

CAFII ALERTS WEEKLY DIGEST: November 18– November 25, 2022

November 25, 2022

The CAFII Alerts Weekly Digest is intended to provide a curated compendium of news on insurance, regulatory, and industry/business/societal topics of relevance to CAFII Members – drawn from domestic and international industry trade press and mainstream media – to aid in Members' awareness of recently published media content in those areas.

The Weekly Digest will take a three week winter hiatus, spanning the months of December 2022 & January 2023. Following the December 16/22 edition, the next Weekly Digest will be produced for the week of January 6 to January 13/23.

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GOVERNMENT/REGULATORY DEVELOPMENTS

Head Of Bankers Group Raises Concerns About Federal Surtax

Anthony Ostler Also Called For More Consumer Protection In The Emerging Payments Space

By Investment Executive Staff, November 24, 2022

https://www.investmentexecutive.com/news/industry-news/head-of-bankers-group-raises-concerns-about-surtax/?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-morning&hash=6d73923380f292a40dc042b455f0fde3

The head of the Canadian Bankers Association has raised concerns about proposed federal taxes that specifically target the banking sector.

Speaking at a Canadian Club Toronto event on Thursday, November 24, association president Anthony Ostler said new taxes on banks and insurers would not only raise the cost of capital for the banking sector but for companies across Canada since they add another variable for potential investors in the country.

A technology company might choose to invest elsewhere, as an example, where they wouldn't be "randomly attacked," he said.

"So we actually increase the cost of capital for all Canadian corporations by creating uncertainty over who could be next," he said.

The taxes include a one-time 15% windfall tax on large bank and life insurer profits made during the pandemic, plus a permanent increase of the tax rate from 15% to 16.5%. The taxes were included in Bill C-32, which was tabled in Parliament earlier this month.

In September, the parliamentary budget officer estimated the two taxes could generate \$5.3 billion over the next five years.

Ostler also said more consumer protection is needed as new entrants in the fast-growing payments space get ahead of regulation. There are now more than 2,000 non-bank payment services providers with more expected amid initiatives such as the push for open banking, he said.

The payments space has grown with numerous technology companies such as Shopify, Square, and PayPal offering options, while more recently there's been tremendous growth in services such as buy now, pay later.

Ostler said that while competition is good, the payments marketplace is running in front of the regulatory environment and consumers aren't being adequately protected.

“Let’s be clear, we don’t want the next FTX or Celsius coming from Canada’s payments ecosystem,” he said.

He said the federal government should add consumer protections to the Retail Payments Oversight Framework as it consider next steps.

New Brunswick Regulator Sees Increasing Need For Women To Build Financial Resilience

By Susan Yellin, Insurance Portal, November 21, 2022

The Financial and Consumer Services Commission of New Brunswick wants women to become more financially resilient, a situation that has become more critical since the onset of the COVID-19 pandemic and, more recently, due to higher interest rates and increasing inflation.

According to the FCNB, women have shorter work experiences, make less money, and live longer than men, making it harder for them to prepare for retirement. A recent poll by the Commission indicated that only 41 per cent of New Brunswick women said they felt good about their financial futures compared with 57 per cent of men.

A woman’s average life expectancy is four years longer than her male counterpart, which means women have to save for more years of retirement and probably deal with managing their money on their own. Giving women the financial knowledge to overcome these barriers is a goal for Shannon Tatlock, a certified financial planner (CFP), in Moncton.

Tatlock said she talks to all of her clients about emergency savings – what she said should be the first step for many of her female clients.

Cash flow planning

But rather than calling a sit-down discussion a talk about “budgeting” she uses the term “cash flow planning.” “That seems to be a softer term that resonates better with women.”

She also uses a cash flow worksheet that she says is completely customizable and allows clients to look at where every penny of their money goes every month. “In some cases, it comes out with a negative number and that’s the first time they’ve ever seen that negative number. So it makes them think about whether they are over-spending in certain areas and where they might be able to cut back.” Sometimes, said Tatlock, it’s not even about saving for retirement, but perhaps it’s their credit cards that are the problem.

There are times when clients simply don’t want to give up some spending, such as their daily Starbucks visit, but Tatlock said she wants to empower her clients to be educated, to understand everything from taxes to benefits “because sometimes just those little things can increase or decrease their cash flow by \$50 or \$100 a month and make a difference.”

Understanding needs and behaviours

Elke Rubach, a lawyer, CFP, and president of Rubach Wealth in Toronto, said she takes time to understand the goals and dreams of her clients and helps them understand their needs and behaviours. She said that if these are not included as part of their plan, they may simply not follow it.

Rubach said sometimes advisors tell clients to give up favourite past-times, such as going to Starbucks, “but if that’s your happy place, let’s build it. Because if you don’t build it you are still going to spend money without awareness.”

Insurance and tax efficiencies

Rubach said that once clients are happy with how these issues stand, she likes to protect what they have with insurance and tax efficiencies. She tells clients that they may not be able to solve an issue overnight, so they should slowly build up their portfolios, determine what they can do with their money while they are alive, and ensure their family is ready to receive an inheritance.

“Everybody hates buying insurance but they love what it does to their beneficiary,” said Rubach. “Insurance is meant to protect a plan ... and their kids.”

As a CFP, Tatlock said it’s her job to understand issues such as social benefits. Many single parents or couples who are going through divorces need advice on freeing up cash flow so they can feel more empowered.

More millennial women handling family’s expenses

Tatlock said that with most young couples, the woman is managing the money, making sure the kids get to daycare, and ensuring that bills are paid. “What I am seeing is that more women millennials are handling a family’s expenses – maybe that’s why the Commission in New Brunswick decided to gear this toward women.”

The FCNB suggests that clients:

- Believe in themselves;
- Network or get a mentor;
- Participate in a financial educational class or program;
- Develop good savings habits; and
- Know it’s never too late to start learning about financial literacy

Rubach said while she can make recommendations to clients about what they can and should do, she doesn’t give them hard and fast rules to follow, saying that sometimes, people have to figure some things out by themselves.

Women have to be true to themselves and like everyone else they can’t do everything by themselves.

“There’s this race to chase the return, the interest, the capital gain, the dividend, the whatever, because that’s how we’re trained,” said Rubach. “But you can’t be both the killer and the protector.”

Rubach said there are some people who want to do all the hard work and all the thinking themselves, without anyone helping them, because nothing affects everyone the same way.

She said she sends clients who don’t know what they want to a life coach before coming back to her to plan.

To be resilient, she said that clients need to tell her that they are good with what has been proposed. “Until they tell me what they want to do and who they are and what they’ve tried and hated ... a financial plan is just a chunk of paper reflecting someone else’s preferences.”

Read Story (Subscription Required): https://insurance-portal.ca/society/regulator-sees-increasing-need-for-women-to-build-financial-resilience/?utm_source=sendinblue&utm_campaign=daily_complete_202211-21&utm_medium=email

Alberta Insurance Council Waives Penalty For Cancelling E&O Insurance While Licensed

By Kate McCaffery, Insurance Portal, November 16, 2022

The Alberta Insurance Council has issued a decision against former agent Sekib Sadic for failing to have active errors and omissions (E&O) insurance while actively licensed. In the decision, the Council opted against levying civil penalties.

The agent, licensed periodically from March 2020 to June 2022 when his certificates of authority expired, contacted the Council in June 2022 asking how to renew his license without paying for E&O coverage.

Sadic wrote that he had been working at another job which did not require him to be licensed. Because of that, he canceled his E&O insurance, believing he had no need for it. When asking to renew his licenses “just in case,” he asked how to apply without having a valid insurance policy in place. The agent believed he could purchase the coverage when he resumed his employment in the industry.

Following his June 2022 query, the Council’s investigators emailed a formal request for information in July 2022 ordering Sadic to demonstrate that he had coverage from June 2021 to June 2022 or provide an explanation as to why he did not have the coverage in place. Sadic indicated that he stopped his insurance coverage during that timeframe as he was not acting as an insurance representative.

Despite the fact that every license holder is required to maintain E&O insurance under the province’s Insurance Act, the Council took Sadic’s honesty and transparency into account along with the fact that he self-reported his lack of active coverage, and ordered that a civil penalty not be levied against the agent.

Read Story (Subscription Required): https://insurance-portal.ca/damage/regulator-waives-penalty-for-cancelling-business-insurance-while-licensed/?utm_source=sendinblue&utm_campaign=daily_complete_202211-17&utm_medium=email

The Future Is Here: Government Of Canada Launches Consultations On The Future Of Competition Policy In Canada

By Kevin Ackhurst, Michael Kilby, and Justine Reisler, Stikeman Elliott, November 18, 2022

[*The Future is Here: Government of Canada Launches Consultations on the Future of Competition Policy in Canada | Stikeman Elliott*](#)

On November 17, 2022, the Minister of Industry, Science and Innovation, François-Philippe Champagne released a long-awaited discussion paper on the future of competition policy in Canada. The paper outlines five key areas of potential reform focused on the key provisions in the Competition Act: merger review, unilateral conduct, competitor collaborations, deceptive marketing, and the administration and enforcement of the Act. The paper does not contain firm recommendations on specific legislative amendments, but rather poses open-ended questions for discussion, albeit with certain policy leanings, and invites interested parties to make submissions to the Government by no later than February 27, 2023.

Stikeman Elliott has long been a thought leader in relation to Canadian competition law and policy and intends to play an active role in the submission process. Should you wish to discuss the process, the scope for amendments, or any other topics related to Canadian competition policy and how to shape it, we would be pleased to hear from you. The below is intended as a short, largely descriptive primer on the content of the discussion paper. More detailed analysis from Stikeman Elliott will follow in the weeks and months to come.

While the Government has set out a clear deadline for submissions – February 27, 2023 - what it has not done is preview what will happen after February. Clarity on the process that will follow will be important to obtain in the coming months, particularly given that the last significant amendments to the Competition Act in 2009 and 2022 were squeezed into budget bills in a manner that in some sense circumvented the normal legislative process that one would expect to see observed in respect of framework legislation as fundamental as the Competition Act.

Background

Over the past few years, many jurisdictions (e.g., the United States, the European Union, the United Kingdom, Australia), have studied, and continue to study, whether their competition laws adequately address the challenges presented by the digital economy, and, consequently, have proposed significant and wide-ranging reforms. In some countries, these processes have been largely “technocratic” in scope whereas in other countries they have been explicitly political. In some cases, major changes have already been implemented whereas in other cases, the debate is ongoing.

It has been in this context that Canadian competition policy commentators have increasingly started to question why Canada had not undertaken a similar review, and whether the Act is fit for purpose. Notably, the Commissioner of Competition supported the call for a comprehensive review of the Act in a dramatic speech to the Canadian Bar Association in 2021 where he underscored the Competition Bureau's (the "Bureau") view that "Canada needs more competition" - a noble sentiment with which at some level it is difficult to disagree - and that it was perceived deficiencies in the Competition Act that were getting in the way of this objective, a somewhat more debatable position. Please see our blog post for more details of the Commissioner's call to action.

Partly in response to this global zeitgeist, Senator Howard Wetston, a former head of the Bureau and a prominent member of Canada's senate, initiated a consultation on Canada's competition policy framework. He commissioned the former dean of the University of Toronto - Faculty of Law, Professor Edward Iacobucci, to examine whether digital markets have distinctive features that would necessitate changes to Canada's competition laws. While Professor Iacobucci's report largely supported the status quo, it did recommend a few incremental reforms, such as criminalizing wage-fixing and no-poach agreements, clarifying that anti-competitive acts that may constitute an abuse of dominance include harm to competition and not just competitors, and adding digital market related examples of anti-competitive acts in the legislation.

Subsequently, Senator Wetston invited interested stakeholders to comment on Professor Iacobucci's paper. More than 25 responses were received, including a detailed submission from the Bureau that had 35 wide-ranging recommendations, that if adopted, would dramatically reshape Canadian competition law enforcement. The Bureau's recommendations went far beyond the scope of Senator Wetston's consultation, which was limited to the digital economy.

On 7 February 2022, Minister Champagne announced that the Government would engage in a review of Canada's competition laws with a view to promoting dynamic and fair markets, and signaled that the review may take place in two stages, as has turned out to be the case. The first stage involved quickly addressing what were characterized as gaps in the law through incremental amendments to the Act (e.g., criminalizing wage-fixing agreements, clarifying that "drip pricing" is misleading advertising, moderately expanding the scope of anti-competitive conduct prohibited by the abuse of dominance provisions, increasing penalties, etc). These amendments were contained in the Budget Implementation Act, 2022, No. 1, in relation to which there was no opportunity for meaningful debate. This first stage of amendments was described in our prior blog posts and publications. The current consultation on the Future of Competition Policy in Canada represents the second stage, where the Government is inviting comments from the public on whether the Act remains fit for purpose.

Discussion Topics

The main areas where the Government has sought feedback from Canadians are:

Mergers:

Thresholds and Non-Notifiable Mergers

Transactions that exceed certain monetary thresholds must be notified to the Bureau in advance of completion and a waiting period must expire (during which time the Bureau conducts its review) before the parties can complete their transaction. In addition, the Act currently gives the Bureau the ability to review any merger, even it falls under these thresholds, prior to closing but then only for a period of one year following its completion.

The discussion papers asks whether the thresholds are adequately calibrated to capture mergers of interest and whether non-notifiable mergers should be subject to review and challenge for a longer period of time, as had previously been the case.

Preventing Closing

One of the most relevant recent topics in Canadian competition law relates to the ability of the Bureau to obtain an injunction pending a merger challenge. Remarkably, it was only in 2021 that the first decision directly on this important question was issued by the Competition Tribunal. The Bureau lost, although a later appeal to the Federal Court of Appeal is such that the Bureau could easily win the next such injunction application and in fact in 2022 Rogers and Shaw agreed to an injunction “on consent” pending their merger challenge. This question will be a key topic in the consultation.

The Commissioner has noted that there is often insufficient time to properly prepare a case that meets the standards established by the case law, which now clearly includes a balancing of efficiencies even at the stage of a preliminary injunction. As such, options that may provide the Bureau with more time to review a transaction and the standards for interim relief are topics for discussion.

Efficiencies

The bête noire of Commissioner Boswell is the efficiencies defence. The efficiencies defense prevents the Competition Tribunal from enjoining an otherwise anti-competitive transaction where the gains from efficiency realized by the transaction outweigh and offset those anti-competitive effects. Countless speeches have been given by Bureau officials calling for reform of this provision, noting that its existence makes Canada an outlier in the competition policy world, and in recent years academics and even the national media have developed strong opinions on the merits (or demerits) of the efficiencies defence, too. The Government stressed in the paper its resolve to review this provision.

Other

The Government also wants to review when remedies should be available in respect of an anti-competitive mergers, including whether a fix must resolve all competition concerns or merely eliminate the “substantial” lessening of competition. In addition, the paper calls for comments on whether, and if so how, harm to labour markets should be a factor for consideration in merger reviews.

Unilateral Conduct:

The discussion paper notes that the abuse of dominance provisions are often misunderstood by the public, and are a quite technical area of the law. It is of course important to strike the right balance between allowing companies to plan their own affairs and engage in intense competitive rivalry, but within the overall bounds of a fair marketplace. The government is seeking input from the public on where these lines should be drawn, and what kind of burden the Bureau should face in enforcing the Act.

The paper invites responses on the best way to define dominance, whether by a sole actor or persons acting jointly in an anti-competitive fashion. The 2022 amendments included some changes to clarify the scope of anti-competitive conduct, and the government would like further input on the extent to which anti-competitive intent is a necessary element of anti-competitive conduct (noting that for decades anti-competitive intent was an absolutely core element of dominance law). Should it be required that a party intend to harm a competitor or competition writ large? Is it necessary that the anti-competitive harm be proven or should certain conduct on its own merely be presumed to be anti-competitive and subject to *per se* condemnation, more in line with the European model. Needless to say, eliminating or lessening the need to prove intent or competitive harm would ease the burden on the Bureau (or private parties) when bringing abuse cases.

The discussion paper does not focus solely on the abuse of dominance provisions within the realm of unilateral conduct. There are several other specifically described practices in the Act, such as refusal to deal, price maintenance, exclusive dealing, tied selling and market restriction, as well as delivered pricing, that feature slightly different standards and contemplate slightly different remedies. The paper asks whether these provisions, along with abuse of dominance, should be rolled into one simplified provision dealing with anti-competitive unilateral conduct.

Competitor Collaboration:

Current Status

Currently, agreements between competitors to fix prices, allocate markets or restrict output are subject to *per se* criminal condemnation. The penalty for breaching these provisions is a maximum of 14 years in jail for an individual or a fine of up to \$25 million, or both; as a result of the amendments passed earlier this year, the cap on the potential fine will be removed in June 2023. This *per se* criminal provision was introduced in 2009 and was at the same time seen as a major policy win for the Bureau.

Agreements between competitors falling short of criminal conduct, or related to anything other than the above three topics, are subject to review under a civil standard, and where the conduct is ongoing and found to result in a substantial lessening of competition, or is prospective and the conduct is likely to result in a substantial lessening of competition, the Tribunal can issue a prohibition order requiring a party to the agreement to take certain actions (or not). No monetary penalty can be imposed.

In addition, a key amendment passed earlier this year (taking effect June 2023) will make it a criminal offence for employers to agree to fix, maintain, decrease or control wages or other terms of employment (“wage-fixing agreements”) and to refrain from hiring or trying to hire one another’s employees (“no-poach agreements”).

Discussion Topics

The discussion paper raises the question of broadening and/or strengthening the Act’s civil competitor collaboration provisions with a view to discouraging more intentional forms of anti-competitive conduct. This could include examining past conduct and introducing monetary penalties. Broadening the civil provision could also be done by eliminating the requirement that the parties to the anti-competitive agreement must be direct competitors.

In keeping with the focus on the digital economy, a key, and perhaps slightly eccentric, concern discussed in the paper is how to treat pricing algorithms. For example, how should the law deal with the potential for “algorithmic collusion,” which the government explains as “the idea that automation could make it easier for firms to arrive at or sustain collusive outcomes with no or minimal human interaction.” To succeed in prosecuting this criminally would require proof beyond a reasonable doubt that the parties intended to collude. What if they programmers merely sought to have prices set in a profit maximizing way? While this particular algorithmic pricing topic has garnered academic attention in recent years, the issue has always been that it does not readily lend itself to pragmatic responses.

There are two final issues raised in this section of the paper: (i) potentially anti-competitive joint ventures or competitor collaborations may be hard to detect, which could be solved by establishing either a mandatory notification process or a voluntary clearance process for such agreements, including drug patent settlements; and (ii) the potential reintroduction of buy-side collusion into the criminal conspiracy provision, or dealing with it using a *per se* civil approach. This would mean revisiting the inclusion of buy-side labour agreements such as no-poach and wage fixing agreements that were only added earlier this year.

Deceptive Marketing:

The discussion paper gives relatively little consideration to deceptive marketing. The amendments earlier this year clarified that drip pricing is considered deceptive. The Government is open to suggestions on similar amendments to better define false or misleading conduct.

Administration and Enforcement:

The final section of the paper examines important topics about how the Act is administered and enforced. In some sense, it is in this area that changes could be the most profound as they could go to basic questions of institutional design. Some of the reforms floated in the paper would have a profound impact on the role and powers of the Competition Bureau and it is critical that any such reforms be subject to vigorous debate, such that they do not substitute one set of problems for another. There is general consensus that the enforcement of the Act before the Bureau, the Tribunal and the courts could be, and should be, made more efficient. There is little consensus on how best to do that.

Currently, the Bureau operates as an independent law enforcement agency. It does not make final determinations in most areas of their remit (other than by declining to pursue a case or by issuing an advance ruling certificate in a merger). Should it uncover conduct it believes contravenes the Act, it must commence proceedings before the Tribunal, or refer a criminal matter to the Public Prosecution Service of Canada. When the Bureau believes a person has records relevant to an inquiry, it must satisfy a judge that a production order or warrant is appropriate in the circumstances. Unlike antitrust agencies in certain other jurisdictions, the Bureau cannot unilaterally compel production (except by issuing a supplementary information request to a merging party during a merger review). It is fundamentally an enforcer who brings cases before the courts, and not a regulator or a rule-making body. That has always been the model in Canada. Indeed, it is easily forgotten that an attempt in 2000 to give the Commissioner the direct power to unilaterally issue orders was found by the Quebec Court of Appeal to violate the Bill of Rights in 2003 (i.e., in essence to be unconstitutional).

The discussion paper notes that some have suggested the Bureau be given greater powers in order to act as a decision-maker, for example by authorizing simplified information-collection, or a first-instance ability to authorize or prevent forms of conduct; on a related note the discussion paper flags that empowering the Bureau to collect information in connection with market studies would be in keeping with powers held by similar agencies in peer countries. Notably, in conjunction with the potential expansion of their powers there is reference to changing the accountability model of the Bureau. Currently the Bureau is housed within ISED and the Commissioner must take direction in limited circumstances from the ISED Minister. A topic for discussion is whether the Bureau should become truly independent and, like the Privacy Commissioner, report directly to Parliament. This would be a significant change for the Bureau and deserves serious scrutiny.

Finally, this section discusses allowing private parties to seek compensation for damages suffered from civilly-reviewable conduct (other than mergers). This is seen as providing a greater incentive for private parties to commence their own action.

Key Takeaways

There is no question that competition law is in the spotlight in Canada and worldwide, as legislatures in key trading partners have introduced amendments to their competition laws. Similarly, high profile cases in Canada have captured headlines and moved from the rarified corners of the business press into mainstream conversation. Commissioner Boswell has also been an outspoken advocate regarding the amendments to the Act.

The possible changes to the Act raised by the discussion paper range from relatively minor tweaks to the Act to fundamental changes in the organization and institutional structure of competition policy. As such, it is important that adequate time be allocated to the consultations and subsequent debate of any recommendations for change. Both the 2022 amendments, and the last set of fundamental changes to the Act (in 2009-2010), were passed as part of omnibus budget legislation, resulting in very little true substantive debate on the merits of the changes. This should not be permitted to occur again.

In both the Bureau's response to the Wetston consultation, and in the discussion paper, the case for change is presented as necessary because the Bureau has not had a very good track record of winning the cases that it brings. Where the law imposes a high burden of proof, proponents for change argue that instead of having to marshal evidence of harm, for example, that amending the Act to include presumptions of harm in certain circumstances could make the Bureau's job easier. When examining the administration and enforcement of the Act during the consultation period, it would also be helpful to evaluate the cases that have been brought (or not brought) and the outcome in those cases. In some areas of law, the cases brought have been so few and far between that perhaps the current law, refined with moderate, surgical amendments, is more fit for purpose that is otherwise realized.

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OTHER CAFII MEMBER-RELEVANT NEWS

I'm Travelling South For The Winter – What Kind Of Travel Insurance Policy Should I Get?

A Standard Travel Insurance Policy May Only Cover You For 21 Days, But Snowbird Travel Insurance Coverage Is Often Available For Around Six Months.

By Srivindhya Kolluru, Special to Toronto Star, November 21, 2022

With many Canadians gearing up to head down south for the winter, it's essential to have the right insurance for your getaway.

Matt Hands, director of insurance at Ratehub.ca, says the type of insurance you go with depends on the length of the trip.

"First and foremost, you should be looking at medical insurance, and then, if you're travelling more of an all-inclusive travel style, you may also want to consider flight and accident insurance."

Hands says a standard travel insurance policy may only cover you for 21 days, but snowbird travel insurance coverage is often available for around six months.

"You need to figure out how long you're going to be gone and make sure that your coverage is in place for the duration of your stay," says Hands. This means ensuring you're covered for trip cancellations, baggage loss, and trip interruption, especially if your journey involves several flights. You may also want to check whether your policy covers COVID-19-related trip interruptions as well.

Pay attention to the fine print when selecting a policy, Hands advises. It's important that the travel policy takes your age into account, especially for snowbirds over 65. If you have any pre-existing medical conditions, make sure your policy covers medical visits. "What a lot of insurance companies are looking for is whether your pre-existing condition is stable enough when you're applying for the policy," says Hands.

Traditional institutions such as Sun Life, RBC, and Desjardins offer snowbird travel insurance as do upstarts such as Goose Insurance, an app-based insurance program.

Hands recommends looking at several factors when comparing policies. "Insurance is specific to your needs, and just because somebody you know got a great rate doesn't mean it's going to work for you because it could depend upon your destination, your age, the duration of your stay," he says.

"Do the research, shop around, talk to multiple travel insurance companies to understand who's offering the best amount of coverage at the best price."

Read Story (Subscription Required): https://www.thestar.com/business/2022/11/21/what-travel-insurance-policies-are-best-for-snowbirds.html?li_source=LI&li_medium=thestar_business

Westjet, Air Canada Passengers Baffled After Travel Partners Compensated \$1,000, But They Got Zilch

The Airlines Said Mistakes Were Made In Adjudicating The Claims

By Sophia Harris, CBC News, November 18, 2022

<https://www.cbc.ca/news/business/air-canada-westjet-compensation-1.6654385>

Frederik van der Veen was confident he'd be compensated for his cancelled WestJet flight, which caused a 12-hour delay when flying home to Montreal from Puerto Vallarta, Mexico, in July.

After all, his wife and travel partner, Irma De La Luz Perez, had already applied for and received \$1,000 compensation for the same flight. But, much to his surprise, WestJet rejected van der Veen's claim, stating the flight disruption was "due to an operational issue" outside the airline's control.

"[I'm] disappointed and kind of bewildered," he said. "Why would they pay one and not the other if we're on the same flight?"

CBC News interviewed three WestJet and two Air Canada passengers who, when they applied for compensation, were flatly denied — even though their travel partner received \$1,000 for the same flight disruption.

"The rules aren't working," said Air Canada passenger Dave Marrone.

Following a flight cancellation in August, Marrone's wife and travel partner, Kielyn, got \$1,000 compensation for what resulted in a 19-hour delay in their return trip from London to Sudbury, Ontario.

But Air Canada rejected Marrone's claim for the same flight, telling him the cancellation was either outside the airline's control or safety-related.

"It does seem like it's a real grab bag of sort of how it's applied, how it works, and who gets compensated," said Marrone, who lives just outside Espanola, Ontario.

Under federal rules, airlines only have to pay compensation — up to \$1,000 — if a flight delay or cancellation is within an airline's control and not required for safety reasons.

Following this spring and summer's travel chaos which sparked numerous flight delays and cancellations, many passengers complained to CBC News that they were unjustly denied compensation.

Since April, more than 19,000 air passengers have filed complaints with the Canadian Transportation Agency (CTA) related to flight disruptions, according to the agency.

The flood of complaints prompted Transport Minister Omar Alghabra to repeatedly warn carriers to play by the rules.

"Airlines must respect travellers' rights and compensate travellers who are eligible," he said during a transport committee hearing in August.

Airlines respond

Both Air Canada and WestJet have repeatedly told CBC News that they do abide by the air passenger regulations.

About two hours after CBC News inquired about Marrone's case, Air Canada informed him it had re-evaluated his claim and that he would receive \$1,000 compensation.

In another case, Air Canada compensated passenger Bob Hays last week — four months after he complained about being denied compensation even though his fiancée got \$1,000 for the same 24-hour flight delay in June.

"It was frustrating," said Hays, who lives in Prince Rupert, B.C. "It's almost comical, but it's not comical that two people can be on the same flight and get different decisions."

In an email, Air Canada spokesperson Peter Fitzpatrick blamed both mismatches on "a processing error." WestJet said it had erred in the cases of all three passengers CBC News interviewed, but that in two cases, including van der Veen's, the airline had paid out \$1,000 to the passengers' travel partners by mistake.

"We apologize for the confusion and understand the frustration any discrepancies may have caused," said spokesperson Madison Kruger in an email.

That means van der Veen won't be getting any cash. However, he still believes he's owed compensation, because WestJet never provided details about the "operational issue" beyond its control that caused his flight cancellation.

"What are they talking about?" said van der Veen. "It's a bit of a gong show."

Following CBC News' inquiry this week, one WestJet passenger did get \$1,000 compensation: Paul Stephenson of Salt Spring Island, B.C. Previously, only his travel partner, Lisa Head, was compensated for the 19-hour delay they endured when flying from London to Victoria in January.

In March, WestJet told Stephenson he didn't qualify for compensation because his flight disruption had been impacted by weather. Then in April, after he pointed out that his partner got compensation for the same flight, WestJet rejected Stephenson's claim again and said the case was closed.

"It's pretty poor customer service," he said. "The Canadian Transportation Agency needs to come down a lot harder on airlines and enforce the regulations regarding compensation."

WestJet hit with fines

In September, the CTA — Canada's transport regulator — doled out its first fines to an airline for violating the compensation regulations. The recipient, WestJet, was fined for 55 violations in January for failing to provide compensation or an explanation as to why compensation was denied within 30 days of a passenger's claim.

The 55 fines (\$200 each) totalled \$11,000. Former Air Canada executive John Gradek argues that's not enough of a deterrent for a major airline.

"It's really just a token slap on the wrist to basically say, 'You naughty boys — or girls,'" said Gradek, a lecturer and program co-ordinator for the aviation management program at McGill University.

He said the CTA should look to the U.S. Department of Transportation, which this week announced it is assessing more than \$7.25 million US in penalties against six airlines for "extreme delays" in providing flight refunds.

"You've got to get the airlines' attention," said Gradek. "The U.S. Department of Transportation now is saying, 'OK, we're playing hardball.'"

WestJet did not comment on the fines.

The CTA said that if the airline commits the same violation again within the next four years, it will face steeper penalties. The agency added that, when it comes to consumer protection, its main focus is resolving passenger complaints to help them get what they're entitled to.

Van der Veen has [filed a complaint](#) with the CTA and is hoping he'll finally get the compensation he feels he's owed.

Pilot Project At Canada-U.S. Border Crossing Offers Hope For Stalled Nexus Program

By James McCarten, The Canadian Press, November 22, 2022

<https://www.ctvnews.ca/canada/pilot-project-at-canada-u-s-border-crossing-offers-hope-for-stalled-nexus-program-1.6163840>

Canada and the United States are road-testing a workaround for their irreconcilable differences over Nexus — evidence, officials say, of a shared bilateral commitment to the treasured but imperilled fast-traveller program.

The pilot project underway at the Thousand Islands border crossing between Ontario and New York state marks the first signs of life for a Nexus enrolment centre north of the border since the onset of the COVID-19 pandemic.

But it also suggests that the days of customs agents from both countries conducting joint interviews inside a shared space on Canadian soil are likely over — at least for the foreseeable future.

“Canada and the U.S. continue discussions about the re-opening of Canadian enrolment centres and are pursuing solutions to address the current backlog,” Canada Border Services Agency spokesperson Rebecca Purdy said in a statement.

Senior management officials from both CBSA and U.S. Customs and Border Protection met earlier this month in-person as part of that ongoing effort, Purdy said.

“These discussions include options for shorter-term measures that continue to increase the number of people being issued new or renewed Nexus cards each month.”

The pilot project has been underway since late September at the Thousand Islands bridge crossing between Alexandria Bay, New York, and the Ontario town of Landsdowne, about 50 kilometres east of Kingston, Ontario.

Nexus applicants are interviewed in-person by a Canada Border Services Agency officer before crossing the border to sit down with an agent from U.S. Customs and Border Protection and to be photographed and fingerprinted.

“The CBSA and U.S. CBP are actively exploring the expansion of this pilot to additional locations along the border where demand and capacity are greatest.”

It's a far cry from how Nexus interviews have traditionally been conducted in both countries, with applicants sitting down for an in-person interview that's jointly conducted by officers from the two agencies in the same room.

That process has been going on as normal in the U.S. since April, when the 13 Nexus centres south of the border re-opened for joint interviews after a two-year pandemic-driven hiatus.

Customs and Border Protection, however, won't send agents to staff centres in Canada without being guaranteed the same legal protections they enjoy on U.S. soil — a condition the federal government in Canada considers a non-starter.

The impasse turned into a full-blown diplomatic row in October when Kirsten Hillman, Canada's U.S. envoy, said the program was being "held hostage" to a unilateral attempt to renegotiate the bilateral pre-clearance agreement under which Nexus was established.

Business leaders and elected officials in both countries have been pressing the two sides to find a solution, describing Nexus as a critical component of the cross-border trade and commercial ties between Canada and the U.S.

That includes a coalition of U.S. lawmakers — Representative Brian Higgins (D-N.Y.), Representative Bill Huizenga (R-Mich.), Representative Suzan DelBene (D-Wash.) and Representative Rick Larsen (D-Wash.) — who wrote to their Canadian counterparts earlier this month.

"Trusted-traveller programs, including Nexus, are critical tools in facilitating cross-border travel and commerce. ... However, the delays in processing new Nexus applications have severely diminished the program's effectiveness," they wrote.

The letter cited Customs and Border Protection data that showed the current average wait time is 16.5 months for a Nexus application that requires any level of review.

It goes on to acknowledge "the implications, sensitivities and complex nature" of the issue, which include "the sovereignty of both countries."

Purdy said 49,482 new, renewed or replacement Nexus cards were issued between October 6 and November 5 — progress, but a far cry from the backlog of more than 330,000 applications cited in the Higgins letter.

The pilot project is reminiscent of a proposal floated earlier this month by Scotty Greenwood, chief executive of the Canadian American Business Council, who has been among those pushing hard for a resolution.

She said that idea came about while brainstorming with Matt Morrison, the head of a cross-border economic development coalition of western U.S. states and Canadian provinces known as the Pacific Northwest Economic Region.

Greenwood's Council has launched a public awareness campaign called Save Nexus that encourages visitors to the website savenexus.ca to pressure members of Parliament to re-open the enrolment centres.

The site has generated more than 1,500 emails so far, said Greenwood, who urged both agencies to be more transparent about their efforts to date.

"I don't know why this is so hard on the Canadian side — I really don't, because there's so much benefit," she said. "The pain points aren't on the U.S. side, the pain points are on the Canadian side."

She also acknowledged that separate in-person interviews likely won't be as efficient as the existing system — and that there may not be a solution available that allows U.S. and Canadian agents to work alongside each other in Canada.

"The idea of decoupling is something that's workable — it's not as good, but it's something that could work," Greenwood said.

"It's not as good as solving the underlying issues, but it might be the only thing we can do."

Diabetes, Mental Illness Becoming More Prevalent Among Young Canadians

Manulife And Sun Life Offer Insights To Ensure Benefits Are Structured To Support Employees' Needs

By Jean Dondo, Insurance Business Canada, November 21, 2022

https://www.wealthprofessional.ca/investments/life-and-health-insurance/diabetes-mental-illness-becoming-more-prevalent-among-young-canadians/371652?utm_source=GA&e=YnJlbmRhbi53eWNrc0BjYWZpaS5jb20&utm_medium=20221121&utm_campaign=WPCW-Newsletter-20221121&utm_content=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8&tu=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8

Younger Canadian employees are using sick leave for mental health difficulties more frequently and more people are getting treatment for diabetes, according to new health insights from Manulife.

Manulife Group Benefits claims statistics show that since 2019, 22% more Canadian workers between the ages of 18 and 34 have gone on long-term disability due to mental illness.

In all, there has been a 27% increase in this age group's workers filing claims for mental health-related issues, including counselling, medication, and disability.

The findings from Manulife align with data released by Statistics Canada earlier this year, which found that nearly a quarter of Canadian workers said they had encountered at least one mental health risk factor at work in 2016.

The agency found several risk factors for mental health that might affect workers: extreme time pressure or job overload, violence or the fear of violence, and harassment or bullying.

In the previous 12 months, at least one of the three workplace risk factors for mental health had been experienced by 24.8% of Canadian employees.

Fifteen per cent of workers reported having encountered bullying or harassment -- the most prevalent form. One in ten people (11.4%) reported experiencing severe time pressure or job stress, while 4.1% reported experiencing violence or the threat of violence.

At the level of broad occupational groups, exposure to risk factors for mental health differed as well.

The occupational groups that were most exposed to mental health risk factors at work in 2016 were those in the health sector (38.1%); education, law, social, community, and government services (36.4%); and management (31.1%).

Additionally, more full-time workers than part-time workers (25.3% vs. 21.6%) claimed to have experienced a mental health risk at work.

The difference was mostly explained by being under intense time pressure or having an overload of work.

Manulife's health insights also revealed a greater number of workers under 44 are now receiving diabetic treatment. In 2022, that group represented 19% of employees who filed claims for diabetes, a rise from 2019's 13%.

According to research from Sun Life, Canadians with diabetes tend to get discouraged by the process of obtaining related health insurance, as they are aware of the struggles faced by those living with chronic conditions in getting approved. Among Canadians with diabetes who do apply for insurance, the insurer found that about half get declined.

"As an industry, we have more work to do to ensure we are designing an appropriate solution for these clients," Jibran Imtiaz, VP, Insurance Solutions Market Development at Sun Life, said in an interview earlier this year.

Canadian Cities' Downtown Cores Are Hollowing Out, But Small Towns And Suburbs Tell A Different Story

By Vanmala Subramaniam, The Globe and Mail, November 22, 2022

The downtowns of most major Canadian cities are still facing a substantial dip in foot traffic compared with pre-pandemic norms – but the opposite is true of smaller towns and suburbs within commutable distance of those cities, a new study shows.

The results of the study, released by the Canadian Chamber of Commerce's Business Data Lab, suggest that almost three years into the pandemic, a new economic pattern is emerging in metropolitan areas across the country – a hollowing out of the central hubs of big cities largely because of hybrid work, and growth in foot traffic in the outlying spokes of those cities.

"Canada's biggest cities are significantly behind in terms of workers returning to the office. But we found that there's been a substantial increase in activity in the downtown cores of towns within a commutable distance of these cities," said Stephen Tapp, chief economist at the Chamber.

The report, which also relied on data from Statistics Canada and the research firm Environics Analytics, measured the movement of workers in more than 150 metropolitan areas and 55 downtowns across the country using commuter cellphone data. The data essentially track how many people in a given geographical location left their homes and commuted to their offices.

Worker foot traffic in downtown Toronto was 46 per cent lower in September 2022 – when most large white collar workplaces began mandating return-to-office policies – compared with January 2020. In Ottawa, it was 45 per cent lower over that same time frame. Vancouver experienced a 48 per cent decline compared with pre-pandemic times, while Calgary saw a 42 per cent decrease.

Meanwhile, the Ontario cities of Brampton, Barrie, and Brantford – all within a two-hour commute from Toronto – saw a surge in foot traffic of roughly 30 per cent between January 2020, and September 2022. Smaller cities in proximity to Montreal and Quebec City, such as Trois-Rivières and Sherbrooke, also saw a substantial increase in pedestrian traffic over the course of the pandemic.

Overall, 14 of 55 downtowns experienced more foot traffic over the period and most of those downtowns were in small cities.

The data do not fully explain why the downtown core of a city such as Barrie, for example, would see a surge in movement of people – if a remote worker who used to work at an office in Toronto now lives and works from home in Barrie, it stands to reason that that person would not leave their home to commute to downtown Barrie to work.

But according to Mr. Tapp, the pattern in the data could suggest a rise in the number of remote workers in a city such as Barrie, which in turn has led to an increase in economic activity to service these workers.

“It could be that there are more people going into downtown Barrie now than prior to the pandemic because the city has grown, more services such as restaurants and retail stores have emerged and workers are needed in those businesses,” he explained.

Montreal seemed to be an outlier, with data indicating that the city’s downtown had almost recovered to pre-pandemic norms: compared with January 2020, there was a decline of just 3.5 per cent in pedestrian traffic.

Gatineau, a town whose economy relies largely on federal public servants, saw the biggest decline across 55 downtowns in Canada – a drop of almost 75 per cent.

The report also found that cities with a higher share of women have had slower recoveries in foot traffic, and cities with higher shares of commuters who use public transit have also had more muted recoveries.

Mr. Tapp said that if these work patterns were to stick, it could mean greater opportunities for businesses in smaller towns and increased local economic development.

“Where we have movement of people over time, you’ll have movement of businesses to serve the needs of those people.”

Read Story (Subscription Required): <https://www.theglobeandmail.com/business/article-canadian-suburbs-cities-foot-traffic/>

UPCOMING CAFII MEMBER-RELEVANT WEBINARS AND EVENTS

Second Annual FSRA Exchange Event

Dates: Thursday, January 19, 2023

Time: 8:30 a.m. – 1:45 p.m. EST

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- FSRA’s Board Chair, Joanne De Laurentiis;
- FSRA’s CEO, Mark White.

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Videos By Torys LLP: “The Canadian Fintech Review”

By Torys LLP, November 24, 2022

With constant changes in fintech, industry leaders can be left looking for the most current state of play and legislative responses.

Watch the latest videos in our series “The Canadian Fintech Review” to stay updated on three ever-evolving areas: data privacy, contracting considerations, and technology’s impact on the insurance industry.

1. Insurtech

By Jill E. McCutcheon and Brigitte Goulard

The marriage of insurance and technology presents a way for intermediaries and insurers to reinvent how they do business. With the industry now perched on the cusp of an insurtech revolution, the market is experiencing the next wave of efficient products and transparent processes.

Jill McCutcheon and Brigitte Goulard discuss the current state of play for the insurance industry in Canada, including:

- How insurance is regulated
- The adoption of insurtech in Canada
- How technologies impact FTC plans

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2. Privacy, cybersecurity, data and AI

By Molly Reynolds and Konata T. Lake

Privacy is a leading issue in fintech, with startups, FIs and regulators alike placing it at the forefront of innovation and negotiation discussions.

Molly Reynolds and Konata Lake discuss the Canadian privacy landscape, including:

- What's next for data and AI regulation
- Litigation considerations
- How to craft privacy policies for both Canada and the U.S

[Watch here](#)

3. Fintech contracting considerations

By Joel Ramsey and Brigitte Goulard

Navigating the creation and execution of fintech contracts requires exhaustive attention to detail. To limit friction, startups and financial institutions should understand the expectations from both sides of the deal table, and the regulatory oversight they will fall under across their products' lifecycle.

Joel Ramsey and Brigitte Goulard discuss key contract restrictions and regulatory changes impacting the fintech industry, including:

- Updates to the B10 guideline
- Negotiations between startups and financial institutions
- Why contractual issues aren't just about outsourcing

[Watch here](#)