

PANORAMIC

AVIATION LIABILITY

Canada



 LEXOLOGY

Aviation Liability

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Generated on: November 14, 2024

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APPLICABLE TREATIES

Major air law treaties

To which major air law treaties related to carrier liability for passenger injury or death is your state a party?

Treaty	Effective date	Implementation
Montreal Convention (1999)	4 November 2003	Implemented by Carriage by Air Act (RSC, 1985, c. C-26)
Montreal Protocol No. 1 (1975)	15 February 1996	Ratified
Montreal Protocol No. 2 (1975)	15 February 1996	Ratified
Montreal Protocol No. 3 (1975)	Not applicable	Not in force
Montreal Protocol No.4 (1975)	25 November 1999	Implemented by annual statute 1999, volume I, Chapter 21
Guatemala City Protocol (1971)	Not applicable	Not in force
Tokyo Convention (1963)	5 February 1970	Ratified
Guadalajara Supplementary Convention (1961)	30 November 1999	Implemented by annual statute 1999, volume I, Chapter 21
Hague Protocol (1955)	17 July 1964	Ratified
Rome Convention (1952)	4/ February 1958 to 29 December 1976	Denounced on 29 December 1976
Warsaw Convention (1929)	8/9/47	Implemented by Carriage by Air Act (RSC, 1985, c. C-26)

Law stated - 19 September 2024

INTERNATIONAL CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Montreal Convention and Warsaw Convention

Do the courts in your state interpret the similar provisions of the Montreal Convention and the Warsaw Convention in the same way?

Canadian courts have accepted that where there are no significant differences between the language of the Warsaw Convention and the Montreal Convention; the interpretation of the Warsaw Convention is relevant and applicable.

Law stated - 19 September 2024

Montreal Convention and Warsaw Convention

Do the courts in your state consider the Montreal Convention and Warsaw Convention to provide the sole or exclusive basis for air carrier liability for passenger injury or death?

The Supreme Court of Canada has [ruled](#) that the Montreal Convention provides exclusive recourse against airlines for matters falling within its scope. The exclusivity of the liability scheme established under the Montreal Convention extends at least to excluding actions arising from injuries suffered by passengers during flight or embarkation and debarkation when those actions do not otherwise fall within the scheme of permitted claims.

Law stated - 19 September 2024

Definition of 'carrier'

In your state, who is considered to be a 'carrier' under the Montreal and Warsaw Conventions?

There is case law in Canada confirming that Chapter V of the Montreal Convention expands the applicability of the Convention to entities not previously covered by the Warsaw Convention. In particular, the application of articles 39 and 43 has resulted in sellers of vacation packages (which include flights) being found to be 'contracting carriers' whose liability is governed by the Montreal Convention. Those provisions have not yet been interpreted to include ground handlers.

There is limited case law in Canada, but courts have declined to conclude that carriage is 'successive carriage' in cases governed by the Warsaw Convention unless the carrier had prior actual knowledge that the 'itinerary' included an international segment.

Law stated - 19 September 2024

Carrier liability condition

How do the courts in your state interpret the conditions for air carrier liability – 'accident', 'bodily injury', 'in the course of any of the operations of embarking or disembarking' – for passenger injury or death in article 17(1) of the Montreal Convention and article 17 of the Warsaw Convention?

Canadian courts have interpreted the term 'accident' to mean an 'unexpected or unusual event or happening that is external to the passenger' in reference to the ruling of the Supreme Court of the United States in *Air France v Saks*, 470 US 392 (US Cal 1985).

Canadian courts have interpreted the term 'bodily injury' to mean a physical injury and ruled that the Montreal Convention does not allow compensation for purely psychological injury. Psychological injury caused by a bodily injury, however, is compensable.

To date, one Canadian court decision has recognised the test from the United States Court of Appeals (second circuit) in *Day v Trans World Airlines Inc*, 528 F 2d 31, which sets out three factors to consider in determining whether a passenger was in the process of embarking or disembarking within the meaning of article 17: the passenger's activity at the time of injury; their whereabouts when injured; and the extent to which the carrier was exercising control.

However, the court found it unnecessary to apply the test in the circumstances of the case. It is anticipated that future decisions will consider this jurisprudence.

Law stated - 19 September 2024

No negligence defence

How do the courts in your state interpret and apply the 'no negligence' defence in article 21 of the Montreal Convention, and the 'all reasonable measures' defence in article 20 and the 'wilful misconduct' standard of article 25 of the Warsaw Convention?

In a recent decision, a Canadian court has considered the 'no negligence defence' in article 21 of the Montreal Convention, finding that the Canadian concept of negligence applies. The elements of negligence in Canadian law require a duty of care, a breach of the standard of care, and damages caused, in fact and in law, by the breach of the standard of care. The standard is that of a 'reasonable airline and its personnel in similar circumstances' (see [S v Ukraine International Airlines JSC](#), 2024 ONSC 3303 at paragraph 153). External indicators of reasonable conduct relevant to determining the content of the standard of care also include custom, industry practice, professional standards, and regulatory standards in addition to statutory standards. The Court considered various International Civil Aviation Organization (ICAO) documents, the laws and regulations of the defendant carrier's state, and the policies, procedures, guidelines, and manuals of the defendant carrier. With regard to the language in article 20 of the Warsaw Convention, Canadian courts have required objective proof on a balance of probabilities. With regard to article 25 of the Warsaw Convention, the courts have applied a subjective test to determine whether the carrier acted recklessly and with the knowledge that damage would probably result (see [Connaught Laboratories Limited v British Airways](#), 61 OR (3d) 204, [2002] OJ No. 3421 (ONSC), at paragraph 57).

Law stated - 19 September 2024

Advance payment for injury or death

Does your state require that advance payment be made to injured passengers or the family members of deceased passengers following an aircraft accident?

No.

Law stated - 19 September 2024

Deciding jurisdiction

How do the courts of your state interpret each of the jurisdictions set forth in article 33 of the Montreal Convention and article 28 of the Warsaw Convention?

Canadian courts have generally accepted that the domicile of the carrier and its principal place of business is normally the place where the carrier is incorporated. The place where

the tickets are purchased has been found to be the place where the contract is made (see [Sakka \(Litigation Guardian of\) v Air France](#), 2011 ONSC 1995, paragraph 31). In the two court decisions considering the 'fifth jurisdiction', courts have declined to rule because of a lack of evidence presented to establish a passenger's 'principal and permanent residence'.

Canadian courts recognise the doctrine of *forum non conveniens* but have not decided the issue of whether it would be applied to a Montreal or Warsaw action.

Law stated - 19 September 2024

Period of limitation

How do the courts of your state interpret and apply the two-year period of limitations in article 35 of the Montreal Convention and article 29 of the Warsaw Convention?

Canadian courts have ruled that the two-year period of limitations is a condition precedent to suit and is therefore absolute (see [Titulescu v United Airlines Inc](#), 2014 ONSC 5683 and [Diallo v Cie Nationale Royale Air Maroc](#), 2016 ONSC 3247). A recent decision from British Columbia held that a plaintiff's failure to plead the Montreal Convention in the original claim precludes the plaintiff from amending the claim to assert a viable claim under the Montreal Convention after the passenger's 'right to damages' has been extinguished due to the passing of time set out in article 35 (see [Spencer v Transat AT Inc](#), 2022 BCSC 2256).

Law stated - 19 September 2024

Liability of carriage

How do the courts of your state address the liability of carriage performed by a person other than the contracting carrier under the Montreal and Warsaw Conventions?

Canadian courts have accepted that passengers may bring an action against an actual or contracting carrier pursuant to the principles set out in the Warsaw or Montreal Conventions. Courts have applied article 46 of the Montreal Convention in accepting that jurisdiction may be conferred on the domicile or principal place of business of the actual carrier (see [Zoungrana v Air Algérie](#), 2016 QCCS 2311).

Law stated - 19 September 2024

DOMESTIC CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Governing laws

What laws in your state govern the liability of an air carrier for passenger injury or death occurring during domestic carriage?

Liability of an air carrier for passenger injury or death is governed by the common law and fatal accident statutes of each province. In the case of a conflict of laws between provinces,

the law that applies to substantive matters is generally the law of the province in which the injury or death occurred.

Law stated - 19 September 2024

Nature of carrier liability

What is the nature of, and what are the conditions for, an air carrier's liability?

Liability for an air carrier is fault-based. The Supreme Court of Canada has ruled that although the carrier of passengers is not an insurer, there is a heavy burden on the defendant carrier to establish that it had used all due, proper and reasonable care and skill to avoid or prevent injury to the passenger. The care required is of a 'very high degree'.

Law stated - 19 September 2024

Liability limits

Is there any limit of a carrier's liability for personal injury or death?

There is a limit of liability for non-pecuniary damages for pain and suffering, which relates to the severity of injuries. Catastrophic injuries not resulting in death have a current ceiling of approximately C\$460,000 and increase incrementally. There is no limit for other types of damages, such as past and future loss of income, loss of future earning capacity and cost of future care.

Law stated - 19 September 2024

Main defences

What are the main defences available to the air carrier?

A carrier may defend against claims on the basis that it was not negligent, that the injury or death was the result of a third party or an intervening act or was caused by contributory negligence of the claimant or a failure to mitigate. Further, a passenger may be statutorily barred from making a claim against an operator if the passenger is injured in the course and scope of their employment. Each province and territory has its own Workers' Compensation legislation, which may proscribe or limit the carrier's liability in specific circumstances.

Law stated - 19 September 2024

Damages

Is the air carrier's liability for damages joint and several?

Yes.

Law stated - 19 September 2024

Rule for apportioning fault

What rule do the courts in your state apply to apportioning fault when the injury or death was caused in whole or in part by the person claiming compensation or the person from whom the right is derived?

Where damage was caused in whole or in part by the person claiming compensation, the claimant is entitled to compensation based on comparative negligence. In apportioning damages, courts are concerned with the relative fault or blameworthiness of the parties involved.

Accordingly, the court will consider two questions. First, the court must determine whether the person claiming compensation acted negligently. If the court answers this question in the affirmative, it must next consider the comparative causation of the carrier's negligence and that of the claimant's own negligence. A claimant's overall award will be accordingly reduced by the amount they are found to be at fault.

However, in an action with multiple defendants, where the claimant is found contributory negligent, the liability of a single defendant in certain provinces may not be joint and several, resulting in each defendant being found liable only for its 'share' of damages.

To determine whether a child is contributorily liable, courts will consider whether the child exercised the care expected of a reasonable child of their age and experience. Similarly, courts will consider whether a mentally disabled person exercised the care expected of a reasonable person with the same abilities or mental capacity. In some circumstances, the carrier may reduce its liability by claiming against the parents or caregiver of the child or disabled person on the basis that they failed to exercise the care expected of a 'reasonably prudent parent'.

Law stated - 19 September 2024

Statute of limitations

What is the time within which an action against an air carrier for injury or death must be filed?

The limitation period for an action against an air carrier can vary depending on the limitation of actions statute or other relevant provincial statutes. In most jurisdictions, a claim must be brought within two years of the date that the cause of action arose, or the date of discovery.

Limitation periods are subject to an 'ultimate limitation period', which provides for a final deadline regardless of when the claimant 'discovered' the claim. The ultimate limitation period varies from 10 years in Alberta, to 15 years in BC and Ontario, to 30 years in Manitoba. The limitation period does not run during the time in which the claimant is a minor or incapable of commencing a proceeding by reason of physical or mental condition.

Service and filing requirements differ between provinces and between different levels of court. An action is typically commenced once a notice of claim is filed with the court registry.

Law stated - 19 September 2024

THIRD-PARTY ACTIONS

Seeking recovery

What are the applicable procedures to seek recovery from another party for contribution or indemnity?

The procedures for seeking recovery from a third party for contribution and indemnity differ between provinces according to the rules and legislation of the court in which the proceedings take place.

Law stated - 19 September 2024

Time limits

What time limits apply?

The limitation for bringing a third-party claim in Canada may vary based on the limitation of action statute of the province in which an action is brought. In many provinces, a claim for contribution or indemnity must be brought shortly after being served with the notice of claim or the filing of a statement of defence. If a party misses the deadline, they must obtain leave of the court to commence a third-party claim.

Law stated - 19 September 2024

LIABILITY FOR GROUND DAMAGE

Applicable laws

What laws apply to the liability of the air carrier for injury or damage caused to persons on the ground by an aircraft accident?

There are no specific rules governing the liability of air carriers for ground damage. As a result, the law that applies is the common law of the province in which the damage occurred, or the civil law of Quebec. If an aircraft accident occurs on airport property, liability may be affected by the terms of any contract with the airport authority governing the carrier's operations at the airport.

Law stated - 19 September 2024

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for ground damage?

An air carrier's liability for ground damage is fault-based.

Law stated - 19 September 2024

Liability limits

Is there any limit of carriers' liability for ground damage?

No.

Law stated - 19 September 2024

Main defences

What are the main defences available to the air carrier in a claim for damage caused on the ground?

In the event of damage caused on the ground, an air carrier may defend against claims on the basis that it was not negligent, that the damages were caused by a third party, or that the claimant failed to mitigate their losses.

Law stated - 19 September 2024

LIABILITY FOR UNRULY PASSENGERS AND TERRORIST EVENTS

Applicable laws

What laws apply to the liability of the air carrier for injury or death caused by an unruly passenger or a terrorist event?

If the injury or death occurs in the course of international carriage, the terms of the Montreal Convention will apply. Depending on the circumstances, the definition of 'accident' under the Montreal Convention could include injury caused by an unruly passenger or a terrorist event and the carrier could be liable under the Montreal Convention.

If the injury occurs in the course of domestic carriage, claims will be resolved in accordance with the common law of the province in which the incident occurred, or the civil law of Quebec.

Law stated - 19 September 2024

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for injury or death caused by an unruly passenger or a terrorist event?

If the injury or death caused by an unruly passenger or terrorist event occurs in the course of 'international carriage', the liability provisions of the Montreal Convention will apply to impose a combination of strict and fault-based liability on the carrier. If the injury caused by an unruly passenger or a terrorist event occurs in the course of domestic carriage, the carrier's liability will be fault-based.

The [Canadian Aviation Regulations](#) provide that no operator of an aircraft should provide or serve any intoxicating liquor to a person on board the aircraft where there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent

that may present a hazard to others. Further, no operator should allow a person to board the aircraft where there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent that may present a hazard to the aircraft or to persons on board the aircraft. To the extent a passenger's unruly behaviour is alcohol or drug related and results in death or injury, a court may consider whether this was a foreseeable hazard. While a carrier's breach of these regulations is not proof of fault, it could be considered by the court in determining whether the carrier was negligent.

Law stated - 19 September 2024

Liability limits

Is there any limit of liability for injury or death caused by an unruly passenger or a terrorist event?

In the event that bodily injury or death caused by an unruly passenger or terrorist event occurred during international carriage and the definition of an 'accident' under the Montreal Convention was met, the air carrier would be strictly liable for up to 128,821 special drawing rights. Beyond this, the limitation of liability will only apply if the carrier can prove that the damage was not because of its own negligence or wrongful act or omission, or if the damage was solely owing to negligence or wrongful act or omission of a third party. If the carrier is found to have been negligent, there is no limit of liability, subject to Canada's cap on non-pecuniary damages (currently around C\$460,000).

In the event that the injury occurred during domestic carriage, there is no limit of liability for the carrier (again, subject to the cap on non-pecuniary damages).

Law stated - 19 September 2024

Main defences

What are the main defences available to the air carrier in a claim for injury or death caused by an unruly passenger or a terrorist event?

If the claim results from international carriage, the main defences available for a carrier are that the unruly passenger incident or terrorist event was not an 'accident' within the definition of the Montreal Convention or that no 'bodily injury' occurred and any injury suffered was purely mental or emotional. The principles set out in the Tokyo Convention can provide guidance as well.

The carrier may also argue it was not negligent to take advantage of the limitation of liability.

If the claim results from domestic carriage, an air carrier may argue that it was not negligent, that the damage was caused solely by a third party or intervening act, or that the claimant was contributorily negligent or failed to mitigate their losses.

Regardless of whether the claim results from domestic or international carriage, a carrier could initiate an action against the unruly passenger (or a third party in the case of a terrorist event) for contribution and indemnity.

Law stated - 19 September 2024

LIABILITY FOR HARM CAUSED BY DRONES

Applicable legislation

Summarise the laws or regulations related to the liability for injuries or damage caused by drones.

There are no specific rules governing liability, but the Canadian Aviation Regulations prohibit the operation of a remotely piloted aircraft system (RPAS) in a reckless or negligent manner that endangers or is likely to endanger aviation safety or the safety of any person. RPAS pilots must immediately cease operations if aviation safety or the safety of any person is endangered or likely to be endangered. The regulations require pilots to always give way to power-driven heavier-than-air aircraft, airships, gliders, and balloons, and prohibits them from operating an RPAS in such proximity to another aircraft as to create a risk of collision. Pilots operating an RPAS over 250 grams must have a valid pilot certificate although there are no requirements for obtaining liability insurance.

Law stated - 19 September 2024

CONSUMER PROTECTION AND PASSENGER RIGHTS

Applicable legislation

Summarise aviation-related consumer-protection laws or regulations related to passengers with reduced mobility, flight delays and overbooking, tarmac delay and other relevant areas.

Air passenger rights in these areas are governed by a combination of international conventions, the federal Air Transportation Regulations (ATRs), the [Air Passenger Protection Regulations](#) (APPRs), and the Accessible Transportation for Persons with Disabilities Regulations (ATPDRs).

The APPRs impose statutory obligations on carriers with respect to communication with passengers, delayed or cancelled flights, denied boarding, tarmac delays, seating of minors, lost and damaged baggage, and transportation of musical instruments. The APPRs apply to both foreign and domestic carriers and to all flights to, from, and within Canada, including connecting flights.

The APPRs impose obligations on carriers and compensation payable (up to C\$2,400) to passengers with respect to denied boarding situations. The APPRs also impose obligations on carriers in tarmac delay situations and stipulate specific lengths of time after which carriers will be required to permit passengers to disembark from the aircraft. Airlines also must provide compensation for lost or damaged baggage of up to C\$2,100. The APPRs did stipulate that baggage fees also had to be refunded, but this provision was struck down by a recent decision of the Federal Court of Appeal. The Court found that this provision was *ultra vires* (beyond the powers) of the Canadian Transportation Agency to regulate due to the Montreal Convention (see [International Air Transport Association v Canadian Transportation Agency](#), 2022 FCA 211).

Where flights are cancelled or delayed, standards of treatment (including food and drink and access to communication) must be met by the carrier and compensation up to C\$1,000 may be payable in situations where the cancellation or delay was within the carrier's control. Certain alternate arrangements for travel must be provided by the carrier, the extent and timing of which depend on whether the delay or cancellation was within the carrier's control, within the carrier's control but required for safety purposes, or caused by situations outside the carrier's control. The APPRs also provide that a passenger can elect to receive a refund of the unused portion of their ticket regardless of the reason for the delay or cancellation.

The amount of compensation payable under the APPRs is higher for 'large' carriers (who have transported at least two million passengers in each of the two preceding years) than for 'small' carriers (who have transported less than two million passengers in each of the two preceding two years).

Parliament is currently undergoing a review of the APPRs and considering amendments due to concerns surrounding the clarity and enforceability of the current regime. The proposed amendments are expected to impose a higher burden on carriers with regard to categorising disruptions and proving that the disruption was properly categorised. The amendments, if passed, will result in the APPRs more closely resembling the regime in the European Union.

The ATRs require carriers to accept, free of charge, mobility aids for carriage. If the carrier damages or loses a mobility aid, it is required to immediately provide a suitable temporary replacement, and to arrange for the prompt and adequate repair or replacement of the damaged aid.

The ATPDRs impose obligations on carriers related to services offered and accessible communication for persons with disabilities, training for employees, acceptance of service dogs, and aircraft and terminal specifications and technical requirements. The ATPDRs also require carriers to provide a passenger with an additional seat free of charge in the event that the passenger requires two seats because of a disability (including obesity), or because they require an attendant to accompany them during air travel. This applies only to domestic flights.

The ATPDRs that relate to service requirements apply to both Canadian and international carriers, while communications, training, and technical requirements apply to Canadian carriers only.

The requirements set out above currently only apply to those carriers defined as 'large', meaning that they have transported at least one million passengers in each of the two preceding years.

The Canadian Transportation Agency is an independent government agency and quasi-judicial tribunal responsible for overseeing passenger rights in respect of air travel and handles air travel disputes and complaints related to the APPRs, the ATRs, and the ATPDRs.

Law stated - 19 September 2024

LIABILITY OF GOVERNMENT ENTITIES PROVIDING SERVICES TO CARRIERS

| Relevant laws

What laws apply to the liability of the government entities that provide services to the air carrier?

In Canada, entities such as air traffic control, many airport authorities, and the agency responsible for airport security have been privatised and are independent of the government. For the purposes of establishing the civil liability of these entities, ordinary private law rules apply. Except in the province of Quebec (which is a civil law jurisdiction), the common law framework for negligence applies. The claimant must establish the following:

- that the entity owes a duty of care;
- that there has been a breach of the standard of care applicable in the circumstances;
- that it is more likely than not that the acts or omissions of the entity caused the claimant's injury or loss; and
- that damages were suffered.

A claim based solely on the breach of a statute or regulation is not a recognised private law cause of action in Canada. However, regulatory requirements will determine the standard of care in a negligence action.

Law stated - 19 September 2024

Nature and conditions of liability

What is the nature of, and what are the conditions for, the government's liability?

As with non-government entities, the liability of the government in aviation matters is fault-based. For a private law action (such as negligence), the legal tests that apply to claims against non-government entities also apply to claims against the government. The same procedure is followed, which begins with the filing of a notice of claim.

The government may also be found liable for misfeasance in public office. However, this legal test is a higher standard than in negligence law: the government actor or actors must have acted unlawfully and must have known that they were acting unlawfully or have been reckless or wilfully blind to the unlawfulness of their actions.

Law stated - 19 September 2024

Liability limits

Are there any limitations to seeking recovery from the government entity?

There are no legislative immunities applicable to aviation in favour of the Canadian government. However, other than in circumstances where there is a well-established body of case law (for example, government obligation regarding road maintenance), it is difficult to establish proximity sufficient to find that the government owes a duty of care to a private person.

There have been no decisions in which a court has concluded, under the present legal test, that the government owes a duty of care to an air carrier or passenger. In the only case

in which this issue was fully considered, the court found that proximity was not present where the carrier's air operating certificate was unlawfully suspended by the civil aviation regulator, Transport Canada, immediately following an accident: [Gill v Canada](#), 2014 BCSC 582 (affirmed on appeal, [2015 BCCA 344](#)), see also *British Columbia (Workers' Compensation Board) v Flanagan Enterprises (Nevada) Inc*, 2017 BCSC 99 and *Swanson v R*, [1991] F.C.J. No. 452. Given that the primary purpose of the statutory scheme was to ensure safe air travel, the court found that the government could not be required to consider the economic interests of the carrier in determining whether to suspend an operating certificate.

Law stated - 19 September 2024

CRIMINAL PROCEEDINGS

Responsibility for accidents

Can an air carrier be criminally responsible for an aviation accident?

The Criminal Code of Canada includes specific offences involving aviation (eg, dangerous operation of an aircraft), as well as general offences that could capture conduct that has caused an aviation accident (eg, criminal negligence causing death).

Criminal charges or prosecutions in the aviation context are extremely rare. These cases have typically involved egregious negligence or reckless conduct.

Law stated - 19 September 2024

Effect of proceedings

What is the effect of criminal proceedings against the air carrier on a civil action by the passenger or their representatives?

In most cases, a criminal conviction or finding of guilt against an air carrier would be proof that the carrier committed the constituent elements of the offence for the purpose of civil proceedings brought against it in respect of the same incident.

Law stated - 19 September 2024

Compensation

Can claims for compensation by passengers or their representatives be made against the air carrier through the criminal proceedings?

While the impact on victims of a crime may be considered for the purposes of sentencing, victims have no standing to make claims in a criminal proceeding. However, a court can make a restitution order compelling the offender to pay a victim for financial losses because of the offender's crime.

Law stated - 19 September 2024

EFFECT OF CARRIER'S CONDITIONS OF CARRIAGE AND TARIFFS

Liability

What is the legal effect of a carrier's conditions of carriage or tariffs on the carrier's liability?

Under the law of contract in Canada, the carrier's tariff will generally be binding on a passenger if they are given notice of the terms and conditions at the time the contract is formed. With respect to exclusions or limitation of liability clauses, courts may construe these against the party that drafted the contract, and these terms must be brought to the attention of the other party, or they may not be binding. The Canada Transportation Act, SC 1996, c 10, mandates that a commercial air carrier make their tariffs available for public inspection as well as publish the terms and conditions of carriage online.

Law stated - 19 September 2024

DAMAGES

Damage recovery

What damages are recoverable for the personal injury of a passenger?

In claims involving international carriage, the provisions of the Montreal Convention govern, provided that the passenger suffered a 'bodily injury' as a result of an 'accident'.

In claims involving domestic travel, passengers are generally entitled to general (non-pecuniary) damages, income loss (past and future), cost of future care, loss of housekeeping capacity, special damages, and pre- and post-judgment interest. General damages for pain and suffering may not exceed approximately C\$460,000 (this amount increases with inflation).

Punitive damages may be recoverable in actions involving domestic carriage, provided that the plaintiff can demonstrate oppressive or high-handed conduct on the part of the defendant that is deserving of rebuke.

An injured party has standing to claim. In most provinces, close relatives may claim (either in their own name or through the plaintiff, in trust for the relative) for the cost of housekeeping services that they provided to the injured person as a result of the injuries. Where a plaintiff is a minor or otherwise suffers from a disability, a litigation guardian must be appointed to act on the plaintiff's behalf with respect to the claim.

Law stated - 19 September 2024

Damage recovery

What damages are recoverable for the death of a passenger?

The decedent's dependants may seek damages for financial losses (including loss of financial support that would have been provided by the deceased), loss of (or accelerated) inheritance, funeral expenses, and other pecuniary expenses incurred as a result of the death. In most provinces, a dependant may also maintain an action for general damages suffered for grief, loss of companionship, and loss of care and guidance. The various provinces have

enacted legislation that stipulates the types of damages that may be awarded in wrongful death actions. In some provinces, the legislation prescribes amounts that may be awarded to different classes of dependants. Punitive damages are not recoverable.

Law stated - 19 September 2024

ACCIDENT INVESTIGATION AND FAMILY ASSISTANCE

Investigatory authority

Who is responsible in your state for investigating aviation accidents?

The Transportation Safety Board of Canada is responsible for investigating all aviation accidents, pursuant to the [Canadian Transportation Accident Investigation and Safety Board Act](#), SC 1989, c 3.

Law stated - 19 September 2024

Disclosure restrictions

Set forth any restrictions on the disclosure and use of accident reports, flight data recorder information or cockpit voice recordings in litigation.

Under the Canadian Transportation Accident Investigation and Safety Board Act, SC 1989, c 3, on-board recordings and statements provided to the Transportation Safety Board during an investigation are privileged and are not to be used in litigation except in certain circumstances.

The Supreme Court of Canada recently confirmed that the statutory privilege with respect to cockpit voice recordings can be overcome if the public interest in the administration of justice outweighs the importance of maintaining confidentiality and privilege. The court cautioned that disclosure should not be routinely authorised simply because the recordings offer reliable or trustworthy evidence. The court must consider whether the disclosure is necessary, such that its exclusion may threaten trial fairness (ie, if the evidence is necessary to fill in the gaps of the pilots' evidence that are central to determining causation and thus liability). In several recent decisions, these recordings and proceedings have been ordered producible in litigation but with restrictions on use and publication. Communications with air traffic control may not be used against someone in legal proceedings. Accident reports are not admissible as evidence in trial. Except for coroner's investigations, investigators are not compellable or competent to appear as a witness unless the court orders for special cause.

Law stated - 19 September 2024

Relevant post-accident assistance laws

Does your state have any laws or regulations addressing the provision of assistance to passengers and their family after an aviation accident?

Under the Commercial Air Service Standards, which outline the requirements for compliance with parts of the Canadian Aviation Regulations, an air carrier is required to have an

emergency safety plan that includes casualty and next-of-kin coordination. There are no other laws or regulations addressing the provision of assistance to passengers or family members after an aviation accident.

Law stated - 19 September 2024

INSURANCE REQUIREMENTS

Mandatory requirements

Are there mandatory insurance requirements for air carriers?

Insurance coverage is mandatory in Canada for commercial air service operators. Under the current *Air Transportation Regulations*, air carriers operating a domestic or international service currently must have liability insurance covering risks of injury or death to passengers in the amount of C\$595,000 multiplied by the number of passenger seats on board the aircraft.

The air carrier must also have public liability insurance depending upon aircraft weight. Liability limits must be no less than C\$1,985,000 million in coverage for aircraft less than 7,500 pounds, C\$3,970,000 million for aircraft between 7,500 and 18,000 pounds, or C\$3,970,000 million plus C\$655 multiplied by the number of pounds by which the aircraft exceeds 18,000 pounds. Air carriers must also file a valid certificate of insurance with the Canadian Transportation Agency on an annual basis.

All of these liability limits will be adjusted every five years by way of a formula contained in the Regulations to account for inflation.

Law stated - 19 September 2024

LITIGATION PROCEDURE

Court structure

Provide a brief overview of the court structure as it relates to civil aviation liability claims and appeals.

No particular court has been designated in Canada for aviation matters. In each province, the Superior Court of the province is the court of inherent jurisdiction. Each province also has a provincial small claims court or tribunal where certain claims under a monetary limit may be brought. These monetary limitations vary from C\$5,000 to C\$100,000.

Decisions from a provincial small claims court are appealed to the Provincial Superior Court. An appeal lies from a final decision of a Provincial Superior Court to the Provincial Court of Appeal. A further appeal to the Supreme Court of Canada may only proceed if leave to appeal is granted. Generally, matters heard by the Supreme Court of Canada are only those that raise an issue of public importance.

Law stated - 19 September 2024

Allowable discovery

What is the nature and extent of allowable discovery/disclosure?

In small claims actions, there are minimal pre-trial discovery and disclosure procedures.

In actions before a Provincial Superior Court, parties are required to list and produce for inspection any document that is relevant or material to the action. The scope and timing of disclosure varies between provinces, but parties may apply to the court for further disclosure or to set timelines in cases where a party is dilatory with respect to its disclosure obligations. Parties are also entitled to conduct an examination under oath of each other party to the litigation.

In actions involving companies, a corporate representative with the most knowledge of the facts in issue is selected to provide evidence on behalf of the corporation. The purpose of these examinations is to assist the parties in narrowing the issues for trial and to commit the opposing parties to their evidence. The rules regarding the scope and procedure for these examinations vary between provinces (for example, in certain provinces, a party is entitled to conduct examinations of more than one representative of corporate parties). The length of time allowed to conduct oral examinations of a witness may also vary depending upon jurisdiction.

Law stated - 19 September 2024

Evidence

Does the law of your state provide for any rules regarding preservation and spoliation of evidence?

The common law doctrine of spoliation exists in all provinces, but its application varies. In general, in situations where evidence is destroyed by accident, spoliation does not arise. To establish spoliation, a party must prove on a balance of probabilities that:

- the evidence has been destroyed;
- the evidence was relevant to an issue in the lawsuit;
- legal proceedings were pending (ongoing or contemplated); and
- the destruction of the evidence was intentional with the purpose of affecting the outcome of the litigation or suppressing the truth.

When spoliation is established, the court draws an adverse inference that the evidence would have been unfavourable to the party that destroyed it.

Law stated - 19 September 2024

Recoverability of fees and costs

Are attorneys' fees and litigation costs recoverable?

A successful party may recover 'costs' from the unsuccessful party. These are intended to cover a portion of the expenses incurred for items such as lawyers' fees, expert fees, and

disbursements, among others. The court has broad discretion with respect to the award of costs, but these awards do not usually provide full indemnity to the successful party.

Law stated - 19 September 2024

JUDGMENTS AND SETTLEMENT

Pre- and post-judgment interest

Does your state impose pre-judgment or post-judgment interest? What is the rate and how is it calculated?

An amount of pre-judgment and post-judgment interest payable will be determined by provincial legislation. The amount and calculations vary from province to province.

Law stated - 19 September 2024

Settlements

Is court approval required for settlements?

Court approval or approval of a public trustee may be required where the plaintiff is a minor or has a disability. In class action lawsuits, court approval is required for any settlement.

Law stated - 19 September 2024

Settlements

What is the effect of a settlement on the right to seek contribution or indemnity from another person or entity? Can it still be pursued?

Provided that a settlement is agreed to without an admission of liability, the settling defendant may still be able to pursue another party for contribution or indemnity if the relevant limitation period for bringing such a claim has not expired.

Upon receipt of a claim and to preserve the applicable limitation period, it is common practice for defendants in an action to initiate a third-party proceeding against other potential wrongdoers. Any claim cannot exceed the amount paid out in settlement and is still subject to proving both liability and damages. A settling defendant may also settle with the plaintiff using a 'Pieringer' agreement, in which the plaintiff continues his or her action against the non-settling defendants and waives his or her right to claim for or recover any portion of damages that may be attributable to the fault of the settling defendant. The non-settling defendant would only be liable for several of its liability.

Law stated - 19 September 2024

Settlements

Are there any financial sanctions, laws or regulations in your state that must be considered before an air carrier or its insurer may pay a judgment or settlement?

In most provinces, the provincial Ministry of Health maintains a subrogated right to recover any healthcare costs that it incurs as a result of a tortious act of a defendant. In most provinces, provincial legislation provides that the provincial Ministry of Health's approval is required for any settlement agreement or release to be binding. The timing and procedure for reporting claims to the relevant provincial Ministry of Health varies between provinces.

Law stated - 19 September 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

On 30 September 2023, legislative amendments were made to the Canada Transportation Act, S C 1996, c. 10 (CTA) to 'simplify and strengthen Canada's air passenger protection regime'. These amendments affect the evidentiary requirements in determining a passenger's eligibility for compensation concerning flight delays, cancellations and baggage loss, reversing the onus from the complainant to the air carrier to demonstrate that compensation is not owed. Further, on 22 June 2023, the Budget Implementation Act, 2023, No. 1 (BIA) received Royal Assent. The BIA amends the CTA, requiring airlines to provide compensation for inconvenience to passengers when there is a flight disruption unless there are exceptional circumstances. It also puts the burden on airlines to prove the situation is an exceptional circumstance. These amendments to the CTA are not yet in force. The Canadian Transportation Agency is in the process of amending the Air Passenger Protection Regulations (APPRs) to reflect these changes.

In [International Air Transport Association v Canadian Transportation Agency, 2022 FCA 211](#), the International Air Transport Association (IATA) challenged the APPRs on the basis that the regulations exceeded the Agency's authority under the CTA and had impermissible extraterritorial effects, thus contravening Canada's international obligations under the Montreal Convention. The Federal Court of Appeal concluded that the extraterritorial reach of the Regulations does not contravene the principles of international law. The court only found subsection 23(2) of the regulations, a provision relating to the temporary loss of baggage to be *ultra vires* since the CTA does not authorise the making of regulations for the delay of baggage. Leave to appeal to the Supreme Court of Canada was granted on 17 August 2023, and the appeal was heard on 25 March 2024. A decision is forthcoming.

There have been further developments in Canadian aviation law with respect to class actions, provincial consumer protection legislation, and discrimination. In [Gauthier v Air Canada, 2024 BCSC 231](#), a representative plaintiff brought a proposed class action against two Canadian airlines on behalf of a proposed class described as persons with disabilities who require an additional seat when travelling on an aircraft. The representative plaintiff brought a claim under provincial consumer protection legislation and under the common law doctrine of unconscionability. The airlines argued that the claim be dismissed for lack of jurisdiction on

the basis that the claim was essentially a discrimination case and was within the exclusive jurisdiction of either the Canadian Human Rights Commission (CHRC) or the Agency. The court found that the plaintiffs had pleaded common law and statutory claims that were independent of human rights law and that it was not plain or obvious that jurisdiction over the matter should be declined by the court. This decision is currently under appeal and was heard in September 2024. [Zoghbi v Air Canada, 2024 FCA 123](#) is an appeal of a judicial review arising from a decision of the CHRC to 'screen out' a complaint of discrimination seeking financial relief on the basis that the Montreal Convention applies and provides exclusive recourse. The activity complained of took place upon an international flight. The Montreal Convention does not provide financial relief for discrimination. In its decision, the CHRC did not consider the appellant's claim that the Montreal Convention violated section 15 of the Charter. The appeal court concluded that, while it was reasonable for the CHRC to find that financial relief was precluded under the Convention, the CHRC was aware of the applicant's equality rights claim under section 15 of the Charter and ought to have dealt with it.

On January 8, 2020, Ukraine International Airlines (UIA) flight PS752 (PS752), departing from Tehran, was hit by two surface-to-air missiles launched by a terrorist organisation. All 176 passengers and crew perished. From this incident, 101 individual actions and one class proceeding arose. [S v Ukraine International Airlines JSC, 2024 ONSC 3303](#), relates to the trial of the class proceeding, as well as the individual actions governed by the Montreal Convention. The parties agreed that an 'accident had taken place as defined in the Montreal Convention and that UIA would be strictly liable for the accident. At issue was whether UIA could rely on article 21 of the Montreal Convention and limit its liability to 128,821 special drawing rights. To do so, the UIA had the onus to prove the following:

- that the damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
- such damage was solely due to the negligence or other wrongful act or omission of a third party.

The court found that UIA owed the passengers and crew a duty of care, that UIA breached the standard of care and the passengers and crew suffered damage and, as such, the carrier could not rely on the limitation of liability under article 22 as the airline failed to prove that it was not negligent.

Law stated - 19 September 2024