



Aviation Finance Newsletter

September 2019

Blakes
CANADIAN LAWYERS

Blake, Cassels & Graydon LLP

Drones: Boldly Going Where No Regulation Has Gone Before

Jason MacIntyre

Partner – Aviation & Aerospace Group

Auriol Marasco

Partner – Aviation & Aerospace Group

On June 1, 2019, the Canadian landscape for drone operations changed. Their uses are as varied as their names (drones, unmanned aerial vehicles, UAVs, remotely piloted aerial systems, RPAS, among others — collectively, Drone or Drones), but a Drone's use no longer determines the regulatory regime. Instead, the new regulations apply to all Drones operating within a visual line of sight (VLOS) that have a maximum take-off weight of at least 250 grams (0.55 pounds), but not more than 25 kilograms (55 pounds).

The aim of the new regulations was, in part, to streamline the registration process and more closely align Drone regulations with that of manned aircraft regulations. The new rules are designed to be commensurate with the level of risk of a Drone operation, based on the complexity of the operation. As such, within the weight category, the rules are further broken down into two types: basic operation and advanced operation.

For basic operations, an operator must be at least 14 years of age and have successfully completed an online exam and recurrency training. For advanced operations, an operator must be at least 16 years of age, have successfully completed an online exam (which is more stringent than the basic exam) and have completed a flight review and recurrency training.

In addition to the requirements for the operator, the new regulations also feature a requirement to register Drones with Transport Canada Aviation (TCA). Following an application to TCA, a certificate of registration, including a registration number, is generated via an online automated system. The certificate is issued to the registered owner (i.e., the operator) of the Drone, and the registration number must be affixed to the Drone before it can be operated.

While the new regulations do not require manufacturers to provide information about the laws surrounding operations of Drones, they do require manufacturers to declare that the Drone has met Standard 922 – RPAS Safety Assurance (Standard) if the Drone is to be used for advanced operations. The Standard outlines the necessary safety limits of the Drone in order to fly in and around people.

TCA is primarily responsible for enforcing the *Aeronautics Act* and its regulations, including the new regulations. A breach of the new regulations could result in a fine of up to C\$5,000 for individuals and C\$25,000 for corporations. This means that before you test out the Drone your grandma bought you for your birthday, be sure you are compliant with the new regulations! A Toronto Raptor fan learned this the hard way and incurred a \$2,750 fine for flying a drone in contravention of the regulations during the epic victory parade for the Raptors earlier this spring.

Passenger Rights Get the Spotlight

Chris Wong

Associate – Aviation & Aerospace Group

On July 15, 2019, phase one of the Air Passenger Protection Regulations (APPRs) came into force, providing air passengers in Canada with rights and benefits under Canada's first "air passenger bill of rights." The goal of the APPRs is to provide for clearer and more consistent air passenger rights by imposing certain minimum requirements on airlines operating in Canada.

The APPRs apply to all airlines operating flights to, from and within Canada, including connecting flights. Different requirements for compensation and rebooking apply to large airlines (airlines having transported over two-million passengers in each of the two preceding years) versus small airlines (all other airlines).

Phase One

As of July 15, 2019, applicable airlines are required to meet new obligations regarding communication, denied boarding, tarmac delays, baggage liability and the transportation of musical instruments:

- **Communication:** Airlines are required to clearly communicate with passengers information on their rights and remedies for flight disruptions and lost or damaged baggage. In the event of a flight disruption, airlines must communicate to passengers the reason for the disruption and provide regular updates. Airlines must also ensure that communications are accessible to persons with disabilities.
- **Denied Boarding:** The APPRs set out the procedures airlines must follow when a flight is overbooked and passengers must be denied boarding. This includes a guideline on selecting which passenger will be denied boarding and the standard of treatment, compensation and rebooking or refund rights such passenger is entitled to.
- **Tarmac Delays:** The APPRs require that during tarmac delays, whether they occur in Canada or elsewhere, passengers are given, at a minimum, access to lavatories, proper ventilation and heating and cooling, food and drink, and the ability to communicate with people outside of the plane free of charge (e.g., free Wi-Fi), if feasible.
- **Baggage Liability and Musical Instruments:** Before the implementation of the APPRs, airlines operating in Canada were only liable for lost or damaged baggage during international travel, up to approximately C\$2,100. Under the APPRs, airlines will be held liable for up to the same amount for baggage that is lost or damaged during domestic flights. The APPRs also require that airlines provide clear guidelines regarding the transportation of musical instruments.

Aviation Finance Newsletter

Blakes
CANADIAN LAWYERS

Phase Two

Passenger rights with respect to compensation and standard of treatment for flight delays and cancellations will not become effective until December 15, 2019. This provides airlines with a grace period before passengers will be entitled to compensation and rebooking or refund benefits for delays or cancellations within the airlines control.

For example, passengers on a flight delayed or cancelled by a large airline for reasons that were within the airline's control and not related to security and resulted in passengers arriving to their final destination nine or more hours after their initial time of arrival, are entitled to \$1,000. Passenger rights with respect to seating of children will also come effect on December 15, 2019.

Airlines that fail to comply with the APPRs could be subject to administrative monetary penalties of up to \$25,000 per incident. In the event of a dispute with an airline, passengers are entitled to file complaints with the Canadian Transportation Agency.

Notwithstanding that the APPRs have not fully come into force yet, various Canadian airlines, along with IATA, have mounted a legal challenge to them. The Federal Court of Appeal has agreed to hear such dispute.

The AWG Connection

Jasmine Jin

Associate – Aviation & Aerospace Group

As global external counsel for the Aviation Working Group (AWG), we have spent the past year working with AWG on several large projects that are scheduled to go live in early 2020, including the Cape Town Convention Compliance Index (Compliance Index) and Global Aircraft Trading System (GATS).

Compliance Index

The Compliance Index is a large-scale AWG project to assess and monitor going forward the compliance record of contracting states with the Cape Town Convention. It will assign a score and category of likelihood of compliance to each contracting state for which AWG has sufficient data (expected to be most, if not all, contracting states) that will be available publicly.

The scoring will take into account, among other factors, implementation of the Cape Town Convention by way of legislation, rules and regulations and practical application of the Cape Town Convention in a particular contracting state (including court decisions, administrative actions and general experience reported by practitioners).

More detailed scorecards with further explanations and scoring breakdown by the variables that AWG uses in its methodology

will be available to AWG members, certain other select stakeholders (such as rating agencies and the OECD secretariat) and paid subscribers.

The inaugural Compliance Index is scheduled for publication in February 2020 and will be hosted on an electronic platform (E-Platform) within the larger AWG website.

In providing assistance to AWG in coordinating the development, preparation and analysis of the Compliance Index, Blakes has been working over the past 15 months with more than 200 laws firms in 70-plus contracting states around the world to gather information regarding countries' laws, regulations and applied practice as it relates to compliance with the requirements of the Cape Town Convention and associated Aircraft Protocol.

GATS

At its announcement, GATS was greeted with enthusiasm by the aircraft leasing and financing communities as a timely innovation to streamline aircraft trading through a uniform and cost-effective process. Aircraft equipment will be placed into GATS-eligible trusts, with trades occurring at the beneficial-interest-holder level so that most third-party-facing documents (i.e., leases) can be left largely in place without the need for time-consuming and costly, but largely non-substantive, revisions. GATS will help to streamline this process while preserving and protecting third-party rights by way of agreed conditions to transfer that must be confirmed to be satisfied prior to consummating a transaction.

AWG has released for use standard form documents on its website as leasing companies contemplate a transition to the GATS e-ledger system once it goes live (scheduled for end of Q1 2020) by pre-positioning aircraft equipment into GATS-eligible trusts using GATS standard form documents. Once operational, the GATS e-ledger will record and execute transactions with electronic standard form instruments executed by way of digital signatures.

Together with leading aviation leasing and financing law firms around the world, Blakes helped to create many of the form documents that will be used for GATS, and we encourage any leasing companies interested in this innovative approach to aircraft trading to reach out with any questions, either on the transition process or the e-ledger itself.

In addition to the Compliance Index and GATS, AWG is planning to launch a revamp of its website soon, with updated information on all of its various projects and initiatives. It is continuing to work on an updated Annotation to the Fourth Edition of the Official Commentary, published in May 2019, as well as an update to its Practitioners' Guide.

A2-20/20 Vision – The Rise of the A220 in North America

Kirstie Moore

Associate – Aviation & Aerospace Group

By all appearances, Airbus has a vision of the A220 conquering continental skies and is doing all they can to achieve this aim. Following the successful completion of a joint venture in July 2018 between Bombardier Aerospace and Airbus, Airbus SE took a majority stake in the then existing C Series Aircraft Limited Partnership, later rebranded Airbus Canada Limited Partnership, reflecting the majority shareholding. Partners in this company still include Bombardier Inc. and Investissement Québec (acting as mandatory for the government of Quebec).

The A220 family comprises two models: the A220-100 and A220-300 (previously designated the Bombardier CSeries). Both are narrow-body, twin-engine, 100-100-to-150-seat capacity aircraft produced in Mirabel, Quebec. Airbus claims that the A220s are designed in response to a global demand for smaller single-aisle jetliners and are purpose-built for efficiency, bringing together state-of-the-art aerodynamics, advanced materials and Pratt & Whitney's latest-generation PW1500G geared turbofan engines projected to offer at least 20 per cent lower-fuel burn per seat compared to previous generation aircraft.

The range ability of the A220-300 is one of the key marketing points for Airbus as the aircraft can reach destinations around 3,200 nautical miles (5,020 km) away and offers the performance of much larger single-aisle aircraft.

In Canada, both model types of the A220 received 180-minute extended operations (ETOPS) approval from the civil aviation authority, Transport Canada Aviation, which permits the airlines that operate the A220 to adopt direct non-limiting routings over water and remote or underserved regions, opening up new possibilities. As stated by Rob Dewar, Head of Engineering and Customer Support, A220 Programme, "Being the only in-production aircraft in its class capable of performing both steep approach and long-range operations, the A220 is definitely unlocking new route opportunities for airlines."

The fuel efficiency, range ability and fact that A220 family has over 99 per cent parts commonality, as well as the same pilot-type rating facilitating the aircraft's addition to an airline, means that the A220 demonstrates the potential to be a popular choice for operators, and the order book is beginning to reflect this.

In a press release from January 2019, Airbus noted, "With an order book of more than 500 aircraft to date, the A220 has all the credentials to win the lion's share of the 100 to 150 seat aircraft market estimated to represent at least 7,000 aircraft over the next 20 years." Since over half of these orders are destined for the North American market, the potential domination of A220 within the continent seems more likely.

In the United States, Delta became the first airline to acquire the A220-100, and Airbus has confirmed additional orders for Delta and new orders for U.S. carriers. JetBlue Airways and start-up Moxy are in the pipeline. Air Canada was confirmed to be the first North American operator to fly the larger A220-300, and it has announced new routes beginning in the spring of 2020, including a non-stop service between Montréal and Seattle, as well as between Toronto and San Jose, which opens up Air Canada's transcontinental offering as well as serving existing routes from Montréal and Toronto to Ottawa, Winnipeg, Calgary, Edmonton, and New York.

Mark Galardo, vice-president of network planning at Air Canada, was quoted as saying that "the A220 will further strengthen our position on transborder and transcontinental markets and be instrumental in our continued growth" and that "the two routes announced today are the first of many future possibilities as the A220 will allow us to further develop our North American network."

The technology of these aircraft and existence of these orders help signify the potential dominance of the A220 within North America, and there is little indication this rise will slow anytime soon. In anticipation of additional demand for the A220, Airbus recently opened a second production facility in Mobile, Alabama. A pre-assembly line may also be operational in Mirabel sometime around 2021, with a decision on whether to proceed with this investment to be made in the coming weeks, according to Philippe Balducci, CEO of Airbus Canada Limited Partnership, as quoted in the Montréal Gazette.

On the technological advances front, in May 2019, Airbus announced they were increasing the A220 maximum take-off weight (MTOW) that, in turn, increases the maximum range capabilities of the A220-300 to 3,350 nautical miles and, respectively, 3,400 nautical miles for the A220-100, which is some 450 nautical miles more than currently advertised. Christian Scherer, chief commercial officer of Airbus SE, was quoted as saying, "This new MTOW will allow operators to reach markets which today cannot be served by other small single-aisle aircraft types."

It appears that through further innovation and production capabilities, Airbus intends to keep up with the demands of the North American transborder and transcontinental market. Whether Airbus has perfect vision with respect to A220 domination remains to be seen, but indicators are certainly pointing towards that possibility.

Trending Topics in Brazilian Aviation Industry

Isabella Vilhena

Visiting Associate – Aviation & Aerospace Group

Increasing Competition in Brazil

The Brazilian Congress passed Law 13.842 on June 17, 2019, which amended the Brazilian *Aeronautical Code* by abolishing the existing restrictions on foreign ownership and control in national airlines. As the code now allows foreign airlines to establish Brazilian subsidiaries, the Brazilian commercial aviation market is expected to become more competitive than ever. Currently, there are three major airlines in Brazil: Gol, LATAM and Azul. Gol and LATAM together hold more than 86 per cent of the total frequencies in Brazilian airports. Azul has been increasing its market share, especially after Oceanair (also known as Avianca Brazil) ceased its operations in May 2019.

The Brazilian Civil Aviation Authority (ANAC) recently reassigned airport slots that were formerly used by Oceanair at Congonhas Airport, which is the second busiest airport in the country. These slots were assigned to Azul and two Brazilian regional airlines, Passaredo and MAP. The Brazilian Civil Aviation Authority already approved a request from the Spanish group Globalia, which currently owns Air Europa, to set up a Brazilian subsidiary. This is the first case in which a wholly foreign-owned airline is to be authorized to operate cabotage flights within the Brazilian territory.

Recent Developments of Oceanair (Avianca Brazil) Case

The inception of this new Law 13.842 stems from a Provisional Order proposed by the former Brazilian president on December 13, 2018, a few days after one of the major Brazilian air carriers, Oceanair Linhas Aereas SA, filed for corporate restructuring (also known as “judicial recuperation”). The restructuring process is still ongoing, but it is unlikely that Oceanair will be able to come out of the restructuring at this stage. Most of the lessors have already recovered their aircraft after controversial decisions given by the insolvency judge and civil court judges in repossession claims.

Despite all the efforts from legal practitioners and great efforts from ANAC officials, Brazilian courts have seemingly violated local laws and the Cape Town Convention by, among other aspects, depriving foreign aircraft and engine lessors to enforce their repossession rights.

On August 5, 2019, the Brazilian Ministry of Infrastructure issued Executive Order 527 containing the core tenets and best practices to guide Brazilian public officials when negotiating matters related to international air services, including bilateral air services agreements. The Executive Order is an attempt from the Brazilian government to regain credibility with foreign investors

by reinforcing the Brazilian commitment to comply with the obligations Brazil has assumed under aviation-related treaties and conventions to which it adhered, expressly the Cape Town Convention and the Aircraft Protocol.

Boeing: Embraer

On August 19, 2019, Embraer celebrated its 50th anniversary in style. The manufacturer recently announced it received letters of intent and purchase orders for up to 78 commercial aircraft of the E-Jet family. Embraer and Boeing established a partnership through the joint-venture named Boeing Brasil-Commercial in February 2019. Embraer’s shareholders had already approved Boeing’s take-over of Embraer’s commercial aircraft division, but the deal is waiting for regulatory approval.

Recently, Embraer’s vice-president of finance, Nelson Salgado, confirmed to a major Brazilian newspaper that the negotiations are following the due course, but Embraer has not provided any official information on the status of the outstanding regulatory approvals. Back in February, both Embraer and Boeing expected to close the deal by the end of 2019.

Comings and Goings in Blakes Aviation

The Blakes Aviation & Aerospace group welcomes Isabella Vilhena, an associate who is seconding from Basch & Rameh Advogados Associados, a prominent Brazilian aviation law firm. Isabella is currently completing her LL.M. Institute of Air and Space Law from McGill University.

Canadian Aviation in the News

HEADLINES

- In May 2019, WestJet Airlines Ltd. announced that it had entered into an agreement to be acquired by Onex Corporation and its affiliated funds for \$31.00 per share
- In June 2019, the federal government approved a merger between Canadian North and First Air
- In June 2019, Bombardier Commercial Aircraft announced its sale of the CRJ program to Mitsubishi Heavy Industries for \$550 million
- In August 2019, Air Canada offered to buy Transat A.T. Inc. for \$720 million, or \$18 a share
- The 30th Annual Canadian Airline Investment Forum will be held on September 12-13 at the Westin Harbour Castle in Toronto (<https://www.event.insightinfo.com/airline-investment-forum>)

For more information about any of the above, please contact a member of the Blakes Aviation & Aerospace team.

Aviation Finance Newsletter

Blakes
CANADIAN LAWYERS

To learn more about our practice and how we can assist, please contact a member of our group or email us at: aviation@blakes.com

Aircraft Financing, Aviation Commercial and Regulatory



Donald Gray
Chair, Aviation
& Aerospace Group

Toronto Office
416-863-2750
donald.gray@blakes.com



Jason MacIntyre
Partner

Toronto Office
416-863-2507
jason.macintyre@blakes.com



Sébastien Vilder
Partner

Montréal Office
514-982-5080
sebastien.vilder@blakes.com



Auriol Marasco
Partner

Toronto Office
416-863-2788
auriol.marasco@blakes.com



Fabien Lanteri-Massa
Partner

Montréal Office
514-982-4034
fabien.lanterimassa@blakes.com



Warren Nishimura
Partner

Calgary Office
403-260-9664
warren.nishimura@blakes.com



Jasmine Jin
Associate

Toronto Office
416-863-3258
jasmine.jin@blakes.com



Christopher Wong
Associate

Toronto Office
416-863-3864
christopher.wong@blakes.com



Kirstie Moore
Senior Associate

Toronto Office
416-863-2641
kirstie.moore@blakes.com



Julie Marino
Law Clerk

Montréal Office
514-982-5075
julie.marino@blakes.com



Keeley Overkott
Law Clerk

Toronto Office
416-863-3259
keeley.overkott@blakes.com



Jennifer Morgan
Law Clerk

Toronto Office
416-863-2182
jennifer.morgan@blakes.com

Aviation – Restructuring & Insolvency



Pamela Huff
Partner

Toronto Office
416-863-2958
pamela.huff@blakes.com



Chris Burr
Partner

Toronto Office
416-863-3261
chris.burr@blakes.com

Aviation – Tax



Allan Gelkopf
Partner

Toronto Office
416-863-2634
allan.gelkopf@blakes.com



Chris Van Loan
Partner

Toronto Office
416-863-2687
chris.vanloan@blakes.com