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Briefing Note: *International Air Transport Association et al v Canadian Transportation Agency,* 2024 SCC 30

Provided to: Council of Canadians with Disabilities, National Pensioners Federation, Public Interest Advocacy Centre

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Overview

On October 4, 2024, the Supreme Court of Canada (SCC) released its judgment in *International Air Transport Association et al v Canadian Transportation Agency,* 2024 SCC 30.

In a unanimous decision, the SCC found that the federal *Air Passenger Protection Regulations* (Regulations) create a consumer protection scheme that operates in parallel with the international Montreal Convention, without trenching on its exclusivity principle. As such, the Regulations and the Montreal Convention can operate in parallel.

Summary of Decision

The SCC's decision turned on whether the Regulations were within the jurisdiction of the Canadian Transportation Agency, or whether they conflicted with the exclusivity principle of the Montreal Convention.

In finding that the Regulations and the Montreal Convention can operate in parallel, the SCC summarized its reasoning as follows:

> Because the *Regulations* do not provide for an "action for damages", they do not fall within the scope of the *Montreal Convention*'s exclusivity principle. Instead, the *Regulations* are better understood as creating a consumer protection scheme that operates in parallel with the *Montreal Convention*, without trenching on its liability limitation provisions. Because the *Regulations* do not conflict with the *Montreal Convention* as implemented by the *CAA*, there is no basis to conclude that they are *ultra vires* the *CTA*.[1]

In coming to its decision, the Court first discusses the scope of the Montreal Convention, followed by the scope of the Regulations, before determining that there is no conflict between the Regulations and the Montreal Convention.

We note that the Court also addressed in its decision the issue of expert evidence on questions of international law. Given that this question was not addressed in the intervention by the Council of Canadians with Disabilities (CCD), National Pensioners Federation (NPF) and Public Interest Advocacy Centre (PIAC), we do not summarize that portion of the SCC decision in this briefing note.

[1] *IATA v CTA*, 2024 SCC 30, at para 27.

1. Scope of Montreal Convention

In order to decide the appeal, the Court had to resolve the question of what falls within the scope of an "action for damages" in Article 29 of the Montreal Convention, which is referred to as the exclusivity principle.

The Court confirms that the scope of the exclusivity principle codified at Article 29 was left open in *Thibodeau*. In that case, the Court concluded that the claim was for individualized damages and came within the scope of the *Montreal Convention*'s exclusivity principle. However, in that case, the Court expressly declined to consider the significance of the distinction between individualized damages and standardized damages when it comes to applying the exclusivity principle (para. 81 of *Thibodeau*).[2] This is a point that was emphasized by PIAC, CCD and NPF in their arguments.

The Court goes on to say that this appeal, by contrast, requires the Court to address that which was left open by *Thibodeau*, namely whether the *Montreal Convention* precludes standardized compensation of the kind provided for by the *Regulations*.[3]

In order to determine the scope of the Montreal Convention, the ordinary meaning of the words chosen by the state parties, when read in their context, must be determined.

The Court finds that:

> The "ordinary meaning" of an "action for damages" thus points towards an action that shares the characteristics of a judicial proceeding and that seeks individualized compensation that is tied to an injury caused by another. Damages awards are "individualized" in that they seek to compensate the plaintiff for the loss suffered as a result of an injury caused by another. An action for damages is distinct from standardized compensation which, as I explain below, may be owed identically to all claimants irrespective of the harm (if any) they have suffered.[4]

The Court further finds that "an "action for damages" does not include a scheme for standardized compensation. This conclusion is supported by the ordinary meaning of "action for damages", the history, object and purpose of the *Montreal Convention*, and foreign jurisprudence interpreting the *Montreal Convention*."[5]

As such, the exclusivity principle found in "Article 29 should be understood as precluding actions for damages that share the characteristics of judicial proceedings in courts of law, and that seek individualized compensation for death or bodily injury, damage or loss of baggage and cargo, and for delay in international carriage."[6]

[2] *Ibid,* para 37.
[3] *Ibid,* para 38.
[4] *Ibid,* para 42.
[5] *Ibid,* para 62.
[6] *Ibid,* para 63.

2. Scope of the Regulations

The Court finds that the Regulations do not provide for compensation that is individualized in the manner of a damage award.[7] This was another point emphasized by the CCD, NPF and PIAC.

As it relates to enforcement of the Regulations, if a carrier fails to compensate a passenger in accordance with the Regulations, the passenger can file a complaint with the Agency.[8] The Agency has the authority to enforce carrier compliance with the compensation provided for in the *Regulations*, and to extend compensation owed to one passenger to others who are impacted by the same disruption.[9]

In line with the arguments made by the CCD, NPF and PIAC, the Court finds that "(t)he *Regulations* are, thus, best understood as providing for statutory entitlements under a consumer protection scheme."[10]

3. There is no conflict between the Regulations and the Convention

The Court's ultimate conclusion, again in line with the arguments made by the CCD, NPF and PIAC, is that "(t)he *Regulations* fall outside the scope of Article 29 of the *Montreal Convention* and therefore there is no conflict between the *CTA* and the *Montreal Convention*, as implemented by the *CAA*."[11]

In order "to find a conflict between the *Montreal Convention* and the impugned *Regulations*, the latter must be "so inconsistent with" the former that they are "incapable of standing together.""[12]

In line with the perspective of the CCD, NPF and PIAC reflected in their written and oral arguments, the Court summarizes its conclusion as follows:

> Because the *Regulations* do not provide for an action for damages, but instead create an entitlement to standardized compensation that does not seek to measure a passenger's loss, they fall outside the scope of Article 29 and do not conflict with the *Montreal Convention*. The two forms of passenger compensation envisaged by the *Regulations* and the *Montreal Convention* are capable of "standing together". The bargain at the centre of the *Montreal Convention* remains undisturbed.[13]

The Court concludes that "in the absence of any conflict between the *Montreal Convention* (as implemented by the *CAA*) and the *Regulations*, there is no basis to find that the *Regulations* are *ultra vires* the *CTA*."[14]

[7] *Ibid,* para 85.
[8] *Ibid,* para 87.
[9] *Ibid,* para 88.
[10] *Ibid,* para 89.
[11] *Ibid,* para 91.
[12] *Ibid,* para 92.
[13] *Ibid,* para 94.
[14] *Ibid,* para 99.