

Supreme Court endorses support for airline passenger compensation regime (International Air Transportation Association v. Canada (Transportation Agency))

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On 4 October 2024, the Supreme Court of Canada released its long-awaited decision of *International Air Transportation Association v. Canada (Transportation Agency)*, 2024 SCC 30. A primary issue before Canada's highest Court was whether a federal agency could require airlines to provide compensation to passengers for certain international flight disruptions.

Background

In 2018, the *Canada Transportation Act* ("Act") was amended by the federal government to allow the Canadian Transportation Agency ("Agency") to make regulations applicable to international air travel both going in and out of Canada.

In 2019, the Agency adopted the *Air Passenger Protection Regulations* ("Regulations") which provided for standardized compensation programs for international air travel complications, including international flight delays and cancellations, airline-caused flight disruptions, and baggage claims.

The International Air Transport Association, the Air Transportation Association of America, and several prominent air carriers (collectively "Airlines") challenged the applicability of the Regulations and the provisions therein before the Federal Court of Appeal, arguing that the impugned provisions were inconsistent with the language and framework of the *Convention for the Unification of Certain Rules for International Carriage by Air* (otherwise known as the "Montreal Convention"). Accordingly, they argued that the enactment of the Regulations fell outside of the Agency's statutory authority afforded to it by the Act.

The above challenge was brought by the Airlines before the Federal Court of Appeal in 2022 and was subsequently dismissed. The Airlines appealed the decision to the Supreme Court of Canada.

Montreal Convention

The *Montreal Convention* is an international treaty which was ratified by member states of the International Civil Aviation Organization in 1999 and formally enacted in 2003. The Convention was conceptualized as a successor to the *Warsaw Convention* of 1929, and served to both respect the principal tenets of the earlier convention while also making some modifications to reflect the modern realities of international air travel. In doing so, the *Montreal Convention* ratified a single, universal framework which governed airline liability globally.

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In Canada, both the *Montreal Convention* and its predecessor the *Warsaw Convention* have been codified into law under the federal *Carriage by Air Act*.

The directive of the *Montreal Convention* remains to create a universal liability regime of air carriers in the international carriage of passengers, baggage, and cargo by air. Of particular relevance to the case at hand is Article 29 of the *Montreal Convention* which regulates the relationship between the convention's inherent liability regime and the various legislative latticework of national laws which underpins the same. The primary purpose of Article 29, then, is to protect the Convention's uniform liability regime from encroachments by national law, which would serve to threaten its effectiveness and ultimately undermine the protection it offers to international air passengers.

Of its various tenets, the *Montreal Convention* seeks to balance the interests of airlines and international air passengers – it extinguishes the requirement that international air passengers prove fault on the part of an airline to recover damages while simultaneously limiting an airline's liability for any such claims which are legitimately advanced.

The Challenge and Result

The Supreme Court of Canada dismissed the Airlines' appeal.

Writing for a unanimous Court, Justice Rowe maintained that the *Montreal Convention* remained exclusive within the scope of the matters which it addresses, but acknowledged that it did not comprehensively deal with all issues which may arise from international air travel. He clarified that under Article 29, there must be an "action" which leads to "damages" for the exclusivity principle pursuant to the Convention to apply.

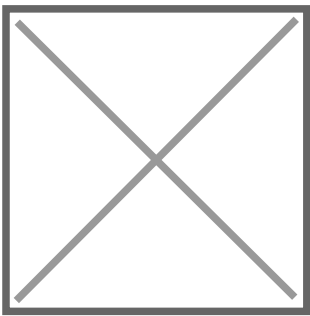
It was the Court's position that the above Regulations did not provide for an "action for damages" as they did not provide for individualized compensation. Instead, the Regulations created, in effect, a "consumer protection scheme" which operates in tandem with the *Montreal Convention*, without encroaching or undermining the latter's liability limitation provisions. Accordingly, the Regulations were not found to offend the exclusivity principal codified in Article 29 of the Convention.

The *Montreal Convention* codifies limits for damages for specific injuries (e.g. death, injury, baggage loss). The Court found that the compensation system prescribed pursuant to the Regulations, on the other hand, did not fall within the scope of the above damages.

It was the Court's unanimous position that the two forms of passenger compensation regimes provided by the Regulations and the *Montreal Convention* are capable of running in tandem with one another, without one offending or otherwise encroaching on the other. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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