

Air Passenger Rights Canada - Chargeback Guide for Cancelled Flights During the COVID-19 Outbreak (2020)

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Disclaimer: Mr. Arnold and Dr. Lukács are **NOT** lawyers or legal professionals of any kind, please do not construe any of the information contained herein as legal advice.

Please follow all instructions and guidance below in exact order. Do not skip ahead to the step-by-step portion, as you may be missing important information.

Disclaimer: This chargeback guide is for informational purposes only, and does not constitute legal advice. The purpose of this guide is to provide an easy-to-follow framework for Canadian air passengers to request chargebacks from their card issuer for airline ticket purchases on a flight that was cancelled by the airline, which generally results in the entitlement to a refund.

Initial Overview

- This guide is for **Canadian air passengers** who have purchased an airline ticket for travel that has been **cancelled** by the airline, for which they have **not been offered a full refund** upon request to the airline. You must **NOT** have accepted any “alternative” compensation offered (e.g., a future travel credit instead of a refund).
- For clarity, this guide **ONLY** applies to passengers whose tickets were cancelled by the airline itself. **These guidelines do not apply to voluntary cancellation of travel by the passenger.** For greater clarity, if you **chose** not to take a flight for any reason (e.g., fears related to COVID-19) and the flight itself was not cancelled by the airline, this guide does not apply to you.
- After making a **good-faith attempt to request a refund directly from the ticket seller**, the intended user of this script is to **telephone** their payment card issuer and **request a chargeback** on the grounds that **the services they paid for were not rendered** (Visa condition 13.1 *Merchandise/Services Not Received*, MasterCard reason code 4855 *Goods or Services Not Delivered*), and the merchant has refused to refund the purchase, which they are legally required to do.
- This script was produced using independent research conducted with transaction dispute department staff in the credit card departments of TD, RBC, and CIBC. All instructions provided herein reflect the **most common** elements of each issuer’s dispute and chargeback process, which include what questions you will be asked, and what is expected of you when you make this request.

Prerequisites for making the chargeback request

- You must have **proof that your flight was cancelled**. Most airlines will send their passengers an email informing them of such, though you can also look up your reservation on the airline’s website and take a screenshot.

- You must have the **exact date** and **exact amount** of the credit card charge ready. For easy reference, write these items down, or take a screenshot. This will expedite your call to your card issuer, so that they can locate the transaction quickly.
- You must have **attempted to contact** the entity who sold you the ticket and collected your money. In most cases, this is the airline. However, if it was a travel agent (whose business name appears on the charge on your statement), you must contact them.

Attempting to contact the ticket seller cannot be skipped. In every chargeback attempt, you will be asked if you have attempted to resolve the matter directly with the merchant. All that matters is that you made a good-faith attempt; whether you spoke to them and they denied you a refund, or you could not get through because of long hold times, your phone records will show that this attempt was made.

- For greater clarity regarding contacting the ticket seller, it is advisable to **exhaust all available channels for contacting the seller** to seek a refund directly from them. If you can demonstrate that you have made an earnest effort by making multiple phone calls and utilizing other channels such as email or live chat (as opposed to simply making one phone call), your card issuer is more likely to initiate your chargeback request. Furthermore, if you make more contact attempts, you also increase your opportunities to receive a refund directly from the ticket seller.
- You should **keep a written record of all contact attempts**, as this may be helpful in the third step of the guide below, when you might be asked about your attempts to request a refund from the merchant directly.

Step-by-Step Guidance

Important: If the ticket seller has offered you alternative compensation in place of a refund (e.g. a credit for future travel) **DO NOT MENTION THIS OFFER TO YOUR CARD ISSUER!** The dispute at hand is simple; you booked an airline ticket, the airline cancelled the flight, the law says they must refund you, and they didn't do it. Airlines are free to offer future travel credits as a gesture of goodwill, but such credits do not satisfy a legal obligation to refund.

It has been reported in the APRC group that at least one bank has insinuated that a future travel credit is equivalent to a refund. Clearly, whichever front-line representatives were handling this call misunderstood, as this is nonsensical. Your best defence is therefore to **avoid mentioning any offered travel credit altogether**, as it is not material to the dispute at hand. After all, if a future travel credit was equivalent to a refund, you would not be calling in the first place.

First Step: Contacting the Card Issuer

Based on the research conducted to produce this guide, you should wait approximately **fifteen calendar days** following your first attempt to request a refund directly from the ticket seller. For example, if you first requested a refund from the ticket seller on March 10, you should contact your card issuer to request a chargeback no earlier than March 26. This provides the ticket

seller a fair opportunity to give you a refund, which is a key consideration in many card issuers' criteria for opening a dispute.

When calling your card issuer, it is advisable to record the call using a call recording app or similar method. Canadian law generally requires only "one party consent" to record phone conversations (i.e. as long as you know you are recording the call, you do not have to disclose it to the other party/parties). However you may wish to consider stating that the call is being recorded, both as a legal precaution (as you never know what jurisdiction the other party/parties may be in) and because you may receive better service if the customer service representatives to whom you are speaking know they are being recorded.

When the time comes to contact your card issuer, you should have in front of you the card that you used to purchase the airline ticket for the flight that was cancelled. Call the customer service number on the back of the card. Some issuers will have automated prompts for disputing a charge - though if you do not hear this option, navigate the options to speak to an agent. When you speak to someone, tell them that you are seeking to file a chargeback.

DO NOT provide any information about the disputed charge or the reason for the dispute until you are **absolutely certain** you are speaking to an agent who handles such things (often called a "dispute advisor", or similar title). The reason for this is simple; staff who do not regularly deal with chargebacks **may not understand your request**. Not only is this a waste of your time, but if they do not understand, they are likely to provide a "generic" response such as to seek a resolution from the merchant directly. To ensure you are speaking to the right type of agent, it is suggested that you ask the following question verbatim, emphasizing all bolded parts:

*"I am calling to **request a chargeback** for a transaction in which the merchant has **declined to provide what I paid for**, and I have already sought to resolve the matter directly with the merchant. **Are you able to assist me with initiating this chargeback?** Or do you need to transfer my call to a different person who can assist me with initiating this chargeback?"*

Second Step: Scripted Initial Request

After you have ensured you are speaking to an agent who handles disputes and chargebacks, and you have confirmed the charge in question with the agent, state the following verbatim, emphasizing all bolded parts:

*"I hereby formally request that a chargeback be initiated for this transaction on the grounds that the merchant has **conveyed to me in writing that they are declining to render the services** which this transaction on my credit card paid for. I have made a **good faith effort** to resolve this dispute directly with the merchant, and these good faith efforts have been unsuccessful in obtaining the refund to which I am entitled under **sections 17(2) and 17(7) of Canada's Air Passenger Protection Regulations of 2019 and related case law**. As this merchant has **failed to issue this refund to which I am legally entitled**, I therefore request that **a formal dispute be***

lodged against this charge on my account in accordance with the rights granted to me under our cardholder agreement, and under provincial-level consumer protection legislation.”

Third Step: Potential Rebuttals

To prevent frivolous chargebacks, card issuers will naturally pose “qualifying” questions prior to accepting a chargeback request. This third step covers examples of such rebuttals that you can expect to encounter, with guidance on how to reply to each.

Rebuttal: Did you attempt to request a refund from the merchant directly?

Response: Your answer should be yes. Describe the extent of your attempts to date, emphasizing the date of the very first contact attempt that you made, to demonstrate at least 15 calendar days have elapsed.

Rebuttal: I don’t think we can dispute this, this is between you and the merchant.

Response: Politely reiterate that you have already tried to take this up with the merchant, and that they (the card issuer) have a “*duty of care*” to you as their client to intervene in transactions in which the merchant will not cooperate. Clarify that there are chargeback codes for exactly these types of situations...

For Visa Credit Cards: Condition 13.1 *Merchandise/Services Not Received*

For MasterCard Credit Cards: Reason code 4855 *Goods or Services Not Delivered*

Rebuttal: Was the ticket non-refundable when you booked it?

Response: This is irrelevant. Sections 17(2) and 17(7) of Canada’s Air Passenger Protection Regulations, in addition to related case law, provide that airlines must provide refunds to ticketed passengers when the airline cancels a flight, irrespective of whether or not the ticket was refundable.

Rebuttal: What do you mean when you say that the airline legally must refund you?

Response: As above, sections 17(2) and 17(7) of Canada’s Air Passenger Protection Regulations, in addition to related case law, provide that airlines must provide refunds to ticketed passengers when the airline cancels a flight. To be assertive, it is suggested that you close off this response with the following sentence, verbatim: *“If the merchant wants to argue about what their legal obligations are, let them argue about it in their response to the transaction dispute that you’re going to file.”*

Rebuttal: It is our understanding that the Canadian Transportation Agency (CTA) has suspended refund rights under the Air Passenger Protection Regulations, so you would be unlikely to qualify for a refund.

Response: This is incorrect. What the CTA suspended was the right to compensation payment on top of refunds, not the right to refunds themselves. If the airline wants to try this argument, they can do so when they respond to the dispute.

Fourth Step: Concluding the Call

In virtually all applicable cases, the steps above will lead to the successful initiation of a chargeback request. In the event that the card issuer ultimately denies your chargeback request, **do not take an outright “no” for an answer.** Be clear to ask them what elements are missing, and what evidence or information you would need to present in order for your chargeback request to be approved.