

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation:** *Veinotte et al. v. Air Canada*, 2023 NSSM 80

**Date:** 20231031  
**Docket:** SCCH 516966  
**Registry:** Halifax

**Between:**

Matthew Scott Veinotte and Thomas Murphy

*Claimants*

v.

Air Canada

*Defendant*

**Adjudicator:** Eric K. Slone

**Heard:** Via zoom on December 13, 2022 and July 25, 2023, in  
Halifax, Nova Scotia

**Appearances:** For the Claimants, self-represented

For the Defendant, Kristen Pascall (December 13, 2022)  
For the Defendant, Olga Young (July 25, 2023)

**By the Court:**

[1] On May 23, 2022, the Claimants were returning from Charlotte, North Carolina to Halifax via Air Canada with a connection in Toronto. There, they had to clear customs before boarding their flight to Halifax. There were a number of delays in completing the flight to Toronto, as a result of which they did not make the connecting flight and had to stay over in Toronto and fly out the next morning.

[2] They say that the delays were within Air Canada's control and ought to attract compensation. They seek \$2,000.00 pursuant to s. 12 of the *Air Passenger Protection Regulations*, plus some out-of-pocket expenses for the overnight stay including hotel, food and taxi.

[3] Air Canada claims that they are not liable for any of this because the reasons for the delay were outside its control.

[4] It should be said at the outset that there may be differences between what the Claimants were told and believe, and what was actually happening. The Claimant, Matthew Veinotte, testified on behalf of himself and his travelling companion. I find that he was sincere and credible, but his information about

what was occurring was mostly hearsay and not necessarily reliable. To accept it as fact requires that I accept that everything he was told was true and accurate. As these reasons will make clear, I am not convinced that accurate information was always provided.

### **The Claimants' version**

[5] Since the events, the Claimants (through Mr. Veniotte) have told their story several times in emails with Air Canada, and in submissions to this court. I will borrow freely from these written communications, sometimes with and sometimes without attribution.

[6] The issues arose during the return leg of a short trip from Halifax to Charlotte, North Carolina on May 23, 2022.

[7] The original itinerary for that leg was:

- a. AC8748 Charlotte to Toronto leaving 17:35, arriving 19:35.
- b. AC618 Toronto to Halifax leaving 20:55, arriving 23:56.

[8] Upon attempting to leave Charlotte, they encountered multiple delays.

[9] The first was 15 minutes due to a “security issue,” as per an email received from Air Canada, which gave a new departure time of 17:50.

[10] Subsequent to that, a delay awaiting a tug back of the aircraft resulted in another 25-minute delay, and finally another 20-minute delay occurred due to a medical emergency involving a member of the ground crew.

[11] As such, they left Charlotte a full hour late, and pulled up to a gate at Pearson Airport in Toronto almost exactly an hour late.

[12] Further issues arose upon landing in Toronto. The plane touched down at approximately 20:10 and began to taxi to the gate. Mr. Veinotte said that they were told that no gate was available for approximately 45 minutes, which was explained as being caused by a “customs hold.” They sat on the tarmac waiting for a gate to become available.

[13] The next delay occurred (or so they were told) due to Air Canada not having staff to open the outside door of the terminal to meet them. Mr. Veinotte testified that this was confirmed by both pilots in multiple separate PA announcements. Multiple times they advised passengers that “someone was coming,” which did not occur right away.

[14] After about a 2-hour delay since touch-down, the pilot in charge physically departed the plane ostensibly to seek out Air Canada staff to complete their required tasks, and let the passengers enter the airport. Disembarking of the

passengers was finally allowed at 22:14, a full 2 hours and 4 minutes since touchdown, due (the Claimants contend) to staffing issues on the part of Air Canada. They then had to clear customs. According to Mr. Veinotte, the customs hall was almost empty, so that process did not take too long. It also caused him to be suspicious of the explanation that there was a customs hold based on inadequate customs staff.

[15] By then the Claimants had missed their connecting flight to Halifax, despite the fact that it was also delayed. As such they were re-booked on the next available flight, AC604, leaving the next morning at 07:50, with arrival at 10:51 local time. This brought the Claimants to Halifax approximately 11 hours later than the original itinerary.

[16] The Claimants asked Air Canada representatives at Pearson International about some compensation and to supply a hotel to sleep in for the night. This was declined. They were also denied access to their luggage, leaving them with *“nowhere to sleep, no food, and none of our belongings, including medications and supplies needed for the night.”*

[17] They ended up staying at an inexpensive airport hotel at their own expense and paid for their own food and transportation.

[18] They claim that they are each entitled to \$1,000.00 (\$2,000.00 total) as compensation for the delay under the *Air Passenger Protection Regulations*, made under the *Canada Transportation Act*, as the longest portion (10+ hours to final destination) was “*due to staffing error on the part of Air Canada, which caused us to miss the connecting flight.*” They also say that under Article 19 of the “*Montreal Convention*,” they are entitled to reimbursement for food, hotel, cab ride, and extra parking day for their vehicle at Halifax International Airport. Those expenses total \$209.00.

### **The Defendant’s version**

[19] The evidence supplied by Air Canada consisted of an affidavit of one Phil Majerle, who is the Director of Systems Operating Control of Jazz Aviation LP, which operates flights on behalf of Air Canada, including the Charlotte to Halifax flight, AC8748. Mr. Majerle was not personally involved in the events but had access to all of the internal records that shed some light on the events of May 23, 2022. Many of those records were exhibited to his affidavit.

[20] As described by Mr. Majerle, there were numerous causes for the delays, each of which compounded the problem.

[21] The first delay in Charlotte occurred because of delays involving the incoming aircraft, in part because of a problem with passenger documentation (the so-called security issue) and in part because of weather, namely electrical storms which delayed the inbound flight. They did indeed leave Charlotte just over an hour behind schedule, because of the late arrival and also a medical emergency involving an employee working on the ramp.

[22] According to Mr. Majerle, based on the contemporaneous documents, the flight touched down at 20:07 and arrived at the gate at 20:33. At that time, the Toronto Airport was limiting the flow of passengers entering the customs hall, which resulted in the airlines being required to hold passengers on planes until given authorization to unload. The reasons for such customs hold appears to have been caused by staffing issues with the Canadian Air Transport Security Authority (CATSA) which is the Crown Corporation responsible for security screening of people and baggage and the administration of identity cards at designated airports in Canada.

[23] The passengers were released at 22:00 and allowed to deplane and enter the customs hall.

[24] Despite itself leaving late, the Halifax flight had long left Toronto, and it was the last flight out until the following morning.

[25] Mr. Majerle's evidence did not touch on the allegation that the plane was sitting at the gate awaiting Air Canada personnel.

[26] The documents appear to substantiate that the plane was at the gate at 20:33, but the passengers were not allowed to deplane until 22:00. An "Operations Overview Report" states:

**All USA inbds had customs hold. This ate into turn times and made it difficult for groomers to keep up. Flight crews kept calling looking agents or updates on hold. Most flights held up 60 min ...**

**8748 inbnd CLT - 20:07 on ground, 20:33 gated. 22:00 customs released pax.**

[27] This document was created contemporaneously with the events, applied to numerous flights, and its creation had nothing to do with the dispute before the court. It qualifies as a business record, which strengthens its weight as hearsay.

### **Was any of the delay within Air Canada's control?**

[28] There is no evidence that Air Canada had any control over the events that led to the late arrival of the aircraft in Charlotte. And I believe it is conceded that the medical emergency on the ramp made it impossible for the plane to leave the gate and take off. Upon touching down in Toronto, there was some



delay before the plane could attach to a gate, which clearly would not have been within Air Canada's control.

[29] The only portion of the delay that could possibly have been caused by Air Canada itself was the delay while sitting at the gate from 20:33 to 22:00 waiting to be allowed to enter the customs hall.

[30] The revised departure time for the Halifax flight ended up being 21:15, which means that even if the Claimants were released from the plane at 20:33 it would have been extremely tight to clear customs and still make the Halifax flight, but on the surface it should not have been impossible.

[31] The documentation supplied by Mr. Majerle points to the delay at the gate being caused by the customs hold. Mr. Veinotte testified that he believed the customs hold explained the delay between touch down at 20:07 and arrival at the gate at 20:33. His understanding may be partially true. It may well have been announced to the passengers that there was a customs hold, but this does not rule out the customs hold as an explanation for the delay at the gate.

[32] While I am troubled by the fact that the pilot appears to have told the passengers that he was leaving the aircraft in search of someone to open the door, it is more likely that the pilot would have been looking for someone to

explain what was going on. The Air Canada documentation substantiates that most flights were held up by about 60 minutes due to customs holds.

[33] In the context of a total delay of 2 hours and 25 minutes between the scheduled arrival and actual arrival, I find that most (if not all) of this delay was outside Air Canada's control. The only evidence that could possibly support the allegation of inadequate staffing is Mr. Veniotte's understanding that the pilots were waiting more than an hour for Air Canada personnel to open the plane door. This seems far-fetched. If a pilot indeed left the plane, the more likely explanation was that he did not understand what was going on with the delay and went looking for answers. This is consistent with the Operations Overview Report which indicated that flight crews were calling "looking for agents or updates on the hold."

[34] If staffing issues caused any of the delay, it most likely would have been airport staff (who needed to provide a gate) and CATSA staff who were needed for customs duty.

**Legal basis for compensation: The regime under the Air Passenger Protection Regulations SOR/2019-150, passed pursuant to the Canada Transportation Act**

[35] The entitlement of passengers, and conversely the obligations of an airline, are quite different depending on whether or not the delay can be said to be within, or outside the carrier's control.

[36] When outside the carrier's control, the extent of the obligation is to re-book on the next available flight:

**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;

(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 or a refund, in the manner set out in section 18, to a passenger who desires such arrangements;

(c) in the case of a cancellation, provide alternate travel arrangements or a refund, in the manner set out in section 18; and

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

[37] On the other hand, where the delay is within the carrier's control there are more onerous obligations including compensation:

**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).

**Delay**

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

(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.

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,

...

(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 ...

[38] Under s.14 there is the requirement to provide food and accommodation,

where the delay is within the carrier's control:

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 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.

[39] The Claimants also refer to the *Montreal Convention* which is applicable in Canada by virtue of the *Carriage by Air Act*, RSC 1985, c C-26. This sets out the general principle that carriers are liable for damage caused by delay that is within their control:

### **Article 19 — Delay**

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.

[40] I do not believe that this provision adds or subtracts anything from the parties' respective rights under the much more detailed provisions of the *Air Passenger Protection Regulations*.

### **Conclusion**

[41] The onus of proof is on the Claimants to prove on a balance of probabilities that they missed their connection due to matters within Air Canada's control.

The onus only shifts to Air Canada if they admit that it was within their control, but unavoidable for safety reasons. That is not the case here.

[42] While the matter is not without doubt, and I am not without sympathy for the Claimant's experience, in the final analysis I find the most reliable evidence to be the internal records produced by Air Canada and exhibited to Mr. Majerle's affidavit. I find that the effective cause of the missed connection was a combination of inclement weather, security issues, and customs issues.

[43] I pin no medals on Air Canada for the accuracy of their communication with the Claimants, but I cannot fault Air Canada as a company for having caused the Claimants to miss their connecting flight.

[44] As such, I am obliged to dismiss the claim.

### **Order**

[45] In the result, this court orders that the claim be dismissed.

Eric K. Slone, Small Claims Court Adjudicator