



# Civil Resolution Tribunal

Date Issued: August 21, 2024

Files: SC-2023-000129  
SC-2023-000167  
SC-2023-000168  
and SC-2023-000169

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fidler v. Air Canada*, 2024 BCCRT 801

B E T W E E N :

JULIE FIDLER

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENT**

A N D B E T W E E N :

JULIE FIDLER as Litigation Guardian of MICAH FIDLER, minor

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENT**

AND BETWEEN:

JULIE FIDLER as Litigation Guardian of EYTAN FIDLER, minor

**APPLICANT**

AND:

AIR CANADA

**RESPONDENT**

AND BETWEEN:

AARON FIDLER

**APPLICANT**

AND:

AIR CANADA

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about compensation under the *Air Passenger Protection Regulations* (APPR) for flight delays and cancellations.
2. The applicants, Julie Fidler, Aaron Fidler, and their minor children Micah Fidler and Eytan Fidler, were passengers with the respondent airline, Air Canada. The applicants travelled from Sydney, Australia, to Detroit, USA, via Vancouver and Toronto. The return itinerary was supposed to follow the same route in reverse.
3. The applicants each want \$3,000 in compensation under the APPR, based on \$1,000 compensation for each of two outbound flight delays and one inbound flight cancellation. Air Canada disagrees with the claims for various reasons, although it paid approximately \$1,000 to each applicant before the parties concluded their submissions in this dispute.
4. The adult applicants are self-represented. Julie Fidler represents the minor applicants. Air Canada is represented by an employee. Because the parties took the same positions and made the same arguments in each dispute, I have issued one decision. As I explain below, I dismiss the applicants' claims.

## JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. The CRT conducts most hearings by written submissions, but it has discretion to decide the format of the hearing, including by telephone or videoconference. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.
9. The APPR applies to “flights to, from and within Canada, including connecting flights.” The Federal Court has held that a connecting flight through Canada is sufficient to ground jurisdiction (see *International Air Transport Association v. Canadian Transportation Agency*, 2022 FCA 211, at paragraphs 179-184). Here, the outbound travel connected in Vancouver and Toronto. Although the return travel ultimately did not involve any Canadian cities, it was originally supposed to, so I find the APPR applies to the entire itinerary. Air Canada did not argue otherwise. Nor did Air Canada argue that there was no real and substantial connection between the claims and BC. I find this is sufficient to ground the CRT’s jurisdiction over this dispute.
10. The applicants say that Air Canada failed to provide dining vouchers, electronic communication means and hotel accommodation in contravention of the APPR. However, as they did not seek any remedies for these alleged contraventions, I have not considered these issues further.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did Air Canada’s payments satisfy its obligations under the APPR to compensate the applicants for outbound travel delay and cancellation?
  - b. Are the applicants entitled to compensation for the inbound travel delay or was the delay required for safety purposes?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

### ***Outbound travel***

13. The applicants were originally booked for travel on June 19, 2022 with Air Canada from Sydney, Australia to Detroit, Michigan, with connections in Vancouver and Toronto. The first flight was delayed, which would have caused missed connections. So, Air Canada rebooked the applicants on the same route on June 21, 2022. However, Air Canada cancelled the flight from Toronto to Detroit. Air Canada rebooked the applicants on a flight the next day that went through Washington, DC.
14. The applicants filed a flight disruption claim with Air Canada. On November 26, 2022, Air Canada advised that the Sydney to Vancouver flight was delayed for reasons within Air Canada's control, so the applicants were entitled to \$1,000 each under APPR section 19(1). Air Canada did not comment on the cancelled final flight from Toronto to Detroit.
15. Air Canada says it has paid the applicants \$1,000 each, so this part of their claims are moot. The applicants argue that in addition to the \$1,000 each for the initial Sydney to Vancouver flight delay, they are entitled to a further \$1,000 each for the Toronto to Detroit flight cancellation. Air Canada says APPR compensation is determined based on arrival time at the final destination rather than the number of flight delays in the itinerary.
16. I agree with Air Canada. APPR section 19(1) bases compensation on the extent of the delayed arrival "at the destination that is indicated on the original ticket." I acknowledge the applicants' argument that this means once a passenger is delayed by 9 hours or more, airlines have no incentive to avoid further delay. However, the language in the APPR is clear that compensation is based on the original ticket destination arrival delay. Revised itineraries as a result of delays or cancellations do

not appear to entitle passengers to further compensation in the event of further delays or cancellations.

17. The applicants acknowledge that Air Canada paid them \$4,478 AUD on March 26, 2024. This is the same amount in Australian dollars that Air Canada offered in its November 26, 2022 letter when it asked the adult applicants for their banking information. It is not clear why the payment was delayed for over a year. There is no evidence about when the applicants supplied their banking information.
18. The applicants now say the payment was “not in line” with the applicable exchange rate on March 26, 2024 and should be considered partial payment. Air Canada processed the payment after the applicants made their initial arguments. This meant that the applicants could only raise the exchange rate issue in their final reply, and that Air Canada did not have a chance to squarely address to it. Even if I accepted the exchange rate that the applicants say (without supporting evidence) should have applied, the difference is around \$7 per person. I find that reopening this dispute for further submissions over such a small amount of money would be inconsistent with the CRT’s mandate for efficiency and proportionality. On balance, I find Air Canada substantially complied with its compensatory obligations under APPR section 19(1). I dismiss this aspect of the applicants’ claims.

### ***Inbound travel***

19. The applicants were scheduled to return to Sydney on July 19, 2022, following the reverse itinerary of the outbound trip. The first flight from Detroit to Toronto was delayed. Air Canada rebooked the applicants to travel the next day through Los Angeles, California and Brisbane, Australia.
20. Compensation under the APPR is not payable if the delay or cancellation is beyond the carrier’s control, or within the carrier’s control but required for safety purposes. The applicants say the delay was not required for safety purposes.
21. Air Canada told the applicants in its September 12, 2022 response to their request for compensation that their flight was “disrupted due to constraints on ground handling

activities beyond the airline's control." However, Air Canada now says the delay was within its control but required for safety purposes.

22. Specifically, Air Canada says the applicants' Detroit-Toronto flight was delayed because of the "knock-on effect" of a maintenance issue that arose that morning in the aircraft that was scheduled to fly the applicants' route that afternoon. APPR section 11(2) says a delay that is directly attributable to an earlier delay required for safety purposes is also considered to be required for safety purposes if the carrier took all reasonable measures to mitigate the impact of the earlier delay.
23. Air Canada's position is supported by a detailed statement from PM, director of system operations control at Jazz Aviation LP, which operated that flight. It is also supported by Air Canada's system records. In short, I accept Air Canada's explanation that earlier that morning the aircraft experienced a battery failure and could not power up critical instruments to start the aircraft. Both batteries had to be replaced and this caused a delay of nearly two hours. I find this delay was required for safety purposes. The Canadian Transportation Agency (CTA) guide *Types and Categories of Flight Disruption* in evidence recognizes that not all mechanical malfunctions can be foreseen or prevented through regular maintenance. Given that the battery failure was only discovered shortly before departure, I accept that this was an unforeseen malfunction that could not reasonably have been identified in routine maintenance. While CTA guides are not a source of law, the guide is consistent with non-binding CTA decisions that have found delays caused by mechanical malfunctions discovered before takeoff were required for safety purposes (see, e.g., Decision No. 153-C-A-2023).
24. I also accept that Air Canada had no other aircraft available to fly at the scheduled departure time for the reasons PM provided, which included explanations about specific aircraft. The applicants argue that PM's evidence only addressed certain aircraft, while Air Canada's fleet is over 350 aircraft. However, I do not consider it reasonable to expect Air Canada to explain why each aircraft in its fleet was unavailable at the time. CTA decisions like Decision No. 122-C-A-2021 emphasize

that there is a greater expectation that a carrier will have alternate aircraft and crew at larger airports and domestic airports. I have no evidence about the Detroit airport's flight volumes, but it is not a domestic airport for Air Canada. This suggests the expectation for alternate aircraft and crew availability is not as high as it is for a large Canadian city.

25. I agree with the applicants that Air Canada has changed its explanation about what caused the delay without explanation. While that is somewhat troubling, I accept that there can be multiple reasons for a delay. While the APPR does require airlines to provide reasons within 30 days, it does not preclude me from considering information provided after 30 days. I must decide the claims on the evidence before me. That evidence shows, on balance, that the earlier delay was required for safety purposes and that there were no reasonable measures Air Canada could have taken to mitigate the impact of the earlier delay. I therefore dismiss this aspect of the applicants' claims.
26. In conclusion, I find the applicants are not entitled to anything further, and I dismiss their claims.
27. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Air Canada was successful but did not pay CRT fees. I dismiss the applicants' claims for CRT fees. None of the parties claim dispute-related expenses.

## **ORDER**

28. I dismiss each applicant's claims.

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Micah Carmody, Tribunal Member