could not agree more and are pleased to see the CTA undertaking efforts to close this loophole quickly.

The CAA believes that airlines that sell tickets to destinations should be required to carry out their obligations under the APPR to assist passengers in completing their journey even if that requires using a competing airline, whether or not a commercial agreement exists.

Should the Agency decide otherwise and proceed with the easing of these obligations, there should be an absolute requirement that airlines offer every passenger a full refund in the form of payment used to purchase the ticket, including any additional charges levied (checked bag, advanced seating, etc.). This alternative, at the very least, preserves the opportunity for the passenger to use their reclaimed funds to purchase their own ticket – if possible – on a competing airline to complete their itinerary and get to or return from their destination.

3. Only requiring that air carriers pay compensation for inconvenience under the APPR if:

- a) they tell passengers of a flight disruption less than 72 hours in advance (instead of 14 days);**

While it is true airlines may be at the mercy of government orders in some circumstances, offering little predictability or ability to anticipate disruptions, we do not agree with reducing the 14-day advance notice requirement to avoid owing compensation to passengers when an airline cancels or significantly delays a flight.

Our rationale lies in the fact that, currently, many cancellations and flight disruptions are already potentially 'outside carrier control' if directly attributable to sudden COVID-19 restrictions, including the unfettered knock-on effects, meaning that no compensation is due. For this reason, this request does not appear to strike the right balance. It appears to provide limited additional aid for airlines, given the available data, while significantly curtailing passenger rights.

Using the carrier provided data in Annex A, we see that only 1% of all cancellations in July (795 / 65,329), August (742 / 64,303) and September 2020 (686 / 59,524) occurred within the 3-14 day window, illustrating the limited number of cases this exemption may



address. We also acknowledge that the data in Annex A illustrates that many more travellers are cancelling in the 3-14 day window before their flight, leading to more volatility. However, we again point to the protections already afforded airlines for situations 'outside carrier control' when the issue is directly attributable to an unanticipated COVID-19 restriction.

Air industry stakeholders have submitted that it is unlikely that flight disruptions resulting from the effects of the pandemic would be considered within the control of air carriers (thus, triggering the obligation to pay compensation), yet they still wish greater certainty and flexibility. CAA has illustrated how few passengers are likely to be owed compensation in the first place and has also outlined that only a tiny number of flights from the total number of cancellations are within the 3-14 day window. The onus should be on the carrier to establish a directly attributable link to a travel disruption related to unanticipated pandemic-related travel restrictions rather than shelve consumer protections because it provides greater certainty to carriers. Respectfully, this appears to be a solution seeking a problem.

From a consumer perspective, this request eliminates airline accountability and potential compensation within the 3-14 day window, even in cases where the carrier made a business decision that was fully within its control. As limited as these cases may be today, passengers should retain the right to have their case reviewed by the CTA. Travel will begin to bounce back in the months ahead and consumer trust and certainty, gained from the APPR, is paramount to getting passengers back in airline seats.

Canadians who are booking flights for essential reasons today have less chance of finding themselves in a situation where compensation is owed and a far greater chance of ending up in a situation where their flight is cancelled, they cannot access a competing airline and can't access a refund. Travellers deserve some level of certainty so that they can avoid consequential costs. While travellers may appreciate having 5 flights a day marketed to them – a business decision within carrier control – when those 5 flights get consolidated due to low demand on short notice, there are real impacts to the passenger. In these cases, some passengers would likely opt for fewer initial flight options and more certainty.

Lastly, building back consumer trust and certainty in airline scheduling and the ability to access refunds for all ticket classes and from all airlines will help Canadians feel more confident returning to air travel in the months ahead. Our understanding is also that, in the EU, compensation is due if a passenger didn't get 14 days' notice unless the carrier can prove that the cancellation is caused by [extraordinary circumstances](#) which could not have been avoided even if all reasonable measures had been taken. The airline has to prove this fact with supporting evidence rather than being given a free pass as contemplated here. The EU position is an example of a pro-consumer regime, which we would submit was the intention of Canada's Parliament as well. Under the CTA, the APPR is in danger of turning more and more into a document that is heavily weighted towards carrier interests.



3. Only requiring that air carriers pay compensation for inconvenience under the APPR if:

b) What if the passenger experiences a delay of more than 6 hours (instead of 3 hours)?

As stated in 3 (a), we understand that managing airline networks and connections is a challenging logistical feat under current circumstances. However, we believe that it is unnecessary to adjust this regulation due to the pandemic because, in fact, this request is, to an overwhelming degree, addressing scenarios unrelated to the pandemic, within full control of airlines. As with the EU model noted in 3 (a), carriers should be required to demonstrate the case in question was directly attributable to the pandemic (i.e. outside carrier control) rather than get an upfront free pass.

In cases where cancellations and flight disruptions are directly attributable to unanticipated COVID-19 restrictions, no compensation would be due in any event. As with the EU model noted in 3 (a), carriers should be forced to prove with supporting facts that the case in question was directly attributable to a sudden pandemic restriction (i.e. outside carrier control).

For these reasons, this request also does not strike the right balance given that it provides limited aid for airlines while significantly curtailing passenger rights in travel scenarios not directly attributable to the pandemic. We do not support this measure.

If the Agency intends to entertain this request further, it should consider first having airlines submit the total dollar value of compensation they have paid out under the APPR since March 2020. This would at least help to quantify the significance of the issue being addressed by this request.

4. Giving air carriers until March 31, 2021 to respond to requests for compensation for inconvenience filed between July 1, 2020 and September 29, 2020 (extending the temporary adjustment made in [Determination A-2020-122](#)).

In Determination No. A-2020-122, the CTA accepted an earlier request by airlines to exempt them from responding to passenger requests for compensation within 30 days. The exemption provided carriers more time as requested, concluding that for compensation requests filed between July 1 and September 29, airlines would have until October 28, 2020 to respond. It is somewhat bizarre that stakeholders are being asked nearly three months after that deadline to extend it. Have airlines not been meeting their obligations since October 28?



When the APPR was announced, the 30-day response window for airlines was seen as a win for consumers, many of whom thought airlines would not respond quickly to APPR complaints. Canadians waited long enough to see a Canadian regime enacted and the Agency has already offered extraordinary concessions to airlines in this regard. There are now consumers who may be owed compensation from as far back as 9 months ago if this request is accepted.

While we recognize that airline resources have been impacted financially, the passengers protected under the APPR, if owed compensation, should not be providing what is essentially an interest-free loan to airlines. Carriers should be required to show their potential liability would be material to their finances before any consideration is given on this point.

We oppose further delays to carriers addressing APPR compensation claims. There should be no further extensions granted.

5. How long any temporary adjustments to the APPR should be in place, if the CTA decides that any should be made.

As noted in our submission above, CAA does not believe that further regulatory holidays should be considered.

If the Agency chooses to permit any exemptions, it should consider the role the APPR plays in safeguarding passengers and building back consumer trust and confidence in our air travel sector, and the public reaction to any further weakening of protections at a time when a strong sector requires public confidence.

Conclusion

We are in the middle of an unprecedented crisis for everyone, including air carriers, but as things stand now many consumers are getting sideswiped in the process. Canada's treatment of affected air passengers does not compare favorably with the US or the EU, both of which have demonstrated understanding of the industry's position but not backed away from supporting their citizens either.

Recognizing that the Minister of Transport has directed the CTA to close the loophole that allows carriers to not refund passengers in pandemic situations to strengthen the APPR, it seems inconsistent that this consultation considers weakening existing consumer protections.

We see very little in the proposed changes above that would materially improve carrier prospects, while in each and every case they would significantly weaken consumer protections. Parliament clearly intended a strengthening of consumer protections by amending legislation to direct the CTA to create regulations. We urge the CTA to keep



this in mind as it considers its decisions. Sadly, to date there is little evidence that this is the case.

More consumer confidence in the regime and the CTA will ultimately strengthen demand and therefore the industry, not weaken it. Neither in the EU nor in the US has any carrier blamed the rights regime it operates under – including currently – for materially depressing its financial recovery prospects.

We would be happy to answer any questions you or your staff might have. Please do not hesitate to contact me by telephone at (613) 863-2590 or email at ijack@national.caa.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'IJ', is centered below the text 'Sincerely,'. The signature is written in a cursive, fluid style.

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