# BEFORE THE DEPARTMENT OF TRANSPORTATION OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS WASHINGTON, D.C.

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Brent Arentsen	)	
	)	
v.	)	Docket DOT-OST-2020
	)	
Air Canada	)	
	)	
	)	
COMPLA	INT OF BREN	IT ARENTSEN
Comments with respect to this doc	ument should b	e addressed to:
Brent Arentsen		
E-mail: brentarentsen@gmail.com		

Dated: June 26, 2020

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Brent Arentsen	)	
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v.	)	Docket DOT-OST-2020
	)	
Air Canada	)	
	)	
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## **COMPLAINT OF BRENT ARENTSEN**

1. This complaint arises out of Air Canada's non-compliance with the Department's rules regarding consumers' right to be refunded for flights to or from the United States ("U.S. Flights") cancelled by airlines, even for reasons outside the carriers' control, as described in the Department's "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" ("Enforcement Notice").

<sup>&</sup>lt;sup>1</sup> Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (April 3, 2020) at <a href="https://www.transportation.gov/airconsumer/enforcement notice refunds apr 3 2020">https://www.transportation.gov/airconsumer/enforcement notice refunds apr 3 2020</a>. See also 14 CFR § 259.5(b)(5), and Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011).

2. This complaint also arises out of Air Canada's retroactive application of changes to its refund policies, which constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712<sup>2</sup>.

#### I. FACTS

## A. Flight cancelled by Air Canada

- 3. On February 11, 2020, I purchased 2 return tickets for Air Canada flights from Vancouver to Los Angeles departing on July 23, 2020 (AC 556), returning July 27, 2020 (AC 557). (Attachment 1).
- 4. On June 16, 2020, I learned that both flights were cancelled by Air Canada and automated rebooking occurred on flights with a significant variance in departure times of 5hr 25min in the scheduled departing flight and 10hr 35min in the return flight. No acceptable alternative flight options offered were suitable for the purpose of the trip. (Attachment 2).
- 5. On June 16, 2020, I contacted Air Canada to request a refund for their cancellation of the originally booked flights but my request was denied, and I was only offered a flight voucher/credit. (Attachment 3).

## B. Air Canada's refund policy for cancelled flights

6. Air Canada's current policy is that customers who purchased nonrefundable flight tickets are not entitled to receive full refunds for flights cancelled or changed by the carrier due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. Air Canada only offers

<sup>&</sup>lt;sup>2</sup> Under 49 USC § 41712, the Department is authorized to investigate and decide whether a U.S. air carrier, foreign air carrier, or ticket agent engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department is also authorized to issue orders to stop an unfair or deceptive practice after notice and opportunity for a hearing.

flight vouchers or credits in such situations and claims in its Unites States

English website that "in accordance with government regulations", that such
bookings are ineligible for a refund (Attachments 4 and 5).

## C. Air Canada's obligations

- 7. Air Canada is an airline that operates flights from and to the United States and is therefore subject to the Department's jurisdiction for such flights and bound by the rules enunciated in the Enforcement Notice, which apply to U.S. and foreign airlines operating flights from, to and within the United States.
- 8. In its Enforcement Notice, and based on existing federal regulation, the

  Department reminds airlines about their obligation to offer prompt refunds for
  flights significantly delayed or cancelled by the carriers, even if the reason of
  such flight disruptions are outside the carrier's control, and regardless of the
  nonrefundablity or cancellation penalty provisions of the ticket purchased by
  the affected consumers.
- 9. In page 2 of its Enforcement Notice, the Department lists the actions non-complying airlines must take to avoid enforcement action, as follows:
  - a. the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
  - the carrier updates its refund policies and contract of carriage
     provisions to make clear that it provides refunds to passengers if the
     carrier cancels a flight or makes a significant schedule change;

- c. the carrier reviews with its personnel, including reservationists, ticket
   counter agents, refund personnel, and other customer service
   professionals, the circumstances under which refunds should be made.
- 10. On May 12, 2020, the department issued a notice<sup>3</sup> in the form of answers to frequently asked questions regarding airline ticket refunds. In the answer to question 4 of the notice, the Department reiterates that airlines may not retroactively apply changes to their refund policies and must honor the policies in place at the time of ticket purchase.

## D. Air Canada's non-compliance and violations

- 11. Air Canada's policy of not issuing prompt refunds for U.S. Flights that are significantly delayed or cancelled by the carrier for reasons outside its control, and regardless of the nonrefundability and cancellation penalty provisions of the purchased ticket, is in direct violation of its obligation to offer prompt refunds to affected consumers as per the rules detailed in the Department's Enforcement Notice.
- 12. Before March 19, 2020 (Attachments 6), Air Canada's policies indicated that consumers can receive refunds for schedule changes and cancellations attributed to the COVID-19 pandemic. However, and since that date, Air Canada changed its refund policies for cancellations and schedule changes in a way that negatively affects consumers by no longer permitting refunds (Attachments 7A, 7B and 8). The new policy is applied by Air Canada based

<sup>&</sup>lt;sup>3</sup> U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (See answer to question 4: "May airlines and ticket agents retroactively apply new refund policies?") <a href="https://www.transportation.gov/airconsumer/FAQ">https://www.transportation.gov/airconsumer/FAQ</a> refunds may 12 2020.

on the date of the cancellation or schedule change, and regardless of the policy in place at the time the passenger purchased the ticket. This represents a retroactive change in policy and represents and unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.

13. Many airlines are complying with their obligations to refund passengers, especially after the issuance of the Enforcement Notice on April 3<sup>rd</sup>. These airlines will be in an unfairly disadvantageous situation if other airlines, such as Air Canada are allowed to continue practices that violate the same obligations without incurring any penalty.

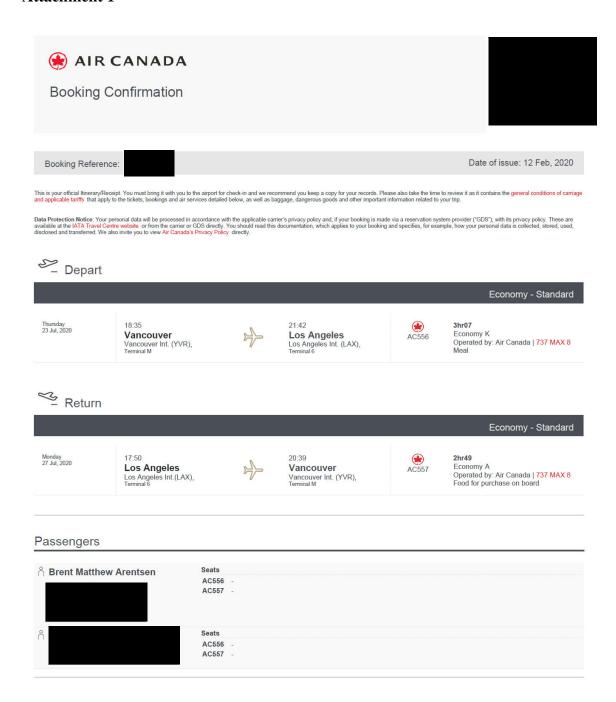
## II. REQUESTED RESOLUTION

- 14. I ask that the Department of Transportation:
  - (1) Exercise its authority under 49 USC 41712 to open an investigation of Air Canada for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;
  - (2) Order Air Canada to comply with its obligation to offer prompt full refunds to original form of payment for U.S. flights that are significantly delayed or cancelled by the carrier, regardless of the reason of such flight disturbances and regardless of the nonrefundability or the cancellation penalty of the tickets purchased by affected customers.
  - (3) Order Air Canada to:
    - a. contact, in a timely manner, the passengers provided vouchers for U.S.
       Flights significantly delayed or cancelled by the carrier to notify those passengers that they have the option of a refund;

- b. update its refund policies, contract of carriage and tariff provisions to make clear that it provides prompt refunds to passengers if the carrier cancels a U.S. Flight or makes a significant schedule change, regardless of the reason of such flight disruptions and regardless of the nonrefundability or the cancellation penalty provisions of the tickets purchased by the affected customers;
- c. review with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.
- (4) Impose appropriate civil penalties on Air Canada.

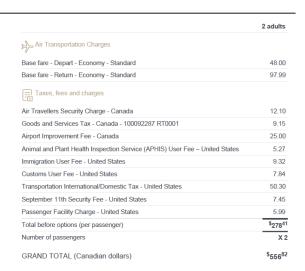
/s/		
Brent Arentsen		

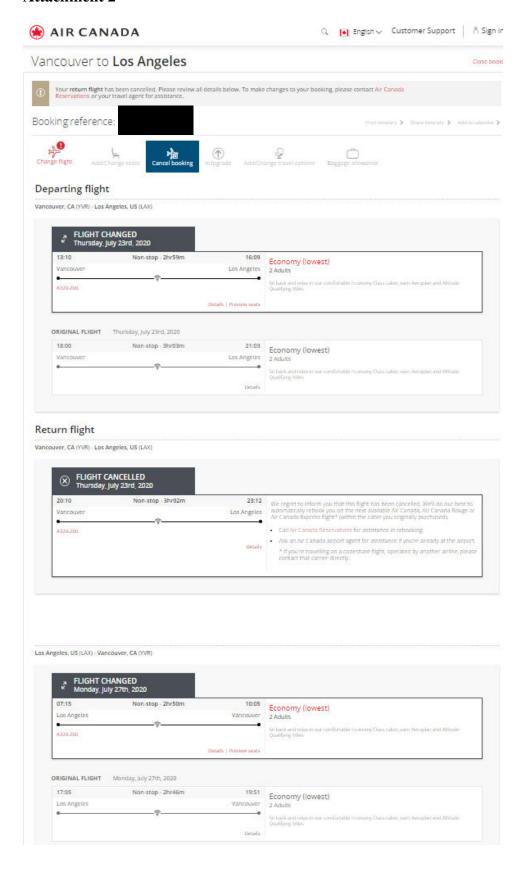
Respectfully submitted,



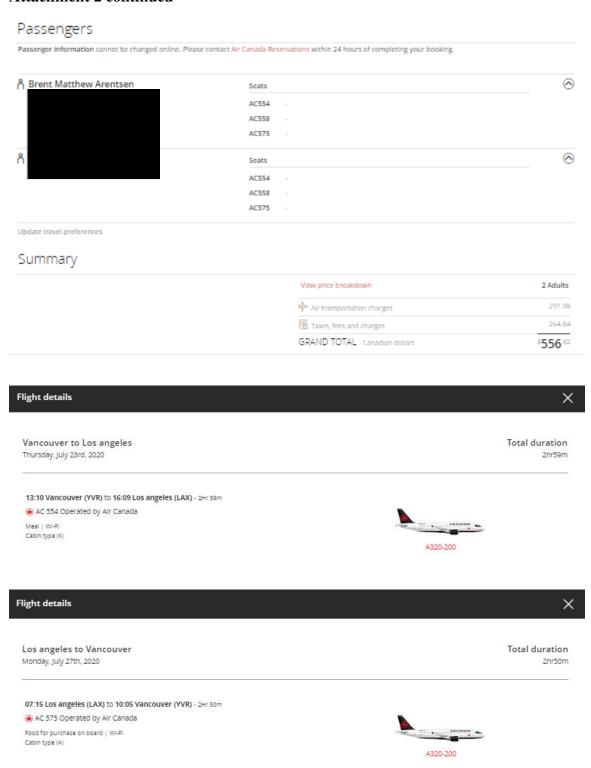
## **Attachment 1 continued**

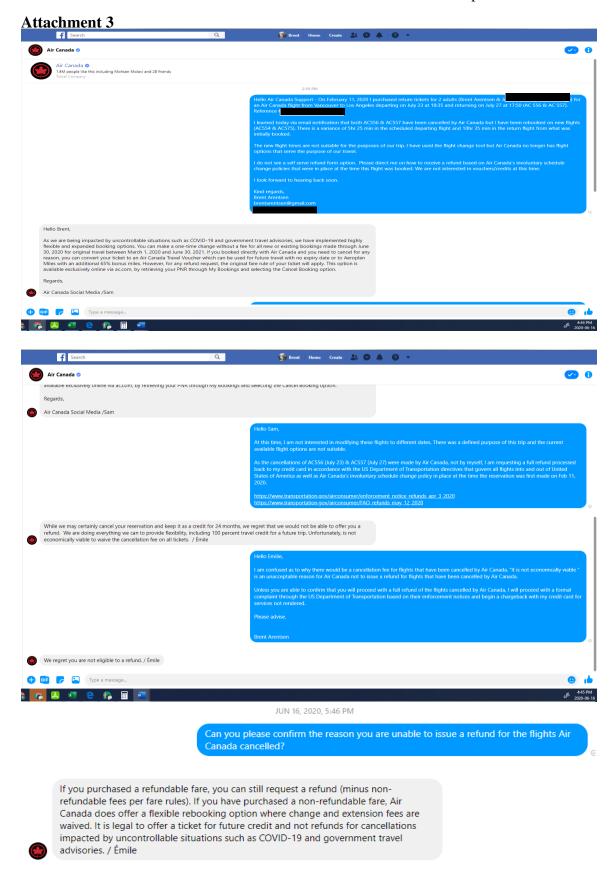






## **Attachment 2 continued**





### Attachment 3 continued

Plain text of conversation with Air Canada support:

JUN 16, 2020, 2:59 PM

#### **Brent Arentsen:**

Hello Air Canada Support - On February 11, 2020 I purchased return tickets for 2 adults (Brent Arentsen & ) for an Air Canada flight from Vancouver to Los Angeles departing on July 23 at 18:35 and returning on July 27 at 17:50 (AC 556 & AC 557). Reference #

I learned today via email notification that both AC556 & AC557 have been cancelled by Air Canada but I have been rebooked on new flights (AC554 & AC575). There is a variance of 5hr 25 min in the scheduled departing flight and 10hr 35 min in the return flight from what was initially booked.

The new flight times are not suitable for the purposes of our trip. I have used the flight change tool but Air Canada no longer has flight options that serve the purpose of our travel.

I do not see a self serve refund form option. Please direct me on how to receive a refund based on Air Canada's involuntary schedule change policies that were in place at the time this flight was booked. We are not interested in vouchers/credits at this time.

I look forward to hearing back soon.

Kind regards,

Brent Arentsen

brentarentsen@gmail.com



#### Air Canada:

Hello Brent,

As we are being impacted by uncontrollable situations such as COVID-19 and government travel advisories, we have implemented highly flexible and expanded booking options. You can make a one-time change without a fee for all new or existing bookings made through June 30, 2020 for original travel between March 1, 2020 and June 30, 2021. If you booked directly with Air Canada and you need to cancel for any reason, you can convert your ticket to an Air Canada Travel Voucher which can be used for future travel with no expiry date or to Aeroplan Miles with an additional 65% bonus miles. However, for any refund request, the original fare rule of your ticket will apply. This option is available exclusively online via ac.com, by retrieving your PNR through My Bookings and selecting the Cancel Booking option.

Regards,

Air Canada Social Media /Sam

#### **Brent Arentsen:**

Hello Sam,

At this time, I am not interested in modifying these flights to different dates. There was a defined purpose of this trip and the current available flight options are not suitable.

#### Attachment 3 continued

As the cancellations of AC556 (July 23) & AC557 (July 27) were made by Air Canada, not by myself, I am requesting a full refund processed back to my credit card in accordance with the US Department of Transportation directives that govern all flights into and out of United States of America as well as Air Canada's involuntary schedule change policy in place at the time the reservation was first made on Feb 11, 2020.

https://www.transportation.gov/airconsumer/enforcement\_notice\_refunds\_apr\_3\_2020

https://www.transportation.gov/airconsumer/FAQ\_refunds\_may\_12\_2020

#### Air Canada:

While we may certainly cancel your reservation and keep it as a credit for 24 months, we regret that we would not be able to offer you a refund. We are doing everything we can to provide flexibility, including 100 percent travel credit for a future trip. Unfortunately, is not economically viable to waive the cancellation fee on all tickets. / Émile

#### **Brent Arentsen:**

Hello Emilie.

I am confused as to why there would be a cancellation fee for flights that have been cancelled by Air Canada. "It is not economically viable" is an unacceptable reason for Air Canada not to issue a refund for flights that have been cancelled by Air Canada.

Unless you are able to confirm that you will proceed with a full refund of the flights cancelled by Air Canada, I will proceed with a formal complaint through the US Department of Transportation based on their enforcement notices and begin a chargeback with my credit card for services not rendered.

Please advise.

Brent Arentsen

### Air Canada:

We regret you are not eligible to a refund. / Émile

JUN 16, 2020, 5:46 PM

#### **Brent Arentsen:**

Can you please confirm the reason you are unable to issue a refund for the flights Air Canada cancelled?

#### Air Canada:

If you purchased a refundable fare, you can still request a refund (minus non-refundable fees per fare rules). If you have purchased a non-refundable fare, Air Canada does offer a flexible rebooking option where change and extension fees are waived. It is legal to offer a ticket for future credit and not refunds for cancellations impacted by uncontrollable situations such as COVID-19 and government travel advisories. / Émile

Captured on May 24, 2020 from <a href="https://www.aircanada.com/us/en/aco/home/fly/customer-support/cancellation-options.html#/current-booking">https://www.aircanada.com/us/en/aco/home/fly/customer-support/cancellation-options.html#/current-booking</a>

If you booked directly with Air Canada, please select one of the following:

#### Air Canada has already cancelled my booking

If you have a booking cancelled by Air Canada for travel prior to March 1, 2020, please click here to learn more about your options.

If you have a booking cancelled by Air Canada for travel after March 1, 2020, you have several options available to you depending on the type of fare you purchased and whether the cancellation was within Air Canada's control.

#### Cancellations outside of Air Canada's control

If Air Canada has already cancelled your booking, and the cancellation is outside of Air Canada's control (for example, due to the impacts of COVID-19, government travel advisories and/or health and safety concerns), you have two expanded options to choose from:

- 1. Air Canada Travel Voucher Transfer the remaining value of all tickets in a booking and associated services to an Air Canada Travel Voucher. The voucher has no expiry date, is fully transferable and can be used multiple times.
- 2. Aeroplan Miles Convert and transfer the remaining value of all tickets and associated services in a booking, minus any taxes, into Aeroplan Miles, and get an additional 65% bonus miles.

If you purchased a non-refundable fare, please note that in accordance with government regulations, non-refundable bookings that are cancelled due to the impacts of COVID-19, government travel advisories and/or health and safety concerns are outside of Air Canada's control and ineligible for a refund.

If you purchased a refundable fare, you have the additional option of returning the remaining refundable value of all tickets and associated services in a booking, minus any applicable fees, back to your original form of payment.

How to process a cancellation

#### Cancellations within Air Canada's control

For both refundable fares and non-refundable fares, if Air Canada has already cancelled your booking, and the cancellation is within Air Canada's control, you have three expanded options to choose from:

- 1. Air Canada Travel Voucher Transfer the remaining value of all tickets in a booking and associated services to an Air Canada Travel Voucher. The voucher has no expiry date, is fully transferable and can be used multiple times.
- 2. Aeroplan Miles Convert and transfer the remaining value of all tickets and associated services in a booking, minus any taxes, into Aeroplan Miles, and get an additional 65% bonus miles.
- 3. Return to original form of payment Return the remaining refundable value of all tickets in a booking and associated services back to your original form of payment.

How to process a cancellation

Captured on May 18, 2020 from <a href="https://www.aircanada.com/us/en/aco/home/fly/flight-information/delayed-flights-and-cancellations/refund-options.html">https://www.aircanada.com/us/en/aco/home/fly/flight-information/delayed-flights-and-cancellations/refund-options.html</a>

Home | Fly | Flight Information | Delayed Flights / Cancellations | Refund Options | ^

# **Refund Options**



For flight cancellations due to the impacts of COVID-19, government travel advisories and/or health and safety concerns, click here.

In the event of a flight cancellation or a delay of more than three hours, for situations other than those outside our control, Air Canada offers you the option of requesting a refund for the unused portion of your ticket, or using the unused portion toward future travel with us. Cancellations resulting from the COVID-19 crisis are considered outside our control.

## To Request a Refund

If your flight is cancelled or delayed by more than 3 hours for reasons other than those outside Air Canada's control, and you'd like to obtain a refund for the unused portion of your ticket (including some fees and/or purchased travel options), please call Air Canada Reservations. You'll be directed to present your refund request via your original point of purchase.

If you choose to request a refund, the method with which you are refunded will accord with the method in which you paid. Your refund will include your fare and all taxes, as well as certain charges paid for added travel options.

## To Retain the Ticket Value for Future Travel

To retain the value of your ticket for future travel:

- Contact Air Canada Reservations. Please provide the booking reference number or ticket number. A customer service agent will
  cancel your current reservation.
- Air Canada will retain the value of all unused portions of your ticket and certain related travel options. (Fares available online
  are not necessarily available through Air Canada Reservation.)
- You may also cancel your entire reservation or all remaining portions of your ticket online. Please keep your booking reference number so we can better assist you when you are ready to use the value of your ticket.

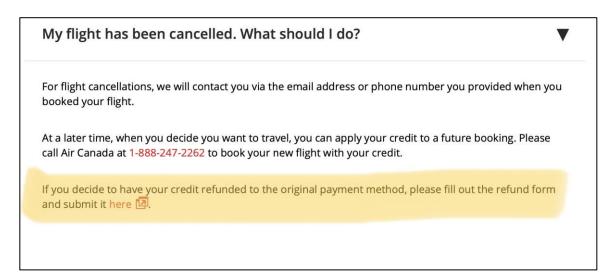
When you're ready to use the unused portion of your ticket for travel with us:

- Please contact Air Canada Reservations, and make sure to have your booking reference handy.
- Please keep in mind that:
  - Any change fee associated to your original ticket will be waived.
  - The value can be used for future travel on Air Canada, Air Canada rouge or Air Canada Express.
  - Unused non-refundable travel options, such as assigned seat selection, Maple Leaf Lounge access, and Air Canada Bistro snack or meal vouchers may be used on future flights, subject to availability.
  - If your ticket is fully unused, you must commence your travel within 12 months of the original issue date.
  - If your ticket was partially used, you must complete your travel within 12 months of the first used portion.
  - Tickets are non-transferable: the original booking passenger(s) must use their respective amount(s).
  - Any amount remaining unused after booking a new flight is forfeited.

Captured on March 17, 2020 from

https://www.aircanada.com/us/en/aco/home/book/travel-news-and-updates/2020/covid-19.html

Note: Air Canada removed the information displayed in this attachment on or around March 19, 2020.



## **Attachment 7A**

Captured on May 21, 2020 from page 2 of <a href="https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH\_EN\_V13.pdf">https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH\_EN\_V13.pdf</a>

## **Overview**

Air Canada has revised the Schedule Change policy, effective immediately, for schedule changes processed as of March 19, 2020.

This policy and these procedures cover Air Canada operated flights affected by schedule changes. A schedule change (SKCH) is a flight cancellation, time change, flight number change, routing/airport change or operating carrier change which occurs **more than 48** hours prior to the original scheduled departure time.

#### Attachment 7B

Captured on May 21, 2020 from page 8 of

https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH EN V13.pdf

## Refunds

Schedule Change occurred on/before March 18, 2020

A refund is permitted and applies only for a 014 ticket if an acceptable protection cannot be found due to a schedule change on Air Canada, Air Canada Rouge, Air Canada Express (Jazz, Sky Regional, Air Georgian, EVAS), AC\*/OAL or OAL that is:

- · A schedule change of 60 minutes or more.
- A change of operating carrier.
- A routing/airport change.
- Not permitting a same-day connection.
- An aircraft change that results in a cabin change.
- Refunds are processed back to the original form of payment.
- Apply waiver code: ACUSKEDCHG along with the flight number.

Schedule Change occurred on/after March 19, 2020

#### Full refunds are not permitted.

Please refer to the Save as Future Credit and Cancel and Refund as per Fare Rules sections below.

Exception: Refunds are permitted for flights originating from the below countries; apply waiver code **ACUSKEDCHG** along with the flight number (e.g. **ACUSKEDCHGXXXX**).

Flight Origin	Refund of Unused Coupons	Deadline to request refund after SKCH
From Algeria	Yes + return to origin	8 days

Information subject to change without notice. "Altitude Super Elite 100K, Air Canada Express and Air Canada rouge are trademarks of Air Canada. «Aeroplan is a registered trademark of Aimia Canada Inc. "Star Alliance is a trademark of the Star Alliance Members. May 14, 2020. V12.

To/From Israel Yes 21 days
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Captured on May 18, 2020 from <a href="https://www.aircanada.com/content/dam/aircanada/portal/html/flash-files/20/200323\_en.html">https://www.aircanada.com/content/dam/aircanada/portal/html/flash-files/20/200323\_en.html</a>

## As of May 7, 2020 - V8

We've waived changes for new and existing bookings made by customers worldwide. See below for additional details.

For quick reference on which policy to apply (Goodwill or Schedule Change), please refer to our helpful one-page document.

# AIR CANADA CANCELLED YOUR FLIGHTS?

NO YES

Apply Goodwill Policy

t cancelled.

ζ.

cancelled up to 2 hours prior to the departure flight.

	MAY 31, 2020		SCHEDULE CHANGE PRIOR TO MARCH 19, 2020	SCHEDULE CHANGE ON/AFTER MARCH 19, 2020
	Between March 1, 2020 and up to May 31, 2021		Permissible as per policy guidelines	Permissible as per policy guidelines
	24 months from the date you cancel your booking	Rebooking:	(allowed OAL). Add <b>DUE SKCH</b> in ticket endorsement.	(does not allow OAL*). Add <b>DUE SKCH</b> in ticket endorsement.
	As per fare rule			As per fare rules.
	Waived - one time		Permissible, and applies only for a 014 ticket if an acceptable protection cannot be found.	Non-refundable amounts will be lost (including non-refundable taxes). Any cancellation fees will apply.
OL)	Applies	Refund:	carriot be found.	or
	CHNGFEE20		Add <b>ACUSKEDCHG + flight number</b> in waiver code field.	Credit** ONLY for 24 months. Add CV20VL22 in ticket endorsement. Change fee waived – ADCOL collected if applicable.
		*	Over-the-water reprotection flight must be and Air Canada-marketed.	e Air Canada-operated
A		**	Ticket will need to be exchanged prior to the in the Schedule Change policy located at a or by contacting the GDS Help Desk.	
∛ Ver	Version 4: May 7, 2020 For complete details, please refer to the Schedule Change policy.			nange policy.

original scheduled departure time.

Involuntary Changes - Apply Schedule Change Policy

Applies when there is a flight cancellation, time change, flight number change, cabin change, routing/airport change or operating carrier change, which occurs more than 48 hours prior to the

## **Certificate of Service**

I hereby certify that I have, this 26 day of June 2020 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Anita Mosner	Anita.Mosner@hklaw.com
Kimberly Graber, Esq.	kimberly.graber@dot.gov
Blane Workie, Esq.	blane.workie@dot.gov
Robert Gorman, Esq.	robert.gorman@dot.gov
	/s/
	Brent Arentsen