



Deficiencies of the Proposed Air Passenger Protection Regulations

by Air Passenger Rights

Submissions to the Canadian Transportation Agency

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Executive Summary

Canada has fallen behind the rest of the Western world in terms of consumer protection for air passengers. In 2006, the European Union's *Regulation (EC) 261/2004* came into force. It has since become known as the gold standard of air passenger rights. No similar laws have been passed in Canada. Regrettably, this is not going to change any time soon. Canada will continue to lag behind.

The proposed *Air Passenger Rights Regulations* [Proposed Regulations] undermine the rights of air passengers travelling within, to, and from Canada in some key areas (Figure 1), while largely regifting existing rights in other areas. It is for this reason that **more than 8,000 emails protesting against the shortcomings of the Proposed Regulations** have been sent to the Canadian Transportation Agency.

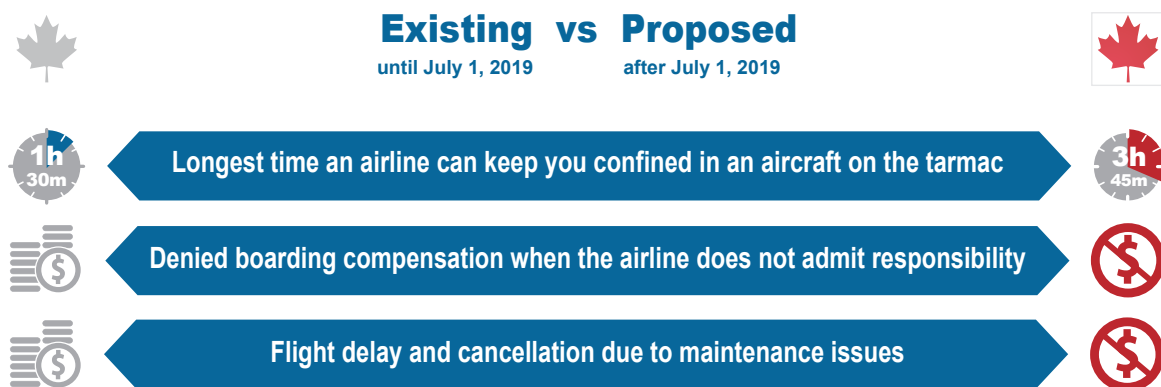


Figure 1. Existing (until July 1, 2019) vs. Proposed (after July 1, 2019)

The Proposed Regulations leave the impression of an instrument written by the airlines to ensure that in most cases, airlines will have to pay no compensation to passengers, while creating the facade of a consumer protection legislation.

APR has identified the following key areas where the Proposed Regulations are fundamentally flawed:

1. **Tarmac Delay.** The Proposed Regulations purport to permit airlines to keep passengers confined in an idling aircraft on the tarmac for up to **3 hours and 45 minutes**. *APR* is of the view that these provisions are: (1) inhumane, causing significant suffering and hardship to passengers with disabilities and to families travelling with young children; (2) unlawful, conflicting with the *Canadian Charter of Rights and Freedoms*, and (3) unacceptable.

APR believes that no passenger should be kept on the tarmac for more than **90 minutes**, as the Senate recommended in March 2018.

2. **No Entitlement to Denied Boarding Compensation in Most Cases.** The Proposed Regulations define “denied boarding” much more narrowly than the commonly used definition, established in *Regulation (EC) 261/2004* (Figure 2). The proposed definition is so narrow that it deprives passengers from being entitled to compensation in many if not most cases. This challenge is compounded by the requirement that passengers seeking denied boarding compensation establish facts that are within the airlines’ exclusive knowledge, such as the number of passengers who checked in.

APR believes that Canada should adopt the commonly used definition of denied boarding established in *Regulation (EC) 261/2004*.



Entitlement to Denied Boarding Compensation		
Airline closes check-in counter before the published cut-off time	✓	✗
Insufficient staffing at check-in counter causing passenger to miss their flight	✓	✗
Airline moves passenger to a different flight without their consent	✓	✗
Airline claims "outside our control" or due to "urgent maintenance"	✓	✗
Aircraft departs full <i>and</i> airline admits responsibility	✓	✓

Figure 2. Denied Boarding Compensation: EU vs. Proposed Regulations

3. **No Entitlement to Monetary Compensation in Most Cases.** The Proposed Regulations establish lack of compensation as the norm in the case of flight delay, cancellation, and denial of boarding, and payment of compensation as the exception. Passengers who seek monetary compensation will have to establish that the event was “within the carrier’s control” and was not required for safety purposes. In practice, passengers can neither verify nor prove these, because they have no access to the airlines’ crew assignment databases, operation centre databases, and aircraft maintenance log books; therefore, unlike in the European Union, where the burden of proof is on the airlines and not the passengers, in Canada, passengers will receive no monetary compensation in most cases.

APR believes that Canada should adopt the principle established in *Regulation (EC) 261/2004* that payment of compensation is the norm, and the airlines must prove any extenuating circumstance.

4. **No Compensation for Passengers Who Do Not Complain within 120 Days.** The Proposed Regulations do not require airlines to proactively compensate passengers for flight delay or cancellation. Instead, passengers are required to complain to the airline and ask for compensation. If they fail to do so within 120 days, they lose their right to compensation.

APR is of the view that imposing a 120-day deadline on passengers is unreasonable and serves only the airlines’ private interests.

5. **No Meals or Hotel in Most Cases.** Under the Proposed Regulations, if the airline notifies passengers about a delay or cancellation at least 12 hours in advance, then the airline is **not required** to provide meals or accommodation, even if the delay or cancellation is “within the carrier’s control.” This means that passengers may be left fending for themselves away from their homes, possibly in a foreign country, without any right to assistance from the airline—as long as the airline provided a 12-hour notice.

APR is of the view that passengers affected by a flight delay or cancellation within the carrier’s control must **always** be provided with meals and overnight accommodation, regardless of how much advance notice the airline provided.

Flight Delay and Cancellation

	EU		Canada	
	Meals&hotel provided	Cash compensation	Meals&hotel provided	Cash compensation
Airline proves "extraordinary circumstances"	✓	✗	✗	✗
Airline claims "outside our control"	✓	✓	✗	✗
Airline claims "urgent maintenance"	✓	✓	✓	✗
Airline admits responsibility	✓	✓	✓	✓
Time limit to make a claim	2 – 6 years		120 days	

Figure 3. Flight Delay and Cancellation: EU vs. Proposed Regulations

6. **Shortchanging Passengers Booked on “Small” Carriers.** The Proposed Regulations provide substantially fewer rights and a fraction of the compensation amounts to passengers travelling on “small” carriers, including on airlines operating large aircraft such as Flair or Swoop (wholly owned by WestJet).

APR is of the view that this distinction is unlawful, unfair to passengers, and inconsistent with the objective of uniformity stated in Parliament by Transport Minister Marc Garneau.

7. **Important Issues Not Addressed.** The Proposed Regulations fail to address the following issues: (1) right to a refund of the unused portion of a ticket in the case of delay, cancellation, and denial of boarding “outside the carrier’s control;” (2) boarding priorities and the obligation to seek volunteers in the case of denial of boarding “outside the carrier’s control;” and (3) “flight advancement,” that is, when the carrier changes the departure time to a time earlier than it appears on the passenger’s original ticket with the consequence that the passenger misses their flight.

APR is of the view that the regulations must address these issues.