

# Transportation Notes: Court Rules on Entitlement to Lost Baggage Compensation

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The Ontario Superior Court of Justice recently ruled that in order to claim damages for lost baggage under the Convention for the *Unification of Certain Rules for International Carriage by Air, signed at Montreal on May 28, 1999* (the “*Montreal Convention*”), a passenger need not have checked the baggage personally.

This decision partially affirmed a decision of the province’s Small Claims Court, where the Deputy Judge held that, despite only one passenger in a group having checked in all the bags, each passenger was entitled to claim damages for the loss of the baggage.

## Facts

The plaintiffs (four family members) were booked on an Air Canada flight from Bogota, Columbia to Toronto, with a stop-over in Miami on August 16, 2016.

On August 16th, one of the plaintiffs, Seyed Nader Emamian Naeini (“**Naeini**”), checked each of his family member’s bags at the counter in Miami and obtained baggage tags in his name.

When the plaintiffs arrived in Toronto at Pearson Airport, five pieces of luggage were missing. Only one of the five missing pieces of luggage was delivered to the plaintiffs. The plaintiffs filed a baggage declaration of loss form, setting out their losses in the amount of \$6,800. This total included the loss of four pieces of luggage and their contents, which was one piece of luggage per family member.

The plaintiffs also claimed their costs for attempting to track down the lost baggage and punitive damages.

## Application of the Montreal Convention

At trial, the plaintiffs conceded that the *Montreal Convention* applied to their claim. The *Montreal Convention* governs the rights and obligations of parties to a contract for international carriage by air, including claims related to lost baggage.

In the case of lost baggage, Article 22 of the *Montreal Convention* limits a carrier’s liability to 1,131 Special Drawing Rights unless the passenger has made a special declaration of interest in delivery at destination setting out the value of the baggage.

## The Small Claims Court Decision

The Deputy Judge in the Small Claims Court held that the issue was whether the liability limit in Article 22 “applies only to the passenger holding checked baggage tags irrespective of whether the checked pieces belong to him or others or a combination of both, ... or applies to each passenger with baggage whether checked by him or her in his/her name or not, or unchecked”.

The Deputy Judge held that the liability limit “applies to each owner of baggage, whether checked by him/her or not, or unchecked.”

The Deputy Judge also held that, even if the right to reimbursement under the Montreal Convention applies only to the passenger holding the checked baggage tags, as Air Canada argued, he would hold that the other members of the Naeini family held baggage tags beneficially in their own names “as beneficiaries of the claims held by [Naeini] in trust for them.”

The Deputy Judge then awarded the maximum Special Drawing Right (an “SDR”) allotment—which was equal to approximately \$2,160 (CAD) for each of the four passengers. This amount was awarded even though the plaintiffs had only claims a total of \$6,800 on the lost baggage declaration form.

### **Position of the Parties**

Air Canada appealed the decision of the Deputy Judge, arguing:

1. That, as a matter of law, the passenger in whose name a baggage tag is issued is the passenger who checked that baggage and, therefore, the only passenger who is entitled to compensation for loss of that bag; and
2. That it was an error to award each plaintiff the maximum amount of compensation based on a global list of all of the contents of their checked baggage without considering the damages that were actually incurred by each respondent.

### **The Superior Court Decision**

Justice Wilton-Siegel of the Ontario Superior Court of Justice upheld the decision of the Deputy Judge with respect to the question of whether each passenger was entitled to claim compensation for lost baggage under the Montreal Convention.

Justice Wilton-Siegel held that the Montreal Convention does not define a passenger who has checked luggage for the purposes claiming compensation:

*“[T]he Convention does not stipulate that a passenger must physically hand over his or her bag, being the bag in which his or her personal effects are packed, to assert a claim. Nor does the Convention provide that a passenger must obtain a luggage tag in the passenger’s name to qualify as a passenger who checked baggage. In short, a passenger having a claim for lost baggage for the purposes of these sections is simply a passenger who can establish as a factual matter that he or she checked a bag containing his or her belongings which was lost while under the control of the carrier.”*

The Court noted that, “as an evidentiary matter, it is far more significant that [Air Canada’s] representative did not treat all of the bags as belonging to Naeini, as evidenced by the fact that he was not charged extra baggage fees.”

As such, Justice Wilton-Siegel held, Article 22(2) of the Montreal Convention effectively permits a claim by each passenger who can demonstrate that his or her bag was handed to the carrier and was checked by the carrier, regardless of whose name is set out on the baggage tag.

With respect to the quantum of damages, however, Justice Wilton-Siegel held that the damages should be reduced to the amount initially claimed by the plaintiffs on their baggage declaration form (\$6,800).

Justice Wilton-Siegel held that the Deputy Judge had no basis for awarding more than this amount, given that there was no evidence before the Deputy Judge that the value of the lost items had been understated on the lost baggage declaration form.

Moreover, the other claims advanced by the plaintiffs — including the costs of attempting to track down the lost baggage as well as

punitive damages – were not compensable under Article 29 of the Montreal Convention.

## Comment

This decision will be notable for carriers, who should be aware that liability for the loss of checked bags will not necessarily be limited to the number of passengers who receive baggage tags.

Rather, as the Court noted, allowing each passenger who can establish that a bag containing their belongings was lost while under the control of the carrier fixes the maximum liability of a carrier to the number of passengers on any given flight.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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