



ICLG

The International Comparative Legal Guide to:

Aviation Law 2016

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Canada

Darryl G. Pankratz



Michael Dery



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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your country.

Canada is a federal system, comprised of 10 provinces and three territories. With the exception of Quebec, all Canadian provincial jurisdictions are “common-law”. Quebec has a civil law system.

The responsibility for matters relating to aviation in Canada rests with the Federal Minister of Transport (the “Minister”). The Minister exercises his authority over aviation in Canada through two principal statutes:

The *Aeronautics Act* applies to all aeronautical products, facilities and services, including airports. The statute enables the Minister to enact the *Canadian Aviation Regulations* (CARs) which are overseen and enforced by Transport Canada, a department of the Federal Government. The CARs regulate:

- operational standards;
- the accreditation and licensing of aviation personnel;
- the oversight of design, manufacture and distribution of aviation products;
- the certification of air carriers;
- the certification of airports;
- the classification and use of airspace; and
- generally, the application in Canada of the *Convention on International Civil Aviation*.

Under the *Aeronautics Act*, the Minister has particular responsibility for aviation security, pursuant to which he has enacted the *Canadian Aviation Security Regulation, 2012* which governs passenger screening and airport and aircraft security measures.

The *Canada Transportation Act* provides the Canadian Transportation Agency (CTA), a quasi-judicial body, with primary jurisdiction over matters related to the economic regulation of air carriers. The statute enables the CTA to enact the Air Transportation Regulations (ATRs).

The CTA administers a licensing regime designed to ensure that publicly available air services operating within Canada are Canadian-owned and have appropriate liability insurance.

The CTA has particular authority to:

- review mergers and acquisitions involving air transportation;
- oversee air carrier tariffs;
- respond to and resolve air travel complaints; and
- participate in the negotiation of bilateral agreements between Canada and other countries.

In Canada, no person can operate an air service without: (a) a licence issued by the CTA under the *Canada Transportation Act*; and (b) an operating certificate issued by Transport Canada under the *Aeronautics Act*.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Pursuant to Sections 61 to 75 of the *Canada Transportation Act* and the ATRs, the CTA may issue three categories of licences for:

- domestic service;
- scheduled international service; and
- non-scheduled international service.

In each case, the licensed service must be publicly available and may be for the transportation of passengers or goods, or both. An air carrier seeking a licence must apply in writing to the Secretary of the CTA with a supporting affidavit and the documentation necessary to establish that the applicant has met prescribed statutory requirements.

A carrier seeking a domestic licence is required to establish that it:

- is a Canadian:
 - section 55 of the *Act* defines “Canadian” as a Canadian citizen or a permanent resident of Canada, or a corporation or other entity incorporated under the laws of Canada that is controlled in fact by Canadians and of which at least 75% of the voting interests are owned and controlled by Canadians;
- holds an air operator certificate issued by Transport Canada;
- has the following liability insurance coverage prescribed in ATR 7 with respect to the service to be provided:
 - passenger liability coverage in the amount of \$300,000 per seat; and
 - public liability insurance of \$1,000,000 (or greater depending on the take-off weight of the aircraft providing the service); and
- where necessary, meets prescribed financial requirements.

Applicants for either a scheduled or non-scheduled international service licence must meet the same requirements. However, a non-Canadian may be eligible to hold a scheduled or non-scheduled international service licence where that carrier has been designated by a foreign government to operate an air service under the terms of a bilateral agreement and the carrier already holds a licence from its own government equivalent to a Canadian scheduled or non-scheduled international service licence.

1.3 What are the principal pieces of legislation in your country which govern air safety, and who administers air safety?

Under the *Aeronautics Act*, the Minister, through Transport Canada and the CARs, has the jurisdiction to introduce laws and regulations necessary to ensure the safe and proper operation of aircraft, and aviation safety in general.

The Canadian Transportation Accident Investigation and Safety Board (CTSB), established under the *Canadian Transportation Accident Investigation and Safety Board Act*, is responsible for advancing transportation safety by identifying safety deficiencies through accident investigations and making recommendations designed to eliminate or reduce those deficiencies.

The CTSB is fully independent of Transport Canada. It may recommend safety measures, but has no authority to implement them.

The *Canadian Criminal Code* includes several offences in which penalties are prescribed for the unsafe operation of an aircraft.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. In Canada, air safety for commercial, cargo and private carriers is regulated by Transport Canada under the *Aeronautics Act*. However, safety standards established by Transport Canada for commercial carriers are typically more stringent than standards applied to private aircraft.

The carriage of certain cargo by air is subject to the *Transportation of Dangerous Goods Act, 1992* and related regulations. The application and enforcement of this legislation is conducted by Transport Canada.

The safety requirements applicable to the carriage of dangerous goods by air for commercial purposes are significantly more stringent than the standards applicable to private aircraft.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Yes. A carrier wishing to offer international charter air service must hold a licence for a non-scheduled international service. All carriers offering charters must obtain a permit issued by the CTA. ATRs 21.1 to 103.5 set out terms and conditions for charter contracts for both international charters (non-U.S. and trans-border charters) between Canada and the United States and trans-border charters (Canada-US charters).

1.6 As regards international air carriers operating in your country, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

The carriage of air traffic between two points within Canada is generally reserved for domestic carriers (cabotage) over international carriers. Routing, pricing, choice of destination and flight frequency may be governed by the bilateral agreement signed between Canada and the state in which the international air carrier resides.

Aviation fuel may be purchased free of the Federal sales tax (HST/GST) provided the fuel is used for transportation to or from Canada or between points outside of Canada. Similarly, aircraft stores

and other consumable technical supplies used in the provision of international air transportation services are mostly exempt from Canadian customs duties and excise taxes. Canada does not levy taxes on income derived by non-residents from the operation of aircraft in international traffic provided that the state in which the international carrier resides grants substantially similar relief to Canadian residents. Generally, the liability of an international air carrier for withholding taxes and other tax provisions will be prescribed in the relevant bilateral agreement.

1.7 Are airports state or privately owned?

Prior to 1994, all airports in Canada were owned and operated by the Government of Canada. In 1994, the Government introduced the National Airports Policy (NAP) with the intention of retaining ownership of airport lands while devolving management and upkeep responsibilities to local entities. The NAP is now almost fully implemented, with all major airports in Canada operated by local authorities under lease to Transport Canada. The private authorities are typically non-share capital corporations operated by a Board, which includes representatives of Transport Canada. A number of smaller airports in northern Canada continue to be both owned and operated by Transport Canada.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your country?

The requirements imposed by airports in Canada on carriers may vary slightly depending on the airport. Principal requirements include:

- the provision of financial security by way of letter of credit, security deposit or pre-payment for aeronautical charges;
- the execution of an airport improvement fee agreement which requires the air carrier to collect from passengers and remit to the airport an improvement fee;
- the payment of landing fees and general terminal use fees (this requirement is imposed without a written agreement at the discretion of the airport); and
- the execution of agreements, leases and/or licences for the dedicated use of gates, counters, bridges and office space.

Generally, airports in Canada do not require an air carrier to execute an operating agreement with respect to their operations at the airport, but all air carriers are required to comply with published airport policies.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The investigation of air accidents is governed by the *Canadian Transportation Accident Investigation and Safety Board Act*, which prescribes the obligations and responsibilities of the operator involved in the accident, as well as the handling and protection of cockpit voice and data recordings.

Regulation 6 to the *Canadian Transportation Accident Investigation and Safety Board Act* requires an air carrier to report to the Safety Board any accident in which a person sustains injury or death or the aircraft sustains significant damage or is missing.

Air carriers are also required to report to the Safety Board incidents involving certain major component failures.

CAR 705.07(2) requires a carrier to maintain an emergency response plan which addresses specific issues including:

- passenger and crew welfare;
- preservation of evidence aircraft; and
- wreckage removal.

1.10 Have there been any recent cases of note or other notable developments in your country involving air operators and/or airports?

There have been several recent cases in Canada involving the aviation industry, including:

- *R. v. Neyazi*, 2014 ONSC 6838 (Ont. S.C.J.): Accused's suitcase passed four separate security clearances at airport. Nevertheless, security officers and police officers decided to search the luggage and found six bags of illicit drugs. Court found that accused had reasonable expectation of privacy in his checked luggage. Consent of passenger required before conducting physical search. Security officers have no authority to search for contraband drugs or other criminal offences. Police officers have no authority to conduct searches for security reasons under the Aeronautics Act. All officers breached Charter rights of accused through discriminatory racial profiling, and right to privacy.
- *Gill v. Canada (Minister of Transport)*, 2015 BCCA 344: Transport Canada does not owe a duty of care to airline operators to protect the operator's economic interests. Such a duty is incompatible with the public safety legislation that governs air travel.

Other notable developments in aviation law include:

- During the previous parliamentary session, legislation was proposed that would have required the Federal Government to seek Provincial Government approval regarding regulations respecting the location of aerodromes. Furthermore, the legislation would have granted the Federal Government the power to restrict development adjacent or near to airports if the Federal Government was unable to agree with the relevant Provincial Government. The legislation was only given first reading and did not pass before the close of Parliament. It remains to be seen whether the proposed legislation will be revived in the new session of Parliament, given the recent change of government in Canada.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No. CARs 202.13(2) and 202.35 require that a Certificate of Registration be issued to the individual or entity that has legal custody and control of an aircraft. While the Canadian Civil Aircraft Register may constitute proof of legal custody and control of the aircraft, it does not constitute proof of legal ownership of the aircraft.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Canada has no national registry for recording security interests in aircraft or aircraft components. Each of Canada's provinces has enacted a *Personal Property Security Act* (PPSA) which permits the registration of a security interest in personal property including

aircraft. A security interest registered with respect to an aircraft in one province will not necessarily be recognised or enjoy priority over an interest registered at a later date in another province. In order to protect a security interest in an aircraft which moves inter-provincially, the security interest must be registered in each province in which the aircraft is likely to operate.

Those with a security interest in an "aircraft object" (airframes, aircraft engines, and helicopters) should also register with the International Registry pursuant to the *Cape Town Convention*. The *Cape Town Convention* supersedes the PPSA regime with respect to international interests over aircraft objects.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

In the absence of a national registry, a security interest in an aircraft should be registered throughout Canada by registering it under the legislation of each province in which the aircraft may be present, and an interest in aircraft objects should be registered in the International Registry.

In order to register, and to conduct effective searches, it is necessary to obtain the exact make, model, year and serial number of the aircraft's engines, propellers and other major components. A physical inspection of the aircraft and its records should be undertaken as early as possible in order to verify make, model and serial numbers and other relevant information.

2.4 Is your country a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Convention for the Unification of Certain Rules for International Carriage by Air (*Montreal Convention 1999*) was ratified by Canada on November 19, 2002.

The Convention on International Interests in Mobile Equipment (*Cape Town Convention*) was ratified by Canada on December 21, 2012. It was implemented as of April 1, 2013.

Canada has not ratified the Convention on the International Recognition of Rights in Aircraft (*Geneva Convention*).

2.5 How are the Conventions applied in your country?

The *Montreal Convention 1999* has been implemented in Canada through the *Carriage by Air Act* (as amended). The Convention is applied in Canada as Canadian law subject to interpretation by the Canadian courts.

The Cape Town Convention is implemented in Canada pursuant to the *International Interests in Mobile Equipment (Aircraft Equipment) Act*. This Act introduces policy and regulatory changes necessary to support Canada's participation in the Convention. Corresponding legislation has been adopted in all provinces.

In the absence of a central registry, the Geneva Convention has no application in Canada.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

In Canada, Nav Canada, the provider of air navigation services, and

all airport authorities have a specific statutory remedy to seize and detain aircraft for unpaid landing fees and service charges.

Section 9(1) of the *Airport Transfer Act* and section 56(1) of the *Civil Air Navigation Services Commercialization Act* permit the airport authorities and Nav Canada respectively to apply before judgment to the Superior Court of the province in which any aircraft owned or operated by the person liable to pay the outstanding fees and charges is situated to obtain an order authorising the seizure and detention of the aircraft.

Because these provisions specifically allow the airports and Nav Canada to “obtain an order against an owner or operator liable for the unpaid charges”, the courts have held that where a lessor retakes possession of an aircraft operated under lease by the airline which has incurred the debt, the airports and Nav Canada shall no longer have any statutory right of seizure or detention.

Under section 4.5 of the *Aeronautics Act*, Transport Canada has a corresponding priority for unpaid “aeronautical charges”.

Most provinces have legislation giving priority to an engineer or other person who has worked on or installed components on an aircraft for the costs of labour and materials.

3.2 Is there a regime of self-help available to a lessor or a financier of aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Yes, although each province has separate legislation in this regard. In most provinces a lessor under a “true lease” may, upon default, retain the services of a bailiff and direct seizure of the aircraft in accordance with the terms of the lease.

In the case of a lease given in support of a financing in which the security interest is registered under the provincial *Personal Property Security Act*, the lessor is bound by the requirements of the PPSA to provide the lessee, together with all registered security interests, with notice prior to sale of the aircraft.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your country regarding the courts in which civil and criminal cases are brought?

No particular court has been designated in Canada for aviation matters. In each province, the Superior Court of the province is the court of inherent jurisdiction. Each province also has a provincial small claims court where certain claims under a monetary limit may be brought. These monetary limitations vary from \$8,000 to \$50,000.

Most aviation disputes should be commenced in the Superior Court of the province having a real and substantial connection with the dispute. If the claim relates to aeronautics, or involves a Crown Corporation such as the Ministry of Transportation or the Canadian Air Transport Security Authority, it should be brought in the Federal Court of Canada.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Service requirements differ between the provinces, and also between the different levels of court (provincial small claims, provincial superior, and federal). Parties must refer to the rules and legislation governing the court in which the proceedings are commenced.

Small Claims Courts

In general, proceedings commenced in small claims courts must be served on the opposing party within 6-12 months, though that time is shorter in some provinces. Extra-jurisdictional parties or airlines may be served in circumstances where, for example, the party is normally resident in the province; the airline has assets within the province, but is an extra-provincial corporation; or the event giving rise to the proceedings occurred within the province. Once served, the party must file and serve a response within a prescribed period of time, generally within 10-20 days. Parties served extra-provincially generally receive additional time to respond.

Superior Courts

Similarly, superior court proceedings must generally be served within 6-12 months. However, the rules governing service in superior court actions are more detailed, specifying how different classes of parties are to be served within the province, extra-provincially, and internationally.

In many circumstances, a party may serve initiating documents without a court order, provided the party can show that the facts of the case are substantially connected to the jurisdiction. Alternatively, the party may apply for leave of the court to serve an action extra-jurisdictionally. Initiating documents served extra-jurisdictionally should be accompanied by an endorsement specifying the circumstances under which service is permitted, though this is not required by courts in certain provinces.

Once served, the party must file and serve a response within a prescribed period of time, generally 20 days. If served extra-provincially, parties generally have 30-40 days to respond. Parties served internationally generally have 40-60 days to respond.

Federal Court

Federal court claims must be filed within 60 days of issue. The responding party must serve and file a statement of defence within 30 days if served in Canada; within 40 days if served in the United States; and within 60 days if served outside Canada and the United States. The Federal Court Rules detail the manner in which different classes of parties may be served.

3.5 What type of remedies are available from the courts or arbitral tribunals in your country, both on an i) interim and a ii) final basis?

Most superior courts in Canada have jurisdiction to grant monetary damages expressed in Canadian dollars. The successful party may also recover “costs” from the unsuccessful party. These are intended to cover a portion of the expenses incurred for items such as lawyer’s fees, expert fees, travel costs, etc. The court has broad discretion with respect to the award of costs. Further, an amount of interest payable on judgment debts will be determined by provincial judgment interest legislation or, in contract cases, by agreement between the parties.

The superior courts of all Canadian jurisdictions have inherent jurisdiction to grant injunctions to restrict the legal rights of a party. Injunctive relief may be granted only until a trial of the action (interim), or may form a part of the final judgment binding the parties indefinitely (permanent). Often courts are empowered to make other interim judgments, such as orders seizing the property that is the subject matter of a proceeding. This is done where there is a risk that the property will be disposed of by the opposing party.

In Canada, aviation matters, including both commercial claims and personal injury claims, have been the subject of class action proceedings whereby a representative plaintiff is permitted to advance a case on behalf of a class of persons having claims with

common issues. A judge may make an order for the distribution of monetary relief, including an undistributed portion of an award that is due to a class or subclass, or its members. Individual hearings or claims procedures may be established to determine each member's entitlement to the aggregate award.

Commercial disputes are frequently resolved by arbitration based upon a written agreement between the parties. All jurisdictions within Canada now have legislation governing arbitrations which may be adopted and incorporated into private arbitration agreements between the parties. Typically, those provisions will establish a forum for the arbitration and grant to the arbitrator quasi-judicial powers so that he has authority to compel and swear witnesses, and make final and binding decisions. Arbitrators may also grant interim relief on any matter for which the arbitrator may make a final award. As with a court decision, arbitrators are commonly empowered to order monetary damages, costs and specific performance, requiring a party to fulfil an obligation laid out in an agreement.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal, and, if so, in what circumstances do these rights arise?

In most cases, an appeal lies from a final decision of a Provincial Superior Court to the relevant provincial Court of Appeal. A further appeal to the Supreme Court of Canada may only proceed where leave to appeal is granted. Generally, matters heard by the Supreme Court of Canada are only those which raise an issue of public importance.

Depending on the arbitration agreement in place, an arbitral award may be appealed or set aside by consent or if the court grants leave. These provisions vary between common law provinces. Generally, the court will permit an appeal where the importance of the result to the parties justifies the court's intervention, and there is a determination of a question of law that will affect the rights of the parties or other classes of persons.

4 Commercial and Regulatory

4.1 How does your country approach and regulate joint ventures between airline competitors?

The terms of a joint venture or indeed any agreement or arrangement among air carriers may be reviewed by the Commissioner of Competition established under the Competition Act (the "Commissioner"). Where the Commissioner believes that an agreement between competing airlines may prevent or lessen competition substantially in a market, he may apply to the Competition Tribunal (the "Tribunal"). If the Tribunal accepts the Commissioner's position, it may make an order prohibiting the agreement or directing the parties to the agreement to take steps to minimise its impact on the market.

In the case of airlines, a joint venture will typically relate to the cooperation or coordination of the airlines in the operation of designated routes. A joint venture will be struck down where it results in:

- a monopoly;
- substantially reduced competition; or
- significantly higher prices,

in relation to designated routes.

To the extent that the terms of the joint venture effectively constitute a merger between competing airlines, it may be a "notifiable

transaction" (discussed below) requiring notice to the Commissioner. Joint ventures involving non-Canadian entities may also be subject to compliance with the *Investment Canada Act*.

4.2 How do the competition authorities in your country determine the "relevant market" for the purposes of mergers and acquisitions?

In Canada, mergers and acquisitions within the airline industry are reviewed generally with respect to their impact on competition under the Competition Act and specifically by the CTA with respect to their effect upon the public interest as it relates specifically to national transportation.

The Competition Bureau (the "Bureau") will consider a transaction on a route-by-route basis and may disallow all or a portion of the transaction based upon the degree to which it creates a monopoly, reduces competition or results in substantially higher prices on any given route.

In Canada, the small number of major air carriers ensures that any merger will be carefully assessed by the CTA to ensure that the public interest is protected in any consolidation.

4.3 Does your country have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes. Pursuant to Section 102 of the *Competition Act*, the Commissioner may issue an advance ruling certificate ("ARC") with respect to a proposed transaction. Provided that the transaction is substantially completed within one year of the date of the certificate, the Competition Commissioner cannot apply to the Tribunal solely on the basis of information upon which issuance of the certificate was based.

In 2014, the Bureau altered its policy to require additional notification in cases where there has been a significant change to the original ARC request, such as adding a new party or new assets to the transaction.

4.4 How does your country approach mergers, acquisition mergers and full-function joint ventures?

Canada's approach to mergers, acquisitions and joint ventures is governed primarily by the *Competition Act*. Under the Act, mergers, acquisitions and joint ventures of all sizes may be reviewed by the Commissioner of Competition to determine whether they will likely result in a substantial lessening or prevention of competition.

Under Section 114 of the *Competition Act*, the parties to certain substantial transactions ("Notifiable Transactions") are required, prior to completion of the transaction, to notify the Commissioner of the transaction and supply prescribed information in accordance with the legislation. For 2015, the transaction-size threshold for Notifiable Transactions is reached when:

- the assets in Canada or revenues of the target firm generated in or from Canada exceed \$86 million; and
- the combined Canadian assets or revenues of the parties and their respective affiliates in, from or into Canada exceed \$400 million.

Where the Commissioner of Competition believes that a merger or joint venture may reduce competition, he may file an application for review to the Competition Tribunal, which may block any transaction found to be likely to reduce competition or through:

- a monopoly on routes;
- substantially reduced competition; or
- significantly higher prices.

Air carriers who are parties to a Notifiable Transaction under the *Competition Act* must also give notice of their transaction to the CTA. Pursuant to Section 53.1 of the *Canada Transportation Act*, the CTA has authority to review mergers and acquisitions in the airline industry to determine that the transaction does not raise issues with respect to the public interest as it relates to national transportation.

Where a merger involves the investment of an international air carrier into a Canadian domestic carrier, it may be blocked by the CTA if it results in a loss of control by Canadians as defined in the Act or a reduction in Canadian equity participation below 75%.

4.5 Details of the procedure, including time frames for clearance and any costs of notifications.

As discussed in question 4.4 above, a transaction which exceeds the Notifiable Transaction threshold under the *Competition Act* must notify both the Commissioner and the CTA. A period of review is granted to both the Commissioner (30 days) and the CTA (150 days). The notification fee is \$50,000, along with costs for administrative items, such as photocopying. Parties may also obtain a written opinion from the Commissioner for \$5,000. The opinion is binding on the Commissioner provided the facts underlying the opinion remain substantially unchanged and the transaction is carried out substantially as proposed.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

In Canada, state aid is not generally available to an air carrier.

Domestic carriers providing services under a domestic licence have limited access to foreign investment. Presently, Canada limits foreign ownership of Canadian air carriers to 25% of voting equity. Amendments to the *Canada Transportation Act* were made in 2009, which would permit foreign ownership up to 49%. The amendments have not yet been brought into force.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The Federal Government offers no subsidies to air carriers for operating particular routes. However, provinces and municipalities seeking to attract air services may be willing to negotiate with an air carrier for a reduction in local fees and charges.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines?

The collection, use and disclosure of personal information in Canada is governed by the *Personal Information Protection and Electronic Documents Act* (PIPEDA). Under that legislation, passengers may file complaints to the Privacy Commissioner

established under Section 53 of the *Privacy Act*. Following the Privacy Commissioner's investigation of the complaint, a report may be issued with recommendations to the subject airline to bring the airline into compliance with Canadian privacy requirements. In 2015, the *Digital Privacy Act* received Royal Assent and it introduces amendments to PIPEDA. One goal of the *Digital Privacy Act* is to streamline rules for businesses in relation to the collection, use and sharing of information.

Notwithstanding PIPEDA, s. 4.83 of the *Aeronautics Act* permits Canadian carriers landing in a foreign state to disclose to authorities in that state information concerning persons on board or expected to be on board. Pursuant to the regulations concerning information required by foreign states, carriers must disclose certain passenger information to the United States Department of Homeland Security if the aircraft is scheduled to fly over the territory of the United States.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

In addition to the complaint process pursuant to PIPEDA and the *Privacy Act*, a complainant may apply to a provincial superior court for enforcement of the report of the Privacy Commissioner. The court may order compliance with the report and award damages to the complainant, including damages for humiliation.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The *Trade-marks Act*, *Copyright Act*, *Patent Act* and *Industrial Design Act* all cover certain intellectual property which may be associated with operations in the aviation industry. The Federal Court of Canada has concurrent jurisdiction with provincial superior courts to hear most disputes involving these Acts. The nature of damages for specific types of violations varies dependent upon the individual Act and nature of the violation.

During the application process for a registered trade-mark, parties disputing the registration of a trade-mark are eligible to file an opposition which will be considered by the trade-mark office when determining whether the trade-mark is to be registered.

4.11 Is there any legislation governing the denial of boarding rights?

There is no legislation in Canada governing the denial of boarding rights. Section 107(1) of the *Air Transportation Regulations* (ATRs) passed under the *Canada Transportation Act* requires that an airline's tariffs shall contain provisions relating to the compensation allowed for denied boarding as a result of overbooking. Passenger complaints in this regard can be made to the CTA.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

There is no legislation in Canada governing flight delays. Section 107(1) of the ATRs requires that an airline's tariffs shall contain provisions relating to the compensation allowed for flight delays. Passenger complaints in this regard can be made to the CTA.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airports in Canada are governed by the *Aeronautics Act* and the related *Canadian Aviation Regulations* (CARs) which prescribe applicable operational standards. The Federal Government also manages airports by way of the National Airports Policy, a two-tiered policy that governs all airports in Canada.

All major airports in Canada are operated on land leased from the Federal Government. The managing airport authorities are incorporated pursuant to the *Canada Not-for-Profit Corporations Act*. They are governed by extensive provisions contained within their land leases which include enhanced accountability principles set out in the “Public Accountability Principles for Canadian Airport Authorities”. These principles and other provisions in the lease require the authority to:

- be incorporated as a not-for-profit corporation;
- have a Board of Directors comprised of Canadian citizens who are nominated through a process acceptable to local and Federal Governments;
- have a Board of Directors with representatives of the local business community, organised labour and consumer interests; and
- at least once every five years, cause an independent organisation to conduct a review of the management, operation and financial performance of the airport.

The object of the authority as set out in the lease and accounting principles is not only to manage, operate and develop their respective airports but also to undertake and promote the development of related airport lands, to expand transportation facilities and generate economic activity in ways compatible with air transportation activities.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

There is no general federal consumer protection legislation in Canada applicable to the services provided by an airport operator. However, each province has general consumer protection legislation with broad application and no exemption or exception for airport operators. This legislation prohibits unfair practices and sets out the requirements for certain consumer contracts.

4.15 What global distribution suppliers (GDSs) operate in your country?

The *Canadian Computer Reservation Systems (CRS) Regulations* (“CRS Regulations”) regulate the operation of global distribution suppliers. The CRS Regulations do not regulate which suppliers may operate in Canada; however, they do require that those GDSs

which operate in Canada comply with neutrality requirements and the production of information to the consumer when requested. The major GDS systems, Amadeus, Travelport GDS, and Sabre, all operate in Canada. In addition, Canadian airlines’ flights are listed on most major international GDS systems.

4.16 Are there any ownership requirements pertaining to GDSs operating in your country?

There are no longer any ownership requirements pertaining to GDSs operating in Canada. Pursuant to the CRS Regulations, a GDS system vendor must allow any carrier an opportunity to participate in its distribution facilities, subject to any technical constraints that are outside of the control of the system vendor.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Vertical integration is permitted between air operators and airports, subject to the *Competition Act*. This can be seen in the utilisation of terminal space at major Canadian airports, as well as the operation of the Billy Bishop Toronto City Airport.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any) or potential developments affecting the aviation industry more generally in your country are likely to feature or be worthy of attention in the next two years or so?

Regulation of unmanned aerial vehicles (“UAVs”) or “drones” will increase in coming years. Transport Canada has proposed amendments to the *Canadian Aviation Regulations* that will clarify the categorisation of different types of UAVs based on size and use, and impose more rigorous certification requirements for UAV users based on those categories. Transport Canada predicts that the new regulations will come into force in 2016.

TP312 (5th edition), “Aerodrome Standards and Recommended Practices – Land Aerodromes” came into effect on September 15, 2015. These new standards move away from older, design-focused standards towards operation-based standards. Aerodrome certification will be linked to aerodrome operational level and physical aircraft characteristics.

Following Canada’s ratification of the *Cape Town Convention*, and its subsequent incorporation into Canadian law in 2013, the shift towards registering security interests in aircraft in the International Registry of Mobile Assets (“IRMA”) is ongoing. IRMA searches should now be standard for aircraft financing and sales. Actions for creditors’ remedies under the *Convention* may correspondingly increase.

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Darryl Pankratz is Chair of Alexander Holburn's Aviation Practice Group.

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He conducts litigation in British Columbia, Ontario, Alberta, Newfoundland, Yukon and the Northwest Territories.

Representative experience includes:

- Counsel in airport and product liability claims.
- Counsel in aircraft hull, passenger and cargo liability claims.
- Advising on regulatory and licensing issues involving Transport Canada.

Darryl frequently writes and presents. He has been selected by peers for inclusion in *Best Lawyers in Canada* and has been recognised as a leading aviation lawyer in the Canadian *Lexpert*. He is currently an Executive Member of the National Air Law Section of the CBA.

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Michael is admitted to practice in British Columbia and Ontario, and has conducted litigation in Alberta and the Northwest Territories.

Recent experience includes:

- Counsel in actions regarding aircraft hull, passenger, cargo, product and airport liability claims.
- Providing advice to airlines on emergency response preparedness, regulatory compliance, codeshare agreements and tariffs.
- Providing advice to aviation insurers on coverage issues.

Michael is regularly asked to present at aviation, insurance, and legal industry conferences and seminars. He was selected by his peers for inclusion in the 2013 and 2014 *Guide to the World's Leading Aviation Lawyers*.



Alexander Holburn's Aviation Department is led by Darryl Pankratz. The group's national and international client base includes prominent names in the aviation industry, amongst them international and domestic airlines, airports, fixed and rotary wing charter operators, flight schools and their insurers. We advise our clients on a full range of legal aviation matters, including accident litigation, product liability claims, commercial litigation, regulatory matters, corporate services, employment and environment law.

Supported by a firm of over 70 lawyers, our department is one of Canada's pre-eminent aviation practices.

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- Lending & Secured Finance
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- Mining Law
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