

Consultation on Requests for Temporary Adjustments to the Requirements of the Air Passenger Protection Regulations (APPR)

Dear Sir/Madam,

Please see my response to your request.

Should air carriers be required to follow APPR requirements to rebook passengers on other air carriers?

Many airlines are currently choosing not to be conservative in their approach to scheduling and are selling contracts of carriage for itineraries that they are extremely unlikely to fulfill. This unwillingness to adapt to the current economic climate is seen in ANNEX A where of the 3 months of data shown, scheduled flights in 2019 and 2020 are nearly identical at 250,656 and 234,971 respectively¹. Yet passenger numbers have fallen from 24,285,909 to 2,822,270 during this same time¹.

With the global aviation industry at risk of bankruptcy it does not seem appropriate to reward the companies taking risks with their schedule while other carriers such as Porter have taken a conservative approach by cancelling all service between March 21 2020-March 29 2021 to ensure their survival².

If an airline wants to protect themselves from the financial burden of rescheduling a passenger on a competitor then they should only sell itineraries they have a higher confidence in providing. For example, Air Canada has been consistently selling non-stop transportation from YYZ-DXB on AC56 including this example from Dec 5th 2020³. Yet if a flight history is examined it will show that the last flight operated by Air Canada on this route was March 22 2020⁴. To this day the company is still advertising this route but the only consistency is the cancellations⁵. In contrast, Emirates has flown this route consistently on EK242⁶. When airlines decide to cancel their flights they should be required to rebook those passengers on any airline willing to fly said route in order to maintain a fair competitive marketplace.

The reduced number of flights currently being operated by many air carriers will mean that, in many situations, there are limited or perhaps no rebooking options on carriers with a relevant commercial agreement. To ensure the contract is fulfilled, all carriers globally must remain a viable option for rebooking.

Should air carriers be given more time to respond to requests for compensation filed between July 1, 2020 and September 29, 2020?

Delaying the assessment of compensation requests exclusively aids the airlines. It serves no benefit to an affected passenger. Air carriers have laid off 10's of thousands of staff for the sole purpose of cutting costs. It could be expected with national unemployment rates peaking at 13.7% in May and the most recent data from December showing an 8.8% rate, many of the previous staff members would gladly be redistributed to a new position in the company dealing with passenger complaints to cover any man power/time constraints that the companies face⁷.

Previous decisions to remove a passenger's right to compensation were made to allow carriers to focus on immediate demands, such as repatriating Canadians stranded abroad, and to adjust their operations to accurately reflect new drastically lower passenger demand levels⁸. None of these factors are present at this time.

The CTA currently has a backlog of greater than 22,000 complaints before them and at last report has yet to begin dealing with **any** that were submitted since March 2020^{9,10}. No passenger protection has been enforced to date by the CTA for events since the COVID-19 pandemic began. This is an inexcusable performance standard. Passenger confidence in the airlines **and** the CTA needs to be increased, not decreased.

Airlines have shown bad faith by denying passengers of their rights in previous examples of legitimate compensation requests and all major Canadian carriers are currently under investigation for mass misrepresentation during compensation requests since the APPR went into effect¹¹.

Should air carriers have to pay compensation for inconvenience under more limited circumstances?

for example: only if they told passengers about the disruption less than 3 days in advance (instead of 14 days); and only if the passenger's delay was 6 or more hours (instead of 3 or more hours);

As seen in the Data from Annex A, the percentage of passengers who booked tickets 3-14 days in advance rose from 15% in 2019 to 34.3% in 2020¹. This data leads to the conclusion that passengers are now twice as likely to book within the window where compensation is required as they know they are protected by enforceable consequences from last minute carrier induced cancellations. By reducing/eliminating this window you would be reducing consumer confidence in $\sim\frac{1}{3}$ of the current

customers. This action is likely to result in even shorter booking windows by customers and even harder load factors to predict for airlines.

Airline pilots and flight crew would suffer from further unpredictability of schedule and unfairly encounter poorer working conditions from angry passengers and last minute work schedule changes.

As most governments advise or require only essential travel be taken by citizens under current health conditions, it can be assumed that many newly purchased itineraries are for a sole purpose and have limited flexibility. Allowing an increased flight delay without compensation would further destroy demand from the dominant sub sector of current customers.

Other federally regulated sectors such as banks have had further restrictions placed on them by their regulator during this pandemic just like other times of economic stress¹². Restrictions on spending and greater cash reserve requirements are added in order to maintain consumer confidence to avoid scenarios such as a “run on the bank”, and to protect society from a critical systematic failure of vital economic infrastructure.

In a previous Determination, the Agency’s refusal to continue exemptions was made on the basis that “Sunwing and Air Canada have not provided evidence that they are facing the same sorts of operational imperatives and the sudden, drastic changes that characterized the initial stages of the pandemic, and they have not shown why, after more than 3 months, it is not possible to adapt operations to new realities such as health and safety precautions”¹³. This statement remains as true now as it was when written.

The sole beneficiaries from limiting compensation would be those individuals with financial interests in the company's profitability.

How long should any temporary adjustments be in place?

Based on all concerns expressed in this document they should be put in place for 0 days.

If for some reason the CTA does decide to remove any passenger protection rights it should be conditional on the following:

1 Only new bookings made between the affected dates can be subject to these adjustments as passengers who booked in advance have vested rights and should not be subject to an ex post facto regulation.

2 All points of sale for new bookings during the relevant time period should require a consumer to expressly acknowledge that they accept not being protected by the regulations as written. It cannot be assumed that a meaningful number of passengers will be aware of any changes to the APPR during the relevant period.

To illustrate this point, as of my submission there are 28 people/organizations who have responded to the agency's request for feedback and thus are confirmed as aware of the situation. In 2019, Canada had 162,185,308 air passengers¹⁴. This is the best data we have pointing towards the number of passengers that are potentially affected by any changes. Using this data, only a miniscule 0.000000166% of the travelling public can be confirmed as being aware of their rights potentially being removed. In this scenario, passengers caught off guard assuming they still maintain their rights under the APPR will be understandably frustrated which would likely cause thousands of new complaints to the CTA which is allegedly already stretched beyond its capacity limits.

Air passengers are not debtors to airlines, are not equity holders, they are customers. Airlines seem to have forgotten that they require paying passengers to recover from this financial stress and consumer confidence is vital. Air passengers have never been given temporary additional rights to compensation during good financial times for airlines nor when things are “difficult” for society. The same needs to be true in reverse.

The CTA's mandate does not implicate the financial well-being of the airlines¹⁵. It is designed to provide consumer protection and efficient, reliable transportation for all Canadians. Neither would be accomplished by removing passenger rights.

Garrett Wellwood
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1. <https://otc-cta.gc.ca/eng/consultation-paper-requested-temporary-adjustments-air-passenger-protection-regulations>
2. <https://www.flyporter.com/en-ca/about-us/news-details?title=Porter+Airlines+updates+tentative+restart+of+flights+to+March+29+2021+01>
3. <https://imgur.com/a/BmAVYw3>
4. <https://flightaware.com/live/flight/ACA56>
5. <https://imgur.com/a/S97c4AP>
6. <https://www.flightera.net/en/flight/EK242>
7. <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1410028703>
8. <https://www.otc-cta.gc.ca/eng/ruling/a-2020-47>

9. <https://www.ctvnews.ca/business/thousands-of-flight-complaints-amid-covid-19-won-t-be-processed-until-2021-1.5212628>
10. <https://www.cbc.ca/news/politics/canadian-transportation-agency-cancelled-flight-complaints-1.5776622>
11. <https://www.otc-cta.gc.ca/eng/ruling/let-c-a-12-2020>
12. <https://www.osfi-bsif.gc.ca/Eng/osfi-bsif/med/Pages/2020-04-03.aspx>
13. <https://www.otc-cta.gc.ca/eng/ruling/a-2020-122>
14. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2310025301>
15. <https://otc-cta.gc.ca/eng/organization-and-mandate>