Federal Court of Appeal

Cour d'appel fédérale

**Date: 20221206**

**Docket: A-311-19**

**Citation: 2022 FCA 211**

**CORAM:** **PELLETIER J.A.**
**DE MONTIGNY J.A.**
**LOCKE J.A.**

**BETWEEN:**

**INTERNATIONAL AIR TRANSPORT ASSOCIATION,
AIR TRANSPORTATION ASSOCIATION OF AMERICA
DBA AIRLINES FOR AMERICA, DEUTSCHE LUFTHANSA AG,
SOCIÉTÉ AIR FRANCE, S.A., BRITISH AIRWAYS PLC,
AIR CHINA LIMITED, ALL NIPPON AIRWAYS CO., LTD.,
CATHAY PACIFIC AIRWAYS LIMITED,
SWISS INTERNATIONAL AIRLINES LTD.,
QATAR AIRWAYS GROUP Q.C.S.C., AIR CANADA,
PORTER AIRLINES INC., AMERICAN AIRLINES INC.,
UNITED AIRLINES INC., DELTA AIR LINES INC.,
ALASKA AIRLINES INC., HAWAIIAN AIRLINES, INC.
and JETBLUE AIRWAYS CORPORATION**

**Appellants**

**and**

**CANADIAN TRANSPORTATION AGENCY
and THE ATTORNEY GENERAL OF CANADA**

**Respondents**

**and**

**DR. GÁBOR LUKÁCS**

**Intervener**

Heard at Ottawa, Ontario, on April 6 and 7, 2022.

Judgment delivered at Ottawa, Ontario, on December 6, 2022.

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|---|---|
| REASONS FOR JUDGMENT BY: | DE MONTIGNY J.A. |
| CONCURRED IN BY: | PELLETIER J.A.<br>LOCKE J.A. |

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**REASONS FOR JUDGMENT**

**DE MONTIGNY J.A.**

[1] In this appeal, this Court is seized with a challenge to the validity of regulations adopted by the Canadian Transportation Agency (the Agency) to compensate air passengers for various delays, losses and inconveniences experienced in the course of international air travel.

[2] In May 2018, Parliament adopted the *Transportation Modernization Act*, S.C. 2018, c. 10 (the TMA), which amended the *Canada Transportation Act*, S.C. 1996, c. 10 (the CTA) by creating the new section 86.11. This new provision requires the Agency, after consulting with the Minister of Transport (the Minister), to make regulations imposing certain obligations on air carriers, notably in relation to flight delays, flight cancellations, denial of boarding, and loss of or damage to baggage. In April 2019, pursuant to subsection 86.11(2) of the CTA, the Minister issued the *Direction Respecting Tarmac Delays of Three Hours or Less*, S.O.R./2019-110 (the *Direction*) requiring the Agency to adopt regulations imposing obligations on air carriers to provide timely information and assistance to passengers in cases of tarmac delays of three hours or less.

[3] Around the same time, the Agency adopted the *Air Passenger Protection Regulations*, S.O.R./2019-150 (the Regulations), imposing obligations – including liability – on air carriers with respect to tarmac delays, flight cancellations, flight delays, denial of boarding and damage or loss of baggage in the context of domestic and international air travel. For ease of reference, the text of the Regulations can be found in the Annex to these reasons.

[4] The appellants challenge numerous provisions of the new Regulations on the basis that they exceed the Agency's authority under the CTA. They claim that the regulations contravene Canada's international obligations under the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, 12 October 1929, 137 L.N.T.S. 11 (the *Warsaw Convention*), its successor the *Convention for the Unification of Certain Rules for International Carriage by Air*, 28 May 1999, 2242 U.N.T.S. 309 (the *Montreal Convention*), and the *Carriage by Air Act*, R.S.C. 1985, c. C-26 (the CAA). They also allege that many of the Regulations' provisions are *ultra vires* because they have impermissible extraterritorial effects, which violate fundamental notions of international law. Finally, the appellants challenge the Minister's *Direction* on the basis that it exceeds the limitations imposed by its enabling statute.

[5] For the reasons that follow, I am of the view that this appeal should be dismissed, except with respect to subsection 23(2) of the Regulations which I find *ultra vires* of the CTA.

## I. Background

[6] The appellant International Air Transport Association (IATA) is a trade association whose members include 290 airlines from 120 countries, which carry approximately 82 per cent of the world's air traffic. The appellant Air Transportation Association of America, DBA Airlines for America, is a trade association which brings together passenger and cargo airlines based in the United States, whose members transport more than 90 per cent of US air passenger and air cargo traffic. The remaining appellants are air carriers serving a large number of Canadian and international airports. With the exception of Air Canada and Porter, headquartered in Canada, all of the other appellant air carriers are foreign air carriers.

[7] The Agency is a regulator and quasi-judicial tribunal. It is empowered by the CTA, its enabling statute, to develop and apply rules that establish the rights and responsibilities of transportation service providers and users. As part of its regulatory function, the Agency makes determinations relating to matters such as the issuance of licenses, permits, and exemptions where appropriate, within the authority granted to it by Parliament. The Agency is also empowered to assign administrative monetary penalties to any breaches of the CTA or its regulations and to take enforcement action through designated enforcement officers. As a quasi-judicial tribunal, the Agency is tasked with resolving commercial and consumer transportation-related disputes, as well as adjudicating accessibility issues for persons with disabilities.

[8] Mr. Lukács describes himself as an “air passenger rights advocate”. He has appeared before this Court in a number of cases as an intervener. He was granted intervener status by Order of this Court dated March 3, 2020.

[9] In 2014, the Minister launched a review of the CTA to examine current issues in transportation, and to identify priorities and potential courses of action in the sector to support Canada’s long-term economic well-being. Informed by extensive consultations with Canadian transportation and trade stakeholders and individual Canadians, the review revealed the latter’s dissatisfaction with their air travel experiences, including with respect to the existing consumer protection regimes in place. The Report was tabled in Parliament by the Minister of Transport on February 25, 2016 (Canada Transportation Act Review, *Pathways: Connecting Canada’s Transportation System to the World*, Vol. 1 (Ottawa: Department of Transport, 2015)). It described the system in place as producing “suboptimal, piecemeal outcomes for industry,

consumers, and the regulator alike" (at p. 203) and recommended that the government enhance air passengers' rights.

[10] In response, the Minister tabled Bill C-49 in May 2017, which mandated the Agency to develop new regulations enhancing air passenger rights in Canada. On May 23, 2018, the legislature enacted the TMA, which amended the CTA to add the new section 86.11. This new provision required the Agency, after consulting with the Minister, to make regulations in relation "to flights to, from and within Canada, including connecting flights", notably in respect of carriers' obligations in case of flight delay, flight cancellation or denial of boarding, including minimum standards of treatment and minimum compensation, in certain circumstances, and for lost and damaged baggage.

[11] The Agency then launched a consultation process, to inform the development of the new air passenger protection regulations (Canadian Transportation Agency, *Air Passenger Protection Regulations Consultations: What We Heard* (Ottawa: Canadian Transportation Agency, 2018 (*Air Passenger Protection Regulations Consultations*)). Travellers and consumer advocates generally favoured the creation of a fair compensation regime that would reflect the inconvenience and losses suffered by passengers, including of their time. This suggestion was met with resistance by certain airlines, who warned that imposing minimum compensation for delays in international travel might contravene the *Montreal Convention* (see Appeal Book, Vol. 22, Tab 14, at p. 369-370). The Agency also considered best practices and lessons learned from air passenger protection regimes in other jurisdictions, including the European Union and the

United States, as well as the regime provided by the *Montreal Convention* (*Air Passenger Protection Regulations Consultations* at p. 2).

[12] The proposed Regulations were published in Part I of the *Canada Gazette* in December 2018, and approved by the Governor in Council on May 21, 2019. The Regulations modified the rights and obligations of passengers and air carriers, defining carriers' minimum obligations to passengers with respect to:

- Communication of passengers' rights and recourse options (ss. 5-7);
- Flight delays, cancellations and denied boarding (ss. 10-21);
- Tarmac delays of three hours or more (ss. 8-9);
- The seating of children under the age of 14 (s. 22); and
- The terms and conditions on the transportation of musical instruments (s. 24).

[13] Shortly before the adoption of the Regulations (on or about April 26, 2019), the Minister also issued the *Direction*, purportedly in reliance of subsection 86.11(2) of the CTA. As we shall see later, the appellants contend that this *Direction* seeks to expand the Agency's regulation-making authority, to the extent that paragraph 86.11(1)(*f*) only authorizes the imposition of obligations in respect to tarmac delays in excess of three (3) hours.

[14] With respect to flight delays, cancellations and denied boarding, the Regulations establish informational (s. 13) and assistance (ss. 14, 16) obligations, require carriers to provide alternate travel arrangements and, in certain circumstances, refund a ticket or an unused portion of it. Additionally, the Regulations imposed a standardized minimum compensation amount for

passengers who experienced flight delays, cancellations or denial of boarding that was "within the carrier's control" but is not required for safety purposes. The amount of compensation ranges from $125 to $2400, depending on the size of the carrier (large or small) and the length of time between the scheduled and actual arrival (ss. 12, 19-20).

[15] Under subsection 86.11(4) of the CTA, the new obligations flowing from the Regulations are "deemed to form part of the terms and conditions set out in the carrier's tariff" insofar as they are more advantageous than the terms and conditions of carriage already provided for in the carrier's tariffs. Where a carrier fails to comply with these obligations, passengers may file a complaint with the Agency, which would in turn determine whether the carrier had failed to apply its tariffs. If found not to have applied the tariffs, carriers could be subjected to the Agency's "corrective measures", including an order to pay the required compensation under the Regulations, and administrative financial penalties under section 32.

[16] The Regulations came into force on July 15, 2019, with the exception of sections 14, 19, 22, 35 and 36, which came into effect on December 15, 2019.

[17] On June 28, 2019, the appellants filed a motion under section 41 of the CTA before this Court for leave to appeal the Regulations. This Court granted leave on August 15, 2019.

[18] The Attorney General of Canada filed a motion on December 2, 2019, seeking leave to present expert evidence on foreign law, specifically air passengers' rights in State parties to the *Montreal Convention*. The Attorney General argued that this evidence is relevant to the appeal

since the practice of State parties, including their domestic legislation and judicial decisions, is a recognized means of interpreting a treaty such as the *Montreal Convention*. This Court (*per* Justice Rennie) granted leave on January 27, 2020. The Attorney General filed, in July 2020, the affidavit of Professor Vincent Correia, which purported to describe the state of the law concerning air passenger rights in 73 states.

[19] In response, the appellants filed affidavits from Professors Pablo Mendes de Leon and Paul S. Dempsey on July 3, 2020. In these affidavits, the experts presented the state of the law in foreign jurisdictions, but also opined on the interpretation of the *Montreal Convention* and its compatibility with foreign regimes. The Attorney General filed a motion to strike out parts of these affidavits on July 30, 2020. This Court (*per* Justice Mactavish) found that the jurisprudence on the necessity and admissibility of expert evidence on international law was equivocal, and dismissed the motion on October 19, 2020, leaving the matter to the panel hearing the appeal.

[20] On January 7, 2021, the Attorney General obtained leave from this Court (*per* Justice Mactavish) to file responding expert evidence relating to the interpretation of the *Montreal Convention*, subject to this Court's ruling on the admissibility of the challenged evidence from Professors Mendes de Leon and Dempsey. On February 26, 2021, the Attorney General filed the affidavit of Professor Elma Giemulla on the interpretation of the *Montreal Convention* and on its compatibility with the European Union regime regarding air passenger rights.

## II. Issues

[21] This appeal raises important questions as to how the *Montreal Convention* applies within Canadian law, and more broadly, on Parliament's ability to provide for the regulation of air passenger rights in the context of international travel. To answer that question, three main issues must be addressed:

A. Is the minimum compensation to passengers required by the Regulations in the case of delay, cancellation, denial of boarding and lost or damaged baggage, when applied to international carriage by air, authorized by subparagraph 86.11(*b*)(i) of the CTA and compatible with the *Montreal Convention*?

B. Are any of sections 5-8, 10(3), 11(3)-(5), 12(2)-(4), 13-18, 23 or 24 of the Regulations *ultra vires* the CTA insofar as they apply to international service because of an impermissible extraterritorial application?

C. Is the *Direction intra vires* of the authority of the Minister under subsection 86.11(2) of the CTA?

[22] Before turning to these questions, however, two preliminary matters need be resolved. The first relates to the Court's jurisdiction to invalidate the *Direction*. In his submissions, the intervener submits that this Court lacks jurisdiction to hear the challenge to the Minister's *Direction* – which is the sole basis to the challenge of section 8 of the Regulations – because the *Direction* is not a "decision, order, rule or regulation" of the Agency within the meaning of section 41 of the CTA. Rather, the *Direction* emanates from the Minister, and is therefore a decision of a "federal board, commission or other tribunal" under section 2 of the *Federal Courts*

*Act*, R.S.C. 1985, c. F-7, for which this Court does not have jurisdiction under section 28. Following this argument, the power to review the Minister's *Direction* falls within the exclusive purview of the Federal Court under section 18 of the *Federal Courts Act*.

[23] The second preliminary matter to be addressed is the admissibility of the appellants' expert evidence. As previously mentioned, the Attorney General filed a motion to strike parts of the affidavits of Professors Mendes de Leon and Dempsey because they contained inadmissible legal opinions on the interpretation of the *Montreal Convention*. By direction of this Court, this issue was dealt with by the parties as part of their overall submission on the merits. Because it is essential to determine which parts of these opinions can be relied upon to determine the substantive issues of which this Court is seized, I will also deal with this issue in a preliminary manner.

## III. Preliminary matters

### A. *The jurisdictional issue*

[24] If the appellants were challenging the Minister's *Direction* and were seeking an order setting it aside as a stand-alone issue, there is no doubt in my mind that they would have had to proceed by way of judicial review before the Federal Court. The intervener is correct that section 18 of the *Federal Courts Act* grants original and exclusive jurisdiction to hear applications for judicial review about the Minister's actions to the Federal Court.

[25] In the case at bar, however, this is not what the appellants are seeking. As is made plain by the Notice of Appeal and the relief sought at paragraph 154 of their Memorandum of Fact and Law, the appellants challenge the validity of the impugned provisions of the Regulations (and in particular, section 8 of these Regulations). It is in the course of this challenge that they question the validity of the *Direction*, because the *Direction* is crucial to the validity of section 8 of the Regulations at least with respect to tarmac delays of less than three hours.

[26] As was made clear by the Supreme Court of Canada in *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54 (at paras. 25-26), it is necessary to determine the "essential nature or character" of a claim to decide whether the Federal Court (or the Federal Court of Appeal) has jurisdiction over it. Quoting from *Domtar Inc. v. Canada (Attorney General)*, 2009 FCA 218 (at para. 28), the Supreme Court went on to write that the essential nature of a claim will be determined on "a realistic appreciation of the practical result sought by the claimant".

[27] The Attorney General rightly acknowledges that this Court must have jurisdiction to consider the legality of the *Direction*, to the extent that it is relevant (and even central, in my view) to its analysis of the validity of section 8 of the Regulations. It would be most impractical and inimical to the principle of access to justice to require the appellants to first challenge the *Direction* before the Federal Court by application for judicial review before challenging section 8 of the Regulations in a parallel appeal pursuant to section 41 of the CTA. As a superior court, this Court must have plenary jurisdiction to decide any matter of law arising out of its original jurisdiction: *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626

at para. 36; *Deegan v. Canada (Attorney General)*, 2019 FC 960 at para. 227; *Bilodeau-Massé v. Canada (Attorney General)*, 2017 FC 604 at paras. 74, 80, 82-83.

[28] As a result, the intervener's argument on jurisdiction must be rejected. This Court undoubtedly has the power to rule on the validity of section 8 of the Regulations, and must therefore be able to determine whether the *Direction* that underpins it is *intra vires* section 86.11 of the *CTA*.

B. *The admissibility issue*

[29] As previously mentioned, the Attorney General filed a motion in writing under Rule 369 of the *Federal Courts Rules,* S.O.R./98-106 seeking an order striking out portions of the affidavit of Professor Mendes de Leon dated June 2, 2020 and of the affidavit of Professor Dempsey dated March 30, 2020 filed by the appellants. More particularly, the Attorney General asked this Court to strike out paragraphs 47, 59 to 91 and 115 of Professor Mendes de Leon's affidavit, and paragraphs 28 to 41 of Professor Dempsey's affidavit. In a nutshell, the Attorney General argues that these paragraphs of the two affidavits are inadmissible because they provide legal opinions with respect to the interpretation of the *Convention*, an issue that is at the very core of the present appeal. Moreover, in the Attorney General's view, such legal opinions involve issues of international law, which are not matters of fact but rather matters of law of which Canadian judges can take judicial notice.

[30] After reviewing the case law and literature on the subject submitted by the parties, Justice Mactavish came to the conclusion that "the law appears to be somewhat less settled" with respect

to the need for expert evidence when questions of international law, as opposed to questions of foreign law, are involved: *International Air Transport Association v. Canada (Transportation Agency)*, 2020 FCA 172 at para. 14. On that basis, she decided that it was preferable to leave that issue to the panel assigned to hear the appeal on the merits.

[31] Before ruling on this motion, it is worth recalling that the Attorney General had previously been granted leave to introduce expert evidence on the law and practice applicable in certain foreign states with respect to air passengers' rights. The Attorney General had argued that such evidence was relevant because the practice of State parties is a recognized means of interpreting a treaty such as the *Montreal Convention*. Justice Rennie agreed with the Attorney General, recognizing that expert evidence is the only permissible means by which evidence of foreign law and practice may be adduced.

[32] In Section II of his affidavit, Professor Mendes de Leon describes the relevant laws of the European Union and its member states, the member states of the European Free Trade Association and the European Common Aviation Agreement Area as it relates to the liability of air carriers to passengers in respect of flight delays, flight cancellations and denial of boarding. This section is not controversial, as it clearly qualifies as evidence on foreign law. The only paragraph of that section to which the Attorney General objects is paragraph 47, where Professor Mendes de Leon states that a decision of the European Court of Justice (ECJ) (*Sturgeon v. Condor; Böck and Lepuschitz v. Air France*, Joined cases C-402/07 and C-432/07, [2009] ECR I-10954 [*Sturgeon*]) was much criticized on the basis that the Court departed from its judicial role and in effect amended *Regulation (EC) No. 261/2004 of the European Parliament and of the*

*Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EC) No 295/91* [2004] OJ, L 46/01) (Regulation 261/2004) by creating a right to non-compensatory payments for flight delays. I will say more on that decision when dealing with the merits of the parties' arguments.

[33] Sections III and IV of Professor Mendes de Leon's affidavit are the most contentious. In section III (paragraphs 59-75), he states that whether EU Regulation 261 is in the application of the *Montreal Convention* requires him to opine on whether that Regulation is aimed at giving effect to the EU's treaty obligations under the *Montreal Convention* (at para. 59). After providing the context in which Regulation 261/2004 was adopted and examining Regulation 261/2004 itself, Professor Mendes de Leon offers the following conclusions:

> 71. In my opinion, it is apparent that Regulation 261 was intended to address matters not governed by the Montreal Convention, 1999, and therefore was not adopted in order to give effect to the EU's treaty obligations thereunder. As explained above in this Affidavit, in the *Sturgeon* case the ECJ controversially extended the obligation to provide compensation imposed on air carriers by Regulation 261 to flight delay. Significantly, the ECJ's reasons for extending compensation beyond denial of boarding and flight cancellation are not at all based on the Montreal Convention, 1999, which is neither discussed nor even mentioned in its judgment.
>
> 72. In my opinion, the *Sturgeon* judgment's extension of the compensation provided for in Article 7 of Regulation 261 to flight delay cannot, therefore, be seen as "giving effect" to the EU's treaty obligations under the Montreal Convention, 1999.

[34] In Section IV of his affidavit (paragraphs 76-91), Professor Mendes de Leon provides his views as to whether the European Union regime governing passenger compensation, and in particular Regulation 261/2004, is consistent with the *Montreal Convention*. After describing in

broad terms the *Montreal Convention* and critically commenting on the ECJ jurisprudence interpreting Regulation 261/2004 as not being in breach of the *Montreal Convention*, Professor Mendes de Leon offers his interpretation of the exclusivity principle found in Article 29 of the *Convention*:

> 89. The language of Article 29 of the Montreal Convention, 1999, is, in my opinion, clear and precise. Pursuant to the first, and principal method of treaty interpretation, a treaty provision must be interpreted *in good faith*, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, which, in the case of the Montreal Convention, 1999, is uniformity of rulemaking in respect of international carriage by air. Article 29, and therefore the Montreal Convention, 1999, thus clearly excludes claims by passengers against air carriers for damages for inconvenience caused by flight delay in respect of international carriage by air.
>
> (emphasis in original)

[35] Section V and VI of his affidavit are not contentious, as they deal with air passenger compensation in other jurisdictions and therefore relate, strictly speaking, to foreign law.

[36] Professor Dempsey's affidavit is focused on the law of the United States as it relates to the liability of air carriers to passengers. Section II of his affidavit (paragraphs 14 to 22) deals with the legal regime in respect of flight delays, flight cancellations, denial of boarding, and damage to or loss of baggage. Section III (paragraphs 23-46) purports to deal with the consistency of US law with the *Montreal Convention*. By way of introduction, Professor Dempsey explains that the US is a "monist" jurisdiction because the US Constitution provides that international treaties are the law of the land. Since international treaties are self-executing, without any requirement of formal promulgation into a statute, there is no distinction between international law and domestic US law, and the US law on passenger compensation in the field of international air travel is the *Montreal Convention*. An opinion on the latter is therefore an

opinion on US law, the implication being that it should be admissible in Canadian law because it constitutes expert evidence on foreign law.

[37] Professor Dempsey then goes on with a brief description of the *Montreal Convention*, in the course of which he opines on the scope of the exclusivity principle found in Article 29 of the *Montreal Convention*:

> 30. As noted above, the Montreal Convention stipulates that the carrier is liable for damage sustained in case of destroyed, lost or damaged baggage, and damage occasioned by delay to passengers or baggage. In light of the aforementioned exclusivity principle of Article 29, any regime that provides for automatic minimum compensation in the event of delays to passengers, or for lost, delayed or damaged baggage, would be in violation of the Montreal Convention. The Convention provides for compensation for provable damages up to a specified amount, and explicitly provides the exclusive remedy for claims arising in international air transportation.
>
> 31. The Convention does not provide for any recourse for delay in the absence of proof of loss; any such recourse would be non-compensatory which is excluded by Article 29.

[38] At paragraphs 32 to 36 of his affidavit, Professor Dempsey addresses the issue of whether there is a conflict between US law and international law on issues of passenger delay or baggage loss, damage or delay. On most topics, there can be no conflict because the US Department of Transport refers consumers who have claims against airlines for international flights to the *Montreal Convention*. The only area in which the US regulations address air carrier liability and impose obligations of compensation to passengers is in the area of denied boarding compensation for overbooking, an issue which, in the opinion of Professor Dempsey, does not fall under the *Montreal Convention*. Once again, he comes to that conclusion on the basis of his interpretation of the *Montreal Convention*:

> 35. […] Nonperformance of the contract of carriage falls outside of the Convention, for the Convention is based upon a contract of carriage for international transportation, whose flight originates and is destined to a contracting State. If the failure of the carrier to perform is deemed to constitute non-performance of the contract of carriage, then the dispute falls wholly outside the Warsaw or Montreal regime, and the aggrieved passenger may pursue his domestic law remedies, without any ceiling on actual damages recoverable.

[39] Interestingly, he relies for that proposition on a number of cases and legal commentaries, including some of his own publications.

[40] Finally, Professor Dempsey expresses the view in Section IV of his affidavit (paragraphs 37-41) that US laws were made in the application of the *Montreal Convention*. He comes to that conclusion because the US is a monist state, the US case law on delay applies the *Montreal Convention*, and the US government has refrained from promulgating aviation regulations addressing air carrier liability in international air transportation in deference to the exclusivity and pre-emption provision of the *Montreal Convention*.

[41] The Attorney General claims that much of Sections III and IV of Professor Mendes de Leon's affidavit and Sections III and IV of Professor Dempsey's affidavit, which opine on whether the law of the European Union and the United States is in the application of the *Montreal Convention* and is consistent with it, should be struck. According to the Attorney General, these portions of the two affidavits, along with Professor Mendes de Leon's criticism of the *Sturgeon* decision of the ECJ (paragraph 47) and a paragraph on the application of the *Montreal Convention* in New Zealand (paragraph 115), are nothing more than legal opinions on the interpretation of an international convention that is at the core of the substantive legal issue to be decided by this Court. According to the Attorney General, the only purpose of that evidence is

to give more weight to the legal position advanced by the appellants than it would have if it was merely argued by counsel.

[42] There is no doubt that the *Montreal Convention*, adopted on May 28, 1999 in Montreal, ratified by Canada and incorporated in its domestic law via amendments to the CAA (s.2(2.1)) is at the heart of this appeal. The appellants have advanced a number of arguments in support of their position that the Regulations are *ultra vires* the CTA. They have argued that in enacting section 86.11 of the CTA, Parliament must be presumed not to have authorized the adoption of delegated legislation that would be inconsistent with the *Montreal Convention* as incorporated in Canadian law. In a similar fashion, they have also submitted that section 86.11 must be construed as not authorizing the adoption of regulations that would be inconsistent with the *Montreal Convention*, since Parliament must be presumed to legislate in a manner compatible with Canada's international obligations. The appellants do not dispute that the interpretation of the *Montreal Convention* is central to these two arguments.

[43] To be successful, the appellants must convince this Court that the non-compensatory damages for flight delays, flight cancellations, denials of boarding and lost or damaged baggage provided for by the Regulations are prohibited by the *Montreal Convention*, exceed the limit of liability set forth in the *Convention* and ignore the exclusion of liability of the *Convention*. If there is no inconsistency, the Regulations are not *ultra vires* since they would fall within the regulation-making authority of section 86.11 of the CTA. At least to that extent, there is agreement between the parties.

[44] It is well established in Canadian evidence law that facts are to be pleaded and proved, whereas law does not need to be proved and courts will take judicial notice of it. Opinions on matters of law are therefore not admissible, since it is for the court to decide questions of law. Although affidavit evidence must generally be confined to facts that are within the deponent's personal knowledge (Rule 81(1) of the *Federal Courts Rules*), a party will exceptionally be allowed to adduce expert opinion on questions of fact when it meets some requirements.

[45] Foreign law has long been characterized as fact for the purpose of the law of evidence. It must be pleaded and proved at trial, unless otherwise provided by statute. In most cases, this will be done by expert evidence: *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292 at para. 120 [*Hape*]; *Asad v. Canada (Citizenship and Immigration)*, 2015 FCA 141 at para. 24; *JP Morgan Chase Bank v. Lanner (Le)*, 2008 FCA 399, [2009] 4 F.C.R. 109 at paras. 18, 35 and 57; *Friedl v. Friedl*, 2009 BCCA 314 at para. 20.

[46] On that basis, should international law be treated as a question of fact? This is a vexed question, which doesn't lend itself to an easy answer in Canadian law and which has been the subject of varied treatment in the jurisprudence. The appellants submit that there is no rule according to which expert evidence on international law is inadmissible *per se*. Courts may take judicial notice of international law that is incorporated into Canadian law, but it is argued that courts may also receive and rely on expert evidence on international law where the normative content of the international law principles at issue is "unsettled, controversial or emerging" (Appellants' Responding Written Representations re Attorney General's motion to strike parts of the appellants' affidavits at para. 41 [Appellants' Responding Written Representations]). The

Attorney General, on the other hand, forcefully argues that international law is a question of law, that Canadian courts should take judicial notice of it, and that evidence purporting to give a legal opinion on the interpretation or application of an international convention is inadmissible, "especially when this is a central issue the Court has to resolve to dispose of a case" (Attorney General's Written Representations on motion to strike parts of appellants' affidavits at para. 55).

[47] In my opinion, the latter view is to be preferred, at least with respect to customary international law and to international treaties that have been incorporated into Canadian law. I leave aside for the purpose of this discussion international conventions and treaties that have not been implemented by Canadian (federal or provincial) statutes, since they are not part of Canadian law. There is no need to consider how an international instrument that Canada has ratified but not yet implemented ought to be brought into evidence given that the *Montreal Convention* was incorporated into Canadian law through the CAA.

[48] There are many reasons why Canadian courts should take judicial notice of international law without the need to resort to expert opinion. First of all, international law is in many respects domestic law. I appreciate that Canada, unlike other legal systems like that of the United States, is a dualist system to the extent that rules of international law must be incorporated or adopted into the domestic legal order in order to be applied by domestic courts. This is true, however, only with respect to international treaties. Following the common law rule of adoption, it has long been recognized that prohibitive rules of customary international law forms part of Canadian law in the absence of conflicting legislation: see *Hape* at paras. 36-39 and the cases referred to. As for treaties, once incorporated, they are Canadian law for all intents and purposes.

Accordingly, the fact that Canada is a dualist state should not be overblown and is not critical to resolve the issue that is before us.

[49] A second related reason why international law should be subject to the same rules of evidence as Canadian law is the presumption that domestic law will be interpreted so as to conform to Canadian international obligations. As noted by Gibran van Ert ("The Admissibility of International Legal Evidence" (2005) 84 C.B.R. 31, at p. 38 [van Ert]), there is no presumption that Canadian law respects the requirements of the law of foreign countries, since these laws do not bind Canada. On the contrary, customary international law and treaties that have been ratified by the Canadian government are binding and violations will attract international responsibility.

[50] A third reason for courts to take judicial notice of international law derives from the law relating to the admissibility of expert opinion evidence. The leading authority on that question is the decision of the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 S.C.R. 9, (at p. 20) [*Mohan*]. In that case, the Court set out four criteria for the admissibility of such evidence: relevance, necessity in assisting the trier of fact, the absence of any exclusionary rule, and a properly qualified expert. In a subsequent case, the Court added a second step, namely the balancing of the potential risks and the benefits of admitting the evidence, in order to decide whether the potential benefits outweigh the risks: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182 at para. 24 [*White Burgess*]; see also: *R. v. Bingley*, 2017 SCC 12, [2017] 1 S.C.R. 170 at paras. 16-17.

[51] Before discussing the application of these criteria, it is worth considering, as pointed out by van Ert, that *Mohan* and *White Burgess* were not dealing with expert opinion on questions of law but rather on questions of fact. It could be argued, therefore, that the criteria set forth in these decisions were not meant to apply to expert opinions on questions of law, and thus cannot be relied upon to justify the introduction of such opinions into the evidence.

[52] Be that as it may, I agree with the Attorney General that expert opinion on a question of law can hardly be necessary, given the Court's expertise on matters of law. Even if necessity should not be judged "by too strict a standard" (*Mohan* at p. 23), the expert opinion must still bring an expertise that is outside the purview of a judge's skills and knowledge. This is clearly the case when the application of the law is predicated on a good grasp of scientific and technical matters, as is often the case in patent law. This is to be contrasted with those cases where the legal issue, albeit novel or complex, does not require any particular expertise beyond that expected from a judge. In those cases, a judge can come to his or her own conclusions and will not need expert opinions. As this Court stated in *Canada (Board of Internal Economy) v. Canada (Attorney General)*, 2017 FCA 43 (at para. 18) [*Board of Internal Economy*], "[t]his is precisely why questions of domestic law (as opposed to foreign law) are not matters upon which a court will receive opinion evidence. Such matters clearly fall within the purview of the court's expertise and opinion evidence on these issues would usurp the court's role as expert in matters of law"; see also: *Es-Sayyid v. Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59 at para. 41; *Brandon (City) v. Canada*, 2010 FCA 244 at para. 27; *Dywidag Systems International, Canada, Ltd. v. Garford PTY Ltd.*, 2010 FCA 223 at paras. 10-11; *Sopinka,*

*Lederman & Bryant*: *The Law of Evidence in Canada*, 4th ed. (Markham, Ontario: LexisNexis, 2014) at paras. 12.155 and 12.156.

[53] As for IATA's argument that expert evidence can be adduced when the principles of international law are contested, controversial or emerging, I find it totally unpersuasive. This has never been the test to accept expert evidence, and indeed IATA cites no authority in support of that new principle. A disagreement between parties on the proper interpretation of the law (be it constitutional law, civil law, criminal law or international law) cannot be the test to determine the admissibility of expert opinion evidence. That would amount to an usurpation of the role of the judge. As van Ert aptly remarked in his previously cited article:

> While it is no doubt true that a scholar who has long studied a particular question of law may be more knowledgeable about it than a trial judge at the outset of a hearing, our adversarial legal system is predicated upon the conviction that a qualified judge, assisted by learned counsel presenting competing views and acting for parties with a real interest in the outcome, and protected (if all else fails) by the possibility of reversal on appeal, is capable of correctly resolving any legal controversy. If we begin to doubt this proposition for international law, on the ground that it may be unfamiliar to many judges, why should we not also doubt it for other lesser-known areas of law? (at p. 41)

[54] The case law has not been consistent and is not free from ambiguity in its treatment of expert opinion evidence as it relates to international law. By and large, however, I think it is fair to say that the jurisprudence has moved towards the exclusion of such evidence. It is noteworthy that the appellants, despite stating that Canadian courts have, "on numerous occasions" (Appellants' Responding Written Representations at para. 41), received and relied on expert evidence on international law, have only been able to provide two cases where expert evidence on issues of international law has been explicitly ruled admissible: see *Holding Tusculum B.V. c. S.A. Louis Dreyfus & Cie*, 2006 QCCS 2827 at para. 16; *Fédération des travailleurs du Québec*

*(FTQ – Construction) c. Procureure générale du Québec*, 2018 QCCS 4548 at para. 20. These two trial court decisions did not discuss the issue thoroughly, and the same court expressly refused to follow the second one of these decisions in a more recent case: *Fédération des policiers et policières municipaux du Québec c. Procureure générale du Québec,* 2020 QCCS 2496 at para. 22.

[55] The appellants have also referred the Court to a few cases where expert evidence on international law was adduced: see *Romania (State) v. Cheng*, 1997 CanLII 9914 (NS SC), aff'd 1997 CanLII 1949 (NS CA); *Amaratunga v. Northwest Atlantic Fisheries Organization*, 2010 NSSC 346; 2011 NSCA 73; *Saskatchewan v. Saskatchewan Federation of Labour*, 2012 SKQB 62; 2013 SKCA 43; 2015 SCC 4, [2015] 1 S.C.R. 245 (*Saskatchewan Federation of Labour)*; *Najafi v. Canada (Public Safety and Emergency Preparedness)*, 2013 FC 876; 2014 FCA 262; [2015] 4 F.C.R. 162; *Tracy v. The Iranian Ministry of Information and Security*, 2016 ONSC 3759. In none of these cases was the admissibility of the expert evidence discussed by the court. Moreover, the expert evidence was only briefly referred to in all of these cases, sometimes just to acknowledge that it was filed; in the two cases that reached the Supreme Court, there was no mention at all of the expert affidavit in one and a mere parenthesis ("See also affidavit of …") in the other (*Saskatchewan Federation of Labour* at para. 65). Needless to say, the decisions on whether or not to file certain evidence to challenge the admissibility of each other's evidence are often tactical and made on a case-by-case basis, and do not amount to rulings as to the admissibility of such evidence. It is well established that courts will not generally raise *proprio motu* an objection to the admissibility of evidence: *Café Cimo Inc. v. Abruzzo Italian Imports*

*Inc.*, 2014 FC 810 at para. 6; *Mallet v. Administrator of the Motor Vehicle Accident Claims Act*, 2002 ABCA 297 at paras. 57-58.

[56] On the other hand, expert evidence on international law has been rejected by this Court and the British Columbia Court of Appeal. In *Board of Internal Economy*, this Court struck out a law professor's affidavit purporting to show that parliamentary expenses fall outside the scope of the protection afforded to parliamentary privilege. In support of that proposition, the law professor relied on the experience of other Commonwealth countries, which in his view demonstrated that the administration of parliamentary expenses does not fall within the common law concept of parliamentary privilege. As pointed out by the appellants, while it is no doubt true that the issue of admissibility of expert evidence on international law was not squarely addressed, it remains that the affidavit was riddled with opinions relating to an allegedly "international global standard of constitutional law" (*Board of Internal Economy* at paras. 6 and 21). The Court came to the conclusion that the affidavit was not a mere factual brief providing neutral information on comparative and foreign law, as argued by the appellants in that case, but was more in the nature of a legal opinion that was meant to advocate for the restrictive interpretation of parliamentary privilege advanced by the appellants. As the Court stated:

> 23. It cannot credibly be contended that the St-Hilaire affidavit is in the nature of a factual brief providing neutral information with respect to the historical development of the parliamentary privilege, and on comparative and foreign law. It reads like a legal opinion: it draws from Canadian and foreign sources to offer a conclusion which happens to support the respondent MPs' argument…

[57] That decision is consistent with the notion that an expert cannot opine on a question of law (which must necessarily include questions of international law) to be decided by the Court, especially when that question is at the heart of the determination to be made to resolve the

dispute between the parties: see the case law cited in *Board of Internal Economy* at para. 18. The British Columbia Court of Appeal confirmed as much when called upon to deal explicitly with expert evidence pertaining to international law. In *R. v. Appulonappa*, 2014 BCCA 163, it stated (at para. 62):

> Finally, with respect to expert evidence, the respondents called Professor Dauvergne, who testified to issues of refugee law and policy. Mr. Dandurand, who was called by the Crown, gave evidence as an expert in human smuggling as a transnational crime. I agree with the respondents that, to the extent that both experts strayed into providing opinions on the interpretation and application of international law and s. 117 of the *IRPA*, their testimony was not properly admissible as these were questions of law for the court. I accordingly limit my consideration of their evidence to factual matters.

[58] More recently, a majority of this Court noted in *obiter* that the parties do not need to file experts' reports to establish international law, because the Court can take judicial notice of said law: *Turp v. Canada (Foreign Affairs)*, 2018 FCA 133 at para. 82. In coming to that conclusion, the Court relied on *R. v. The Ship "North*", (1906) 37 S.C.R. 385 and *Jose Pereira E Hijos, S.A. v. Canada (Attorney General)*, [1997] 2 FC 84 [*Jose Pereira*], and also on the decision of the Scottish High Court of Justiciary in *Lord Advocate's Reference No. 1*, [2001] ScotHC 15.

[59] There may admittedly be few cases where Canadian courts have explicitly stated that they can take judicial notice of international law. There are, however, a number of Supreme Court cases where customary and conventional international norms were considered without any reference to supporting expert evidence. In my view, this speaks volumes as to the propriety of doing so: see, for example, *R. v. Malmo-Levine*; *R. v. Caine*, [2003] 3 S.C.R. 571; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 [*Suresh*]; *United States v. Burns*, [2001] 1 S.C.R. 283; *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437; *Re Canada Labour*

*Code*, [1992] 2 S.C.R. 50; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038; *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401; *Reference re Newfoundland Continental Shelf*, [1984] 1 S.C.R. 86; *Reference Re: Offshore Mineral Rights*, [1967] S.C.R. 792; *The Municipality of the City and County of Saint-John et al. v. Fraser-Brace Overseas Corporation et al*., [1958] S.C.R. 263.

[60] Even more to the point are those cases where Canadian courts interpreted various provisions of international treaties ratified and implemented by Canada without resorting to any expert evidence. In *Pan American World Airways Inc. v. The Queen et al.,* 1979 CanLII 4179, [1979] 2 F.C. 34 at p. 274-275, aff'd at 1980 CanLII 2610 (FCA) and 1981 CanLII 215 (SCC), for example, the Federal Court found that expert evidence as to the proper interpretation of the *Convention on International Civil Aviation,* 7 December 1944, 15 UNTS 295 [*Chicago Convention*] was inadmissible. Interestingly, the Court nevertheless agreed to consider it on the assumption that counsel would have adopted it as argument. Similarly, the Supreme Court applied two provisions of the *Vienna Convention on the Law of Treaties,* 23 May 1969, 1155 U.N.T.S. 331 [*Vienna Convention*] without resorting to any expert evidence: see *Yugraneft Corp. v. Rexx Management Corp.*, 2010 SCC 19, [2010] 1 S.C.R. 649 at paras. 19 and 21 [*Yugraneft*]; *Office of the Children's Lawyer v. Balev*, [2018] 1 S.C.R. 398 at para. 35. Especially relevant for our purposes is the decision of the Supreme Court in *Thibodeau v. Air Canada*, [2014] 3 S.C.R. 340 [*Thibodeau*], where Article 29 and other provisions of the *Montreal Convention* were interpreted without the need for any expert evidence.

[61] Counsel for the appellants argued that the Attorney General has adduced expert evidence in a number of cases, and should therefore be estopped from arguing that expert evidence on international law is inadmissible. In support of their argument, they referred the Court to a number of cases where international law experts have been called by the Attorney General, on his own motion or otherwise, to provide reports or affidavit evidence on various issues of international law. Of course, I agree with the appellants that the Attorney General should strive for consistency in the interpretation of the laws upon which he relies in the various courts of the country in the fulfilment of his responsibilities.

[62] The appellants' argument is essentially that having led expert evidence of international law in other cases, the Attorney General is estopped from objecting to the introduction of similar evidence by other parties. While I agree that the Attorney General stands in a unique position before the Courts, as a practical matter it is not possible to compare what the Attorney General has done in any other case and what is being done in the case before this Court. Counsel make evidentiary decisions on the basis of the facts upon which a case turns. It is not for the Court to audit the facts of every case in which an issue has arisen to determine if the Attorney General is being consistent in the treatment of that same issue.

[63] Moreover, even if practice was relevant, the decisions to file evidence and to raise objections to the admissibility of evidence are made on a case-by-case basis, very often for tactical purposes. Each case raises different issues and requires judges to make different judgment calls on all sorts of issues including the type of evidence to be admitted. In some cases, for example, the evidence was of a historical nature (*R. v. Finta*, [1994] 1 S.C.R. 701, at p. 795),

related to the preparatory work of a treaty (*Québec (Ministre de la Justice) c. Canada (Ministre de la Justice)*, 2003 CanLII 52182 (QC CA)), or consisted of expert reports appended to a factum in a reference (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217). A sample of a dozen cases over the course of thirty years is certainly not sufficient to establish any kind of practice, especially in light of the other numerous cases where the Attorney General chose not to file expert evidence on international law: see, for example, *Kazemi Estate v. Islamic Republic of Iran*, [2014] 3 S.C.R. 176; *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431 [*Febles*]; *Hape*; *Suresh*.

[64] For all of the above reasons, I am therefore of the view that courts ought to take judicial notice of customary international law and of treaties that have been ratified and implemented in Canadian law. As the Supreme Court recognized in *Nevsun Resources Ltd. v. Araya,* 2020 SCC 5 (at paras. 94-98), customary international law is to be treated as the law of Canada, and as such must be judicially noticed without the need of any expert evidence. I see no reason, either principled or practical, to distinguish between customary international law and treaties that have been implemented in Canadian law. For all intents and purposes, both are incorporated into Canadian law and judges are expected to treat them as law, not as fact. The trend of the case law to which I have referred in the preceding paragraphs clearly points in that direction. Indeed, that trend can be traced back as far as the decision of the Federal Court in *Jose Pereira*, where one of the arguments put forward by the plaintiffs was that regulations adopted pursuant to the *Coastal Fisheries Protection Act*, R.S.C. 1985, c. C-33 were beyond the authority of the Governor in Council. Ruling on a motion to strike portions of the statements of claim filed by the defendants,

Justice MacKay first summarized the principles concerning the application of international law in our courts, and then went on with the issue of pleadings as it relates to international law:

> That issue [the *vires* of the Regulations], one fundamental to these proceedings, may be raised without reference in the pleadings or particulars to specific international treaties or conventions which, in so far as they are considered a source of law, will be applied in the action only if they are incorporated in Canadian domestic law by legislation specifically so providing. To the extent that international conventions or treaties are considered authority for international law principles, it is unnecessary to plead them specifically, in the same way that it is unnecessary to plead other authority, e.g., jurisprudence or legislation, and such pleading is not of facts, the essence of pleading, but of law, which is not to be pleaded… (at p. 101) (emphasis added)

[65] Expert evidence on international law, just like expert evidence on any issue of domestic law, should therefore not be countenanced. Counsel should make submissions on international law themselves, without resorting to the added credibility of an expert. Of course, a learned article canvassing some of the legal issues in an expert opinion could, if published, be put before the Court, along with case law and other types of legal sources. But international law should definitely not be pleaded as a fact, to be proven by way of affidavit or testimonial evidence, especially when the objective is to provide legal conclusions on the very issue that is at the core of the dispute between the parties.

[66] On the basis of that principle, I agree with the Attorney General that paragraphs 47, 59 to 91 and 115 of Professor Mendes de Leon's affidavit, and paragraphs 28 to 41 of Professor Dempsey's affidavit should be struck out. Contrary to the appellants' submission, they address issues that are matters of argument to be decided by the judge, and not matters of fact. The normative content of international law falls within the bailiwick of the court's exclusive jurisdiction.

[67] It is one thing to adduce evidence on foreign legislation and decisions as Professor Correia does in his affidavit, and it is another to opine on the consistency of that foreign law with the *Montreal Convention*, thereby at least indirectly interpreting the scope of the *Convention* and of the exclusivity principle contained therein. When Professors Mendes de Leon and Dempsey cross that line, they usurp the role of the Court because this is precisely the question that we are being asked to adjudicate. It is ultimately for the Court to determine whether the state practice adduced by the parties through their expert is or is not in conformity with the *Montreal Convention*, on the basis of its own interpretation of the ground covered by that Convention and of its Article 29.

[68] The evidence of foreign law introduced by Professor Correia will obviously not relieve the Attorney General of establishing that it amounts to “state practice” under the *Vienna Convention*. According to Section 38 of the *Statute of the International Court of Justice* (26 June 1945, Can. T.S. 1945 No. 7), the main sources of international law are international conventions, international custom, general principles of law and, as subsidiary means for determining the law, judicial decisions and the writings of pre-eminent authors. State practice is not a source of international law and does not create, *per se*, international law obligations. It is rather factual, and it can be used as an aid in interpreting a treaty, pursuant to paragraph 31(3)(*b*) of the *Vienna Convention on the Law of Treaties* (23 May 1969, Can. T.S. 1980 No. 37). To qualify as “state practice”, however, the foreign law relied upon must be “in the application of” and “consistent with” the treaty to which it relates. To the extent that the Attorney General intends to show that the State parties to the *Montreal Convention* do not consider that this Convention bars them from establishing air passenger protections similar to those included in the Canadian regime, he will

have to demonstrate that the foreign law (a fact) is consistent with and in the application of the *Convention*, a matter of legal argument.

[69] Finally, the appellants' argument that they are entitled to challenge whether some or all of the foreign law the Attorney General wishes to rely on constitutes relevant state practice that can serve to interpret the *Montreal Convention*, must similarly be rejected. First of all, there is no doubt that the appellants are free to make that counter argument, but this is a matter of law and not of fact. This should be done by counsel, and not by way of expert evidence introduced by affidavit. Moreover, this submission is somewhat circular. State practice can only be characterized as incompatible with a convention once that convention has been interpreted. One cannot short-circuit this logical reasoning by opining from the outset that the foreign law is or is not in the application or in conformity with the *Convention*. In doing so, the appellants' experts pronounce on the consistency of the foreign law with the *Montreal Convention* on the basis of their own interpretation of that convention, which is precisely what must be demonstrated. Once again, this is a matter of law for this Court to decide and not an issue of fact upon which expert evidence is required.

[70] I will therefore proceed without taking into account the above-mentioned paragraphs of the affidavits of Professors Dempsey and Mendes de Leon. The expert evidence submitted by Professor Elmar M. Giemulla on behalf of the Attorney General, which was filed with the express purpose of responding to the expert affidavits of Professor Mendes de Leon and Professor Dempsey, will similarly be disregarded. I hasten to say, however, that counsel were

free to make similar arguments in their oral presentations, and that the Court did consider all of the legal arguments as such.

IV. Standard of review

[71] The appellants do not challenge the validity of section 86.11 of the CTA, nor of any other of its provisions. The core of their challenges is that the minimum compensation scheme set out in the Regulations, insofar as it applies to international carriage, is *ultra vires* of the enabling provision found in section 86.11. Challenging the *vires* of a regulation is certainly a question of law. Indeed, section 41 of the CTA provides for an appeal from the Agency to this Court, with leave, only on questions of law and jurisdiction.

[72] A statutory right to appeal signals Parliament's intent for the appellate standards to apply, thereby rebutting the presumption of reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 17 [*Vavilov*]. On appeal, questions of law attract the correctness standard: *Vavilov* at paras. 36-37; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66, [2019] 4 S.C.R. 845 at para. 35; *Ward v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, 463 D.L.R. (4th) 567 at para. 24; *Canadian Pacific Railway Company v. Canada (Transportation Agency)*, 2021 FCA 69, [2021] CarswellNat 947 at para. 41. The task is therefore to interpret section 86.11 of the CTA to ascertain the statutory grant of power Parliament intended to afford the Agency, and then to interpret the text, context and purpose of the impugned provisions of the Regulations with a view to determining whether they fall within the purview of what Parliament authorized when it enacted section 86.11.

## V. Analysis

### A. *Is the minimum compensation to passengers required by the Regulations in the case of delay, cancellation, denial of boarding and lost or damaged baggage, when applied to international carriage by air, authorized by subparagraph 86.11(b)(i) of the CTA and compatible with the Montreal Convention?*

[73] Relying on the presumptions of compliance with international law and of legislative coherence, the appellants submit that section 86.11 can and should be construed as only authorizing regulations that are consistent with Canada's obligation under international law.

[74] There is no doubt that Parliament must be presumed not to have intended to adopt legislation inconsistent with Canada's international obligations under treaty or customary international law: see, for example, *R. v. Appulonappa*, [2015] 3 S.C.R. 754, 478 N.R. 3 at para. 40; *Hape* at paras. 53-54; R. Sullivan, *The Construction of Statutes*, 6th ed. (Markham, ON: LexisNexis, 2014), paras. 18.5-18.7 (Sullivan). The Supreme Court explicitly reiterated this principle in the context of the *Montreal Convention*: see *Thibodeau* at paras. 6 and 113. In the absence of clear language to the contrary, a statute must be construed as only authorizing subordinate legislation that is respectful of Canada's international obligations.

[75] The appellants also submit that the scope of the Agency's regulation-making authority under section 86.11 of the CTA is further constrained by the presumption of legislative coherence. Pursuant to that well established presumption, overlapping provisions from different statutes must be interpreted so as to avoid conflict wherever this is possible: *Thibodeau* at paras. 89, 93 and 99; *Barreau du Québec v. Quebec (Attorney General)*, 2017 SCC 56, 404 D.L.R.

(4th) 201 at para. 73; *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, 88 D.L.R. (4th) 1 at p. 38 [*Oldman River*]; P.-A. Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Thomson Reuters, 2011), at p. 365. What is true of statutes is also true of delegated legislation: regulations can neither conflict with their enabling legislation nor with any other act of the legislature: *Oldman River*, at p. 38; D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Thomson Reuters, 2022), at § 15:61. Since the *Montreal Convention* has the force of law in Canada as its provisions have been incorporated into Canadian law by subsection 2(2.2) of the CAA, the appellants argue that Parliament must be presumed not to have authorized the adoption of delegated legislation pursuant to section 86.11 that would be inconsistent with the *Montreal Convention*.

[76] On the basis of these two presumptions, the appellants contend that section 86.11 of the CTA can and must be construed in a manner that is consistent with the *Montreal Convention*, and that any regulations regarding compensation should apply only to domestic itineraries. In adopting the impugned provisions of the Regulations, which define air carriers' minimum obligations towards passengers in relation to both domestic and international flights, the appellants are of the view that the Agency went beyond the true scope of the authority conferred by section 86.11, when properly interpreted in light of the above-mentioned presumptions.

[77] The Attorney General retorts that the interpretative presumptions are of no assistance to the appellants, since they cannot be used to alter the clear language of section 86.11 which directs the Agency to make regulations that set minimum compensation for inconvenience in the case of delay, cancellation and denial of boarding for both domestic and international flights. To

the extent that there is a conflict between the Regulations, as mandated by subparagraph 86.11(1)(*b*)(i) of the CTA and subsection 2(2.1) of the CAA, which incorporates the *Montreal Convention*, the former should therefore prevail.

[78] At this stage, and before turning to the merits of these arguments, it is worth reproducing section 86.11 in its entirety:

| **Regulations — carrier's obligations towards passengers** | **Règlements — obligations des transporteurs aériens envers les passagers** |
|---|---|
| 86.11 (1) The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights, | 86.11 (1) L'Office prend, après consultation du ministre, des règlements relatifs aux vols à destination, en provenance et à l'intérieur du Canada, y compris les vols de correspondance, pour : |
| (a) respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise; | a) régir l'obligation, pour le transporteur, de rendre facilement accessibles aux passagers en langage simple, clair et concis les conditions de transport — et les renseignements sur les recours possibles contre le transporteur — qui sont précisés par règlements; |
| (b) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including | b) régir les obligations du transporteur dans les cas de retard et d'annulation de vols et de refus d'embarquement, notamment : |
| (i) the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control, | (i) les normes minimales à respecter quant au traitement des passagers et les indemnités minimales qu'il doit verser aux passagers pour les inconvénients qu'ils ont subis, lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable, |
| (ii) the minimum standards of treatment of passengers that the carrier is required to meet when the | (ii) les normes minimales relatives au traitement des passagers que doit respecter le transporteur lorsque le |

| | |
|---|---|
| delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions, | retard, l'annulation ou le refus d'embarquement lui est attribuable, mais est nécessaire par souci de sécurité, notamment en cas de défaillance mécanique, |
| (iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and | (iii) l'obligation, pour le transporteur, de faire en sorte que les passagers puissent effectuer l'itinéraire prévu lorsque le retard, l'annulation ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment un phénomène naturel ou un événement lié à la sécurité, |
| (iv) the carrier's obligation to provide timely information and assistance to passengers; | (iv) l'obligation, pour le transporteur, de fournir des renseignements et de l'assistance en temps opportun aux passagers; |
| (c) prescribing the minimum compensation for lost or damaged baggage that the carrier is required to pay; | c) prévoir les indemnités minimales à verser par le transporteur aux passagers en cas de perte ou d'endommagement de bagage; |
| (d) respecting the carrier's obligation to facilitate the assignment of seats to children under the age of 14 years in close proximity to a parent, guardian or tutor at no additional cost and to make the carrier's terms and conditions and practices in this respect readily available to passengers; | d) régir l'obligation, pour le transporteur, de faciliter l'attribution, aux enfants de moins de quatorze ans, de sièges à proximité d'un parent ou d'un tuteur sans frais supplémentaires et de rendre facilement accessibles aux passagers ses conditions de transport et pratiques à cet égard; |
| (e) requiring the carrier to establish terms and conditions of carriage with regard to the transportation of musical instruments; | e) exiger du transporteur qu'il élabore des conditions de transport applicables au transport d'instruments de musique; |
| (f) respecting the carrier's obligations in the case of tarmac delays over three hours, including the obligation to provide timely information and assistance to passengers, as well as the minimum standards of treatment of passengers that the carrier is required to meet; and | f) régir les obligations du transporteur en cas de retard de plus de trois heures sur l'aire de trafic, notamment celle de fournir des renseignements et de l'assistance en temps opportun aux passagers et les normes minimales à respecter quant au traitement des passagers; |

| | |
|---|---|
| (g) respecting any of the carrier's other obligations that the Minister may issue directions on under subsection (2). | g) régir toute autre obligation du transporteur sur directives du ministre données en vertu du paragraphe (2). |
| **Ministerial directions** | **Directives ministérielles** |
| (2) The Minister may issue directions to the Agency to make a regulation under paragraph (1)(g) respecting any of the carrier's other obligations towards passengers. The Agency shall comply with these directions. | (2) Le ministre peut donner des directives à l'Office lui demandant de régir par un règlement pris en vertu de l'alinéa (1)g) toute autre obligation du transporteur envers les passagers. L'Office est tenu de se conformer à ces directives. |
| **Restriction** | **Restriction** |
| (3) A person shall not receive compensation from a carrier under regulations made under subsection (1) if that person has already received compensation for the same event under a different passenger rights regime than the one provided for under this Act. | (3) Nul ne peut obtenir du transporteur une indemnité au titre d'un règlement pris en vertu du paragraphe (1) dans le cas où il a déjà été indemnisé pour le même événement dans le cadre d'un autre régime de droits des passagers que celui prévu par la présente loi. |
| **Obligations deemed to be in tariffs** | **Obligations réputées figurer au tarif** |
| (4) The carrier's obligations established by a regulation made under subsection (1) are deemed to form part of the terms and conditions set out in the carrier's tariffs in so far as the carrier's tariffs do not provide more advantageous terms and conditions of carriage than those obligations. | (4) Les obligations du transporteur prévues par un règlement pris en vertu du paragraphe (1) sont réputées figurer au tarif du transporteur dans la mesure où le tarif ne prévoit pas des conditions de transport plus avantageuses que ces obligations. |

[79] The Attorney General submits that conflicts between subordinate legislation, such as the Regulations, and another statute (i.e. not the enabling statute) should be resolved using the rules for resolving conflicts between statutes. Because section 86.11 of the CTA is more specific and more recent than subsection 2(2.1) of the CAA, the former should accordingly prevail in case of conflict. In my view, this analogy is not entirely apposite.

[80] It is no doubt true that subsection 2(2.1) of the CAA which generally incorporates the provisions of the *Montreal Convention* insofar as they relate to “the rights and liabilities” of various actors involved in air transportation, is on its face less precise than the detailed obligations and compensation provided for by section 86.11 of the CTA. Subsection 2(2.1) of the CAA is only meant to be a short hand reference to the various provisions of the *Montreal Convention* dealing with the rights and liabilities of carriers, passengers and other persons covered by the *Convention*, not a full-fledged description of these rights and liabilities. For that, one must refer to the *Convention* itself. And the *Convention* can hardly be said to be less specific than the CTA.

[81] More importantly, form must not prevail over substance. What is at stake here is not merely a conflict between a regulation (and, by extension, its enabling statute) and any other statute, as the Attorney General would have it, but between a domestic regulation and an international treaty that has been ratified and incorporated in domestic law. The focus of the inquiry cannot be the implementing legislation, but the treaty itself. This is clearly not a case of conflict between an enabling statute and another statute.

[82] The real question to be resolved, therefore, is whether the wording of the Regulations is clear enough to prevail over the *Convention* in the event that a conflict is found between these two legal instruments. To address that question, the ordinary rules of conflict between statutes (or between statute and regulation) cannot be resorted to.

[83] As mentioned earlier, it is a well established principle of statutory interpretation that legislation is presumed to be in conformity with Canada's international obligations under treaty or customary international law. For that reason, courts will strive to avoid constructions of domestic law that would result in violation of those obligations, unless it is unavoidable. To come to that conclusion, the statute must demonstrate "an unequivocal legislative intent to default on an international obligation": *Hape* at para. 53.

[84] The Supreme Court expanded on the notion of conflicting legislation in *Thibodeau*, precisely in a context involving the *Montreal Convention*. In that case, the Supreme Court made it clear that a conflict will be found when two provisions are "incapable of standing together", and when "the application of one law excludes the application of the other": *Thibodeau* at paras. 94 and 96. The Court went on to say that overlapping provisions do not necessarily conflict, so long as they can both apply, unless there is evidence to the effect that one of the provisions was meant to provide an exhaustive declaration of the applicable law: *Thibodeau* at para. 98. Since interpretations which result in conflict should be eschewed as much as possible unless it is unavoidable, courts will be "slow to find that broadly worded provisions were intended to be an exhaustive declaration of the applicable law where the result of that conclusion creates rather than avoids conflict": *Thibodeau* at para. 99.

[85] Applying these principles, the majority in *Thibodeau* found that the *Montreal Convention* does not permit an award of damages for breach of language rights during international carriage by air, and that to hold otherwise would be both contrary to the text and purpose of that convention, and would be inconsistent with a "strong international consensus" concerning its

scope and effect: *Thibodeau* at para. 6. Accordingly, the majority interpreted the general remedial power under subsection 77(4) of the *Official Languages Act*, R.S.C. 1985, c. 31 (the OLA), as not authorizing an award of damages so as to avoid a conflict that was not inescapable. The Supreme Court thereby confirmed the decision of this Court that there is no conflict between the two regimes, since a court must not award damages in circumstances to which the *Montreal Convention* applies when determining whether a remedy is "appropriate and just" under subsection 77(4) of the OLA.

[86] The appellants submit that the same reasoning should be followed in the case at bar, and that the Regulations should be interpreted so as not to apply to international flights, thereby avoiding any conflict with the rules governing damage liability of international air carriers under the *Montreal Convention*. The Attorney General disputes this approach and claims that it is inapplicable in the context of the present case, because the language of subsection 86.11(1) is prescriptive and specific and does not allow for an interpretation that would eschew a conflict if there is indeed a discrepancy between the *Montreal Convention* and the Regulations. According to the Attorney General, Parliament could not have made its intent clearer (by using the word "shall") when it required the Agency to make regulations that set minimum compensation for inconvenience in the case of delay, cancellation and denial of boarding for both domestic and <u>international flights:</u> CTA at section 86.11; Memorandum of Fact and Law of the Attorney General at para. 40. There is therefore no room in his view to read down section 86.11 along the lines suggested by the appellants.

[87] I do not find this argument entirely convincing. Parliament is presumed not to intend to legislate in breach of Canada's international law obligations, and this presumption will only be displaced by clear and unequivocal wording. Such is not the case here. Quite to the contrary, subsection 78(1) of the CTA stipulates that the "powers conferred on the Agency by this Part [Part II - Air Transportation] shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party". That provision appears to have transformed a presumption of statutory interpretation into an explicit legislative constraint, and it clearly applies to the new regulatory powers conferred on the Agency by section 86.11, which also falls within Part II of the CTA. The fact that the Regulations adopted pursuant to that section are made after consulting with the Minister does not detract from the fact that they are adopted in the exercise of the powers conferred on the Agency by the CTA. In any event, every regulation made by the Agency under the CTA must receive the approval of the Governor in Council: subsection 36(1) of the CTA. Had Parliament intended to authorize the Agency to adopt regulations in breach of the *Montreal Convention*, section 86.11 could have explicitly exempted the Agency from the constraint of section 78.

[88] The Agency appears to share the view that the Regulations are meant to be respectful of Canada's international obligations. In the *Regulatory Impact Analysis Statement* (2018) C Gaz 1 [RIAS] accompanying the Regulations, we find the following assertion relating to lost or damaged baggage:

> Under the regime, liability limits established under the Montreal Convention for international travel would also apply to domestic flights, which would ensure consistency for travellers. This approach also recognizes that the regime cannot conflict with the Montreal Convention, which provides an exclusive scheme for international travel, a consideration that was emphasized by stakeholders generally…

[89] Curiously, we find no equivalent acknowledgement in the sections of the RIAS dealing with minimum compensation levels for delays and cancellations, denied boarding and tarmac delays. Yet one would be entitled to believe that if Canada cannot derogate from the *Montreal Convention* with respect to lost or damaged baggage, the same should be true for other heads of the liability regime put in place by the Regulations. What we find instead is that the standards of treatment and the minimum compensation levels for delays and cancellations are comparable to those established in the European Union regime and generally align with comments provided by the public and consumer advocates (Appeal Book, Vol. 2, at pp. 420-421).

[90] Finally, the Attorney General argues that if the Agency had only required carriers to pay the compensation provided for by the *Montreal Convention* for international flights, limiting the minimum compensation found in the Regulations to domestic flights, as advocated by the appellants, Parliament would have merely mandated the Agency to make regulations duplicative of the CAA. I am not convinced that the principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage (*R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61 at para. 28) is weightier than the strong presumption of compliance with international law. The case law is replete with clear statements that courts, when choosing among possible interpretations, must avoid an interpretation that would put Canada in breach of its international obligations: see Sullivan at § 18.6 and case law referred to.

[91] In any event, paragraph 23(1)(*b*) of the Regulations illustrates how the Agency could have exercised its authority in a manner consistent with the *Montreal Convention* by distinguishing between international and domestic flights. Pursuant to that paragraph, the

compensation the carrier must provide for lost or damaged baggage is, "in cases where the *Carriage by Air Act* [i.e. the *Montreal Convention*] applies, the compensation payable in accordance with that Act". The Agency could have done the same in the case of flight cancellation, denied boarding or delay exceeding three hours. It is to be noted that paragraphs 86.11(1)(*b*) and (*c*) use the same language with respect to delay, cancellation, denial of boarding and lost or damaged baggage; in all cases, it mandates the Agency to prescribe the minimum compensation the carrier is required to pay.

[92] As for the argument that the interpretation suggested by the appellants would make section 86.11 superfluous, at least with respect to international air travel, it is not totally accurate. The Agency has various enforcement and oversight powers with respect to its regulations (see ss. 25, 33(1) and (4)), and may also sanction the contravention of its regulations with administrative monetary penalties (see s. 177 of the CTA). These powers are not available under the *Carriage by Air Act*.

[93] For all of the foregoing reasons, I am therefore of the view that in the event there is a conflict between the Regulations and the *Montreal Convention*, the former would have to be construed in a manner that is consistent with the latter. I can find nothing in section 86.11 or in its overall context suggesting that Parliament intended to require or authorize the making of regulations that are inconsistent with Canada's international obligations.

(1) The *Montreal Convention*

[94] Because the *Montreal Convention* is at the heart of this appeal, it is essential to deal with it in some detail. My task is made easier by virtue of the fact that the Supreme Court extensively reviewed that Convention and set out some interpretative considerations less than ten years ago in *Thibodeau*. I shall therefore draw heavily on that decision in the following paragraphs of these reasons.

[95] The *Montreal Convention* was adopted in 1999 and it applies to all international carriage by air, of persons, baggage or cargo. The expression “international carriage” is defined in Article 1(2) and essentially encompasses any flight or combination of flights constituting a passenger’s journey of carriage by air (which may include flights between two points within Canada when combined with flights to or from Canada) that is intended to depart, arrive or stop in Canada, and depart, arrive or stop in another State party (or stop in any other country, should they depart and arrive in Canada).

[96] The *Montreal Convention* was meant to “modernize” its predecessor, the *Warsaw Convention*, which was signed in 1929 (see Preamble, *Montreal Convention*). Like the *Warsaw Convention*, its ultimate goal was to ensure the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo. Interestingly, the *Montreal Convention* also recognized in its Preamble “the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution”. This new consumer protective approach is evidenced

notably by the abandonment of limits to liability for death and bodily injury, and by restrictions on the possibilities for the carrier to exonerate itself.

[97] As noted in *Thibodeau*, the *quid pro quo* between limiting air carriers' liability and facilitating consumers' claims that was apparent in the *Warsaw Convention*, was maintained in the *Montreal Convention*. In a nutshell, these Conventions impose a strict liability regime on air carriers for accidents causing passenger bodily injury, passenger death, passenger delay, and delay, damage to or loss of baggage. Under these regimes passengers do not bear the burden of proving fault to establish the air carriers' liability. In exchange, limits are imposed on the amounts payable by air carriers.

[98] It is worth at this stage to quote from the reasons of the majority in *Thibodeau* with respect to the threefold object of the *Montreal Convention*:

> [41] The *Warsaw Convention* (and therefore its successor the *Montreal Convention*) had three main purposes: to create uniform rules governing claims arising from international air transportation; to protect the international air carriage industry by limiting carrier liability; and to balance that protective goal with the interests of passengers and others seeking recovery. These purposes responded to concerns that many legal regimes might apply to international carriage by air with the result that there could be no uniformity or predictability with respect to either carrier liability or the rights of passengers and others using the service. Both passengers and carriers were potentially harmed by this lack of uniformity. There were also concerns that the fledging international airline business needed protection against potentially ruinous multi-state litigation and virtually unlimited liability.

[99] The broad purposes were therefore the same, and the *Montreal Convention* also borrowed the same basic structure and constituent elements from the *Warsaw Convention*. For that reason,

it is appropriate to refer to court decisions and commentary respecting the *Warsaw Convention* when interpreting the *Montreal Convention* (*Thibodeau* at para. 31).

[100] As previously mentioned, the *Montreal Convention* was ratified by Canada in 2002 and came into force in 2003. It has been incorporated into Canadian law through section 2 of the CAA, and its text is set out at Schedule VI of that statute. Of crucial importance for the debate before us is the fact that the *Montreal Convention*, much like the *Warsaw Convention*, contains only "certain rules" for international carriage by air, as its title indicates (*Convention for the Unification of Certain Rules for International Carriage by Air*). The most relevant provisions of the *Montreal Convention* for the purposes of this appeal are: 1) Articles 17 to 19, which clarify the kind of events for which a carrier is liable in case of damages (death and injury of passengers and damage to baggage in Article 17, damage to cargo in Article 18, and damage occasioned by delay in Article 19); 2) Articles 21 and 22, setting out the limits of the carrier's liability linked to the claims addressed in Articles 17 to 19; and 3) Article 29, the so-called exclusivity clause. The relevant portions of these provisions read as follows:

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| Article 17(2) - Death and injury of passengers — damage to baggage | Article 17(2) - Mort ou lésion subie par le passager — Dommage causé aux bagages |
| The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the | Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés, par cela seul que le fait qui a causé la destruction, la perte ou l'avarie s'est produit à bord de l'aéronef ou au cours de toute période durant laquelle le transporteur avait la garde des bagages enregistrés. Toutefois, le transporteur n'est pas responsable si et dans la mesure où le dommage résulte de la nature ou du vice propre |

case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

des bagages. Dans le cas des bagages non enregistrés, notamment des effets personnels, le transporteur est responsable si le dommage résulte de sa faute ou de celle de ses préposés ou mandataires.

Article 19 - Delay

Article 19 – Retard

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de passagers, de bagages ou de marchandises. Cependant, le transporteur n'est pas responsable du dommage causé par un retard s'il prouve que lui, ses préposés et mandataires ont pris toutes les mesures qui pouvaient raisonnablement s'imposer pour éviter le dommage, ou qu'il leur était impossible de les prendre.

Article 22(2) - Limits of liability in relation to delay, baggage and cargo

Article 22(2) - Limites de responsabilité relatives aux retards, aux bagages et aux marchandises

In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger’s actual interest in delivery at destination.

Dans le transport de bagages, la responsabilité du transporteur en cas de destruction, perte, avarie ou retard est limitée à la somme de 1 000 droits de tirage spéciaux par passager, sauf déclaration spéciale d'intérêt à la livraison faite par le passager au moment de la remise des bagages enregistrés au transporteur et moyennant le paiement éventuel d'une somme supplémentaire. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il prouve qu'elle est supérieure à l'intérêt réel du passager à la livraison.

Article 29 – Basis of claims

Article 29 - Principe des recours

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract

Dans le transport de passagers, de bagages et de marchandises, toute action en dommages-intérêts, à quelque titre que ce soit, en vertu de

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| or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable. | la présente convention, en raison d'un contrat ou d'un acte illicite ou pour toute autre cause, ne peut être exercée que dans les conditions et limites de responsabilité prévues par la présente convention, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs. Dans toute action de ce genre, on ne pourra pas obtenir de dommages-intérêts punitifs ou exemplaires ni de dommages à un titre autre que la réparation. |

[101] Needless to say, Article 29 is of paramount importance in the assessment of the appellants' claim that the liability regime created by the Regulations is incompatible with the *Montreal Convention*, just as it was in determining whether the Thibodeau's claim for damages under the OLA were precluded by the *Convention*. It is also critical for the overall scheme of the *Convention*.

[102] The Supreme Court gave an expansive interpretation of Article 29 after reviewing the text and purpose of that provision and the international jurisprudence. It first noted that "any action for damages" in the carriage of passengers, baggage and cargo are subject to the conditions and limitations set out in the *Convention*. To quote from the Supreme Court's reasons, "[t]he provision could hardly be expressed more broadly; it applies to '<u>any</u> action for damages, <u>however founded</u>'" (*Thibodeau* at para. 37, emphasis in the original). It also points out that the language used in that clause is even broader than that used in the equivalent section of the *Warsaw Convention*, thereby signalling the State signatories' intention to exclude any actions not specifically addressed in Articles 17 to 19. It could also have added that Article 29 explicitly excludes (*in fine*) any action for punitive, exemplary or any other non-compensatory damages.

[103] In terms of purpose, the Supreme Court found that two of the main purposes of the *Convention*, namely the creation of a uniform set of rules governing the liability of carriers in the context of international itineraries and the creation of limitations on air carrier liability, cannot be achieved without providing that the set of rules in relation to these matters are exclusive and bar resort to any other bases for liability in those areas: *Thibodeau* at para. 47. While the *Convention* does not purport to be comprehensive and to deal with all aspects of international air transportation, it is nevertheless exclusive within the scope of the matters it does address.

[104] Finally, a lengthy review of the international jurisprudence led the Supreme Court to conclude that it broadly confirms its previous understanding of the exclusivity principle. The Court then summarized its finding with respect to the *Montreal Convention* and its Article 29 in the following paragraph:

> To sum up, the text and purpose of the *Montreal Convention* and a strong current of international jurisprudence show that actions for damages in relation to matters falling within the scope of *Montreal Convention* may only be pursued if they are the types of actions specifically permitted under its provisions. As the Supreme Court of the United Kingdom put it very recently, "[t]he Convention is intended to deal comprehensively with the carrier's liability for whatever may physically happen to passengers between embarkation and disembarkation".
>
> *Thibodeau* at para. 57

[105] As important as this principle is, one must always bear in mind that the scope of the exclusivity principle is limited to the situations covered by Articles 17 to 19, since Article 29 is located in Chapter III ("Liability of the Carrier and Extent of Compensation for Damages") where Articles 17 to 19 are found. The exclusivity principle does not apply to matters falling outside this Chapter, nor indeed to matters falling outside the *Montreal Convention* such as domestic flights, claims filed by employees, subcontractors or suppliers, or critically, claims not

covered by the circumstances contemplated by Articles 17 to 19. It is within these confines that the exclusivity principle applies. As stated by the majority in *Thibodeau,* "[t]he *Montreal Convention* of course does not deal with all aspects of international carriage by air: it is not comprehensive. But within the scope of the matters which it does address, it is exclusive in that it bars resort to other bases for liability in those areas" (at para. 47).

[106] The decision actually reached by the Supreme Court in *Thibodeau* is instructive in that respect. At issue in that case were claims for damages in relation to the airline's breaches of the Thibodeaus' right to services in French. These claims were filed under section 77 of the OLA, which allows the Federal Court to award "such remedy as it considers appropriate and just in the circumstances" if it finds that a federal institution has failed to comply with the OLA. The airline defended against the claims by relying on the limitation on liability for damages set out in the *Montreal Convention*. The majority ultimately concluded that the *Convention* did not permit an award of damages for breach of language rights during international carriage by air, and that the general remedial power under the OLA to award appropriate and just remedies could not be read as authorizing Canadian courts to depart from the *Convention*. In coming to that conclusion, the majority offered precious clues as to the proper interpretation of the exclusivity principle that are most relevant for our purposes.

[107] In answer to the Attorney General's defence that the *Montreal Convention* precluded their claims for damages, the appellants argued that they were not within the type of "action for damages" contemplated by Article 29 of the *Convention*. In support of that submission, the appellants argued that the violation of language rights was not an inherent risk to air carriage

covered by Article 17, and that the *Montreal Convention* did not intend to govern statutory claims based on fundamental rights nor the public law damages they would give rise to.

[108] The Supreme Court gave short shrift to that argument. First, it found no indication in the text of Article 29 suggesting an intention to exclude certain types of claims for damages based on their legal foundation. Indeed, the terms "action" and "damages" demanded a broad interpretation, and to do otherwise would unduly limit the scope of the *Montreal Convention* (*Thibodeau* at para. 60). The Court found that what the appellants sought were effectively "damages for moral prejudice, pain and suffering and loss of enjoyment of their vacation", and that:

> Permitting an action in damages to compensate for "moral prejudice, pain and suffering and loss of enjoyment of [a passenger's] vacation" that does not otherwise fulfill the conditions of Article 17 of the *Montreal Convention* (because the action does not relate to death or bodily injury) would fly in the face of Article 29. It would also undermine one of the main purposes of the *Montreal Convention*, which is to bring uniformity across jurisdictions to the types and upper limits of claims for damages that may be made against international carriers for damages sustained in the course of carriage of passengers, baggage and cargo. As the international jurisprudence makes clear, the application of the *Montreal Convention* focuses on the factual circumstances surrounding the monetary claim, not the legal foundation of it. To decide otherwise would be to permit artful pleading to define the scope of the *Montreal Convention*.
>
> *Thibodeau* at para. 64

[109] The Supreme Court also reviewed the international jurisprudence and opined that accepting the appellants' position would sail against the interpretation given to the exclusivity principle by foreign courts (*Thibodeau* at paras. 65-79). It noted that American district and appellate courts had rejected the validity of claims against air carriers based on fundamental rights under the *Warsaw Convention*, despite recognizing the stark distinction between tort and

discrimination claims. It also remarked that a recent decision from the Supreme Court of the United Kingdom supported the view that exclusion under the *Montreal Convention* turned on whether the relevant claim was one for damages "related to the circumstances contemplated by the *Montreal Convention*, not on the alleged source of the obligation to pay them" (*Thibodeau* at para. 71).

[110] After having rejected the appellants' argument that statutory claims for quasi-constitutional rights fall outside the *Montreal Convention*, the Supreme Court then addressed the Commissioner's contention that the *Convention* does not apply to claims based on a statutory right that are more akin to administrative complaints mechanisms than private law proceedings. Again, the Court swiftly rejected this argument, on the basis that the relevant question is not the underlying source of the claim but rather the nature of the claim. It also dismissed the related argument based on a distinction between public law and private law damages.

[111] Most importantly, however, the Supreme Court expressly refused to consider whether the *Montreal Convention* excluded only claims for "individual damages" or if it also excluded claims for "standardized damages". The Thibodeaus relied on jurisprudence from the ECJ, about which I will have more to say later, to argue that damage that is almost identical for every passenger, and for which redress may take the form of uniform damages, was not covered by the *Montreal Convention*. The Court refused to deal with this question, because the damages sought by the appellants were clearly individualized (*Thibodeau* at para. 81).

[112] It is against this backdrop that I will now address the appellants' arguments that the impugned liability provisions of the Regulations, namely paragraphs 12(2)(*d*), 12(3)(*d*), 12(4)(*d*), and sections 19, 20 and 23, are in breach of the *Montreal Convention*.

(2) The minimum compensation for delay (paragraph 12(2)(*d*) and section 19 of the Regulations)

[113] In the appellants' submission, delay in carriage by air falls squarely within the scope of Article 19 of the *Montreal Convention*, and Article 22 stipulates that the liability for passenger delay is limited to 5,346 Special Drawing Rights (SDR) from the International Monetary Fund (approximately CAD $9,350) per passenger. While proof of fault is not required, the passenger must prove that the delay they have experienced in international travel has caused compensable damage, as evidenced by the language "damage occasioned by delay" found in Article 19 and the fact that Article 29 expressly precludes liability for all forms of non-compensatory monetary relief.

[114] However, the Regulations at paragraph 12(2)(*d*) and subsection 19(1) impose automatic, fixed liability on carriers for the mere occurrence of delay in excess of three hours, without requiring proof of compensable loss. The appellants argued that because these provisions presume fault, injury and causation, they run afoul of Articles 19 and 22 of the *Montreal Convention* and breach its requirement of uniformity in the law governing liability in international air carriage. Moreover, imposing fixed compensation for delay that is wholly independent of the passenger's individual circumstances contradicts sub-Article 22(1) of the *Montreal Convention*, which defines the liability of an air carrier for delay in terms of the actual

damages suffered by the passenger. Additionally, the appellants submit that the liability imposed by paragraph 12(2)(*d*) and subsection 19(1) of the Regulations are not truly compensatory, as they are fixed and automatic without regard to the actual damage sustained nor to the actual period of delay, and because they vary depending on the characterization of the relevant air carrier as “large” or “small”. As such, they contradict Article 29, which excludes “punitive, exemplary or any other non-compensatory damages”.

[115] Furthermore, the appellants submit that the liability regime under the Regulations prevents air carriers from relying on the “due diligence” defence provided for in the *Montreal Convention*. This defence provides that a carrier can avoid liability for damage by proving that they took all measures that could reasonably be required to avoid the damage or that it was impossible to take any such measures. Under the Regulations, air carrier liability for delay is imposed where the delay is within the carrier’s control but is not required for safety purposes, thereby imposing liability in circumstances where the carrier would be exonerated under the *Montreal Convention*.

[116] To illustrate the foregoing, the appellants gave the example of a delay due to mechanical malfunction. The Regulations (at ss. 1(1)) exclude from the definition of “mechanical malfunction” mechanical problems that reduce passenger safety but that have been “identified further to scheduled maintenance undertaken in compliance with legal requirements”. Such problems are not considered “outside the carrier’s control” nor “required for safety purposes”, and would therefore be subject to liability under paragraph 12(2)(*d*) of the Regulations if they occasion delay, even if the air carrier had a sound defense and took all reasonable measures to

avoid liability for delay. All of the preceding arguments, of course, apply to the liability imposed by subsections 19(1) and (2) of the Regulations.

[117] The Attorney General responds that the impugned provisions of the Regulations do not conflict with the *Montreal Convention* because neither the CTA nor the Regulations provide for an action for damage, and because in any event the minimum compensation required by the Regulations falls outside the scope of Article 19 of the *Montreal Convention*. The Attorney General further submits that this interpretation of the *Montreal Convention* is confirmed by the state practice. I will deal first with the true nature of the compensatory scheme put in place by the CTA and the Regulations and then with the state practice argument.

(3) The true nature of the compensatory scheme

[118] In conformity with the rules for treaty interpretation set out in the *Vienna Convention*, one must start with the text of Article 29 and with the *Montreal Convention* as a whole to understand the scope of the exclusivity principle. Article 29 speaks of "any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise", and uses language that pertains to judicial proceedings such as by referring to the persons "who have the right to bring suit", and to "any such action". Article 33(1) similarly refers to "[a]n action for damages must be brought…before the court of the domicile of the carrier […] or before the court at the place of destination". Article 35(1) specifies that the right to damages shall be extinguished "if an action is not brought within a period of two years", and Article 35(2) goes on to state that the method of calculating limitation periods "shall be determined by the law of the court seised

of the case". Finally, Article 22(6) indicates that the prescribed limits "shall not prevent the court from awarding […] court costs and of the other expenses of the litigation".

[119] There is no doubt that the expression "action for damages" in Article 29 of the *Montreal Convention* must be understood in a broad sense. The notion of damages, in particular, cannot be left to the vagaries of domestic law; as noted by the Supreme Court in *Thibodeau*, "the scope of the exclusivity principle in the *Montreal Convention* cannot be modeled on national definitions of damages" (at para. 77). This is also why the Supreme Court reiterated that the focus of the inquiry must be the factual circumstances giving rise to the claim, not the alleged legal foundation of the claim (*Thibodeau* at paras. 66, 71 and 75). This is precisely why the Court rejected the Thibodeaus' argument that there was a distinction between public law and private law damages. As a result, the Court rejected their claim for breaches of quasi-constitutional statutes because it did not fall within the purview of the *Montreal Convention*.

[120] As much as we must strive to give Article 29 its fullest meaning, consistent with the broad language in which it is couched, and thereby avoid "artful pleading to define the scope of the *Montreal Convention*" (*Thibodeau* at para. 64), the Attorney General submits that the *Convention* was meant only to regulate actions in courts. The Attorney General argues that the use of the words "action" and "damages" in the *Convention* must still be accounted for and relies on the definitions in *Black's Law Dictionary* (Brian A. Garner, ed., *Black's Law Dictionary*, 11th ed. (St Paul (Minn): Thomson Reuters, 2019), and in particular on its definition of "action" (defined as "any judicial proceeding, which, if conducted to a determination, will result in a

judgment or decree") and of "damages" (defined as "money claimed by, or ordered to be paid to, a person as compensation for loss or injury").

[121] This understanding of Article 29 appears to be borne out by the *Travaux Préparatoires* leading to the *Montreal Convention*. When asked to clarify the scope of that provision by the Delegate from Sri Lanka, the Chairman indicated that "the scope of the Convention would govern the regulation of the types of actions which could be brought before the Courts". He went on to say:

> The purpose behind Article 28 [renumbered 29 in the final version] was to ensure that, in circumstances in which the Convention applied, it was not possible to circumvent its provisions by <u>bringing an action for damages</u> in the carriage of passengers, baggage and cargo in contract or in tort or otherwise. Once the Convention applied, its conditions and limits of liability were applicable. (emphasis added)
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> ICAO, International Conference on Air Law, Montreal, 10-28 May 1999, Vol. 1, *Minutes*, 9775-DC/2, at p. 235

[122] It may be that in some legal systems, an action for damage may not necessarily involve judicial proceedings at the behest of a litigant. Indeed, Article 33(4) seems to leave questions of procedure to domestic law. In the common law world and in the civil law tradition, however, courts are traditionally called upon to rule on such remedies. Be that as it may, and whether judicial proceedings are an essential component of Article 29, the proper focus must be on what the claim aims to achieve, or what it seeks to redress, not on its legal foundation or how it is brought. It is at this juncture, in my view, that the scheme of the CTA and the Regulations part with the action for damages envisioned by the *Montreal Convention*.

[123] The scheme of the Regulations with regards to air carrier liability is of an entirely different nature than what was contemplated by the *Montreal Convention*. First, and most importantly, the carrier's liability for delay, as contemplated by Article 19 of the *Convention*, is meant to address individualized damages. Even if a passenger does not bear the burden of proving fault or causation to establish the air carrier's liability under the *Montreal Convention*, individualized damages must still be established before an air carrier can be held liable for compensation. Under the Regulations, the amount of compensation to which a passenger is entitled is fixed by the Regulations and is the same for all the passengers on a particular flight, and it is payable as soon as certain objective conditions are met. It is meant to compensate for the inconvenience that delay causes, in and of itself and independently of any demonstrable loss due to a particular situation. Contrary to the *Convention*, which is concerned with the period of time after the delayed arrival, the Regulations cover the time period before the delayed arrival.

[124] It is telling, that the amount of compensation fixed by the Regulations is not linked to the price of the ticket purchased, nor does it depend on the passenger's travel purposes (business or personal). To that extent, it is closer to a consumer protection scheme than to an action in damage. Indeed, the RIAS makes it clear that the objective of the Regulations is "to normalize the minimum standard across all carriers operating in Canada to ensure that the obligations on carriers are clear, concise and easily understood by carriers and passengers" (RIAS at 4893).

[125] Prior to the coming into force of the Regulations, the *Air Transportation Regulations* (S.O.R./88-58) prescribed the topics that carriers had to address in their terms and conditions pursuant to paragraph 86(1)(*h*) of the CTA, but did not describe the content of these provisions.

The mandate to review the content of the terms and conditions was left to the Agency. The review of these provisions therefore proceeded on a carrier-by-carrier and tariff-by-tariff basis.

[126] With the advent of the Regulations, the content of the terms and conditions that have to be covered by the tariffs of all carriers are uniform and standardized. Instead of leaving it to each carrier to determine the compensation for flight disruption within the carrier's control based on criteria described in a carrier's tariff or at the discretion of a carrier, the Regulations establish minimum levels of compensation with a view to enhance clarity and to better protect passengers. These minimal obligations pertain not only to delays, but also to denied boarding, lost or damaged baggage, transportation of musical instruments, seating of children under the age of 14 years, and unaccompanied minors.

[127] The other important characteristic of the Regulations that sets them apart from an action for damages is their enforcement mechanism. The minimum compensation required by the Regulations is meant to be enforced by the Agency through administrative measures. It is noteworthy that even before the advent of standardized minimum tariff introduced by the Regulations, the Agency was empowered to review individual carriers' terms and conditions of carriage, primarily on the basis of individual complaints, to ensure that they were clear, just, and reasonable (s. 111 of the *Air Transportation Regulations*).

[128] Pursuant to section 85.1 of the CTA, the Agency shall review any complaint made by a person with respect to any issue dealt with in that part of the CTA (which obviously includes the terms and conditions set out in tariffs). If an air carrier refuses to compensate a passenger in

accordance with the Regulations, for example, the Agency may attempt to resolve the complaint. Air travel complaints typically first follow an alternative dispute resolution process, whereby Agency staff will try to resolve the complaint through facilitation or mediation.

[129] If this informal process does not work to the complainant's satisfaction, the complainant may then ask for adjudication before a panel of Agency Members (ss. 37 and 85.1(3) of the CTA). This power is consistent, and indeed rooted, in the Agency's jurisdiction to determine whether a carrier has applied the terms and conditions set out in its tariff (see s. 67.1 of the CTA for domestic services and s. 113.1 for international services). It must be remembered that Parliament has deemed the obligations established by the Regulations made under subsection 86.11(1) to form part of the terms and conditions set out in the carrier's tariffs (ss. 86.11(4)), and that the Regulations were so promulgated (see also s. 122 of the *Air Transportation Regulations*).

[130] If the Agency finds that a carrier has failed to apply its tariff, it can order the carrier to take the corrective measures that the Agency considers appropriate, which could include the payment of the applicable amount set out in the Regulations, and compensation for any expense incurred by the passenger (s. 113.1 of the *Air Transportation Regulations* and subpara. 86(1)(*h*)(iii) of the CTA). Interestingly, the Agency has also been granted discretion to make its decisions applicable to some or all passengers affected by a flight that is the subject of a complaint concerning the delay, cancellation and denied boarding provisions of the Regulations (subpara. 86(1)(*h*)(iii.1).

[131] Aside from its oversight role with respect to the application of tariff provisions, the Agency may also enforce the Regulations through administrative monetary penalties. Pursuant to subsection 117(1) of the CTA, the Agency may designate any provisions of the CTA or any regulation as a provision, which if contravened, is a violation under the CTA. The Agency exercised this power at section 32 of the Regulations by designating significant portions, including the compensation provisions at issue in this appeal, as subject to administrative monetary penalties (see Schedule to the Regulations). Administrative monetary penalties are issued by designated enforcement officers named under the CTA (s. 178), and notices of violation are reviewable before the Transportation Appeal Tribunal of Canada (ss. 180.3 to 180.6).

[132] It appears to me, therefore, that the minimum compensation scheme set out in the CTA and the Regulations is markedly different from an action for damages. Not only is it based on a form of standardized and uniform compensation with a view to providing passengers with clear and transparent information and protection, and to avoiding the haphazard application of the various tariffs applicable to the carriers, but it is also enforced through an administrative mechanism rather than through an action for damages: see, by way of analogy, *Brake v. PJ-M2R Restaurant Inc.*, 2017 ONCA 402, 413 D.L.R. (4th) 284 at paras. 109-119. Such a scheme provides benefits to certain persons subject to objective conditions which are independent of any cause of action a person may have. Those benefits are not intended to diminish an injured person's damage claim, to which the usual principles of causation, remoteness and mitigation will apply.

[133] Even though the possibility of filing an action in court to recover the amount set out in the Regulations is not excluded by the CTA, the fact remains that in most instances the Regulations will be implemented through an administrative process for obvious reasons (costs, delay, simplicity of the proceedings). In any case, even in those rare instances where a passenger might want to institute an action in court, it would still not be an action for damages since the compensation is fixed and bears no relationship to the actual damage incurred but rather hinges on certain conditions being met.

[134] This is precisely what distinguishes the action launched by the Thibodeaus in the Federal Court from the present matter. As noted by the Supreme Court, the Thibodeaus' claims were clearly an action for damages within the meaning of Article 29 of the *Montreal Convention*, as their claim was for damages for injuries suffered in the course of an international flight (*Thibodeau* at para. 61). Indeed, their pleading revealed that they were claiming $25,000 in damages and $250,000 in punitive and exemplary damages. As such, their claim did not respect the conditions and limits of Article 17 of the *Montreal Convention*, and were therefore barred by Article 29. As the Supreme Court made clear, to decide otherwise would undermine one of the main goals of the *Montreal Convention*, "which is to bring uniformity across jurisdictions to the types and upper limits of <u>claims for damages</u> that may be made against international carriers for <u>damages</u> sustained in the course of carriage of passengers, baggage and cargo" (*Thibodeau* at para. 64; emphasis added). As noted earlier, the Supreme Court was very cautious not to pronounce on the Thibodeaus' further argument that the *Montreal Convention* excludes only individual damages and not claims for standardized damages, because it was not relevant to the

issue in that case. Once again, the claims of the Thibodeaus were for damages on an individual basis, and their argument based on standardized damages could not assist them.

[135] This brings me to the international jurisprudence, and especially to the case law of the ECJ, to which the Supreme Court referred without commenting on it. The jurisprudence interpreting Article 19 of the *Montreal Convention*, in the context of its Article 29, comes in vast majority from the ECJ for the simple reason that the European Union was first to promulgate several consumer protection oriented regulations that address a variety of airline passenger issues (e.g. flight delay, cancellation, and denied boarding). The first such regulation to attract judicial scrutiny was Regulation 261/2004, which requires airlines to grant financial compensation to passengers in the event of denied boarding, flight delay, or flight cancellation, to assist them in revising their travel plans by giving them the choice between rescheduling the ticket or a refund, and to pay for their board and lodging.

[136] In a complaint brought before the ECJ, IATA argued that Regulation 261/2004 violated the *Montreal Convention.* The Court rejected that claim, and took the position that excessive delay causes two types of damages: (1) “damage that is almost identical for every passenger, redress for which may take the form of standardized and immediate assistance or care for everybody concerned”; and (2) “individual damage, inherent in the reason for travelling, redress for which requires a case-by-case assessment of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis” (*International Air Transport Association and European Low Fares Airline Association v. Department for Transport*, C-344/04, [2006] ECR I-443 at para. 43 [*IATA et al.*]). The Court reasoned that the

Regulation addressed the former, while the *Montreal Convention* addressed the latter. Another way to distinguish Regulation 261/2004 and the *Montreal Convention* is that the Regulation works at an earlier stage, namely prior to departure of the flight, whereas the system created by the *Montreal Convention* applies after the flight has been operated. In two critical paragraphs of that decision, the Court stated:

> It is clear from Articles 19, 22 and 29 of the Montreal Convention that they merely govern the conditions under which, after a flight has been delayed, the passengers concerned may bring actions for damages by way of redress on an individual basis, that is to say for compensation, from the carriers liable for damage resulting from that delay.
>
> It does not follow from these provisions, or from any other provision of the Montreal Convention, that the authors of the Convention intended to shield those carriers form any other form of intervention, in particular action which could be envisaged by the public authorities to redress, in a standardised and immediate manner, the damage that is constituted by the inconvenience that delay in the carriage of passengers by air causes, without the passengers having to suffer the inconvenience inherent in the bringing of actions for damages before the courts.
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> *IATA et al.* at paras. 44-45
>
> See also: *Opinion of Advocate General Geelhoed*, delivered on 8 Sept. 2005, C-344-04 at paras. 50-53

[137] That decision has been denounced for a number of reasons. Aside from the criticism that the right to compensation contained in Article 7 of Regulation 261/2004 (which deals with flight cancellation) has been improperly read into Article 6 (which deals with delay), some have argued that the compensation for delay is not standardized but particularized, to the extent that it depends upon the distance flown and the time of delay. It has also been suggested that because the penalties imposed for delay are paid to the passengers rather than to a governmental authority, Regulation 261/2004 is closer to an effort to compensate passengers for the damages they incurred rather than to an administrative fine for violating consumer protection regulations.

Whether they are compensatory or punitive, critics say, they run afoul of Article 19 and 29 of the *Montreal Convention*, because the only actions for damages that can be brought are subject to the conditions and limits set out in the *Convention* and any other punitive, exemplary or other non-compensatory damages are prohibited: see, for example, Paul Stephen Dempsey & Svante Johansson, "Montreal v. Brussels: The Conflict of Laws on the Issue of Delay in International Air Carriage" (2010) 35:3 Air & Space L 207, at pp. 218 ff.

[138] Despite these criticisms, the ECJ reaffirmed that Regulation 261/2004 does not conflict with Article 19 of the *Montreal Convention* in *Wallentin-Hermann v. Alitalia*, C-549/07 [2008] ECR I - 11065 and in *Sturgeon*. In the latter case, the ECJ ruled that delays exceeding three hours must be treated as cancellations for compensation purposes under Regulation 261/2004, even though delay was deliberately left outside the scope of the application of Article 7. By bringing delays within the situations in which compensation can be claimed under the Regulation, the *Sturgeon* case gave new impetus to the exclusivity debate of the *Montreal Convention*.

[139] The ECJ confirmed the *Sturgeon* judgment and Regulation 261/2004's consistency with the *Montreal Convention* in *Nelson and others v. Deutsche Lufthansa AG, TUI Travel and others v. Civil Aviation Authority*, Joined cases C-581/10 & C-629-10, [2012] ECR I-295 where it explained that a loss of time cannot be categorized as "damage occasioned by delay" (at para. 55) within the meaning of Article 19 and therefore cannot come within the scope of Article 29 of the *Montreal Convention*. First, a loss of time is not damage arising as a result of delay, but rather an inconvenience, just like other inconveniences resulting from denied boarding, flight

cancellation and long delay. Second, since a loss of time is suffered identically by all passengers whose flights are delayed, their redress can be effected by means of a pre-determined amount, without the necessity of individual assessments. Finally, there is not necessarily a causal link between the actual delay and the loss of time considered relevant for the purpose of giving rise to a right to compensation or calculating the amount of that compensation. For those reasons, the loss of time inherent in a flight delay does not fall within the "damage occasioned by delay" envisaged by Article 19 of the *Montreal Convention* and does not come within the exclusivity principle of Article 29 of that *Convention*. Much like previous decisions, this case drew a fair amount of negative commentary: see, for example, Peter Haanappel, "Compensation for Denied Boarding, Flight Delays and Cancellation Revisited" (2013) 62 German J of Air and Space L 38, at pp. 48-50; Robert Lawson and Tim Marland, "The Montreal Convention 1999 and the Decisions of the ECJ in the Cases of *IATA* and *Sturgeon* – in Harmony or Discord?" (2011) 36:2 Air & Space L 99; Sonja Radosevic, "*CJEU's Decision in Nelson and Others in Light of the Exclusivity of the Montreal Convention*" (2013) 38:2 Air & Space L 95; Charlotte Thijssen, "The Montreal Convention, EU Regulation 261/2004 and the Sturgeon Doctrine: How to Reconcile the Three?" (2013) 12:3 Issues in Aviation L & Pol'y 413.

[140] The reasoning of the ECJ was followed by a number of national courts, notably by the Court of Appeal of England and Wales (see, for example, *Dawson v. Thomson Airways Ltd.*, [2014] EWCA Civ 845 and *Graham v. Emirates*, [2017] EWCA Civ 1530) and by the French Court of Cassation (see, for example, Cass Civ 1ère, 15 June 2017, [2017] no. 16-19.375; Cass Civ 1ère, 22 February 2017, [2017] no. 15-27.809; Cass Civ 1ère, 25 March 2015, [2015] no. 13-24.431; Cass Civ 1re, 14 March 2018, [2018] no. 17-15.378). The ECJ itself recently reiterated

the distinction made in its earlier jurisprudence between standardized damages compensable under Regulation 261/2004 and individualized damages requiring a case-by-case assessment in *Radu Lucian Rusu and Oana Maria Rusu v. SC Blue Air- Airline Management Solutions SRL*, C-354/18, [2019] ECR I-319.

[141] On the basis of that case law, therefore, it would appear that a regulatory regime providing minimum compensation for the inconvenience inherent in a delay, which essentially consists of a loss of time identical for all passengers, can operate side by side with Article 19 of the *Montreal Convention*, which is meant to cover liability for the individual damage occasioned by the delay and which necessarily varies from one passenger to another. Both regimes are compensatory in nature, even if they do not compensate for the same kind of loss. The two regimes also differ in two important respects. First, Article 19 creates a strict liability regime, whereby passengers do not have to show fault on the part of the carrier but must prove their individual damage, whereas Regulation 261/2004 provides for a fixed and standardized amount of damage depending on the length of the delay instead of proof of damage. Second, the carriers can exonerate themselves by proving that they took all reasonable measures that could avoid the damage under Article 19 of the *Montreal Convention*, whereas no such exoneration is contemplated by Regulation 261/2004.

[142] It is obvious from a reading of the RIAS that the Regulations were adopted with a view to emulating and aligning with the European Union regime. While they are not identical, they build upon the same framework and share the same rationale of better protecting passengers and compensating them for inconvenience resulting from the disruption of their flight schedules. As

previously mentioned, the Supreme Court expressly left open the question of whether the *Montreal Convention* extends to bar claims for standardized compensation, as it did not have to rule on that issue to decide the Thibodeaus' claims. It nevertheless considered the cases decided under both the *Warsaw Convention* and the *Montreal Convention* (many of which I just referred to), and stated emphatically that "[i]n light of the *Montreal Convention's* objective of achieving international uniformity, we should pay close attention to the international jurisprudence and be especially reluctant to depart from any strong international consensus that has developed in relation to its interpretation" (*Thibodeau* at para. 50). I therefore draw further support from that jurisprudence for my conclusion that the Regulations, far from being incompatible with the *Montreal Convention*, are more properly characterized as complementary to it and thus do not infringe on its exclusivity principle.

(a) *The minimum compensation for cancellation and denied boarding*

[143] Paragraph 12(3)(*d*) and section 19 of the Regulations impose automatic, fixed liability for flight cancellation identical to that for flight delay in circumstances that are "within the carrier's control", but are not required for "safety purposes". In a similar fashion, paragraph 12(4)(*d*) and section 20 provide for automatic, fixed liability for denial of boarding in similar circumstances. Denial of boarding is defined at subsection 1(3) of the Regulations as the situation where "a passenger is not permitted to occupy a seat on board a flight because the number of seats that may be occupied on the flight is less than the number of passengers who have checked in by the required time, hold a confirmed reservation and valid travel documentation and are present at the boarding gate at the required boarding time". In both instances, the quantum of liability is tiered as a function of delay in arrival time.

[144] The appellants concede that the *Montreal Convention* does not explicitly address carrier liability for cancellation or denial of boarding, but nevertheless argue that these two occurrences fall within its scope. They point out that the term "delay" is not defined, and rely on the case law interpreting and applying the *Montreal Convention* and the *Warsaw Convention* to argue that only total non-performance of the contract of carriage by air falls outside the scope of these Conventions. The appellants submit that where, despite a cancellation or denial of boarding, the carrier ultimately performs the contract of carriage, it falls within the category of "delay". Yet, the Regulations impose liability for cancellation and denial of boarding based on the scheduled and actual arrival time, using identical language and structure to the delay provisions. It is thus evident, the appellants contend, that paragraphs 12(3)(*d*), 12(4)(*d*), and sections 19 and 20 of the Regulations seek to impose liability on air carriers that relates to delay, a matter which in their view falls within the *Montreal Convention's* uniform and exclusive liability regime.

[145] This argument cannot succeed. Even if flight cancellation or denial of boarding could be assimilated to delay, the compensation scheme set out in paragraphs 12(3)(*d*), 12(4)(*d*), and sections 19 and 20 would not be incompatible with the *Convention* for the reasons already given above with respect to the compensation for delay.

[146] Moreover, I agree with the Attorney General that cancellation, denial of boarding and delay are three different concepts, both factually and legally. Cancellation obviously results in the non-performance of the contract of carriage. The same is true for a denial of boarding: while the traveller may eventually get to his or her destination, it will not be pursuant to the original ticket/contract, such that it also represents non-performance of that contract. On the other hand,

delay is better characterized as the late performance of the contract. The fact that the amount of compensation is established on the basis of the length of the delayed arrival does not change the nature of the circumstances that mandated the compensation and does not transform a cancellation or denial of boarding into a delay. As a matter of fact, passengers can opt for a refund if the alternate travel arrangement does not accommodate their needs and the cancellation or denial of boarding is within the carrier's control. In that scenario, the compensation is fixed: Regulations, subsections 17(2) and 19(2). I note, parenthetically, that the passenger who has been denied boarding and who has opted for a refund does not seem to be entitled to a compensation; there is no equivalent to paragraph 19(2) in section 20. Compensation for cancellation and denial of boarding will be determined according to the length of time between scheduled and actual arrival only if alternate travel arrangement takes place: Regulations, subsections 19(1) and 20(1).

[147] I am of the view, therefore, that the minimum compensation required by the Regulations for cancellation and denied boarding falls outside the scope of Article 19 of the *Montreal Convention*.

(b) *The minimum compensation for lost or damaged baggage*

[148] The appellants submit that the baggage liability provisions under the Regulations contravene the *Montreal Convention*. They submit that Article 17(2) of that *Convention* provides that air carriers are liable for damage sustained by passengers in the event of destruction or loss of, or damage to checked baggage caused by an event occurring while the baggage is in the charge of the air carrier. Moreover, Article 19 imposes liability for damage occasioned by delay

in the carriage of baggage. This liability is capped at Article 22(2) to a maximum of 1,288 SDR on proof of loss, unless the passenger made a special declaration of value when the baggage was handed over to the air carrier. The *Montreal Convention* therefore caps liability for the damages actually sustained, and the loss must be demonstrated.

[149] However, subsections 23(1) and (2) of the Regulations set the carrier's liability for lost or damaged baggage at an amount equal to the sum of the fees paid for that baggage and the compensation payable under the *Carriage by Air Act* (i.e. under the *Montreal Convention*). As a result, the liability imposed by the Regulations will in many instances exceed the cap set by Article 22(2) of the *Montreal Convention*.

[150] Moreover, subsection 23(2) of the Regulations imposes liability for temporary loss of baggage for "21 days or less", which the appellants submit should be more correctly referred to as "delay" rather than "temporary loss". Framed as such, they submit, this liability not only contravenes the exclusivity principle enshrined in the *Convention* because its Article 19 imposes liability for delay of baggage, but it is also *ultra vires* of its enabling legislation. Section 86.11 of the CTA does not authorize the making of regulations in respect of delay of baggage, and the Agency cannot trespass beyond that provision's limitations by using the label "temporary loss" to regulate delay.

[151] I agree with the Attorney General that requiring carriers to reimburse baggage fees does not contravene the *Montreal Convention*. While the baggage provisions in the Regulations do not explicitly seek to compensate passengers for the "inconvenience" of the occurrence, as do the

provisions relating to delay, cancellation and denied boarding provisions, they achieve the same purpose: providing standardized and immediate assistance that is almost identical for every passenger. Even if all passengers do not lose their baggage or have their baggage damaged at the same time, subsection 23(1) of the Regulations treats each occurrence in an identical manner, one which does not account for individualized loss.

[152] Moreover, baggage fees do not represent any sort of individualized loss or harm, and they are not part of the value of the baggage. The fees remain the same for each passenger, depending on the number of bags. Interpreted within the context of the statutory scheme, both subsection 23(1) of the Regulations and the authorizing paragraph 86.11(1)(*c*) of the CTA implicitly aim to compensate passengers for the inconvenience of lost or damaged baggage.

[153] That being said, I agree with the appellants on the second point. The explicit text of paragraph 86.11(1)(*c*) of the CTA states that the baggage regulations must relate to “lost or damaged” baggage, and do not expressly provide for compensation in the event of a “temporary loss” of baggage. The Attorney General claims that the ordinary meaning of the words “lost baggage” encompasses baggage that cannot be located by an air carrier upon arrival, even if such baggage is found a few days later by the air carrier. With all due respect, I do not think this interpretation is possible in light of the context and purpose of the CTA and its paragraph 86.11(1)(*c*).

[154] The *Montreal Convention* entitles passengers to damages for lost or damaged baggage, in addition to delay in the carriage of baggage. Thus, it distinguishes between baggage that is “lost”

from that which is "delayed", as the appellants suggest. Given that dichotomy, it is important to underscore Parliament's choice to provide for regulations relating to "lost or damaged" baggage, but not for "delayed" baggage. Interpreting "lost baggage" in paragraph 86.11(1)(*c*) to include baggage delay would be inconsistent with the clear distinction drawn by the *Montreal Convention* between these two terms, without any good reason for doing so. I also note that the objective of the Regulations with respect to lost or damaged baggage, according to the RIAS, was apparently to extend the application of the *Montreal Convention* regime to domestic travel, and to require the reimbursement of any baggage fees. In my view, this is quite telling as it says nothing about temporary loss.

[155] In light of the foregoing, I agree with the appellants that Parliament only intended to authorize the Agency to regulate minimum compensation relating to lost or damaged baggage, but not for delayed baggage. Subsection 23(2) of the *Regulations* should therefore be held *ultra vires* the CTA.

(4) The state practice

[156] Pursuant to Article 31 of the *Vienna Convention*, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Paragraph 31(3)(*b*) provides that "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" shall be taken into account in the interpretation of a treaty. This is to be contrasted with the supplementary means of interpretation enumerated in Article 32, such as the preparatory work of the treaty and the circumstances of its conclusion, which may be used to confirm the

meaning resulting from the application of Article 31. As a result, resort to state practice is not contingent on the existence of an ambiguity in the text of a treaty; on the contrary, it is an integral part of the interpretation process and is on a par with the words of the treaty and its context: Richard Gardiner, *Treaty Interpretation*, 2nd ed., (Oxford: Oxford UP, 2015) at p. 253 and 347; “Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries” in *Report of the International Law Commission*, UNILC, 70th Sess, Supp. No. 10, UN Doc A/73/10 (2018) at p. 20; *Yugraneft* at para. 21; *Febles* at para. 90. In both their written and oral submissions, the parties have devoted much time and effort to that notion of state practice, either to show (from the Attorney General’s perspective) that the state practice confirms its interpretation of the *Montreal Convention* or (from the appellants’ point of view) that the evidence adduced by the Attorney General does not establish such a practice.

[157] There is no doubt that the practice of the parties to a treaty can be quite useful in clarifying the meaning to be given to the treaty, and may result in narrowing, widening or otherwise determining the range of possible interpretations. This is important because it constitutes objective evidence of the understanding of the parties with respect to the treaty that they signed: see *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, [1999] ICJ Rep 1045 at para. 49, quoting from *Yearbook of the International Law Commissions 1966*, Vol. II (New York: UN, 1967) at para. 15 (A/CN.4/SER. A/1966/Add. 1). As noted by the authors, state practice can include any conduct—actions or omissions, including silence—of a party, whether in the exercise of its executive, legislative, judicial or other functions: see Oliver Dörr & Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary,* 2nd ed. (Berlin:

Springer, 2018), at p. 597; Richard Gardiner, *Treaty Interpretation*, 2nd ed., (Oxford: Oxford University Press, 2015)*,* at p. 257; *Report of the International Law Commission*, *supra*, at pp. 31 and 37; Giovanni Distefano, “La pratique subséquente des états parties à un traité” (1994) 40 *Annuaire français de Dr Intl* 41, at p. 48. Needless to say, the practice must be generalized, consistent and uniform; subsequent practice which does not fall within this narrow definition will, at best, constitute a supplementary means of interpretation within the meaning of Article 32: see, *inter alia*, *Case Concerning Kasikili/Sedudu Island*, *supra* at paras. 79-80; *Loizidou v. Turkey* (Preliminary Objections) (1995), No. 15318/89, ECHR (Ser A) No. 310 at paras. 79-81; Mustafa Kamil Yasseen, “L’interprétation des traités d’après la Convention de Vienne sur le droit des traités” in *Collected Courses of the Hague Academy of International Law*, Vol. 151 at p. 52; Ian Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd ed. (Manchester: Manchester UP, 1984), at p. 137-138.

[158] In support of its position that state practice confirms its interpretation of the *Montreal Convention*, the Attorney General has tendered the expert affidavit evidence of Professor Vincent Correia. Professor Correia holds a Doctorate in law and has published extensively in the field of European and international air and space law. He currently teaches at the University of Paris-Saclay (France) and at the University of Leiden (Netherlands). In his expert report, he looked at various legal regimes adopted throughout the world to protect the rights of the passengers.

[159] He first focuses on the legal regime of the European Union because it was in Europe that the movement aimed to better protect air passengers, which started in 1991. In 2004, Regulation

(EC) No. 261/2004, which I have already mentioned, expanded the initially proposed rights to establish "minimum rights for passengers when: (a) they are denied boarding against their will; (b) their flight is cancelled; (c) their flight is delayed" (Regulation 261/2004, *supra*, Article 1(1)). This Regulation applies to all carriers, whether European or not, that depart from an airport in the Union, as well as European carriers that depart from a third state to a European Union destination. Passengers who were denied boarding or whose flight was cancelled are entitled to choose between being reimbursed and being re-routed, and they are entitled to be adequately cared for and to compensation in the form of a lump sum payment. Passengers whose flight was delayed are also entitled to various types of compensation, which vary depending on the length of the delay. In the event of a cancellation or a delay that was longer than three hours, airlines may be exempted from paying compensation if they can prove that there were extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. For delayed, lost or damaged baggage, the provisions of the *Montreal Convention* apply. Under the Regulation, recourse is governed by the rules of procedure of each member state.

[160] This regime is not only applicable in the 27 European Union member states, but has also been implemented in the four member states of the European Free Trade Association, and in the five member states of the European Common Aviation Area which are not otherwise members of the European Union or of the European Free Trade Association, and in a few other neighbouring states of the European Union. In practice, 39 states therefore apply Regulation 261/2004 (except for the right to monetary compensation in the case of delays of more than three hours, which derives from the *Sturgeon* decision and not from Regulation 261/2004). Other states have also

adopted internal legislation broadly similar to Regulation 261/2004 without taking the European Union regime as a model.

[161] In his expert report, Professor Correia also summarizes the legal regime of a number of other states in the Middle East, the Americas, Africa, and Asia Pacific. On the basis of his extensive review, he draws a number of conclusions, chief among which is the fact that 73 state parties to the *Montreal Convention* (excluding Canada) have established a local regime requiring standardized compensation of air passengers in the case of cancellation and/or denial of boarding; of those states, 45 also require compensation in the case of delay. These regimes vary in some respects. For example, the basis for establishing the amount of compensation varies: compensation is sometimes a fixed amount based on the length of the delay or the distance of the flight while other regimes provide for the reimbursement of the price of the ticket. Despite these variations, these regimes clearly illustrate a trend in favour of better protecting air passengers. As Professor Correia states in his concluding remarks:

> [TRANSLATION] In conclusion, the various instruments that have been reviewed reflect the reality of developments in passenger protection around the globe and demonstrate the consistency—which is admittedly relative as the details sometimes differ—of the regulations adopted in this regard. While it is certain that not every country in the world has introduced specific regulations concerning delays, cancellations and denied boarding as yet, it is clear that the number of instruments continues to grow.
>
> Correia affidavit, at p. 110, para. 304

[162] On the basis of that expert evidence, the Attorney General submits that the state practice, coupled with the absence of any objection from other signatories of the *Montreal Convention*, is indicative of acceptance by all state parties that a standardized compensation regime for delay,

cancellation and denial of boarding of the kind enacted in the Regulations does not contravene the *Montreal Convention*. The appellants have not filed any evidence to the contrary.

[163] Rather, the appellants have sought to undermine Professor Correia's credibility, arguing that he has repeatedly concluded in past publications that Regulation 261/2004 is incompatible with the *Montreal Convention.* Moreover, the appellants claim that the Attorney General improperly attempted to shield him during cross-examination by objecting to all questions relating to his past published opinions regarding the compatibility of the European regime with the *Montreal Convention*.

[164] This argument is without merit. I have read the cross-examination of Professor Correia on his affidavit, and I agree with the Attorney General that the questions that were put to him relating to the views he has expressed in his writings on the conformity of the ECJ jurisprudence with the *Montreal Convention* were irrelevant. Professor Correia was asked to give evidence on two topics: 1) to present the airline passenger protection regimes of member [signatory] states to the *Montreal Convention*, whether they are analogous or not to the Canadian regime established by the [Airline Passenger Protection] Regulations; and 2) as appropriate, to identify the trends and the elements of similarity or distinction in the treatment of denial of boarding, cancellations, flight delays and lost or damaged baggage (Correia affidavit, at p. 4, para. 11). His mandate was clearly not, nor could it be, to give his opinion on the proper interpretation of the *Montreal Convention* or on the compatibility of the ECJ jurisprudence with that *Convention*. As a result, the questions seeking to elucidate his views on these topics (whether directly or by referring to the views he has expressed elsewhere) were clearly outside the scope of the expert opinion he

presented to the Court in this appeal, and the Attorney General rightly objected to them. Both the questions and the answers ought to be disregarded.

[165] The appellants also contend that the Attorney General's attempt to prove and rely on state practice fails on numerous levels. First, they claim that the affidavit of Professor Correia is "largely irrelevant" because it falls silent on the key issue of whether the European Union passenger rights regime is "in the application of" the *Montreal Convention,* and thus properly the subject of state practice. In fact, they submit, the US is the only jurisdiction where the expert evidence establishes that the domestic regime governing compensation for delay is aimed at fulfilling the country's treaty obligations.

[166] The appellants also argue that there is no evidence showing that the various domestic regimes reviewed by Professor Correia establish the agreement of the parties with respect to the interpretation of the *Montreal Convention*. These various regimes, they say, are too heterogeneous and diverge in so many respects that they cannot reflect any agreement. Finally, they argue that Articles 19 and 29 of the *Montreal Convention* are not ambiguous, and the invocation of expert evidence on purported state practice is an attempt to create ambiguity in the text via domestic law.

[167] There is no doubt that the expression "in the application of the treaty" conveys the notion that the conduct of state parties must be in good faith. Nor is there any doubt that the parties must regard their conduct as falling within the scope of the application of the treaty to which they are signatories: Oliver Dörr & Kirsten Schmalenbach, *supra*, at p. 598. A manifest misapplication of

a treaty, or a practice that is clearly meant to diverge from the accepted interpretation of a treaty, would clearly not amount to state practice in the application of the treaty. That being said, state parties to a treaty are presumed to respect its terms, and it is therefore to be assumed that they consider their own legislation to be compatible with the limits set out in the treaties that they have signed: *Report of the International Law Commission*, *supra*, at pp. 14, 47. The absence of any adverse reactions by other treaty signatories will also be revealing of their views on the proper interpretation of a treaty and of the conformity of any given state practice with such treaty: *Report of the International Law Commission, supra*, at p. 79 and the jurisprudence cited at footnote 430 on that page; Yasseen, *supra*, at p. 49; Gardiner, *supra*, at p. 267.

[168] In the case at bar, the evidence shows that 73 out of the 135 state parties to the *Montreal Convention* have established a local regime requiring standardized compensation for air passengers in the case of cancellation, denial of boarding and/or delay. While these regimes show some variations in the modalities of their particular scheme, they all share common features in terms of their overall structure, their territorial application, the nature of their compensation, and the conditions under which air carriers can exclude their liability. This is strong evidence that these states interpret the *Montreal Convention* as allowing this kind of compensation scheme. As mentioned above, this understanding is bolstered by the absence of any evidence to the effect that these regimes have been challenged by other state parties to the *Montreal Convention*. As Richard Gardiner wrote in his *Treaty Interpretation, supra*, at p. 265, "[t]o find agreement on meaning from practice may require examining a combination of action by one or more states with subsequent responsive action or inaction by others". There is also no

evidence that State parties which do not have a regime of standardized compensation objected to the application of these regimes to their citizens or to airlines registered in their country.

[169] The fundamental flaw with the appellants' argument is that they postulate the very proposition that must be established. They claim that the regimes providing standardized compensation for air passengers in case of cancellation, denial of boarding and/or delay, are incompatible with the *Montreal Convention* and therefore cannot constitute state practice. Yet, this interpretation of the *Convention* and its exclusivity principle as excluding any parallel regime of standardized compensation of the type enacted by Regulation 261/2004 and the Regulation is precisely what is at stake in this case. In other words, the appellants' argument is circular. State practice is an aid to arrive at the proper interpretation of the *Montreal Convention*, similar to text, context and purpose; one does not first construe the *Convention* in the abstract to then determine if the text, context and practice fit that interpretation. To do otherwise and to exclude from consideration state practice that does not coincide with one's preferred interpretation of a legal instrument would be inimical to general principles of statutory construction and would turn Article 31 of the *Vienna Convention* on its head.

[170] For all of the foregoing reasons, I am therefore of the view that state practice confirms that standardized compensation for the inconvenience resulting from flight cancellation, denial of boarding and/or delay is compatible with and can operate alongside the individual damages prescribed by the *Montreal Convention*. The jurisprudence of the ECJ and Regulation 261/2004 constitute the law in Europe, and the criticism of scholars (including those of the two professors

who have filed expert reports on behalf of the appellants) does not supersede state practice when it comes to interpreting an international treaty.

B. *Are any of sections 5-8, 10(3), 11(3)-(5), 12(2)-(4), 13-18, 23 or 24 of the Regulations ultra vires the CTA insofar as they apply to international service because of an impermissible extraterritorial application?*

[171] The appellants submit that the Regulations have impermissible extraterritorial effects that violate the territorial sovereignty of foreign states. Respect for the territorial sovereignty of foreign states is a well established principle of customary international law, and as such it is binding on Canada: *Hape* at para. 46; *R. v. Terry*, 1996 CanLII 199 (SCC), [1996] 2 S.C.R. 207 at para. 16 [*Terry*]; *The Case of the S.S.* "*Lotus*" (1927) P.C.I.J. (Ser. A) No. 10, at p. 18 [*Lotus*]. This principle is further reflected by the 1944 *Chicago Convention*, to which Canada is a party. Article 1 of the *Chicago Convention* states that "[t]he contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory". As a result, section 86.11 of the CTA must be interpreted in a manner that respects this obligation; yet, the appellants claim, several provisions of the Regulations attempt to regulate the conduct of foreign air carriers while they are located in the territories of foreign states, thereby rendering them *ultra vires* the regulation-making authority granted by Parliament. At the hearing, the appellants clarified that they have no issue with flights coming in or departing from Canada; their extraterritoriality argument is limited to flights operating entirely outside of Canada and connecting two foreign states. They have also amended the order sought to reflect the narrower scope of their argument.

[172] The starting point of any analysis on the limits of state jurisdiction is the decision of the Supreme Court in *Hape*. At issue in that case was whether the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 could apply extraterritorially to prevent searches and seizures by Canadian police officers in foreign jurisdictions, and thus exclude evidence that had been so collected. Examining the principle of territoriality, the Court explained that international law - particularly the customary principle of state equality - sets the limits of state jurisdiction, while domestic law determines "how and to what extent a state will assert its jurisdiction within those limits" (*Hape* at para. 59). The primary basis upon which a state can assert jurisdiction is territoriality: as a result of its territorial sovereignty, a state has full authority to exercise prescriptive, enforcement and adjudicative jurisdiction over all matters arising and people found within its borders.

[173] As the Court noted, jurisdiction is not an issue when a dispute is wholly contained within the territory of one state. Claims for jurisdiction can arise on grounds other than territoriality, however, and nationality is the most frequent of these other grounds. The interplay between territoriality and other principles justifying jurisdiction are central to the issue of whether extraterritorial exercise of jurisdiction is permissible. While states may have valid concurrent claims to jurisdiction, the exercise of one state's jurisdiction cannot infringe on the sovereignty of other states. In the event of concurrent claims, "comity dictates that a state ought to assume jurisdiction only if it has a real and substantial link to the event" (*Hape* at para. 62).

[174] The Court went on to add, relying on the decision of the Permanent Court of International Justice in *Lotus*, that extraterritorial jurisdiction is governed by international law, and not by the

laws of individual states. Comity is not necessarily offended by extraterritorial prescriptive jurisdiction or even where a state's courts assume jurisdiction over a dispute that occurred abroad, but enforcement by a state of its laws within the territory of another state is more problematic absent the consent of the other state: *Hape* at para. 65; *Terry* at para. 15.

[175] There is no doubt that Parliament has the authority to make laws having extraterritorial effects. This has been explicitly recognized by section 3 of the *Statute of Westminster*, *1931* (U.K.), 22 Geo.5, c. 4, and Canada has exercised that power on several occasions especially in criminal legislation (see, for ex., the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, which addressed crimes of "universal jurisdiction"). These statutes, however, do not authorize Canada to enforce their prohibitions in a foreign state's territory. Although the Supreme Court recognized Parliament's authority to pass legislation that would regulate the conduct of non-Canadians outside of the country (*Hape* at para. 68), these laws cannot be enforced in another country without the consent of the host state because it would violate international law and the comity of nations.

[176] Although Parliament clearly has the plenary authority to enact legislation that applies extraterritorially, it must do so through clear words or by necessary implication; otherwise, Parliament is presumed not to intend to do so: *Society of Composers, Authors and Music Publishers of Canada v. Canadian Association of Internet Providers*, 2004 SCC 45, [2004] 2 S.C.R. 427 at para. 54.

[177] How do these principles apply in the context of the present appeal? The appellants challenge a number of provisions of the Regulations as offending the principle of territoriality, on the basis that they seek to regulate the conduct of foreign carriers while located in foreign states. More particularly, they claim that various sections of the Regulations seek to regulate the conduct of foreign air carriers while located in foreign states in respect of:

- the terms and conditions of carriage and the requirement to provide information by foreign air carriers outside of Canada (ss. 5, 6 and 24);
- the display of notices at airports located outside of Canada by foreign air carriers (s. 7);
- tarmac delays occurring at airports outside Canada in respect of the flights of foreign air carriers (s. 8);
- standards of treatment of and assistance to passengers and liability of foreign air carriers in relation to delayed or cancelled flights departing from airports outside Canada, and denial of boarding on such flights (ss. 10(3), 11(3), 11(4), 11(5), 12(2), 12(3), 12(4), 13, 14, 15, 16, 17, 18, 19 and 20);
- the assignment of seats by foreign carriers on flights departing from airports outside of Canada (s. 22); and
- loss or damage to baggage in the charge of foreign carriers occurring outside of Canada (s. 23).

[178] First of all, I fail to see how Article 1 of the *Chicago Convention* can be of any help to the appellants. This Convention has not been incorporated into domestic law: *Aerlinte Eirann Teoranta v. Canada (Minister of Transport)*, 1990 CanLII 8110 (FCA), 68 D.L.R. (4th) 220 at para. 19. Moreover, it is not readily apparent how the Regulations infringe foreign states'

sovereignty over the airspace above their territories. They impose obligations on carriers with respect to information provided at service desks and self-service terminals, on printed tickets and at airport gates, as well as compensatory obligations relating to delayed and cancelled flights, and denied boarding. Strictly speaking, none of these obligations affect how air carriers operate in flight, that is, in a particular jurisdiction's airspace, nor do they purport to affect or alter another state's airspace. At most, they manifest themselves while carriers operate on the ground in a foreign territory, or on the territory as opposed to above the territory of a foreign jurisdiction. I therefore see no interference with Article 1 of the *Chicago Convention*.

[179] It is clear from the language of section 86.11 that Parliament intended the forthcoming regulations to apply beyond its borders. Subsection 86.11(1) required the Agency to make regulations in relation to "flights to, from and within Canada, including connecting flights" (emphasis added). Indeed, the CTA expressly recognized the potential overlap between the Regulations and other compensation regimes at subsection 86.11(3) by providing that passengers could not receive compensation under the Regulations "if that person has already received compensation for the same event under a different passenger rights regime than the one provided for under this Act".

[180] The Agency presents another compelling argument that Parliament intended the Regulations to have extraterritorial effect. The premise of that argument is that section 86.11 of the CTA cannot be read down to exclude jurisdiction over foreign carriers and international itineraries when the overall scheme of the CTA applies explicit prescriptions and requirements to international carriage and foreign carriers. Section 57 of the CTA requires that any person

operating an “air service” in Canada have a licence issued by the Agency. An “air service” is either domestic or international (s. 55), and the Agency grants three types of licences–domestic, scheduled international and non-scheduled international–to Canadians and non-Canadians alike (ss. 69(2) and (3), and s. 73(1) of the CTA). Interestingly, the Minister may issue binding directions to the Agency when it exercises its powers or performs its duties if it is in the interest of international comity or reciprocity to do so (para. 76(1)(*c*)), which is another indication that the CTA may have extraterritorial effects. In short, it is clear from the overall scheme of the CTA that the Agency’s licensing scheme was intended to capture Canadian and non-Canadian carriers for international services and to provide the Agency with powers to impose restrictions on their terms and conditions of service.

[181] Pursuant to paragraph 86(1)(*h*) of the CTA, the Agency is also given the authority to make regulations “respecting traffic and tariffs, fares, rates, charges and terms and conditions of carriage for international service”. Part V, Division II of the *Air Transportation Regulations* sets out carriers’ obligations and the Agency’s jurisdiction over terms and conditions of carriage for international service. Prior to the coming into force of the Regulations, the content of the terms and conditions of carriage contained in air carriers’ tariffs was determined by the carriers themselves; the *Air Transportation Regulations* only prescribed the topics that carriers had to address in their terms and conditions (para. 122(*c*)). Yet the Agency was empowered to review these terms and conditions to ensure that they ware clear, just and reasonable (s. 111(1)). Moreover, the decision of this Court in *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, made it very clear that the Agency has jurisdiction over flights to and from

Canada and can examine a foreign carrier's tariff from the perspective of events taking place outside Canadian borders and on flights that are subject to regulations in a foreign jurisdiction.

[182] With the advent of the Regulations, it is not only the topics that carriers have to address in their terms and conditions that are set out but also the substance of their tariffs. In fact, many of the provisions impugned in this appeal cover topics that carriers were required to address in their international tariffs before the Regulations came into effect. The only difference is that the Agency no longer has to review individual carrier provisions for clarity or reasonableness if they reflect the Regulations. Carriers were, and continue to be, subject to section 116 of the *Air Transportation Regulations*, which requires them to keep their tariff at each business office and to prominently display a sign indicating that the tariff is available for public inspection. They were and continue to be subject to section 116.1 of the *Air Transportation Regulations*, which requires carriers selling or offering international services on their website to display their tariff on that site and prominently post a notice to that effect. The Agency also continues to have jurisdiction to review complaints that carriers are not applying the terms and conditions contained in their tariff, and to order corrective measures (including compensation) if that is the case. In short, nothing has changed with respect to the jurisdiction of the Agency to review the terms and conditions of carriage set out in tariffs for international services provided by both Canadian and non-Canadian carriers. The only difference is that the terms and conditions on many topics are now set out by the Regulations, instead of being left to each carrier.

[183] The overall scheme governing air transportation under the CTA and the *Air Transportation Regulations,* and the way they have been applied and interpreted since their

enactment, therefore supports the view that Parliament's intent was to give the Regulations extraterritorial reach. Moreover, the extraterritorial reach of the Regulations does not contravene the principles of international law governing state sovereignty and territoriality. As pointed out by the Attorney General, the Regulations do not purport to allow for their enforcement on foreign soil, nor to authorize investigation in a foreign country for non-compliance occurring in that country. Quite to the contrary, the Regulations provide that affected passengers may claim the respective compensation directly with the air carrier. Given the deeming provision in the CTA, the Regulations' obligations form part of each carrier's tariff, that is, of the contractual bargain it makes with its passengers. Enforcement takes place in Canada, and as previously mentioned, enforcement of laws on the State's own territory for events occurring outside its territory is permitted as long as there is an objective link with the country: *Lotus*; Michael Akehurst, "Jurisdiction in International Law" (1972-1973) 46 Brit Y B Int'L 145.

[184] It is clear that a flight departing from or arriving on Canadian soil, whether operated by a Canadian or a foreign carrier, has a sufficient connection to this country to ground an exercise of its jurisdiction. This connection arises from the permission granted to the carrier by the CTA to operate in Canada, and from the tariff which the airline has agreed to prepare and follow. At the hearing, there was some discussion about the notion of "connecting flight". There is no definition of that expression, either in the CTA, in the Regulations or in the *Air Transportation Regulations*. I would not venture to propose a comprehensive definition of a connecting flight, and would certainly not want to turn this appeal into a declaratory judgment. For the purposes of this appeal, I think it is sufficient to say that the Regulations will apply only to the extent that a clear link can be established between Canada and "persons, property and acts outside [its]

territory”, to use the language of the *Lotus* case (at p. 19). For example, and without expressing any definitive views on the subject, I fail to see how the Regulations could apply to the passenger (even if Canadian) of a flight operated by a non-Canadian carrier connecting country A and country B and stopping in country B, even if that same flight was also a connecting flight for some passengers subsequently flying from country B to Canada. On the other hand, it would appear that flight segments between two points outside Canada would be covered by the Regulations for those passengers who use these flights to connect to flights to or from Canada. There are obviously a number of potential permutations in this example, relating to the nationality of the passenger and of the carrier and to the flight itself, and it would be hazardous to propose a solution in the abstract for each and every possible situation. Each case turns on its own facts, and it will be for the Agency to determine whether its jurisdiction has been engaged in any given case.

### C. *Is the Direction intra vires of the authority of the Minister under subsection 86.11(2) of the CTA?*

[185] The appellants’ final argument is that the Minister’s *Direction* requiring the Agency to make regulations in respect of tarmac delays of three hours or less, exceeds the power that he has been granted under subsection 86.11(2). Pursuant to that subsection, the Minister is authorized to issue directions to the Agency to make a regulation respecting any of the carrier’s obligations towards passengers that are not listed in paragraph (1)(*a*) to (*f*). One of the obligations that the Agency is explicitly empowered to regulate relates to tarmac delays of more than three hours. In the appellants’ view, the *Direction* constitutes an impermissible attempt to amend the CTA and seeks to modify Parliament’s intent by purporting to remove an explicit and clear legislative limit

to the regulatory powers granted by Parliament to the Agency. In other words, the *Direction* transformed an express statutory power to regulate tarmac delays of more than three hours into a power to regulate tarmac delays of any length whatsoever, and should therefore be held *ultra vires* the CTA. By the same logic, section 8 of the Regulations which imposes obligations regarding tarmac delays of any duration on air carriers should also be held *ultra vires* the regulation-making authority of the Agency under section 86.11 of the CTA.

[186] Prior to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], the analytical framework for the judicial review of delegated legislation was firmly established, and rested on the *ultra vires* doctrine. When the validity of delegated legislation was challenged, reviewing courts interpreted the statutory grant of authority to determine whether, correctly interpreted, it fell within or outside its ambit. This was essentially an exercise of statutory interpretation, with no deference to the delegate's interpretation.

[187] In the years following *Dunsmuir*, some confusion arose in the highest court on this issue, no doubt because that decision was focused on the judicial review of decisions of adjudicative tribunals and not on delegated legislation. In some cases, the Court applied the judicial review framework (see *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635), whereas in other cases the Court reverted to the *vires* analysis (see for example, *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care),* 2013 SCC 64, [2013] 3 S.C.R. 810 [*Katz*]; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40,

[2014] 2 S.C.R. 135 at para. 51; Donald Brown & John Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Thomson Reuters Canada Ltd., 2022), Chap. 2021, at section 2021:5(ii)(3)).

[188] Unfortunately, *Vavilov* did not bring much clarity to that confusion. Because the Supreme Court purported to adopt the reasonableness standard as the default standard of review to all administrative actions, most intermediate appeal courts adopted the view that delegated legislation would henceforth be reviewed against that standard: see, for example, *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at paras. 48-59; *Portnov v. Canada (Attorney General)*, 2021 FCA 171; *Canadian Association of Refugee Lawyers v. Canada (Citizenship and Immigration)*, 2020 FCA 196 [2021] 1 F.C.R. 271; Paul Daly, “Regulations and Reasonableness Review” (January 29, 2021), online (blog): *Administrative Law Matters* <https://www.administrativelawmatters.com/blog/2021/01/29/regulations-and-reasonableness-review/and the cases cited therein>.

[189] This approach, however, has not been followed unanimously: see, for example, *Hudson’s Bay Company ULC v. Ontario (Attorney General)*, 2020 ONSC 8046, 154 O.R. (3d) 103; *Friends of Simcoe Forest Inc. v. Minister of Municipal Affairs and Housing*, 2021 ONSC 3813 at para. 25. Indeed, the reasonableness standard review is fraught with difficulties, not the least of which is that it assumes the body or person that has been granted the power to adopt delegated legislation has also been vested with the power to decide questions of law and to determine the proper interpretation of the habilitating statute; yet, this is obviously not always the case: see

John M. Evans, “Reviewing Delegated Legislation After *Vavilov*: *Vires* or Reasonableness?” (2021) 34:1 Can. J. Admin. L.& P. 1.

[190] More recently, the Supreme Court has brought grist to the mill of those who support the view that the *Vavilov* judicial review framework does not apply to delegated legislation. In *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, 455 D.L.R. (4th) 1 [*Ref re Greenhouse Gas*], the Court reviewed the validity of the regulations at issue on the basis of its own interpretation of the enabling statute, without expressing any deference to Cabinet on the interpretative issue. It is true that the majority (in contrast to the dissenting opinion of Rowe J.) made no mention of the *ultra vires* doctrine, but neither did it refer to *Vavilov* nor to reasonableness review. On the contrary, the majority took it upon itself to interpret the scope of the regulation-making powers found in the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12. While this is clearly not the last word on the subject, it signals at the very least that the issue is far from settled.

[191] That being said, and whether we assess the validity of the *Direction* and of section 8 of the Regulations through the lens of the reasonableness standard of review or through the more exacting prism of the *ultra vires* doctrine, the result would be the same. For the appellants to succeed with their argument that subsection 86.11(2) of the CTA does not encompass the power to issue the *Direction* (and section 8 of the Regulations) because it relates to matters covered at paragraph 86.11(1)(*f*), they would have to show either that the *Direction*: 1) is irrelevant, extraneous or completely unrelated to the statutory purpose (*Katz* at para. 28; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, 1994 CanLII 115 (SCC) at p. 280), or 2)

rests on an unreasonable interpretation of subsection 86.11(2). If the *Direction* (and section 8 of the CTA) satisfies the more exacting *ultra vires* framework, it will obviously meet the less stringent reasonableness standard of review analysis.

[192] I agree with the Attorney General that the language of subsection 86.11(2) is quite broad, and that limiting the Minister's ability to issue directions to matters not covered in paragraphs 86.11(1)(*a*) to (*f*) as suggested by the appellants would be inimical to the ordinary meaning of the words used by Parliament in subsection 86.11(2). The Minister is granted the power to issue directions to the Agency with respect to "any of the carrier's other obligations". These terms are quite broad, and there is no indication that they were meant to limit the discretion of the Minister to those matters that are strictly speaking extraneous and unrelated to those listed in subsection 86.11(1).

[193] The *Direction* and section 8 of the Regulations are not only consistent with the wording of subsection 86.11(2) of the CTA*,* but also with the context and purpose of the CTA as a whole. In its summary, the *Transportation Modernization Act* states that it "amends the [CTA] to make regulations establishing a new air passenger rights regime …". The intent was clearly to provide better protection to air passengers, and it is in that spirit that Parliament compelled the Agency to make regulations regarding passengers' rights and carriers' obligations on specific matters. It is certainly not inconsistent or unrelated to that statutory purpose, let alone unreasonable, to interpret the list of matters found at subsection 86.11(1) as the baseline of carriers' obligations towards passengers, rather than the upper limit. The fact that the delegation of power created by subsection 86.11(2) may be extensive and that the discretion conferred on the Minister may be

broad is no obstacle to its validity: see *Ref re Greenhouse Gas* at paras. 85-88. In sum, I have not been convinced that the Minister has exceeded the scope and limits of his power under subsection 86.11(2) of the CTA. As a result, both the *Direction* and section 8 of the Regulations are valid.

## VI. Conclusion

[194] For all of the above reasons, I am of the view that his appeal should be dismissed, except with respect to subsection 23(2) of the Regulations which I find *ultra vires* of the CTA. Costs should be granted to the respondents.

"Yves de Montigny"
J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
George R. Locke J.A."

# ANNEX

CONSOLIDATION

CODIFICATION

# Air Passenger Protection Regulations

# Règlement sur la protection de passagers aériens

SOR/2019-150

DORS/2019-150

Current to June 28, 2021

À jour au 28 juin 2021

Last amended on December 15, 2019

Dernière modification le 15 décembre 2019

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

**Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

**Inconsistencies in regulations**

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

**Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

**Incompatibilité — règlements**

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

This consolidation is current to June 28, 2021. The last amendments came into force on December 15, 2019. Any amendments that were not in force as of June 28, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

## NOTE

Cette codification est à jour au 28 juin 2021. Les dernières modifications sont entrées en vigueur le 15 décembre 2019. Toutes modifications qui n'étaient pas en vigueur au 28 juin 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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Registration
SOR/2019-150 May 22, 2019

CANADA TRANSPORTATION ACT

**Air Passenger Protection Regulations**

P.C. 2019-584 May 21, 2019

Whereas, pursuant to subsection 36(2) of the *Canada Transportation Act*[a], the Canadian Transportation Agency has given the Minister of Transport notice of the annexed Regulations;

Whereas, pursuant to subsection 86.11(1)[b] of the *Canada Transportation Act*[a], the Canadian Transportation Agency has consulted with the Minister of Transport with respect to the annexed Regulations;

And whereas, pursuant to subsection 86.11(2)[b] of the *Canada Transportation Act*[a], the Minister of Transport has given the *Direction Respecting Tarmac Delays of Three Hours or Less*[c];

Therefore, the Canadian Transportation Agency, pursuant to subsection 86(1)[d], section 86.1[e] and subsections 86.11(1)[b] and 177(1)[f] of the *Canada Transportation Act*[a], makes the annexed *Air Passenger Protection Regulations*.

Gatineau, April 30, 2019

[a] S.C. 1996, c. 10
[b] S.C. 2018, c. 10, s. 19
[c] SOR/2019-110
[d] S.C. 2018, c. 10, s. 18
[e] S.C. 2007, c. 19, s. 27
[f] S.C. 2007, c. 19, ss. 49(1) and (2)

Enregistrement
DORS/2019-150 Le 22 mai 2019

LOI SUR LES TRANSPORTS AU CANADA

**Règlement sur la protection des passagers aériens**

C.P. 2019-584 Le 21 mai 2019

Attendu que, conformément au paragraphe 36(2) de la *Loi sur les transports au Canada*[a], l’Office des transports du Canada a fait parvenir au ministre des Transports un avis relativement au règlement ci-après;

Attendu que, conformément au paragraphe 86.11(1)[b] de la *Loi sur les transports au Canada*[a], l’Office des transports du Canada a consulté le ministre des Transports relativement au règlement ci-après;

Attendu que, au titre du paragraphe 86.11(2)[b] de la *Loi sur les transports au Canada*[a], le ministre des Transports a donné la *Directive concernant les retards de trois heures ou moins sur l’aire de trafic*[c],

À ces causes, en vertu du paragraphe 86(1)[d], de l’article 86.1[e] et des paragraphes 86.11(1)[b] et 177(1)[f] de la *Loi sur les transports au Canada*, l’Office des transports du Canada prend le *Règlement sur la protection des passagers aériens*, ci-après.

Gatineau, le 30 avril 2019

[a] L.C. 1996, ch. 10
[b] L.C. 2018, ch. 10, art. 19
[c] DORS/2019-110
[d] L.C. 2018, ch. 10, art. 18
[e] L.C. 2007, ch. 19, art. 27
[f] L.C. 2007, ch. 19. par. 49(1) et (2)

Le président et premier dirigeant de l'Office des transports du Canada,

---

Scott Streiner
Chairperson and Chief Executive Officer, Canadian Transportation Agency

La vice-présidente de l'Office des transports du Canada,

---

Elizabeth C. Barker
Vice-Chairperson, Canadian Transportation Agency

Her Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to subsection 36(1) of the *Canada Transportation Act*[a], approves the annexed *Air Passenger Protection Regulations*, made by the Canadian Transportation Agency.

Sur recommandation du ministre des Transports et en vertu du paragraphe 36(1) de la *Loi sur les transports au Canada*[a], Son Excellence la Gouverneure générale en conseil agrée le *Règlement sur la protection des passagers aériens*, ci-après, pris par l'Office des transports du Canada.

[a] S.C. 1996, c. 10

[a] L.C. 1996, ch. 10

# Definitions and Interpretation

### Definitions — Part II of Act

**1 (1)** The following definitions apply in Part II of the Act.

***mechanical malfunction*** means a mechanical problem that reduces the safety of passengers but does not include a problem that is identified further to scheduled maintenance undertaken in compliance with legal requirements. (*défaillance mécanique*)

***required for safety purposes*** means required by law in order to reduce risk to passenger safety and includes required by safety decisions made within the authority of the pilot of the aircraft or any decision made in accordance with a *safety management system* as defined in subsection 101.01(1) of the *Canadian Aviation Regulations* but does not include scheduled maintenance in compliance with legal requirements. (*nécessaire par souci de sécurité*)

### Definitions — Regulations

**(2)** The following definitions apply in these Regulations.

***Act*** means the *Canada Transportation Act*. (*Loi*)

***arrival*** means the time when one of the doors of an aircraft is opened after it lands to allow passengers to leave the aircraft. (*arrivée*)

***large carrier*** means a carrier that has transported a worldwide total of two million passengers or more during each of the two preceding calendar years. (*gros transporteur*)

***small carrier*** means any carrier that is not a large carrier. (*petit transporteur*)

### Denial of boarding

**(3)** For the purpose of these Regulations, there is a denial of boarding when a passenger is not permitted to occupy a seat on board a flight because the number of seats that may be occupied on the flight is less than the number of passengers who have checked in by the required

# Définitions et interprétation

### Définitions — partie II de la Loi

**1 (1)** Les définitions qui suivent s'appliquent à la partie II de la Loi.

***défaillance mécanique*** Problème mécanique qui réduit la sécurité des passagers, à l'exclusion du problème découvert lors de la maintenance planifiée effectuée conformément aux exigences légales. (*mechanical malfunction*)

***nécessaire par souci de sécurité*** Se dit de toute exigence légale à respecter afin de réduire les risques pour la sécurité des passagers, y compris les décisions en matière de sécurité qui relèvent du pilote de l'aéronef ou qui sont prises conformément au *système de gestion de la sécurité* au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*, à l'exception de la maintenance planifiée effectuée conformément aux exigences légales. (*required for safety purposes*)

### Définitions — règlement

**(2)** Les définitions qui suivent s'appliquent au présent règlement.

***arrivée*** Heure à laquelle l'une des portes de l'aéronef est ouverte après l'atterrissage pour permettre aux passagers de sortir de l'aéronef. (*arrival*)

***gros transporteur*** Transporteur qui a transporté un total de deux millions de passagers ou plus, dans le monde, au cours de chacune des deux années civiles précédentes. (*large carrier*)

***Loi*** La *Loi sur les transports au Canada*. (*Act*)

***petit transporteur*** Transporteur qui n'est pas un gros transporteur. (*small carrier*)

### Refus d'embarquement

**(3)** Pour l'application du présent règlement, il y a refus d'embarquement lorsqu'un passager ne peut pas occuper un siège sur un vol parce que le nombre de sièges pouvant être occupés est inférieur au nombre de passagers qui se sont enregistrés à l'heure requise, qui possèdent une réservation confirmée et des documents de voyage

time, hold a confirmed reservation and valid travel documentation and are present at the boarding gate at the required boarding time.

valides et qui sont présents à la porte d'embarquement à l'heure prévue pour leur embarquement.

**Obligations of small carriers**

**(4)** For the purpose of these Regulations, a small carrier has the same obligations as a large carrier towards a passenger that it carries on behalf of a large carrier under a commercial agreement with that carrier.

**Obligations du petit transporteur**

**(4)** Pour l'application du présent règlement, le petit transporteur a, envers les passagers qu'il transporte pour le compte d'un gros transporteur dans le cadre d'une entente commerciale avec celui-ci, les mêmes obligations que le gros transporteur.

# General

# Dispositions générales

**Carrier liability**

**2 (1)** The carrier operating a flight is liable to passengers with respect to the obligations set out in sections 7 to 22 and 24, or, if they are more favourable to those passengers, the obligations on the same matter that are set out in the applicable tariff.

**Responsabilité du transporteur**

**2 (1)** Le transporteur qui exploite un vol est responsable envers les passagers des obligations prévues aux article 7 à 22 et 24, ou, si elles leur sont plus avantageuses, celles figurant dans le tarif visant le même sujet.

**Joint liability**

**(2)** However, if one carrier carries passengers on behalf of another carrier under a commercial agreement, the carriers are jointly and severally, or solidarily, liable to those passengers with respect to the obligations set out in sections 7, 22 and 24, or, if they are more favourable to those passengers, the obligations on the same matter that are set out in the applicable tariff.

**Responsabilité solidaire**

**(2)** Toutefois, si un transporteur transporte des passagers pour le compte d'un transporteur dans le cadre d'une entente commerciale avec celui-ci, les transporteurs sont solidairement responsables envers les passagers des obligations prévues aux articles 7, 22 et 24, ou, si les obligations envers les passagers sont plus avantageuses, celles figurant dans le tarif visant le même sujet.

**Tickets**

**(3)** The issuing carrier of a ticket is liable to passengers for the obligations set out in sections 5 and 6, or, if they are more favourable to those passengers, the obligations on the same matter that are set out in the applicable tariff.

**Titre de voyage**

**(3)** Le transporteur émetteur d'un titre de voyage à un passager est responsable envers se dernier des obligations prévues aux articles 5 et 6 ou, de celles figurants dans les tarifs applicables et concernant les mêmes sujets si elles prévoient des conditions plus avantageuses pour les passagers.

**Persons with disabilities**

**3 (1)** These Regulations do not limit a carrier's legal obligations with respect to persons with disabilities.

**Personnes handicapées**

**3 (1)** Le présent règlement ne limite pas les transporteurs de leurs obligations légales envers les personnes handicapées.

**Carrier's right of action**

**(2)** For greater certainty, these Regulations do not remove a carrier's right of action against any other person.

**Droit d'action du transporteur**

**(2)** Il est entendu que le présent règlement ne retire pas au transporteur les droits d'action qu'il pourrait exercer contre toute autre personne.

**Other regimes**

**(3)** Subject to subsection 86.11(3) of the Act, a passenger must not be refused compensation in accordance with these Regulations for an event on the grounds that they are also eligible for compensation for the same event under a different passenger rights regime.

**Autres régimes**

**(3)** Sous réserve du paragraphe 86.11(3) de la Loi, un passager ne peut se voir refuser une indemnité prévue par le présent règlement parce qu'il est aussi admissible à une indemnité pour le même évènement dans le cadre d'un autre régime de droits des passagers.

### Application to charter flights

**4 (1)** In the case of a charter flight, sections 2 to 24 apply

**(a)** to a charter flight within Canada if one or more seats on that flight are purchased for resale to the public; or

**(b)** to a charter flight to or from Canada if one or more passengers began their itinerary in Canada and one or more seats on that flight are purchased for resale to the public.

### Licensee obligations

**(2)** A licensee must include the obligation to comply with these Regulations in its contracts with a charterer with respect to flights referred to in subsection (1).

### Simple, clear and concise communication

**5 (1)** A carrier must make its terms and conditions of carriage that apply in the following circumstances available in simple, clear and concise language:

**(a)** flight delay, flight cancellation and denial of boarding;

**(b)** lost or damaged baggage; and

**(c)** the assignment of seats to children who are under the age of 14 years.

### Means of communication

**(2)** The terms and conditions referred to in subsection (1) must be made available on all digital platforms that the carrier uses to sell tickets and on all documents on which the passenger's itinerary appears.

### Information on treatment, compensation and recourse

**(3)** A carrier must provide information on the treatment of passengers and minimum compensation owed by the carrier and the recourse against the carrier available to passengers, including their recourse to the Agency, in simple, clear and concise language on all digital platforms that it uses to sell tickets and on all documents on which the passenger's itinerary appears.

### Hyperlink

**(4)** For the purpose of subsections (2) and (3), a digital platform or a document that contains a hyperlink is considered to contain the information that is contained on the web page to which that hyperlink leads.

### Vols affrétés

**4 (1)** Dans le cas d'un vol affrété, les articles 2 à 24 s'appliquent :

**a)** au vol affrété à l'intérieur du Canada lorsqu'au moins un des sièges de l'aéronef a été acheté pour être revendu au public;

**b)** au vol affrété en provenance ou à destination du Canada, si au moins un passager a débuté son itinéraire au Canada et qu'au moins un des sièges de l'aéronef a été acheté pour être revendu au public.

### Obligations du licencié

**(2)** Le licencié inclut dans ses contrats avec un affréteur, à l'égard des vols visés au paragraphe (1), l'obligation de se conformer au présent règlement.

### Communication en langage simple, clair et concis

**5 (1)** Le transporteur rend disponible, en langage simple, clair et concis, les conditions de transport applicables aux circonstances suivantes :

**a)** le retard et l'annulation de vol et le refus d'embarquement;

**b)** la perte ou l'endommagement de bagage;

**c)** l'attribution de sièges aux enfants de moins de quatorze ans.

### Moyens de communication

**(2)** Les conditions de transport visées au paragraphe (1) sont disponibles sur toute plateforme numérique où le transporteur vend des titres de transport et sur tout document sur lequel figure l'itinéraire du passager.

### Renseignements sur le traitements des passagers, indemnités et recours

**(3)** Le transporteur fournit, dans un langage simple, clair et concis, sur toute plateforme numérique où il vend des titres de transport et sur tout document sur lequel figure l'itinéraire du passager, les renseignements sur le traitement des passagers, les indemnités minimales qu'il doit leur verser ainsi que sur les recours possibles qu'ont les passagers contre lui, notamment ceux auprès de l'Office.

### Hyperlien

**(4)** Pour l'application des paragraphes (2) et (3), la plateforme numérique ou le document qui contient un hyperlien est considéré comme contenant les renseignements contenus dans la page Web à laquelle il conduit.

### Notice

**(5)** The following notice must be made available on all digital platforms that the carrier uses to sell tickets and on all documents on which the passenger's itinerary appears:
"If you are denied boarding, your flight is cancelled or delayed for at least two hours, or your baggage is lost or damaged, you may be entitled to certain standards of treatment and compensation under the *Air Passenger Protection Regulations*. For more information about your passenger rights please contact your air carrier or visit the Canadian Transportation Agency's website.
Si l'embarquement vous est refusé, ou si votre vol est annulé ou retardé d'au moins deux heures ou si vos bagages sont perdus ou endommagés, vous pourriez avoir droit au titre du *Règlement sur la protection des passagers aériens*, à certains avantages au titre des normes de traitement applicables et à une indemnité. Pour de plus amples renseignements sur vos droits, veuillez communiquer avec votre transporteur aérien ou visiter le site Web de l'Office des transports du Canada."

### Persons with disabilities

**(6)** If the information referred to in subsection (1) or (3) or the notice set out in subsection (5) is provided in a digital format, that format must be compatible with adaptive technologies intended to assist persons with disabilities and if that information or notice is provided in a paper format, the carrier must, on request, provide it in large print, Braille or a digital format.

SOR/2019-150, s. 35.

### Person authorized to sell tickets

**6** The carrier must take reasonable measures to ensure that anyone authorized to sell tickets in the carrier's name complies with section 5.

### Notice at airport

**7 (1)** A carrier operating a flight to or from an airport in Canada must display, in a visible manner at the check-in desk, self-service machines and boarding gate, a notice containing the following text:
"If you are denied boarding, your flight is cancelled or delayed for at least two hours, or your baggage is lost or damaged, you may be entitled to certain standards of treatment and compensation under the *Air Passenger Protection Regulations*. For more information about your passenger rights please contact your air carrier or visit the Canadian Transportation Agency's website.
Si l'embarquement vous est refusé, ou si votre vol est annulé ou retardé d'au moins deux heures ou si vos bagages sont perdus ou endommagés, vous pourriez avoir droit au titre du *Règlement sur la protection des passagers*

### Avis

**(5)** L'avis ci-après figure, sur toute plateforme numérique où le transporteur vend des titres de transport et sur tout document contenant l'itinéraire du passager :
« Si l'embarquement vous est refusé, ou si votre vol est annulé ou retardé d'au moins deux heures ou si vos bagages sont perdus ou endommagés, vous pourriez avoir droit au titre du *Règlement sur la protection des passagers aériens*, à certains avantages au titre des normes de traitement applicables et à une indemnité. Pour de plus amples renseignements sur vos droits, veuillez communiquer avec votre transporteur aérien ou visiter le site Web de l'Office des transports du Canada.
If you are denied boarding, your flight is cancelled or delayed for at least two hours, or your baggage is lost or damaged, you may be entitled to certain standards of treatment and compensation under the *Air Passenger Protection Regulations*. For more information about your passenger rights please contact your air carrier or visit the Canadian Transportation Agency's website. »

### Personnes handicapées

**(6)** Lorsque les renseignements visés aux paragraphes (1) ou (3) ou dans l'avis prévu au paragraphe (5) sont fournis en format numérique, le support numérique utilisé est compatible avec les technologies d'adaptation visant à aider les personnes handicapées. Si les renseignements sont fournis sur support papier, ils sont également fournis, sur demande, en gros caractères, en braille ou en format numérique.

DORS/2019-150, art. 35.

### Personne autorisée à vendre des titres de transport

**6** Le transporteur prend des mesures raisonnables pour que toute personne autorisée à vendre des titres de transport en son nom se conforme à l'article 5.

### Avis à l'aéroport

**7 (1)** Le transporteur qui exploite un vol en provenance ou à destination d'un aéroport au Canada, affiche au comptoir d'enregistrement, aux bornes libre-service et à la porte d'embarquement, un avis indiquant d'une manière visible le texte suivant :
« Si l'embarquement vous est refusé, ou si votre vol est annulé ou retardé d'au moins deux heures ou si vos bagages sont perdus ou endommagés, vous pourriez avoir droit au titre du *Règlement sur la protection des passagers aériens*, à certains avantages au titre des normes de traitement applicables et à une indemnité. Pour de plus amples renseignements sur vos droits, veuillez communiquer avec votre transporteur aérien ou visiter le site Web de l'Office des transports du Canada.

*aériens*, à certains avantages au titre des normes de traitement applicables et à une indemnité. Pour de plus amples renseignements sur vos droits, veuillez communiquer avec votre transporteur aérien ou visiter le site Web de l'Office des transports du Canada."

If you are denied boarding, your flight is cancelled or delayed for at least two hours, or your baggage is lost or damaged, you may be entitled to certain standards of treatment and compensation under the *Air Passenger Protection Regulations*. For more information about your passenger rights please contact your air carrier or visit the Canadian Transportation Agency's website. »

**Persons with disabilities**

**(2)** If the notice is provided in a digital format, that format must be compatible with adaptive technologies intended to assist persons with disabilities and if the notice is provided in a paper format, the carrier must, on request, provide it in large print, Braille or a digital format.

SOR/2019-150, s. 36.

**Personnes handicapées**

**(2)** Lorsque l'avis est affiché en format numérique, le support numérique utilisé est compatible avec les technologies d'adaptation visant à aider les personnes handicapées. S'il est affiché sur support papier, il est fourni, sur demande, en gros caractères, en braille ou en format numérique.

DORS/2019-150, art. 36.

# Delay, Cancellation and Denial of Boarding

# Retard, annulation et refus d'embarquement

**Tarmac delay obligations**

**8 (1)** If a flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the carrier must provide passengers with the following, free of charge:

**(a)** if the aircraft is equipped with lavatories, access to those lavatories in working order;

**(b)** proper ventilation and cooling or heating of the aircraft;

**(c)** if it is feasible to communicate with people outside of the aircraft, the means to do so; and

**(d)** food and drink, in reasonable quantities, taking into account the length of the delay, the time of day and the location of the airport.

**Retard sur l'aire de trafic**

**8 (1)** Lorsqu'un vol est retardé sur l'aire de trafic après la fermeture des portes de l'aéronef en prévision du décollage, ou après l'atterrissage, le transporteur veille à ce que, sans frais :

**a)** si l'aéronef possède des toilettes, celles-ci soient fonctionnelles et accessibles aux passagers;

**b)** l'aéronef soit adéquatement ventilé et climatisé ou chauffé;

**c)** les passagers aient accès, si possible, à un moyen de communication avec des personnes à l'extérieur de l'aéronef;

**d)** les passagers aient accès à de la nourriture et à des boissons en quantité raisonnable compte tenu de la durée du retard, du moment de la journée et de l'emplacement de l'aéroport.

**Urgent medical assistance**

**(2)** If a passenger requires urgent medical assistance while the flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the carrier must facilitate access to that assistance.

**Soins médicaux d'urgence**

**(2)** Si un passager requiert des soins médicaux d'urgence durant la période de retard du vol sur l'aire de trafic après la fermeture des portes de l'aéronef en prévision du décollage, ou après l'atterrissage, le transporteur facilite l'accès à ces soins.

**Passenger disembarkation**

**9 (1)** If a flight is delayed on the tarmac at an airport in Canada, the carrier must provide an opportunity for passengers to disembark

**Débarquement des passagers**

**9 (1)** Lorsqu'un vol est retardé sur l'aire de trafic dans un aéroport au Canada, le transporteur permet aux passagers de débarquer de l'aéronef :

**(a)** three hours after the aircraft doors have been closed for take-off; and

**(b)** three hours after the flight has landed, or at any earlier time if it is feasible.

**Take-off imminent**

**(2)** However, a carrier is not required to provide an opportunity for passengers to disembark if it is likely that take-off will occur less than three hours and 45 minutes after the doors of the aircraft are closed for take-off or after the flight has landed and the carrier is able to continue to provide the standard of treatment referred to in section 8.

**Priority disembarkation**

**(3)** A carrier that allows passengers to disembark must, if it is feasible, give passengers with disabilities and their support person, service animal or emotional support animal, if any, the opportunity to disembark first.

**Exceptions**

**(4)** This section does not apply if providing an opportunity for passengers to disembark is not possible, including if it is not possible for reasons related to safety and security or to air traffic or customs control.

**Obligations — situations outside carrier's control**

**10 (1)** This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier's control, including but not limited to the following:

**(a)** war or political instability;

**(b)** illegal acts or sabotage;

**(c)** meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;

**(d)** instructions from air traffic control;

**(e)** a *NOTAM*, as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;

**(f)** a security threat;

**(g)** airport operation issues;

**(h)** a medical emergency;

**(i)** a collision with wildlife;

**a)** trois heures après la fermeture des portes en prévision du décollage;

**b)** trois heures après l'atterrissage ou plus tôt si cela est possible.

**Décollage imminent**

**(2)** Le transporteur n'est toutefois pas tenu de permettre aux passagers de débarquer de l'aéronef s'il est probable que le décollage aura lieu dans moins de trois heures et quarante-cinq minutes après la fermeture des portes en prévision du décollage ou après l'atterrissage et que le transporteur peut continuer à appliquer les normes de traitement prévues à l'article 8.

**Priorité de débarquement**

**(3)** Le transporteur qui permet aux passagers de débarquer de l'aéronef offre, si possible, la priorité de débarquement aux personnes handicapées et, le cas échéant, à leur personne de soutien, à leur animal d'assistance ou à leur animal de soutien émotionnel.

**Exceptions**

**(4)** Le présent article ne s'applique pas au transporteur qui n'est pas en mesure de permettre aux passagers de débarquer de l'aéronef notamment pour des raisons de sécurité, de sûreté, de contrôle de la circulation aérienne ou de contrôle douanier.

**Obligations — situations indépendantes de la volonté du transporteur**

**10 (1)** Le présent article s'applique au transporteur lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment :

**a)** une guerre ou une situation d'instabilité politique;

**b)** un acte illégal ou un acte de sabotage;

**c)** des conditions météorologiques ou une catastrophe naturelle qui rendent impossible l'exploitation sécuritaire de l'aéronef;

**d)** des instructions du contrôle de la circulation aérienne;

**e)** un *NOTAM* au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*;

**f)** une menace à la sûreté;

**g)** des problèmes liés à l'exploitation de l'aéroport;

**h)** une urgence médicale;

**(j)** a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;

**(k)** a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and

**(l)** an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

**Earlier flight disruption**

**(2)** A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

**Obligations**

**(3)** When there is delay, cancellation or denial of boarding due to situations outside the carrier's control, it must

**(a)** provide passengers with the information set out in section 13;

**(b)** in the case of a delay of three hours or more, provide alternate travel arrangements, in the manner set out in section 18, to a passenger who desires such arrangements; and

**(c)** in the case of a cancellation or a denial of boarding, provide alternate travel arrangements in the manner set out in section 18.

**Obligations when required for safety purposes**

**11 (1)** Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's control but is required for safety purposes.

**Earlier flight disruption**

**(2)** A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

**i)** une collision avec un animal sauvage;

**j)** un conflit de travail chez le transporteur, un fournisseur de services essentiels comme un aéroport ou un fournisseur de services de navigation aérienne;

**k)** un défaut de fabrication de l'aéronef, qui réduit la sécurité des passagers, découvert par le fabricant de l'aéronef ou par une autorité compétente;

**l)** une instruction ou un ordre de tout représentant d'un État ou d'un organisme chargé de l'application de la loi ou d'un responsable de la sûreté d'un aéroport.

**Pertubation de vols précédents**

**(2)** Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable à une situation indépendante de la volonté du transporteur est également considéré comme attribuable à une situation indépendante de la volonté du transporteur si ce dernier a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou de l'annulation précédent.

**Obligations**

**(3)** Lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de la volonté du transporteur, ce dernier :

**a)** fournit aux passagers les renseignements prévus à l'article 13;

**b)** dans le cas d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs aux termes de l'article 18;

**c)** dans le cas d'une annulation ou d'un refus d'embarquement, fournit des arrangements de voyage alternatifs aux termes de l'article 18.

**Obligations — nécessaires par souci de sécurité**

**11 (1)** Sous réserve du paragraphe 10(2), cet article s'applique au transporteur dans le cas du retard ou de l'annulation de vol ou du refus d'embarquement qui lui est attribuable, mais qui est nécessaire par souci de sécurité.

**Retard, annulation et refus d'embarquement subséquents**

**(2)** Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable au transporteur, mais nécessaire par souci de sécurité, est également considéré comme attribuable au transporteur mais nécessaire par souci de sécurité si le transporteur a pris

toutes les mesures raisonnables pour atténuer les conséquences du retard ou annulation précédent.

**Delay**

**(3)** In the case of a delay, the carrier must

**(a)** provide passengers with the information set out in section 13;

**(b)** if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and

**(c)** if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements.

**Retard**

**(3)** Dans le cas du retard, le transporteur :

**a)** fournit aux passagers les renseignements prévus à l'article 13;

**b)** si le retard a été communiqué aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

**c)** s'il s'agit d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

**Cancellation**

**(4)** In the case of a cancellation, the carrier must

**(a)** provide passengers with the information set out in section 13;

**(b)** if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and

**(c)** provide alternate travel arrangements or a refund, in the manner set out in section 17.

**Annulation**

**(4)** Dans le cas de l'annulation de vol, le transporteur :

**a)** fournit aux passagers les renseignements prévus à l'article 13;

**b)** si l'annulation a été communiquée aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

**c)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

**Denial of boarding**

**(5)** In the case of a denial of boarding, the carrier must

**(a)** provide passengers affected by the denial of boarding with the information set out in section 13;

**(b)** deny boarding in accordance with section 15 and provide the standard of treatment set out in section 16 to passengers affected by the denial of boarding; and

**(c)** provide alternate travel arrangements or a refund, in the manner set out in section 17.

**Refus d'embarquement**

**(5)** Dans le cas du refus d'embarquement, le transporteur :

**a)** fournit aux passagers concernés les renseignements prévus à l'article 13;

**b)** refuse l'embarquement conformément à l'article 15 et applique à l'égard des passagers concernés les normes de traitement prévues à l'article 16;

**c)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

**Obligations when within carrier's control**

**12 (1)** Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's control but is not referred to in subsections 11(1) or (2).

**Obligations — attribuable au transporteur**

**12 (1)** Sous réserve du paragraphe 10(2), le présent article s'applique au transporteur dans le cas du retard ou de l'annulation de vol ou d'un refus d'embarquement qui lui est attribuable mais qui n'est pas visé aux paragraphes 11(1) ou (2).

**Delay**

**(2)** In the case of a delay, the carrier must

**(a)** provide passengers with the information set out in section 13;

**(b)** if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide them with the standard of treatment set out in section 14;

**(c)** if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements; and

**(d)** if a passenger is informed 14 days or less before the departure time on their original ticket that the arrival of their flight at the destination that is indicated on that original ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

**Cancellation**

**(3)** In the case of a cancellation, the carrier must

**(a)** provide passengers with the information set out in section 13;

**(b)** if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14;

**(c)** provide alternate travel arrangements or a refund, in the manner set out in section 17; and

**(d)** if a passenger is informed 14 days or less before the original departure time that the arrival of their flight at the destination that is indicated on their ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

**Denial of boarding**

**(4)** In the case of a denial of boarding, the carrier must

**(a)** provide passengers affected by the denial of boarding with the information set out in section 13;

**(b)** deny boarding in accordance with section 15 and provide the standard of treatment set out in section 16 to passengers affected by the denial of boarding;

**(c)** provide alternate travel arrangements or a refund, in the manner set out in section 17; and

**Retard**

**(2)** Dans le cas du retard, le transporteur :

**a)** fournit aux passagers les renseignements prévus à l'article 13 ;

**b)** si le retard a été communiqué aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

**c)** s'il s'agit d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17;

**d)** s'ils ont été informés quatorze jours ou moins avant l'heure de départ indiquée sur leur titre de transport initial que leur arrivée à la destination indiquée sur ce titre de transport sera retardée, verse aux passagers l'indemnité minimale prévue à l'article 19 pour les inconvénients subis.

**Annulation de vol**

**(3)** Dans le cas de l'annulation, le transporteur :

**a)** fournit aux passagers les renseignements prévus à l'article 13 ;

**b)** si l'annulation de vol a été communiquée aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

**c)** fournit des arrangements de voyage alternatifs ou un remboursement aux termes de à l'article 17;

**d)** s'ils ont été informés quatorze jours ou moins avant l'heure de départ indiquée sur leur titre de transport initial que leur arrivée à la destination indiquée sur ce titre de transport sera retardée, verse aux passagers l'indemnité minimale prévue à l'article 19 pour les inconvénients subis.

**Refus d'embarquement**

**(4)** Dans le cas du refus d'embarquement, le transporteur :

**a)** fournit aux passagers concernés les renseignements prévus à l'article 13;

**b)** refuse l'embarquement conformément à l'article 15 et applique à l'égard des passagers concernés les normes de traitement prévues à l'article 16;

**(d)** provide the minimum compensation for inconvenience for denial of boarding in the manner set out in section 20.

### Information — cancellation, delay, denial of boarding

**13 (1)** A carrier must provide the following information to the passengers who are affected by a cancellation, delay or a denial of boarding:

**(a)** the reason for the delay, cancellation or denial of boarding;

**(b)** the compensation to which the passenger may be entitled for the inconvenience;

**(c)** the standard of treatment for passengers, if any; and

**(d)** the recourse available against the carrier, including their recourse to the Agency.

### Communication every 30 minutes

**(2)** In the case of a delay, the carrier must communicate status updates to passengers every 30 minutes until a new departure time for the flight is set or alternate travel arrangements have been made for the affected passenger.

### New information

**(3)** The carrier must communicate to passengers any new information as soon as feasible.

### Audible and visible announcement

**(4)** The information referred to in subsection (1) must be provided by means of audible announcements and, upon request, by means of visible announcements.

### Method of communication

**(5)** The information referred to in subsection (1) must also be provided to the passenger using the available communication method that they have indicated that they prefer, including a method that is compatible with adaptive technologies intended to assist persons with disabilities.

### Standards of treatment

**14 (1)** If paragraph 11(3)(b) or (4)(b) or 12(2)(b) or (3)(b) applies to a carrier, and a passenger has waited two hours after the departure time that is indicated on

**c)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.;

**d)** verse l'indemnité minimale prévue à l'article 20 pour les inconvénients subis.

### Renseignements fournis à la suite d'un retard, d'une annulation ou d'un refus d'embarquement

**13 (1)** Le transporteur fournit aux passagers visés par le retard ou l'annulation de vol ou le refus d'embarquement les renseignements suivants :

**a)** la raison du retard, de l'annulation de vol ou du refus d'embarquement;

**b)** les indemnités qui peuvent être versées pour les inconvénients subis;

**c)** les normes de traitement des passagers applicables, le cas échéant;

**d)** les recours possibles contre lui, notamment ceux auprès de l'Office.

### Mises à jour toutes les trente minutes

**(2)** Dans le cas du retard, le transporteur fournit aux passagers une mise à jour toutes les trente minutes sur la situation, et ce, jusqu'à ce qu'une nouvelle heure de départ soit fixée ou jusqu'à ce que des arrangements de voyage alternatifs aient été pris.

### Nouveau renseignement

**(3)** Le transporteur fournit aux passagers tout nouveau renseignement dès que possible.

### Annonces audio et visuelle

**(4)** Les renseignements visés au paragraphe (1) sont fournis au moyen d'annonces faites sur support audio et, sur demande, sur support visuel.

### Moyen de communication

**(5)** Les renseignements visés au paragraphe (1) sont également fournis aux passagers à l'aide du moyen de communication disponible pour lequel ils ont indiqué une préférence, y compris un moyen qui est compatible avec les technologies d'adaptation visant à aider les personnes handicapées.

### Normes de traitement

**14 (1)** Si les alinéas 11(3)b) ou (4)b), ou 12(2)b) ou (3)b), s'appliquent au transporteur et qu'il s'est écoulé deux heures depuis l'heure de départ indiquée sur le titre

their original ticket, the carrier must provide the passenger with the following treatment free of charge:

**(a)** food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger; and

**(b)** access to a means of communication.

**Accommodations**

**(2)** If paragraph 11(3)(b) or (4)(b) or 12(2)(b) or (3)(b) applies to a carrier and the carrier expects that the passenger will be required to wait overnight for their original flight or for a flight reserved as part of alternate travel arrangements, the air carrier must offer, free of charge, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport.

**Refusing or limiting treatment**

**(3)** The carrier may limit or refuse to provide a standard of treatment referred to in subsection (1) or (2) if providing that treatment would further delay the passenger.

**Denial of boarding — request for volunteers**

**15 (1)** If paragraph 11(5)(b) or 12(4)(b) applies to a carrier, it must not deny boarding to a passenger unless it has asked all passengers if they are willing to give up their seat.

**Passenger on aircraft**

**(2)** The carrier must not deny boarding to a passenger who is already on board the aircraft, unless the denial of boarding is required for reasons of safety.

**Confirmation of benefit**

**(3)** If a carrier offers a benefit in exchange for a passenger willingly giving up their seat in accordance with subsection (1) and a passenger accepts the offer, it must provide the passenger with a written confirmation of that benefit before the flight departs.

**Priority for boarding**

**(4)** If denial of boarding is necessary, the carrier must select the passengers who will be denied boarding, giving priority for boarding to passengers in the following order:

**(a)** an unaccompanied minor;

de transport initial du passager, le transporteur fournit, sans frais supplémentaires :

**a)** de la nourriture et des boissons en quantité raisonnable compte tenu de la durée de l'attente, du moment de la journée et du lieu où se trouve le passager;

**b)** l'accès à un moyen de communication.

**Hébergement**

**(2)** Si les alinéas 11(3)b) ou (4)b), ou 12(2)b) ou (3)b) s'appliquent au transporteur et que celui-ci prévoit que le passager devra attendre toute la nuit le vol retardé ou le vol faisant partie des arrangements de voyage alternatifs, le transporteur fournit au passager, sans frais supplémentaire, une chambre d'hôtel ou un lieu d'hébergement comparable qui est raisonnable compte tenu du lieu où se trouve le passager ainsi que le transport pour aller à l'hôtel ou au lieu d'hébergement et revenir à l'aéroport.

**Refus ou limite des normes de traitement**

**(3)** Le transporteur peut limiter les normes de traitement prévues aux paragraphes (1) ou (2), ou refuser de les appliquer, si leur application entraînerait un retard plus important pour le passager.

**Refus d'embarquement — demande de volontaires**

**15 (1)** Si les alinéas 11(5)b) ou 12(4)b) s'appliquent au transporteur, celui-ci ne peut refuser l'embarquement à un passager avant d'avoir demandé aux autres passagers si l'un d'eux accepterait de laisser son siège.

**Passager déjà à bord**

**(2)** Le passager déjà à bord de l'aéronef ne peut faire l'objet d'un refus d'embarquement, sauf pour des raisons de sécurité.

**Confirmation des avantages**

**(3)** Le transporteur qui offre un avantage aux passagers afin que l'un d'eux accepte de laisser son siège conformément au paragraphe (1), fournit aux passagers qui acceptent l'offre une confirmation écrite de l'avantage avant le départ du vol.

**Priorité d'embarquement**

**(4)** Lorsque le refus d'embarquement est nécessaire, le transporteur sélectionne les passagers qui se verront refuser l'embarquement en accordant la priorité d'embarquement aux passagers dans l'ordre suivant :

**a)** un mineur non accompagné;

**(b)** a person with a disability and their support person, service animal, or emotional support animal, if any;

**(c)** a passenger who is travelling with family members; and

**(d)** a passenger who was previously denied boarding on the same ticket.

### Treatment when boarding is denied

**16 (1)** If paragraph 11(5)(b) or 12(4)(b) applies to a carrier, it must, before a passenger boards the flight reserved as part of an alternate travel arrangement, provide them with the following treatment free of charge:

**(a)** food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger; and

**(b)** access to a means of communication.

### Accommodations

**(2)** If the carrier expects that the passenger will be required to wait overnight for a flight reserved as part of alternate travel arrangements, the carrier must offer, free of charge, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport.

### Refusing or limiting treatment

**(3)** The carrier may limit or refuse to provide a standard of treatment referred to in subsection (1) or (2) if providing that treatment would further delay the passenger.

### Alternate arrangements — within carrier's control

**17 (1)** If paragraph 11(3)(c), (4)(c) or (5)(c) or 12(2)(c), (3)(c) or (4)(c) applies to a carrier, it must provide the following alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

**(a)** in the case of a large carrier,

**(i)** a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within nine

**b)** une personne handicapée et, le cas échéant, à leur personne de soutien, à leur animal d'assistance ou à leur animal de soutien émotionnel;

**c)** un passager qui voyage avec des membres de sa famille;

**d)** un passager qui s'est déjà vu refuser l'embarquement pour le même titre de transport.

### Normes de traitement des passagers lors du refus d'embarquement

**16 (1)** Si les alinéas 11(5)b) ou 12(4)b) s'appliquent au transporteur, celui-ci fournit au passager, avant son embarquement à bord d'un vol faisant partie des arrangements de voyage alternatifs, sans frais supplémentaires :

**a)** de la nourriture et des boissons en quantité raisonnable compte tenu de la durée de l'attente, du moment de la journée et du lieu où se trouve le passager;

**b)** l'accès à un moyen de communication.

### Hébergement

**(2)** Si le transporteur prévoit que le passager devra attendre toute la nuit le vol faisant partie des arrangements de voyage alternatifs, il lui fournit, sans frais supplémentaires, une chambre d'hôtel ou un lieu d'hébergement comparable qui est raisonnable compte tenu du lieu où se trouve le passager, ainsi que le transport pour aller à l'hôtel ou au lieu d'hébergement et revenir à l'aéroport.

### Refus ou limite des normes de traitement

**(3)** Le transporteur peut limiter les normes de traitement prévues aux paragraphes (1) ou (2), ou refuser de les appliquer, si leur application entraînerait un retard plus important pour le passager.

### Arrangements alternatifs — situation attribuable au transporteur

**17 (1)** Si les alinéas 11(3)c), (4)c) ou (5)c), ou 12(2)c), (3)c) ou (4)c) s'appliquent au transporteur, celui-ci fournit aux passagers, sans frais supplémentaires, les arrangements de voyage alternatifs ci-après pour que les passagers puissent compléter leur itinéraire prévu dès que possible :

**a)** dans le cas d'un gros transporteur :

**(i)** une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, suivant toute route aérienne raisonnable à partir de l'aéroport où se situe le passager vers la destination indiquée sur le titre de transport initial du passager et

hours of the departure time that is indicated on that original ticket,

**(ii)** a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the departure time that is indicated on that original ticket if the carrier cannot provide a confirmed reservation that complies with subparagraph (i), or

**(iii)** transportation to another airport that is within a reasonable distance of the airport at which the passenger is located and a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from that other airport to the destination that is indicated on the passenger's original ticket, if the carrier cannot provide a confirmed reservation that complies with subparagraphs (i) or (ii); and

**(b)** in the case of a small carrier, a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket.

### Refund

**(2)** If the alternate travel arrangements offered in accordance with subsection (1) do not accommodate the passenger's travel needs, the carrier must

**(a)** in the case where the passenger is no longer at the point of origin that is indicated on the ticket and the travel no longer serves a purpose because of the delay, cancellation or denial of boarding, refund the ticket and provide the passenger with a confirmed reservation that

**(i)** is for a flight to that point of origin, and

**(ii)** accommodates the passenger's travel needs; and

**(b)** in any other case, refund the unused portion of the ticket.

### Comparable services

**(3)** To the extent possible, the alternate travel arrangements must provide services that are comparable to those of the original ticket.

dont le départ a lieu dans les neuf heures suivant l'heure de départ indiquée sur ce titre de transport,

**(ii)** s'il ne peut fournir une réservation confirmée visée au sous-alinéa (i), une réservation confirmée pour un vol exploité par tout transporteur, suivant toute route aérienne raisonnable à partir de l'aéroport où se situe le passager vers la destination indiquée sur son titre de transport initial et dont le départ a lieu dans les quarante-huit heure,

**(iii)** s'il ne peut fournir une réservation confirmée visée aux sous-alinéas (i) ou (ii), le transport vers un aéroport se trouvant à une distance raisonnable de celui où se trouve le passager et une réservation confirmée vers la destination indiquée sur le titre de transport initial du passager suivant toute route aérienne raisonnable exploitée par tout transporteur en partance de cet aéroport;

**b)** dans le cas d'un petit transporteur, une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, suivant toute route aérienne raisonnable à partir de l'aéroport où se situe le passager, vers la destination indiquée sur le titre de transport initial du passager.

### Remboursement

**(2)** Si les arrangements de voyage alternatifs fournis conformément au paragraphe (1) ne satisfont pas aux besoins de voyage du passager, le transporteur :

**a)** dans le cas où le passager n'est plus au point de départ indiqué sur le titre de transport et que le voyage n'a plus sa raison d'être en raison du retard, de l'annulation de vol ou du refus d'embarquement, rembourse le titre de transport et fournit au passager une réservation confirmée :

**(i)** pour un vol à destination de ce point de départ,

**(ii)** qui satisfait aux besoins de voyage du passager;

**b)** dans tous les autres cas, rembourse les portions inutilisées du titre de transport.

### Services comparables

**(3)** Dans la mesure du possible, les vols faisant partie des arrangements de voyage alternatifs offrent des services comparables à ceux prévus dans le titre de transport initial.

**Refund of additional services**

**(4)** A carrier must refund the cost of any additional services purchased by a passenger in connection with their original ticket if

**(a)** the passenger did not receive those services on the alternate flight; or

**(b)** the passenger paid for those services a second time.

**Higher class of service**

**(5)** If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

**Lower class of service**

**(6)** If the alternate travel arrangements provide for a lower class of service than the original ticket, the carrier must refund the difference in the cost of the applicable portion of the ticket.

**Method used for refund**

**(7)** Refunds under this section must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.

**Alternate arrangements — outside carrier's control**

**18 (1)** If paragraph 10(3)(b) or (c) applies to a carrier, it must provide the following alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

**(a)** in the case of a large carrier,

**(i)** a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the end of the event that caused the delay, cancellation or denial of boarding,

**(ii)** if the carrier cannot provide a confirmed reservation that complies with subparagraph (i),

**(A)** a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which

**Remboursement d'un service additionnel**

**(4)** Le transporteur rembourse le passager de tout service additionnel acheté en lien avec son titre de transport initial dans les cas suivants :

**a)** le passager n'a pas reçu ce service lors du vol alternatif;

**b)** le passager a payé de nouveau pour ce service.

**Classe de service supérieure**

**(5)** Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service supérieure à celle prévue dans le titre de transport initial, le transporteur ne peut exiger le versement d'un supplément.

**Classe de service inférieure**

**(6)** Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service inférieure à celle prévue dans le titre de transport initial, le transporteur rembourse la portion applicable du titre de transport.

**Moyen utilisé pour le remboursement**

**(7)** Les remboursements prévus au présent article sont versés, selon le mode de paiement initial à la personne qui a acheté le titre de transport ou le service additionnel.

**Arrangements alternatifs — situation indépendante de la volonté du transporteur**

**18 (1)** Si les alinéas 10(3)b) ou c) s'appliquent au transporteur, celui-ci fournit aux passagers, sans frais supplémentaires, les arrangements de voyage alternatifs ci-après pour que les passagers puissent compléter l'itinéraire prévu dès que possible :

**a)** dans le cas d'un gros transporteur :

**(i)** une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, suivant toute route aérienne raisonnable à partir de l'aéroport où se trouve le passager vers la destination indiquée sur le titre de transport initial du passager et dont le départ aura lieu dans les quarante-huit heures suivant la fin de l'évènement ayant causé le retard ou l'annulation de vol ou le refus d'embarquement,

**(ii)** s'il ne peut fournir une réservation confirmée visée au sous-alinéa (i) :

the passenger is located, or another airport that is within a reasonable distance of that airport, to the destination that is indicated on the passenger's original ticket, and

**(B)** if the new departure is from an airport other than the one at which the passenger is located, transportation to that other airport; and

**(b)** in the case of a small carrier, a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the same airport to the destination that is indicated on the passenger's original ticket.

**Comparable services**

**(2)** To the extent possible, the alternate travel arrangements must provide services that are comparable to those of the original ticket.

**Higher class of service**

**(3)** If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

**Compensation for delay or cancellation**

**19 (1)** If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:

**(a)** in the case of a large carrier,

**(i)** $400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

**(ii)** $700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

**(iii)** $1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and

**(b)** in the case of a small carrier,

**(A)** une réservation confirmée pour un vol exploité par tout transporteur, suivant toute route aérienne raisonnable à partir de l'aéroport où se situe le passager, ou d'un aéroport se trouvant à une distance raisonnable de celui-ci, vers la destination indiquée sur le titre de transport initial du passager,

**(B)** si le départ s'effectue dans un aéroport autre que celui où se trouve le passager, le transport entre les aéroports;

**b)** dans le cas d'un petit transporteur, une réservation confirmée pour le prochain vol disponible exploité par lui, ou par un transporteur avec lequel il a une entente commerciale, pour toute route aérienne raisonnable à partir de l'aéroport où se trouve le passager, vers la destination indiquée sur le titre de transport initial du passager.

**Services comparables**

**(2)** Dans la mesure du possible, les vols faisant partie des arrangements de voyage alternatifs offrent des services comparables à ceux prévus dans le titre de transport initial.

**Classe de service supérieure**

**(3)** Si les arrangements de voyage alternatifs prévoient que le passager voyage dans une classe de service supérieure à celle prévue dans le titre de transport initial, le transporteur ne peut exiger le versement d'un supplément.

**Indemnité pour retard ou annulation de vol**

**19 (1)** Si les alinéas 12(2)d) ou (3)d) s'appliquent au transporteur, celui-ci verse l'indemnité minimale suivante :

**a)** dans le cas d'un gros transporteur :

**(i)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de trois heures ou plus, mais de moins de six heures, 400 $,

**(ii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport est retardée de six heures ou plus, mais de moins de neuf heures, 700 $,

**(iii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de neuf heures ou plus, 1000 $;

**b)** dans le cas d'un petit transporteur :

**(i)** $125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

**(ii)** $250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

**(iii)** $500, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

**Compensation in case of refund**

**(2)** If paragraph 12(2)(c) or (3)(c) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of

**(a)** $400, in the case of a large carrier; and

**(b)** $125, in the case of a small carrier.

**Deadline to file request**

**(3)** To receive the minimum compensation referred to in paragraph (1) or (2), a passenger must file a request for compensation with the carrier before the first anniversary of the day on which the flight delay or flight cancellation occurred.

**Deadline to respond**

**(4)** The carrier must, within 30 days after the day on which it receives the request, provide the compensation or an explanation as to why compensation is not payable.

**Compensation for denial of boarding**

**20 (1)** If paragraph 12(4)(d) applies to a carrier, it must provide the following minimum compensation:

**(a)** $900, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by less than six hours;

**(b)** $1,800, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours; and

**(c)** $2,400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

**(i)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de trois heures ou plus mais de moins de six heures, 125 $,

**(ii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de six heures ou plus mais de moins de neuf heures, 250 $,

**(iii)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de neuf heures ou plus, 500 $.

**Indemnité en cas de remboursement**

**(2)** Si les alinéas 12(2)c) ou (3)c) s'appliquent au transporteur et que le titre de transport est remboursé au titre du paragraphe 17(2), le transporteur verse l'indemnité minimale suivante :

**a)** dans le cas d'un gros transporteur, 400 $;

**b)** dans le cas d'un petit transporteur, 125 $.

**Délai pour déposer une demande d'indemnité**

**(3)** Pour obtenir l'indemnité minimale prévue aux paragraphes (1) ou (2), le passager dépose une demande auprès du transporteur avant le premier anniversaire du retard ou de l'annulation.

**Délai pour répondre**

**(4)** Le transporteur dispose de trente jours, après la date de la réception de la demande, pour verser l'indemnité au passager ou lui fournir les motifs de son refus de la verser.

**Indemnité pour refus d'embarquement**

**20 (1)** Si l'alinéa 12(4)d) s'applique au transporteur, il verse l'indemnité minimale suivante :

**a)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de moins de six heures, 900 $;

**b)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardé de six heures ou plus, mais de moins de neuf heures, 1800 $;

**c)** si l'heure d'arrivée du vol du passager à la destination indiquée sur le titre de transport initial est retardée de neuf heures ou plus, 2 400 $.

**Payment**

**(2)** The carrier must provide the compensation to the passenger as soon as it is operationally feasible, but not later than 48 hours after the time of the denial of boarding.

**Estimated arrival time**

**(3)** If the compensation is paid before the arrival of the flight reserved as part of alternate travel arrangements at the destination that is indicated on their ticket, that compensation is determined based on the flight's expected arrival.

**Written confirmation**

**(4)** If it is not possible to provide the compensation before the boarding time of the flight reserved as part of alternate travel arrangements, the carrier must provide the passenger with a written confirmation of the amount of the compensation that is owed.

**Adjustment**

**(5)** If the arrival of the passenger's flight at the destination that is indicated on their original ticket is after the time it was expected to arrive when the compensation was paid or confirmed in writing and the amount that was paid or confirmed no longer reflects the amount due in accordance with subsection (1), the carrier must adjust the amount of the compensation accordingly.

**Compensation for inconvenience**

**21** A carrier who is required to provide compensation must do so in the form of money, unless

**(a)** it offers compensation in another form that has a greater monetary value than the minimum monetary value of the compensation that is required under these Regulations;

**(b)** the passenger has been informed in writing of the monetary value of the other form of compensation;

**(c)** the other form of compensation does not expire; and

**(d)** the passenger confirms in writing that they have been informed of their right to receive monetary compensation and have chosen the other form of compensation.

**Paiement**

**(2)** Le transporteur verse l'indemnité aux passagers aussitôt qu'il le peut sur le plan opérationnel, mais au plus tard quarante-huit heures après le refus d'embarquement.

**Heure d'arrivée prévue**

**(3)** Si l'indemnité est versée avant que le vol faisant partie des arrangements de voyage alternatifs n'arrive à la destination indiquée sur le titre de transport initial, elle est calculée en fonction de l'heure d'arrivée prévue.

**Confirmation écrite**

**(4)** Si le transporteur ne peut verser l'indemnité avant l'heure d'embarquement du vol faisant partie des arrangements de voyage alternatifs fournis, il donne au passager une confirmation écrite du montant de cette indemnité.

**Ajustement**

**(5)** Si le vol d'un passager arrive à la destination indiquée sur le titre de transport initial après l'heure prévue, et que le montant de l'indemnité qui a été versée, ou confirmée par écrit, ne reflète pas l'indemnité due aux termes du paragraphe (1), le transporteur ajuste le montant de l'indemnité en conséquence.

**Indemnités pour inconvénients**

**21** Le transporteur tenu de verser une indemnité verse celle-ci en argent sauf si, à la fois :

**a)** il offre une indemnité, autre que monétaire, dont la valeur est supérieure au montant de l'indemnité minimale prévue par le présent règlement;

**b)** le passager a été informé par écrit de la valeur de l'indemnité sous l'autre forme;

**c)** l'indemnité sous l'autre forme n'a pas de date d'expiration;

**d)** le passager a confirmé par écrit qu'il a été informé de son droit à une indemnité en argent, mais qu'il préfère recevoir l'indemnité sous l'autre forme.

# Assignment of Seats to Children under the Age of 14 Years

### Assigning seats

**22 (1)** In order to facilitate the assignment of a seat to a child who is under the age of 14 years in close proximity to a parent, guardian or tutor in accordance with subsection (2), a carrier must, at no additional charge

**(a)** assign a seat before check-in to the child that is in close proximity to their parent, guardian or tutor; or

**(b)** if the carrier does not assign seats in accordance with paragraph (a), do the following:

**(i)** advise passengers before check-in that the carrier will facilitate seat assignment of children in close proximity to a parent, guardian or tutor at no additional charge at the time of check-in or at the boarding gate,

**(ii)** assign seats at the time of check-in, if possible,

**(iii)** if it is not possible to assign seats at the time of check-in, ask for volunteers to change seats at the time of boarding, and

**(iv)** if it is not possible to assign seats at the time of check-in and no passenger has volunteered to change seats at the time of boarding, ask again for volunteers to change seats before take-off.

### Proximity to adult's seat

**(2)** The carrier must facilitate the assignment of a seat to a child who is under the age of 14 years by offering, at no additional charge,

**(a)** in the case of a child who is four years of age or younger, a seat that is adjacent to their parent, guardian or tutor's seat;

**(b)** in the case of a child who is 5 to 11 years of age, a seat that is in the same row as their parent, guardian or tutor's seat, and that is separated from that parent, guardian or tutor's seat by no more than one seat; and

**(c)** in the case of a child who is 12 or 13 years of age, a seat that is in a row that is separated from the row of their parent, guardian or tutor's seat by no more than one row.

# Attribution de sièges aux enfants de moins de quatorze ans

### Attribution de sièges

**22 (1)** Pour faciliter l'attribution aux enfants de moins de quatorze ans d'un siège à proximité du siège d'un parent ou d'un tuteur conformément au paragraphe (2), le transporteur, sans frais supplémentaires :

**a)** attribue à un enfant de moins de quatorze ans, avant l'enregistrement, un siège à proximité du siège d'un parent ou d'un tuteur;

**b)** lorsqu'il n'attribue pas de sièges conformément à l'alinéa a), prend les mesures suivantes :

**(i)** il avise les passagers, avant l'enregistrement, qu'il facilitera l'attribution aux enfants de sièges à proximité du siège d'un parent ou d'un tuteur sans frais supplémentaires au moment de l'enregistrement ou à la porte d'embarquement,

**(ii)** il attribue les sièges au moment de l'enregistrement, si possible,

**(iii)** si l'attribution des sièges au moment de l'enregistrement est impossible, il demande si quelqu'un se porte volontaire pour changer de siège au moment de l'embarquement,

**(iv)** si aucun passager ne se porte volontaire pour changer de siège au moment de l'embarquement, il demande de nouveau si quelqu'un se porte volontaire pour changer de siège avant le décollage.

### Proximité du siège d'un adulte

**(2)** Le transporteur facilite l'attribution des sièges aux enfants de moins de quatorze ans, sans frais supplémentaires, de la façon suivante :

**a)** il attribue aux enfants de quatre ans et moins un siège adjacent au siège d'un parent ou d'un tuteur;

**b)** il attribue aux enfants de cinq à onze ans un siège situé à au plus un siège de celui de leur parent ou tuteur dans la même rangée;

**c)** il attribue aux enfants de douze et treize ans un siège dans une rangée située à au plus une rangée du siège de leur parent ou tuteur.

**Difference in price**

**(3)** If a passenger is assigned a seat in accordance with subsection (2) that is in a lower class of service than their ticket provides, the carrier must reimburse the price difference between the classes of service, but if the passenger chooses a seat that is in a higher class of service than their ticket provides, the carrier may request supplementary payment representing the price difference between the classes of service.

**Différence de prix**

**(3)** Lorsqu'un passager se voit attribuer un siège conformément au paragraphe (2) et que ce siège est dans une classe de service inférieure à celle prévue par son titre de transport, le transporteur rembourse la différence de prix entre les classes de service. Toutefois, si le passager choisit un siège dans une classe de service supérieure à celle prévue dans son titre de transport, le transporteur peut exiger un supplément représentant la différence de prix entre les classes de service.

## Baggage

**Lost or damaged baggage**

**23 (1)** If a carrier admits to the loss of baggage, or if baggage is lost for more than 21 days or is damaged, the carrier must provide compensation equal to or greater than the sum of

**(a)** the fees paid for that baggage,

**(b)** in cases where the *Carriage by Air Act* applies, the compensation payable in accordance with that Act, and

**(c)** in cases where the *Carriage by Air Act* does not apply, the amount that would be payable by the carrier in accordance with the Convention for the Unification of Certain Rules for International Carriage by Air set out in Schedule VI to that Act, if the carrier were conducting international carriage of baggage within the meaning of paragraph 1 of Article 1 of that Convention.

**Temporary loss**

**(2)** If baggage is lost for 21 days or less, the carrier must provide compensation equal to or greater than the sum of

**(a)** the fees paid for that baggage,

**(b)** in cases where the *Carriage by Air Act* applies, the compensation payable in accordance with that Act, and

**(c)** in cases where the *Carriage by Air Act* does not apply, the amount that would be payable by the carrier for delay in the carriage of baggage in accordance with the Convention for the Unification of Certain Rules for International Carriage by Air set out in Schedule VI to that Act, if the carrier were conducting international carriage of baggage within the meaning of paragraph 1 of Article 1 of that Convention.

## Bagages

**Bagage perdu ou endommagé**

**23 (1)** Si le transporteur admet la perte d'un bagage ou si le bagage est perdu pendant plus de vingt et un jours ou est endommagé, le transporteur verse une indemnité égale ou supérieure à la somme de ce qui suit :

**a)** les frais payés pour le bagage;

**b)** dans le cas où la *Loi sur le transport aérien* s'applique, le montant de l'indemnité payable conformément à cette loi;

**c)** dans le cas où la *Loi sur le transport aérien* ne s'applique pas, la somme qui serait payable conformément à la Convention pour l'unification de certaines règles relatives au transport aérien international figurant à l'annexe VI de cette loi, si le transporteur aérien procédait au transport international de bagages au sens du paragraphe 1 de l'article 1 de cette convention.

**Perte temporaire**

**(2)** Si le bagage est perdu pendant vingt et un jours ou moins, le transporteur verse une indemnité égale ou supérieure à la somme de ce qui suit :

**a)** les frais payés pour le bagage;

**b)** dans le cas où la *Loi sur le transport aérien* s'applique, le montant de l'indemnité payable conformément à cette loi;

**c)** dans le cas où la *Loi sur le transport aérien* ne s'applique pas, la somme qui serait payable conformément à la Convention pour l'unification de certaines règles relatives au transport aérien international figurant à l'annexe VI de cette loi, si le transporteur aérien procédait au transport international de bagages au sens du paragraphe 1 de l'article 1 de cette convention.

**Musical instruments**

**24 (1)** A carrier must establish terms and conditions with regard to

**(a)** musical instruments that may be carried in the cabin or that must be checked, including

**(i)** restrictions with respect to size and weight,

**(ii)** restrictions with respect to quantity, and

**(iii)** the use of stowage space in the cabin;

**(b)** fees for transporting instruments; and

**(c)** passenger options if, because a flight will occur on a different aircraft than expected, there is insufficient stowage space in the cabin.

**Obligation to carry**

**(2)** A carrier must accept musical instruments as checked or carry-on baggage, unless accepting an instrument is contrary to general terms and conditions in the carrier's tariff with respect to the weight or dimension of baggage or to safety.

# Advertising

**Definitions**

**25** The following definitions apply in this section and sections 27 to 31.

***air transportation charge*** means, in relation to an air service, every fee or charge that must be paid upon the purchase of the air service, including the charge for the costs to the carrier of providing the service, but excluding any third party charge. (*frais du transport aérien*)

***third party charge*** means, in relation to an air service or an optional incidental service, any tax or prescribed fee or charge established by a government, public or airport authority or agent or mandatary of a government or public or airport authority, that upon the purchase of the service is collected by the carrier or other seller of the service on behalf of the government, public or airport authority or the agent or mandatary for remittance to it. (*somme perçue pour un tiers*)

***total price*** means

**(a)** in relation to an air service, the total of the air transportation charges and third party charges that must be paid to obtain the service; and

**Instruments de musique**

**24 (1)** Le transporteur élabore les modalités concernant :

**a)** le transport d'instruments de musique en cabine ou à titre de bagages enregistrés, notamment :

**(i)** les restrictions relatives à la taille et au poids,

**(ii)** les restrictions relatives au nombre,

**(iii)** l'utilisation des espaces de rangement en cabine;

**b)** les frais pour le transport d'instruments;

**c)** les options s'offrant au passager si, en raison d'un changement d'aéronef, l'espace de rangement en cabine sera insuffisant pour l'instrument.

**Obligation de transport**

**(2)** Le transporteur accepte les instruments de musique à titre de bagages enregistrés ou bagages de cabine, à moins que cela soit contraire aux conditions du tarif du transporteur relativement au poids ou aux dimensions des bagages ou à la sécurité.

# Publicité

**Définitions**

**25** Les définitions qui suivent s'appliquent au présent article et aux articles 27 à 31.

***frais du transport aérien*** S'entend, à l'égard d'un service aérien, de tout frais ou droit qui doit être payé lors de l'achat du service, y compris les coûts supportés par le transporteur pour la fourniture du service, mais à l'exclusion des sommes perçues pour un tiers. (*air transportation charge*)

***prix total*** S'entend :

**a)** à l'égard d'un service aérien, de la somme des frais du transport aérien et des sommes perçues pour un tiers à payer pour ce service;

**b)** à l'égard d'un service optionnel connexe, de la somme totale à payer pour ce service, y compris les sommes perçues pour un tiers. (*total price*)

***somme perçue pour un tiers*** S'entend, à l'égard d'un service aérien ou d'un service optionnel connexe, d'une taxe, de frais ou d'un droit établis par un gouvernement, une autorité publique, une autorité aéroportuaire ou un mandataire de ceux-ci et qui est, lors de l'achat du

**(b)** in relation to an optional incidental service, the total of the amount that must be paid to obtain the service, including all third party charges. (*prix total*)

service, perçue par le transporteur ou autre vendeur pour le compte de ce gouvernement, de cette autorité ou de ce mandataire afin de lui être remis. (*third party charge*)

**Subsection 86.1(2) of the Act**

**26** For the purposes of subsection 86.1(2) of the Act and sections 25 to 31, a prescribed fee or charge is one that is fixed on a per person or *ad valorem* basis.

**Paragraphe 86.1(2) de la Loi**

**26** Pour l'application du paragraphe 86.1(2) de la Loi et des articles 25 à 31, les frais et droits visés sont ceux établis par personne ou proportionnellement à une valeur de référence.

**Application**

**27 (1)** Subject to subsection (2), sections 28 to 31 apply to advertising in all media of prices for air services within, or originating in, Canada.

**Application**

**27 (1)** Sous réserve du paragraphe (2), les articles 28 à 31 s'appliquent à toute publicité dans les médias relative aux prix de services aériens au Canada ou dont le point de départ est au Canada.

**Exception**

**(2)** Sections 28 to 31 do not apply to an advertisement that relates to

**(a)** an air cargo service;

**(b)** a package travel service that includes an air service and any accommodation, surface transportation or entertainment activity that is not incidental to the air service; or

**(c)** a price that is not offered to the general public and is fixed through negotiation.

**Exception**

**(2)** Les articles 28 à 31 ne s'appliquent pas à la publicité relative :

**a)** à un service aérien de transport de marchandises;

**b)** à un forfait de voyage qui inclut le service aérien et tout hébergement, transport terrestre ou autre activité qui n'est pas liée au service aérien;

**c)** à un prix qui n'est pas offert au grand public et qui est fixé par voie de négociations.

**Medium to advertise**

**(3)** Sections 28 to 31 do not apply to a person who provides another person with a medium to advertise the price of an air service.

**Support médiatique**

**(3)** Les articles 28 à 31 ne s'appliquent pas à la personne qui fournit un support médiatique à une autre personne que celle-ci pour annonce le prix d'un service aérien.

**Information in advertisement**

**28 (1)** A person who advertises the price of an air service must include the following information in the advertisement:

**(a)** the total price that must be paid to the advertiser to obtain the air service, expressed in Canadian dollars and, if it is also expressed in another currency, the name of that currency;

**(b)** the point of origin and point of destination of the service and whether the service is one-way or round-trip;

**(c)** any limitation on the period during which the advertised price will be offered and any limitation on the period for which the service will be provided at that price;

**Renseignements dans la publicité**

**28 (1)** La personne qui annonce le prix d'un service aérien dans une publicité y inclut les renseignements suivants :

**a)** le prix total à payer à l'annonceur pour le service, en dollars canadiens, et, si le prix total est également indiqué dans une autre devise, la devise en cause;

**b)** le point de départ et le point d'arrivée du service et s'il s'agit d'un aller simple ou d'un aller-retour;

**c)** toute restriction quant à la période pendant laquelle le prix annoncé sera offert et toute restriction quant à la période pour laquelle le service sera disponible à ce prix;

**d)** le nom et le montant de chacun des frais, droits et taxes qui constituent des sommes perçues pour un tiers pour ce service;

**(d)** the name and amount of each tax, fee or charge relating to the air service that is a third party charge;

**(e)** each optional incidental service offered for which a fee or charge is payable and its total price or range of total prices; and

**(f)** any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.

**Third party charges**

**(2)** A person who advertises the price of an air service must set out all third party charges under the heading "Taxes, Fees and Charges" unless that information is only provided orally.

**Air transportation charges**

**(3)** A person who makes a reference to an air transportation charge in an advertisement must set the charge out under the heading "Air Transportation Charges" unless that information is only provided orally.

**One direction of round-trip service**

**(4)** A person who advertises the price of one direction of a round-trip air service is exempt from the application of paragraph (1)(a) if the following conditions are met:

**(a)** the advertised price is equal to 50% of the total price that must be paid to the advertiser to obtain the service;

**(b)** it is clearly indicated that the advertised price relates to only one direction of the service and applies only if both directions are purchased; and

**(c)** the advertised price is expressed in Canadian dollars and, if it is also expressed in another currency, the name of that other currency is specified.

**Readily obtainable information**

**(5)** A person is exempt from the requirement to provide the information referred to in paragraphs (1)(d) to (f) in their advertisement if the following conditions are met:

**(a)** the advertisement is not interactive; and

**(b)** the advertisement mentions a location that is readily accessible where all the information referred to in subsection (1) can be readily obtained.

**e)** les services optionnels connexes offerts pour lesquels des frais ou des droits sont à payer, ainsi que leur prix total ou leur échelle de prix total;

**f)** les frais, droits ou taxes publiés qui ne sont pas perçus par lui, mais qui doivent être payés au point de départ ou d'arrivée du service par la personne à qui celui-ci est fourni.

**Tiers**

**(2)** La personne qui annonce le prix d'un service aérien dans une publicité doit y indiquer les sommes perçues pour un tiers pour ce service sous le titre « Taxes, frais et droits », à moins que ces sommes ne soient annoncées qu'oralement.

**Frais du transport aérien**

**(3)** La personne qui fait mention des frais du transport aérien dans une publicité indique sous le titre « Frais du transport aérien », à moins que ces frais du transport ne soient annoncés qu'oralement.

**Aller simple d'un service aller-retour**

**(4)** La personne qui annonce dans sa publicité le prix pour un aller simple d'un service aller-retour est exemptée de l'application de l'alinéa (1)a) si les conditions suivantes sont remplies :

**a)** le prix annoncé correspond à cinquante pour cent du prix total à payer à l'annonceur pour le service;

**b)** il est clairement indiqué que le prix annoncé n'est que pour un aller simple et qu'il ne s'applique qu'à l'achat d'un aller-retour;

**c)** le prix annoncé est en dollars canadiens et, s'il est également indiqué dans une autre devise, la devise est précisée.

**Renseignements disponibles**

**(5)** La personne est exemptée d'inclure dans sa publicité les renseignements visés aux alinéas (1)d) à f) si les conditions suivantes sont remplies :

**a)** la publicité n'est pas interactive;

**b)** la publicité renvoie à un endroit facilement accessible où tous les renseignements visés au paragraphe (1) peuvent être facilement obtenus.

### Total price readily determinable

**29** A person must not provide information in an advertisement in a manner that could interfere with the ability of anyone to readily determine the total price that must be paid for an air service or for any optional incidental service.

### Distinction — tax and charges

**30** A person must not set out an air transportation charge in an advertisement as if it were a third party charge or use the term “tax” in an advertisement to describe an air transportation charge.

### Name of third party charge

**31** A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.

## Administrative Monetary Penalties

### Designation

**32** The provisions, requirements and conditions set out in column 1 of the schedule are designated for the purposes of subsection 177(1) of the Act.

### Maximum amount payable

**33** The maximum amount payable in respect of a contravention of a provision, requirement or condition set out in column 1 of the schedule is the amount

**(a)** in respect of a corporation, set out in column 2; and

**(b)** in respect of an individual, set out in column 3.

## Transitional Provisions

### Subsection 2(1)

**34 (1) Subsections 2(1) and (2) do not apply in respect of section 22 before December 15, 2019.**

### Delay and cancellation

**(2) Subsections 2(1) and (2), paragraphs 10(3)(b) and (c), 11(3)(b) and (c) and (4)(b) and (c), 12(2)(b) to (d) and (3)(b) to (d) and 13(1)(b) to (d) and sections 17 and 18 do not apply in respect of a delay or cancellation of a flight before December 15, 2019.**

### Prix total à déterminer aisément

**29** Il est interdit de présenter des renseignements dans une publicité d’une manière qui pourrait nuire à la capacité de toute personne à déterminer aisément le prix total à payer pour un service aérien ou pour les services optionnels connexes.

### Terminologie — taxe et frais

**30** Il est interdit de présenter dans une publicité des frais du transport aérien comme étant une somme perçue pour un tiers ou d’y utiliser le terme « taxe » pour désigner de tels frais.

### Nom du tiers

**31** Il est interdit de désigner dans une publicité une somme perçue pour un tiers sous un nom autre que celui sous lequel elle a été établie.

## Sanctions administratives pécuniaires

### Désignation

**32** Pour l’application du paragraphe 177(1) de la Loi, les dispositions, les obligations et les conditions mentionnées à la colonne 1 de l’annexe sont des textes désignés.

### Montant maximal de la sanction

**33** Le montant maximal de la sanction pour une contravention d’un texte désignées visé à la colonne 1 de l’annexe, est prévu :

**a)** dans le cas d’une personne morale, à la colonne 2;

**b)** dans le cas d’une personne physique, à la colonne 3.

## Dispositions transitoires

### Paragraphe 2(1)

**34 (1) Les paragraphes 2(1) et (2) ne s’appliquent pas à l’article 22 avant le 15 décembre 2019.**

### Retard et annulation de vol

**(2) Les paragraphes 2(1) et (2), les alinéas 10(3)b) et c), 11(3)b) et c), 11(4)b) et c), 12(2)b) à d), 12(3)b) à d), 13(1)b) à d) et les articles 17 et 18 ne s’appliquent pas au retard ou à l’annulation de vol d’un vol avant le 15 décembre 2019.**

## Amendments to these Regulations

**35 [Amendments]**

**36 [Amendments]**

## Consequential Amendments

### Air Transportation Regulations

**37 [Amendments]**

**38 [Amendments]**

**39 [Amendments]**

**40 [Amendments]**

**41 [Amendments]**

**42 [Amendments]**

**43 [Amendments]**

### Canadian Transportation Agency Designated Provisions Regulations

**44 [Amendments]**

**45 [Amendments]**

## Coming into Force

**July 15, 2019**

**46 (1) Subject to subsections (2) and (3), these Regulations come into force on July 15, 2019.**

**December 15, 2019**

**(2) Sections 14, 19, 22, 35 and 36 come into force on December 15, 2019.**

**Schedule**

**(3) Items 28 to 30, 54 to 62 and 70 to 72 of the schedule come into force on December 15, 2019.**

## Modifications au présent règlement

**35 [Modifications]**

**36 [Modifications]**

## Modifications corrélatives

### Règlement sur les transports aériens

**37 [Modifications]**

**38 [Modifications]**

**39 [Modifications]**

**40 [Modifications]**

**41 [Modifications]**

**42 [Modifications]**

**43 [Modifications]**

### Règlement sur les textes désignés (Office des transports du Canada)

**44 [Modifications]**

**45 [Modifications]**

## Entrée en vigueur

**15 juillet 2019**

**46 (1) Sous réserve des paragraphes (2) et (3), le présent règlement entre en vigueur le 15 juillet 2019.**

**15 décembre 2019**

**(2) Les articles 14, 19, 22, 35 et 36 entrent en vigueur le 15 décembre 2019.**

**Annexe**

**(3) Les articles 28 à 30, 54 à 62 et 70 à 72 de l'annexe entrent en vigueur le 15 décembre 2019.**

## SCHEDULE

(Sections 32 and 33)

# Administrative Monetary Penalties

| Item | Column 1<br>Provision, Requirement or Condition | Column 2<br>Maximum Amount Payable — Corporation ($) | Column 3<br>Maximum Amount Payable — Individual ($) |
|---|---|---|---|
| 1 | Subsection 4(2) | 25,000 | 5,000 |
| 2 | Paragraph 5(1)(a) | 25,000 | 5,000 |
| 3 | Paragraph 5(1)(b) | 25,000 | 5,000 |
| 4 | Paragraph 5(1)(c) | 25,000 | 5,000 |
| 5 | Subsection 5(2) | 25,000 | 5,000 |
| 6 | Subsection 5(3) | 25,000 | 5,000 |
| 7 | Subsection 5(5) | 25,000 | 5,000 |
| 8 | Subsection 5(6) | 25,000 | 5,000 |
| 9 | Section 6 | 25,000 | 5,000 |
| 10 | Subsection 7(1) | 25,000 | 5,000 |
| 11 | Subsection 7(2) | 25,000 | 5,000 |
| 12 | Paragraph 8(1)(a) | 25,000 | 5,000 |
| 13 | Paragraph 8(1)(b) | 25,000 | 5,000 |
| 14 | Paragraph 8(1)(c) | 25,000 | 5,000 |
| 15 | Paragraph 8(1)(d) | 25,000 | 5,000 |
| 16 | Subsection 8(2) | 25,000 | 5,000 |
| 17 | Paragraph 9(1)(a) | 25,000 | 5,000 |
| 18 | Paragraph 9(1)(b) | 25,000 | 5,000 |
| 19 | Subsection 9(3) | 25,000 | 5,000 |
| 20 | Paragraph 13(1)(a) | 25,000 | 5,000 |
| 21 | Paragraph 13(1)(b) | 25,000 | 5,000 |
| 22 | Paragraph 13(1)(c) | 25,000 | 5,000 |
| 23 | Paragraph 13(1)(d) | 25,000 | 5,000 |
| 24 | Subsection 13(2) | 25,000 | 5,000 |
| 25 | Subsection 13(3) | 25,000 | 5,000 |

## ANNEXE

(articles 32 et 33)

# Sanctions administratives pécuniaires

| Article | Colonne 1<br>Texte désigné | Colonne 2<br>Montant maximal de la sanction — Personne morale ($) | Colonne 3<br>Montant maximal de la sanction — Personne physique ($) |
|---|---|---|---|
| 1 | Paragraphe 4(2) | 25 000 | 5 000 |
| 2 | Alinéa 5(1)a) | 25 000 | 5 000 |
| 3 | Alinéa 5(1)b) | 25 000 | 5 000 |
| 4 | Alinéa 5(1)c) | 25 000 | 5 000 |
| 5 | Paragraphe 5(2) | 25,000 | 5,000 |
| 6 | Paragraphe 5(3) | 25 000 | 5 000 |
| 7 | Paragraphe 5(5) | 25 000 | 5 000 |
| 8 | Paragraphe 5(6) | 25 000 | 5 000 |
| 9 | Article 6 | 25 000 | 5 000 |
| 10 | Paragraphe 7(1) | 25 000 | 5 000 |
| 11 | Paragraphe 7(2) | 25 000 | 5 000 |
| 12 | Alinéa 8(1)a) | 25 000 | 5 000 |
| 13 | Alinéa 8(1)b) | 25 000 | 5 000 |
| 14 | Alinéa 8(1)c) | 25 000 | 5 000 |
| 15 | Alinéa 8(1)d) | 25 000 | 5 000 |
| 16 | Paragraphe 8(2) | 25 000 | 5 000 |
| 17 | Alinéa 9(1)a) | 25 000 | 5 000 |
| 18 | Alinéa 9(1)b) | 25 000 | 5 000 |
| 19 | Paragraphe 9(3) | 25 000 | 5 000 |
| 20 | Alinéa 13(1)a) | 25 000 | 5 000 |
| 21 | Alinéa 13(1)b) | 25 000 | 5 000 |
| 22 | Alinéa 13(1)c) | 25 000 | 5 000 |
| 23 | Alinéa 13(1)d) | 25 000 | 5 000 |
| 24 | Paragraphe 13(2) | 25 000 | 5 000 |
| 25 | Paragraphe 13(3) | 25 000 | 5 000 |

| Item | Column 1<br>Provision, Requirement or Condition | Column 2<br>Maximum Amount Payable — Corporation ($) | Column 3<br>Maximum Amount Payable — Individual ($) |
|---|---|---|---|
| 26 | Subsection 13(4) | 25,000 | 5,000 |
| 27 | Subsection 13(5) | 25,000 | 5,000 |
| 28 | Paragraph 14(1)(a) | 25,000 | 5,000 |
| 29 | Paragraph 14(1)(b) | 25,000 | 5,000 |
| 30 | Subsection 14(2) | 25,000 | 5,000 |
| 31 | Subsection 15(1) | 25,000 | 5,000 |
| 32 | Subsection 15(2) | 25,000 | 5,000 |
| 33 | Subsection 15(3) | 25,000 | 5,000 |
| 34 | Subsection 15(4) | 25,000 | 5,000 |
| 35 | Paragraph 16(1)(a) | 25,000 | 5,000 |
| 36 | Paragraph 16(1)(b) | 25,000 | 5,000 |
| 37 | Subsection 16(2) | 25,000 | 5,000 |
| 38 | Subparagraph 17(1)(a)(i) | 25,000 | 5,000 |
| 39 | Subparagraph 17(1)(a)(ii) | 25,000 | 5,000 |
| 40 | Subparagraph 17(1)(a)(iii) | 25,000 | 5,000 |
| 41 | Paragraph 17(1)(b) | 25,000 | 5,000 |
| 42 | Paragraph 17(2)(a) | 25,000 | 5,000 |
| 43 | Paragraph 17(2)(b) | 25,000 | 5,000 |
| 44 | Subsection 17(3) | 25,000 | 5,000 |
| 45 | Subsection 17(4) | 25,000 | 5,000 |
| 46 | Subsection 17(5) | 25,000 | 5,000 |
| 47 | Subsection 17(6) | 25,000 | 5,000 |
| 48 | Subsection 17(7) | 25,000 | 5,000 |
| 49 | Subparagraph 18(1)(a)(i) | 25,000 | 5,000 |
| 50 | Subparagraph 18(1)(a)(ii) | 25,000 | 5,000 |
| 51 | Paragraph 18(1)(b) | 25,000 | 5,000 |
| 52 | Subsection 18(2) | 25,000 | 5,000 |
| 53 | Subsection 18(3) | 25,000 | 5,000 |
| 54 | Subparagraph 19(1)(a)(i) | 25,000 | 5,000 |
| 55 | Subparagraph 19(1)(a)(ii) | 25,000 | 5,000 |

| Article | Colonne 1<br>Texte désigné | Colonne 2<br>Montant maximal de la sanction — Personne morale ($) | Colonne 3<br>Montant maximal de la sanction — Personne physique ($) |
|---|---|---|---|
| 26 | Paragraphe 13(4) | 25 000 | 5 000 |
| 27 | Paragraphe 13(5) | 25 000 | 5 000 |
| 28 | Alinéa 14(1)a) | 25 000 | 5 000 |
| 29 | Alinéa 14(1)b) | 25 000 | 5 000 |
| 30 | Paragraphe 14(2) | 25 000 | 5 000 |
| 31 | Paragraphe 15(1) | 25 000 | 5 000 |
| 32 | Paragraphe 15(2) | 25 000 | 5 000 |
| 33. | Paragraphe 15(3) | 25 000 | 5 000 |
| 34 | Paragraphe 15(4) | 25 000 | 5 000 |
| 35 | Alinéa 16(1)a) | 25 000 | 5 000 |
| 36 | Alinéa 16(1)b) | 25 000 | 5 000 |
| 37 | Paragraphe 16(2) | 25 000 | 5 000 |
| 38 | Sous-alinéa 17(1)a)(i) | 25 000 | 5 000 |
| 39 | Sous-alinéa 17(1)a)(ii) | 25 000 | 5 000 |
| 40 | Sous-alinéa 17(1)a)(iii) | 25 000 | 5 000 |
| 41 | Alinéa 17(1)b) | 25 000 | 5 000 |
| 42 | Alinéa 17(2)a) | 25 000 | 5 000 |
| 43 | Alinéa 17(2)b) | 25 000 | 5 000 |
| 44 | Paragraphe 17(3) | 25 000 | 5 000 |
| 45 | Paragraphe17(4) | 25 000 | 5 000 |
| 46 | Paragraphe 17(5) | 25 000 | 5 000 |
| 47 | Paragraphe 17(6) | 25 000 | 5 000 |
| 48 | Paragraphe 17(7) | 25 000 | 5 000 |
| 49 | Sous-alinéa 18(1)a)(i) | 25 000 | 5 000 |
| 50 | Sous-alinéa 18(1)a)(ii) | 25 000 | 5 000 |
| 51 | Alinéa 18(1)b) | 25 000 | 5 000 |
| 52 | Paragraphe 18(2) | 25 000 | 5 000 |
| 53 | Paragraphe 18(3) | 25 000 | 5 000 |
| 54 | Sous-alinéa 19(1)a)(i) | 25 000 | 5 000 |
| 55 | Sous-alinéa 19(1)a)(ii) | 25 000 | 5 000 |

| Item | Column 1<br>Provision, Requirement or Condition | Column 2<br>Maximum Amount Payable — Corporation ($) | Column 3<br>Maximum Amount Payable — Individual ($) |
| --- | --- | --- | --- |
| 56 | Subparagraph 19(1)(a)(iii) | 25,000 | 5,000 |
| 57 | Subparagraph 19(1)(b)(i) | 25,000 | 5,000 |
| 58 | Subparagraph 19(1)(b)(ii) | 25,000 | 5,000 |
| 59 | Subparagraph 19(1)(b)(iii) | 25,000 | 5,000 |
| 60 | Paragraph 19(2)(a) | 25,000 | 5,000 |
| 61 | Paragraph 19(2)(b) | 25,000 | 5,000 |
| 62 | Subsection 19(4) | 25,000 | 5,000 |
| 63 | Paragraph 20(1)(a) | 25,000 | 5,000 |
| 64 | Paragraph 20(1)(b) | 25,000 | 5,000 |
| 65 | Paragraph 20(1)(c) | 25,000 | 5,000 |
| 66 | Subsection 20(2) | 25,000 | 5,000 |
| 67 | Subsection 20(4) | 25,000 | 5,000 |
| 68 | Subsection 20(5) | 25,000 | 5,000 |
| 69 | Section 21 | 25,000 | 5,000 |
| 70 | Subsection 22(1) | 25,000 | 5,000 |
| 71 | Subsection 22(2) | 25,000 | 5,000 |
| 72 | Subsection 22(3) | 25,000 | 5,000 |
| 73 | Subsection 23(1) | 25,000 | 5,000 |
| 74 | Subsection 23(2) | 25,000 | 5,000 |
| 75 | Paragraph 24(1)(a) | 25,000 | 5,000 |
| 76 | Paragraph 24(1)(b) | 25,000 | 5,000 |
| 77 | Paragraph 24(1)(c) | 25,000 | 5,000 |
| 78 | Subsection 24(2) | 25,000 | 5,000 |
| 79 | Paragraph 28(1)(a) | 25,000 | 5,000 |
| 80 | Paragraph 28(1)(b) | 25,000 | 5,000 |
| 81 | Paragraph 28(1)(c) | 25,000 | 5,000 |
| 82 | Paragraph 28(1)(d) | 5,000 | 1,000 |
| 83 | Paragraph 28(1)(e) | 5,000 | 1,000 |
| 84 | Paragraph 28(1)(f) | 5,000 | 1,000 |
| 85 | Subsection 28(2) | 5,000 | 1,000 |

| Article | Colonne 1<br>Texte désigné | Colonne 2<br>Montant maximal de la sanction — Personne morale ($) | Colonne 3<br>Montant maximal de la sanction — Personne physique ($) |
| --- | --- | --- | --- |
| 56 | Sous-alinéa 19(1)a)(iii) | 25 000 | 5 000 |
| 57 | Sous-alinéa 19(1)b)(i) | 25 000 | 5 000 |
| 58 | Sous-alinéa 19(1)b)(ii) | 25 000 | 5 000 |
| 59 | Sous-alinéa 19(1)b)(iii) | 25 000 | 5 000 |
| 60 | Alinéa 19(2)a) | 25 000 | 5 000 |
| 61 | Alinéa 19(2)b) | 25 000 | 5 000 |
| 62 | Paragraphe 19(4) | 25 000 | 5 000 |
| 63 | Alinéa 20(1)a) | 25 000 | 5 000 |
| 64 | Alinéa 20(1)b) | 25 000 | 5 000 |
| 65 | Alinéa 20(1)c) | 25 000 | 5 000 |
| 66 | Paragraphe 20(2) | 25 000 | 5 000 |
| 67 | Paragraphe 20(4) | 25 000 | 5 000 |
| 68 | Paragraphe 20(5) | 25 000 | 5 000 |
| 69 | Article 21 | 25 000 | 5 000 |
| 70 | Paragraphe 22(1) | 25 000 | 5 000 |
| 71 | Paragraphe 22(2) | 25 000 | 5 000 |
| 72 | Paragraphe 22(3) | 25 000 | 5 000 |
| 73 | Paragraphe 23(1) | 25 000 | 5 000 |
| 74 | Paragraphe 23(2) | 25 000 | 5 000 |
| 75 | Alinéa 24(1)a) | 25 000 | 5 000 |
| 76 | Alinéa 24(1)b) | 25 000 | 5 000 |
| 77 | Alinéa 24(1)c) | 25 000 | 5 000 |
| 78 | Paragraphe 24(2) | 25 000 | 5 000 |
| 79 | Alinéa 28(1)a) | 25 000 | 5 000 |
| 80 | Alinéa 28(1)b) | 25 000 | 5 000 |
| 81 | Alinéa 28(1)c) | 25 000 | 5 000 |
| 82 | Alinéa 28(1)d) | 5 000 | 1 000 |
| 83 | Alinéa 28(1)e) | 5 000 | 1 000 |
| 84 | Alinéa 28(1)f) | 5 000 | 1 000 |
| 85 | Paragraphe 28(2) | 5 000 | 1 000 |

| Item | Column 1<br>Provision, Requirement or Condition | Column 2<br>Maximum Amount Payable — Corporation ($) | Column 3<br>Maximum Amount Payable — Individual ($) |
|---|---|---|---|
| 86 | Subsection 28(3) | 5,000 | 1,000 |
| 87 | Section 29 | 5,000 | 1,000 |
| 88 | Section 30 | 5,000 | 1,000 |
| 89 | Section 31 | 5,000 | 1,000 |

| Article | Colonne 1<br>Texte désigné | Colonne 2<br>Montant maximal de la sanction — Personne morale ($) | Colonne 3<br>Montant maximal de la sanction — Personne physique ($) |
|---|---|---|---|
| 86 | Paragraphe 28(3) | 5 000 | 1 000 |
| 87 | Article 29 | 5 000 | 1 000 |
| 88 | Article 30 | 5 000 | 1 000 |
| 89 | Article 31 | 5 000 | 1 000 |

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | A-311-19 |
| **STYLE OF CAUSE:** | INTERNATIONAL AIR TRANSPORT ASSOCIATION et al. v. CANADIAN TRANSPORTATION AGENCY et al. |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | APRIL 6 AND 7, 2022 |
| **REASONS FOR JUDGMENT BY:** | DE MONTIGNY J.A. |
| **CONCURRED IN BY:** | PELLETIER J.A.<br>LOCKE J.A. |
| **DATED:** | DECEMBER 6, 2022 |

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