

Ontario Court of Appeal upholds unlimited liability in 2020 Ukraine International Airlines disaster

By **John Schofield**

Law360 Canada (August 12, 2025, 5:24 PM EDT) -- In what one lawyer describes as a “turning point” for global aviation safety,” the Ontario Court of Appeal has upheld a trial judge’s finding that Ukraine International Airlines (UIA) was negligent in allowing Flight PS752 to depart Tehran on Jan. 8, 2020, confirming the airline faces unlimited liability under the 1999 *Montreal Convention* for the deaths of all 176 people on board when the aircraft was shot down by Iranian missiles.

In a unanimous, Aug. 11 decision in *N.S. v. Ukraine International Airlines PJSC* 2025 ONCA 587, a three-judge panel comprising Justices Peter Lauwers, Lise Favreau and Jonathan Dawe dismissed UIA’s appeal, finding no error in Ontario Superior Court Justice Jasmine Akbarali’s conclusion last year in *S. v. Ukraine International Airlines JSC* 2024 ONSC 3303 that the airline breached its standard of care by not adequately conducting security risk assessments before the fatal flight.

“The Ontario Court of Appeal’s ruling on Flight PS752 is a decisive victory for justice — and a turning point for aviation safety,” said Jordan Assaraf, an associate with Toronto-based Gluckstein Lawyers and one of several lawyers representing plaintiffs in the case.

Calling it a victory for families who lost loved ones in the tragedy, Assaraf — who served as counsel for the respondents Ali Ahmari-Moghaddam et al. — said in an email to Law360 Canada that the decision will shape “how the industry safeguards passengers in the future,” especially near conflict zones.

According to facts detailed in the decision, Flight PS752 took off from Imam Khomeini International Airport in Tehran at 6:12 a.m. on Jan. 8, 2020, bound for Kyiv. Minutes after takeoff, the aircraft was struck by two surface-to-air missiles fired by Iran’s Islamic Revolutionary Guard Corps, killing all 167 passengers and nine crew members. The incident occurred hours after Iran had launched ballistic missile attacks on U.S. military bases in Iraq in retaliation for the U.S. assassination of Iranian General Qasem Soleimani.

Under the Montreal Convention, airlines are strictly liable for passenger deaths, but liability is capped at approximately \$235,000 per passenger unless the airline cannot prove it was not negligent. The trial had been structured specifically to determine whether UIA could establish it was not negligent, thereby limiting its liability.

As Justice Lauwers, writing for the Court of Appeal, explained: “Thus, to succeed in limiting its liability, UIA must prove, on the balance of probabilities, that it was not negligent in permitting flight PS752 to depart Tehran.”

The Court of Appeal found multiple failures in UIA’s security risk assessment conducted by Petro Martynenko, the airline’s deputy president and director of aviation security. The court identified several critical breaches of the standard of care required under International Civil Aviation Organization (ICAO) guidelines.

Justice Lauwers noted that Tehran’s airspace “was a textbook example of a conflict zone” on the morning of the flight: “In the hours before PS752 took off, Iran launched ballistic missiles through its airspace over a period of hours towards American troops in Iraq, after the then-President of the United States had threatened to retaliate ‘FAST AND HARD’ against Iran for any attack responding to the killing of General Soleimani.”

The court found UIA breached its standard of care in several ways:

- **Inadequate Information Gathering:** Martynenko failed to consult crucial available sources, including a U.S. Federal Aviation Administration Notice to Airmen (NOTAM) issued at 3:37 a.m. prohibiting U.S. aircraft from Iranian airspace, and an advisory from Osprey Flight Solutions rating Iranian airspace as "EXTREME" risk.
- **Failure to Apply ICAO Standards:** The court found that ICAO Document 10084, the "Risk Assessment Manual for Civil Aircraft Operations Over or Near Conflict Zones," was directly applicable and required both security and safety risk assessments. UIA conducted only a security assessment.
- **Lack of Communication:** Martynenko failed to consult with the flight commander or UIA's Operational Control Centre, preventing them from making informed decisions about the flight's safety.

The court accepted expert evidence that a proper risk assessment applying ICAO 10084's five key risk factors would have prevented the flight from departing. The decision emphasized that Martynenko "made several questionable assumptions" and failed to consider critical factors such as Iran's "aggressive shoot-down policy" and that the flight route "passed close to Alghadir missile base."

Justice Lauwers wrote: "UIA cannot reasonably argue its failure to collect relevant available sources of information allowed it to come to a different conclusion that could justify the exercise of discretion in letting flight PS752 take off."

On causation, the court found that proper risk assessment procedures would have resulted in flight cancellation. Expert witness John Edwards concluded that "had the security risk assessment been done properly with all of the relevant information, there would be no possible mitigating measure apart from cancelling the flight."

The court also rejected UIA's argument that the missile strike was too remote a consequence to establish liability, noting the 2014 Malaysia Airlines Flight MH17 incident and other historical examples of commercial aircraft being shot down in conflict zones.

UIA had argued that its decision was reasonable because other airlines were also operating from Tehran airport that morning. The court firmly rejected this defence, finding that Martynenko had "no basis to assume that those airlines that continued to operate in Tehran FIR had judged the risk of doing so to be acceptable."

The court noted that "UIA provided no evidence as to whether these airlines conducted security risk assessments and whether their decisions to take off despite what was unfolding were supportable."

The court also denied UIA leave to appeal a \$4.96 million costs award, finding no error in the trial judge's discretionary assessment despite UIA's arguments about duplicative legal representation among the multiple plaintiff groups.

Tom Arndt of Toronto-based TWA Law, who served as counsel for the respondent plaintiff Omid Arsalani et al. with Geoff Adair of Toronto-based Adair Litigation, said he and other counsel will continue to prosecute the class action arising from the downing of Flight PS752 on behalf of the passengers and their families.

"While it is possible for the airline to ask ("seek leave to") the Supreme Court of Canada for a further appeal," he said in an email to Law360 Canada, "we are hopeful that they will accept this decision and focus instead on resolving passenger and family member damages claims."

Stephen Birman of Toronto-based Thomson Rogers LLP, who served as counsel for the Estate of Seyed Mehran Abtahi Froushani et al. with firm colleague Lucy Jackson, said the decision will compel airlines to more carefully analyze security and safety risks to flights — which may include delaying and cancelling flights when necessary to protect passengers.

"The decision will hopefully result in all airlines operating in conflict zones reviewing their risk assessment protocols," he said in an email to Law360 Canada.

The decision is the first in Canada and globally to closely examine airline decision-making when flights are operating in or near conflict zones, said Joe Fiorante of Vancouver-based Camp Fiorante Matthews Mogerman LLP, who served as counsel for the respondent N.S. with firm colleagues Jamie Thornback and Paul Miller of Toronto-based Howie Sacks and Henry LLP.

"The decision means that UIA's liability to compensate the families of passengers killed in the downing of Flight 752 is not capped by Article 21 of the Montreal Convention," he said in an email to Law360 Canada. "UIA is now liable to pay full compensation to each family."

Vincent Genova of Toronto-based Rochon Genova LLP, who served as counsel for the respondents the Estate of Behnaz Ebrahimi-Khoei et al. along with firm colleagues Peter Jarvis, Douglas Worndl and Pritpal Mann, said the firm's expert on security risk assessments, John Edwards, played a critical role in the court concluding that the airline breached the standard of care and duty owed to its passengers and crew.

"As well, the trial decision and that of the Court of Appeal were the first to rule on the applicability of the Montreal Convention for airlines flying near or in a conflict zone," he added in an email to Law360 Canada. "The decisions will hopefully put all commercial airlines on notice that fulsome risk assessments are warranted in like circumstances."

Roderick Winsor of Toronto-based Blaney McMurtry LLP, who served as counsel for the respondents Razia Dhirani et al. with firm colleague Steven Kelly, said the Court of Appeal's clear statement on the standard of care for airlines is the most significant aspect of the decision for the industry.

"UIA essentially said everyone else did the same, and we did what the governments said we should and could," he said in an email to Law360 Canada. "What the courts have said is that is not good enough."

"International airlines cannot go through the motions, tick boxes and wait for others to stop them," he added. "Every airline has to conduct its own assessment based on the information available to it and do so without bias."

Particularly at trial, the case was also notable, said Winsor, for illustrating the critical importance of adverse discovery, which the Ontario Civil Rules Review Working Group is considering abolishing. It also used a hybrid procedure, which allowed the evidence to be completed in three weeks.

"The only fact witness on what security risk assessment was conducted by UIA was the uncorroborated evidence of their head of security," he said. "It was only through the examination for discovery that we were able to get the evidence we needed to prepare for the trial and ensure a fair result."

Counsel for the appellant, Ukraine International Airlines, were Clay Hunter and Jiwan Son, of Toronto-based Paterson MacDougall LLP. Clay Hunter did not respond to an email requesting comment.

In parallel to the court action against UIA, a coalition of countries, including Canada, is continuing to pursue state accountability against Iran through international legal bodies, including the International Court of Justice and the International Civil Aviation Organization — a process that could take several years.

Last year, the Supreme Court of Canada declined to hear an appeal from victims' families of an Ontario judge's dismissal of a motion to enforce a 2021 default court judgment against Iran for \$107 million plus interest and costs. The Ontario court found that the Iranian property was protected by diplomatic immunity under Canadian law.

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