



Case in Brief: ***International Air Transport Association v. Canada (Transportation Agency)***

Judgment of October 4, 2024 | On appeal from the Federal Court of Appeal
Neutral citation: 2024 SCC 30

The Supreme Court confirms that airlines can be required to compensate passengers for certain international flight disruptions.

This is an appeal about whether a federal agency can require airlines to pay compensation to passengers for certain international flight disruptions. It addresses whether that compensation is consistent with a treaty dealing with some aspects of international air travel.

In 2018, Parliament amended the *Canada Transportation Act* (“CTA”) to require that the Canadian Transportation Agency make regulations establishing what it described as a “new air passenger rights regime”. In 2019, the Agency made the *Air Passenger Protection Regulations*. The Regulations say what airlines have to do for passengers in the case of international flight delays, cancellations and denial of boarding, which in some cases includes paying a set minimum amount of compensation. They also require airlines to refund baggage fees paid by passengers when an airline has lost or damaged their baggage on international flights.

The International Air Transport Association, the Air Transportation Association of America, and several airlines (collectively, “airlines”) challenged certain provisions of the Regulations before the Federal Court of Appeal. The airlines said that the provisions were not consistent with the *Convention for the Unification of Certain Rules for International Carriage by Air* (“Montreal Convention”) and fell outside the Agency’s regulation-making authority under the CTA.

The Montreal Convention is an international agreement that Canada signed in 2001 and that has been implemented into Canadian law. It sets out certain conditions and limits on what airlines can be required to pay passengers to compensate for international flight disruptions. Article 29 of the Montreal Convention says that any “action for damages” within the scope of the agreement is subject to those conditions and limits. This is called the “exclusivity principle”, because it prevents a person from bringing an “action for damages” not subject to the conditions and limits even if there is another basis in law to do so.

The Federal Court of Appeal dismissed the challenge brought by the airlines, with the exception of the provisions relating to the temporary loss of baggage. It considered the compatibility of the Regulations with the Montreal Convention, and concluded that the compensation provided for under the Regulations is not an “action for damages”.

The Airlines appealed to the Supreme Court seeking an order setting aside certain provisions of the Regulations as they relate to international air travel.

The Supreme Court has dismissed the Airlines’ appeal.

The compensation payable to passengers is not individualized and is not therefore an “action for damages” limited by the Montreal Convention.

Writing for a unanimous Court, Justice Rowe explained that the Montreal Convention is exclusive within the scope of the matters that it addresses but does not deal comprehensively with all aspects of international carriage by air. Under Article 29, there must be an “action” that leads to “damages” for the exclusivity principle to apply. However, the Regulations do not provide for an “action for damages” because they do not provide for individualized compensation. Rather, they create a consumer protection scheme that operates in parallel with the Montreal Convention, without trenching on its liability limitation provisions. Thus, they do not fall within the scope of the Montreal Convention’s exclusivity principle.

Since the Regulations do not give rise to liability that is pre-empted by Article 29, they do not conflict with the Montreal Convention and there is no basis to conclude that they are outside the jurisdiction of the Agency.

Breakdown of the decision: *Unanimous*: Justice [Rowe](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed)

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