



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **STRENGTHENING AIR PASSENGER RIGHTS IN CANADA**

**Report of the Standing Committee on Transport,  
Infrastructure and Communities**

**Peter Schiefke, Chair**

**APRIL 2023  
44th PARLIAMENT, 1st SESSION**

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### **Reports from committees presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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# **THE STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES**

has the honour to present its

## **TENTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the committee has studied the air passenger protection regulations and has agreed to report the following:



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## SUMMARY

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Canada's *Air Passenger Protection Regulations* (APPR) came into force in 2019, establishing a framework for the rights of air passengers under Canadian law, mere months before the collapse of global air travel due to the COVID-19 pandemic. In order to evaluate this relatively new framework, the House of Commons Standing Committee on Transport, Infrastructure and Communities (the Committee) decided to undertake a study of the APPR.

During this study, passengers across Canada experienced significant disruptions to their travel plans over the 2022-2023 holiday period. The Committee heard details about these disruptions from witnesses representing the air and rail transportation sectors on the exceptional nature of winter storm conditions experienced in December 2022, as well as about procedural reviews already underway.

Witnesses representing industry, passenger rights groups, as well as government entities presented their views on the continued viability of the APPR. The Committee heard many recommendations to improve the current system, particularly with regards to passengers' eligibility to receive compensation from airlines for cancellations, delays, and denials of boarding. Several witnesses proposed changes to harmonize the APPR with similar regulations implemented by the European Union.

Representatives from airlines and airports discussed options to further share accountability throughout the "aviation ecosystem." The Committee also heard arguments for airlines to continue being a single point of contact and compensation with passengers.

The Committee also heard about lengthy delays in the claims process, as well as proposals to improve timelines through a variety of options from increased data sharing and batching complaints based on flight, to more significant changes to the manner in which the Canadian Transportation Agency (CTA) functions as an administrative tribunal.

There was also testimony regarding the suitability of the enforcement powers available to the CTA, particularly with regards to fines against airlines, their amount, and the CTA's willingness to impose them.



## LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

### **Recommendation 1 – Regulate How Airlines Communicate Service Disruptions**

**That the Government of Canada consider updating the APPR to ensure that airlines communicate service problems (ex. flight delays, flight cancellations) in a detailed, timely and more transparent manner.**

### **Recommendation 2 — Categorization of Delays and Cancellations**

**That the Government of Canada review the process by which flight delays or cancellations may be categorized as within an air carrier’s control but required for safety purposes, and that it consider harmonizing the *Canada Transportation Act* and the *Air Passenger Protection Regulations* with European regulatory schemes in this regard.**

### **Recommendation 3 —Burden of Proof**

**That the Government of Canada amend the evidentiary requirements in determining a passenger’s eligibility for compensation, to ensure that the burden of proof falls upon the airline to demonstrate why compensation should not be awarded.**

### **Recommendation 4 – New Definitions**

**That the Government of Canada add definitions of the terms “ticket,” “reservation” and “cancellation” to the *Canada Transportation Act*.**

### **Recommendation 5 – Compensation Payment Method**

**That the Government of Canada amend the APPR to ensure that passengers have the right to receive compensation through the same payment method used to pay for the original ticket rather than a travel credit or alternative flight, especially if the alternative flight does not permit the original purpose of the trip to be fulfilled.**

### **Recommendation 6 — Service Standards for the Aviation Ecosystem**

**That the Government of Canada, in consultation with airlines, airport authorities, federal entities, and labour representatives, develop a clear and transparent service standards framework for all members of the aviation ecosystem, and that performance metrics be made easily available to the public.**

### **Recommendation 7 — Temporary Loss of Baggage**

**That the Government of Canada act swiftly to address the issues raised by the Federal Court of Appeal with regard to Section 23(2) of the *Air Passenger Protection Regulations* and ensure that the protections afforded to passengers in relation to the temporary loss of baggage by that section are maintained in both the short and long term.**

### **Recommendation 8 – Investigating Wrongful Donation of Baggage**

**That the Canadian Transportation Agency investigate the airline practice of donating passenger luggage, deemed to be lost, in order to inform future policy.**

### **Recommendation 9 — Data Sharing**

**That the Government of Canada develop requirements for airlines to collect and make publicly available data on their internal complaint mechanisms, including the number, nature, and outcome of complaints and requests for compensation.**

### **Recommendation 10 — Review of the Canada Transportation Agency**

**That the Government of Canada review the role of the Canada Transportation Agency within the current enforcement model for the *Air Passenger Protection Regulations* and that, in doing so, it consider the examples of administrative complaints agencies such as the Commission for Complaints for Telecommunication Services and the Ombudsman for Banking Services and Investments.**

### **Recommendation 11 – A simpler Complaints Process for Air Travelers**

That the Government of Canada reform the APPR complaints process to make it more simple for consumers to understand and exercise their rights; and in a manner that will lead more quickly to enforceable decisions by the CTA when appropriate.

### **Recommendation 12 – Costs of Processing APPR Complaints**

That the Government of Canada require the costs for investigating and resolving APPR complaints be borne by the airlines in cases where the Canadian Transportation Agency reverses the airline's decision, as a way to incentivize better customer service and fewer complaints.

### **Recommendation 13 – Application of CTA Rulings to All Affected Passengers**

That the Government of Canada update the APPR regime so that when the CTA determines that a customer's rights under the APPR have been violated, passengers on the same flight should be informed of the decision and provided an option to seek equivalent reimbursement/compensation if there are reasonable grounds to think they may have been affected by the same issue (ex. A flight delay or cancellation).

### **Recommendation 14 – Greater use of Existing CTA Authorities to Extend Rulings to All Affected Passengers**

That the Government of Canada provide policy direction to the CTA to make it a standard practice to use their authorities, under section 67.4 of the *Canada Transportation Act* and subsection 113.1(3) of the *Air Transportation Regulations* to group complaints for passengers on the same flight, in order to expedite rulings, and ensure consistency.

### **Recommendation 15 – More Efficient Compensation Claims Processing**

That the Government of Canada develop a system by which airlines automatically, and without passenger request, offer compensation to all passengers affected by a flight delay, cancellation, or denial of boarding, when circumstances fall within normal airline operations.

### **Recommendation 16 – Increase Public Awareness of APPR Rights**

That the Government of Canada work to increase public awareness of passenger rights by strengthening requirements for airlines to clearly inform passengers of their rights under the APPR in simple language and in a manner that is easily accessible for all passengers (ex. through a link to the CTA website on electronic tickets; airline websites; signage and literature at airports; on-board announcements, etc.) and that the Government regularly measure public awareness of APPR rights among travelers to gauge the effectiveness of its work.

### **Recommendation 17- Ministerial Direction**

That the Minister of Transport consider making greater use of the provisions under sections 49 and 43 of the *Canada Transportation Act* to direct the CTA to adopt the recommendations of the Committee's report related to the implementation of the *Air Passenger Protection Regulations*.

### **Recommendation 18 – Complaint Transparency**

That the Canadian Transportation Agency develop practices to maintain, and make publicly available, anonymized data of the outcomes of all complaints made to the Agency, including those resolved informally.

### **Recommendation 19 – CTA Backlog**

The Committee expresses its disappointment with regard to the large and growing backlog of passenger complaints and urges the application of new strategies to resolve existing complaints in a timely way.

### **Recommendation 20 – Imposition of Financial Penalties**

That the Government of Canada both raise the maximum and set mandatory administrative monetary penalties for violations of the *Air Passenger Protection Regulations*, so that the cost of violating the regulations is higher than the costs of abiding by them.

### **Recommendation 21 – Maximum Fines**

That the Government of Canada amend the *Air Passenger Protection Regulations*, to reduce the threshold at which a small carrier is considered to be a large carrier.



# STRENGTHENING AIR PASSENGER RIGHTS IN CANADA

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## INTRODUCTION

The *Air Passenger Protection Regulations* (APPR), which came into force in 2019, establish a framework for the rights of air passengers under Canadian law. They include provisions on air carriers' obligations towards their passengers for flight delays, cancellations and denied boarding, as well as for lost or damaged baggage.

Within months of its establishment, this framework was severely tested by the impacts of the COVID-19 pandemic and the collapse of global air travel. In response to this, on 8 September 2022, the *Regulations Amending the Air Passenger Protection Regulations* came into force to address air carriers' obligations towards their passengers for flight disruptions in situations outside of the carriers' control.

In order to evaluate this new framework for air passengers' rights, the House of Commons Standing Committee on Transport, Infrastructure and Communities (the Committee) agreed to the following [motion](#) on 3 February 2022:

That, pursuant to Standing Order 108(2), the Committee undertake a study of the Air Passenger Protection Regulations, their shortcomings and what needs to be done to improve them; and that this study be carried out in four meetings or more.

The Committee dedicated two meetings to this study on 21 and 28 November 2022. It heard from nine witnesses and received two briefs.

Subsequent to the Committee passing its initial motion for this study, the chaos of the summer travel season of 2022 further highlighted some of the APPR's shortcomings. This was addressed in the Committee's 8th Report, entitled *Enhancing the Efficient, Affordable Operation of Canada's Airports*. After beginning this study, however, still more problems became apparent over the holiday travel season in December 2022 and January 2023. As such, the Committee agreed to the following [motion](#) on 9 January 2023:

That, pursuant to Standing Order 108(2), the committee commit to undertake special meetings to study the travel disruptions that occurred during the December 2022–January 2023 holiday period with a view of understanding why the disruptions occurred, holding those responsible accountable and identifying what actions are being taken to avoid a recurrence of the problems in the future; that, as part of the study, air



passenger advocates, affected travellers, Sunwing, Air Canada, and WestJet, the Toronto, Montreal and Vancouver airport authorities, Via Rail and CN rail, the Canadian Transportation Agency, Transport Canada and the Minister of Transport be invited to testify; and that, in consultation with the committee members, the Chair be empowered to coordinate the resources and scheduling necessary to hold the first special meeting on Thursday, January 12, 2023, and that the testimony recorded at the special meeting become part of the committee's ongoing study of air passenger protection regulations.

The Committee held five meetings from 12 January to 7 February 2023, heard from 29 witnesses and received three briefs.

## 2022–2023 HOLIDAY DISRUPTIONS

Witnesses representing airlines, airports, and the rail sector made clear to the Committee that preparation for an anticipated winter peak is commonplace for transportation in Canada. This includes yearly planning for resiliencies in staffing levels and equipment capacity, as well as coordination meetings to ensure the smooth and efficient transportation of passengers.<sup>1</sup>

They were equally clear, however, that the holiday period of December 2022–January 2023 was exceptional. Extreme weather events across the country coincided with the busiest travel days of the year.<sup>2</sup> This resulted in significant and compounding delays and cancellations, with some passengers unable to deplane while stuck on the tarmac for several hours.<sup>3</sup>

According to [Mr. Andrew Dawson](#), President of Tour Operations, Sunwing Travel Group, at Sunwing Airlines, as of 12 January 2023, Sunwing alone had received 7,000 complaints for compensation, extra expenses incurred, and refunds in relation to holiday delays and cancellations.

Witnesses representing airlines, airports, as well as VIA Rail and CN, told the Committee that they were in contact with both Transport Canada and the office of the Minister of

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1 Standing Committee on Transport, Infrastructure and Communities (TRAN), *Evidence*, 44th Parliament, 1st Session: [Scott Wilson](#), Vice-President, Flight Operations, WestJet Airlines Ltd.; [Michael Brankley](#), Vice-President, Railway Operations, VIA Rail Canada Inc.; [Deborah Flint](#), President and Chief Executive Officer, Greater Toronto Airports Authority (GTAA); [Philippe Rainville](#), President and Chief Executive Officer, Aéroports de Montréal (Aéroports de Montréal); [Olivier Chouc](#), Senior Vice-President and Chief Legal Officer, Canadian National Railway Company (CN).

2 TRAN, *Evidence*: [Flint](#) (GTAA); [Vrooman](#), President and Chief Executive Officer, Vancouver Airport Authority (VAA); [Martin R. Landry](#), Interim President and Chief Executive Officer, VIA Rail Canada Inc. (VIA Rail); [Chouc](#) (CN).

3 TRAN, *Evidence*: [Vrooman](#) (VAA).

Transport, although not with the Minister himself, throughout the holiday period<sup>4</sup>. [Mr. Len Corrado](#), President of Sunwing Airlines, for example indicated that he did not have a direct conversation with the Minister of Transport until January 5, 2023.

In his own testimony, The Honourable [Omar Alghabra](#), Minister of Transport, stated that throughout the crisis, he was being briefed by his staff on a regular, “sometimes hourly”, basis. When questioned about his communications with the minister and his office, [Mr. Philippe Rainville](#), President and Chief Executive Officer of Aéroports de Montréal, said “I wouldn't call the minister if I had an operational issue. That's not why the minister is there; he is there to give us regulations and look over our shoulder on our lease agreement”. Similarly, [Mr. Martin R. Landry](#), Interim President and Chief Executive Officer of VIA Rail Canada Inc., indicated that, in his view, Transport Canada officials were the “proper contacts” to help VIA Rail address ongoing operational issues.

Some industry representatives indicated that procedural reviews are already underway,<sup>5</sup> with [Mr. Corrado](#) in particular apologising for Sunwing’s “failures in execution”. One common area for improvement that they have already identified is communications, particularly with regards to customer service. [Minister Alghabra](#) expressed his view that, while travel disruptions due to extreme weather are a fact of life in Canada, it is unacceptable for passengers to be “kept in the dark about what alternative plans are being provided, or being left stranded for days on end without any information.” This opinion was shared by [Mr. Rainville](#) and was also applied to passenger rail service by [Mr. Landry](#) and [Mr. Tim Hayman](#), President of Transport Action Atlantic.

## AIR PASSENGER RIGHTS REGULATIONS

Over the course of its study, the Committee heard a range of opinions on the viability of the APPR as a passenger rights regime. At one end of the spectrum, [Dr. Gábor Lukács](#), President of Air Passenger Rights, a non-profit organization, described the regulations as “essentially a sham”, “written by the airlines for the airlines” to create the appearance of air passenger protection in Canada.

At his initial appearance on 21 November 2022, [Mr. John Lawford](#), Executive Director and General Counsel of the Public Interest Advocacy Centre, argued that the APPR represented “a counterweight to airline power”. His position changed, however, in

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4 TRAN, *Evidence*: [Len Corrado](#) President, Sunwing Airlines; [Andrew Gibbons](#), Vice-President, External Affairs, WestJet Airlines Ltd. (WestJet); [David Rheault](#), Vice-President, Government and Community Relations, Air Canada (Air Canada); [Vrooman](#) (VAA); [Flint](#) (GTAA); [Rainville](#) (Aéroports de Montréal); [Landry](#) (VIA Rail); [Chouc](#) (CN).

5 TRAN, *Evidence*: [Vrooman](#) (VAA); [Corrado](#) (Sunwing).



response to the delays and cancellations over the holiday period. At his second appearance on this issue, on 26 January 2023, [Mr. Lawford](#)'s views were much more in line with those of Dr. Lukács, and he described the APPR as “structurally unsound”.

Other witnesses preferred to view the APPR as a work in progress, and, to that effect, several pointed to the fact that the regulations initially came into effect mere months before the global emergence of the COVID-19 pandemic.<sup>6</sup>

[Mr. Andrew Gibbons](#), Vice-President, External Affairs at WestJet Airlines Ltd., argued that air carriers haven't had “a period of stability to properly assess the APPR outside of COVID chaos and operational chaos” and that the focus for the time being should be on improving the operation of the current system rather than bringing major reforms to a relatively new regulatory scheme. [Mr. Ian Jack](#), Vice-President, Public Affairs, with the Canadian Automobile Association, had a similar view but suggested that the previous six to nine months had provided a sufficient return to near-normal operational levels to reveal “significant deficiencies that need to be addressed”.

[Minister Alghabra](#), as well as officials from Transport Canada and the Canadian Transportation Agency (CTA), told the Committee that the regulations are in fact being continuously re-evaluated to identify potential improvements.<sup>7</sup> The [Minister](#) indicated that work had already been underway prior to the events of December 2022 and that proposed changes to the APPR would likely be ready in the Spring of 2023. These changes, [he](#) said, would likely focus on three principles:

- 1) the clarification of rules, particularly around safety;
- 2) simplifying the CTA complaint process and reversing the burden of proof in favour of passengers; and
- 3) strengthening existing rules with the possibility of increasing fines against air carriers.

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6 TRAN, *Evidence*: [The Honourable Omar Alghabra](#) (Minister of Transport); [Gibbons](#) (WestJet); [Ian Jack](#), Vice-President, Public Affairs, Canadian Automobile Association; [Jeff Morrison](#), President and Chief Executive Officer, National Airlines Council of Canada (NACC); [France Pégeot](#), Chair and Chief Executive Officer, Canadian Transportation Agency (CTA).

7 TRAN, *Evidence*: [Craig Hutton](#), Associate Assistant Deputy Minister, Policy, Department of Transport (Department of Transport); [Michelle Greenshields](#), Director General, Dispute Resolution Branch, Canadian Transportation Agency (CTA); [Pégeot](#), (CTA); [Dominic Rochon](#), Acting Deputy Minister, Department of Transport.

Both [Mr. Jacob Charbonneau](#), President and Chief Executive Officer of Late Flight Claim Canada Inc., a law firm specializing in air passenger rights, and [Mr. John Gradek](#), Faculty Lecturer and Academic Programs Coordinator, School of Continuing Studies, McGill University (appearing as an individual), viewed the APPR as an improvement compared to the lack of framework or “wild west” that existed prior to their establishment, and in fact other witnesses suggested a similar regulatory framework for rail passengers.<sup>8</sup> Though both Mr. Charbonneau and Mr. Gradek identified issues to be addressed, with the former pointing to a lack of enforcement and the latter to “loop-holes” relating to compensation clauses.

## Compensation

**“(O)perating an airline is not a charity. At the same time, they provide a service, and that service has to be reliable”**

[Dr. Gábor Lukács](#), President, Air Passenger Rights

[Dr. Lukács](#) told the Committee that, in his view, refunds should be provided regardless of the reason for cancellation. Compensation, however, is specifically meant to address a passenger’s lost time, inconvenience, and productivity value. [Mr. Lawford](#) viewed compensation schemes for passengers as an acknowledgement that “the system isn't going to work”, in that air carriers will necessarily not meet all of their service obligations.

An air carrier’s responsibilities towards passengers depend upon the categorization of the issue behind the delay or cancellation. This categorization is done by the air carrier to determine whether passengers are eligible for a refund and/or compensation. Passengers who disagree with this determination can file a complaint, which can eventually result in the involvement of the CTA. This approach, according to [Mr. Charbonneau](#) relies on “the goodwill of the carriers” in their self categorization to determine their own obligations towards passengers.

According to [Mr. Gibbons](#), CTA investigations have not revealed any instances of an airline “deliberately miscoding a flight”, though he acknowledged the possibility of human error. [He](#) also indicated that air carriers may “disagree” with the CTA’s determination of a category. However, [Ms. France Pégeot](#), Chair and Chief Executive Officer of the Canadian Transportation Agency, reflected on the need for regulatory

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8 [TRAN](#), *Evidence*: [Landry](#) (VIA Rail); [Tim Hayman](#), President, Transport Action Atlantique.



clarification on the categorization of flights, referring to “grey areas that are big”. [She](#) stopped short, however, of using the term “loophole”, as employed by [Dr. Lukács](#).

A particular “grey area” that was raised by several witnesses is the category of “within an airline’s control but required for safety purposes”. [Mr. Lawford](#) told the Committee that this system was in fact “completely unworkable and will always generate lengthy disputes”.

For example, some witnesses decried airlines’ application of this category to delays and cancellations related to staffing issues, arguing that this is a conscious attempt to avoid paying compensation under the APPR<sup>9</sup>. [Mr. Charbonneau](#) also raised maintenance issues, such as a delay caused by the pilot’s miscalculation of fuel requirement. Such a delay, he argued, while obviously necessary, remains an operational decision which should not indemnify the airline from providing compensation.

These accusations of deliberate avoidance were vehemently denied by some industry witnesses. [Mr. Gibbons](#) told the Committee that “safety is sacred” and should remain a key principle of the APPR as it was intended to be. Meanwhile, [Mr. Jeff Morrison](#), President and Chief Executive Officer of the National Airlines Council of Canada, dismissed claims that airlines are using safety as an excuse to justify disruptions and avoid penalties as “false and irresponsible”. [He](#) added that cancellations in particular are a “last resort”. In fact, [Mr. Rainville](#) told the Committee that it falls to the pilot, not the air carrier, to decide whether it is safe for a plane to take off. [He](#) added that, from an airport’s perspective, a pilot’s decision regarding safety is beyond question.

On the specific issue of staffing shortages, [Mr. Gradek](#) was of the opinion that staffing levels are within an airline’s control and can be reasonably forecasted. [Mr. Lawford](#) even suggested that airlines have been responsible for their own labour shortage for not properly utilizing Canada Emergency Wage Subsidy payments to maintain staffing levels in the face of COVID lay-offs and retirements.

Both [Minister Alghabra](#) and [Ms. Pégeot](#) referred to decisions by the CTA over the summer of 2022, which found that safety issues that are due to the actions or inaction

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9 TRAN, *Evidence*: [John Gradek](#), Faculty Lecturer and Academic Programs Coordinator, School of Continuing Studies, McGill University (appearing as an individual); [Gábor Lukács](#), President, Air Passenger Rights (APR); [Jacob Charbonneau](#), President and Chief Executive Officer of Late Flight Claim Canada Inc. (Late Flight Claim Canada); [John Lawford](#), Executive Director and General Counsel, Public Interest Advocacy Centre (PIAC).

of an airline, including labour shortages, do not justify a refusal to compensate passengers.<sup>10</sup>

In order to simplify the issue of compensation, some witnesses suggested harmonizing Canadian regulations with those of the European Union (EU), which place responsibility on the airline for all delays, cancellations or denials of boarding with the sole exception of “extraordinary circumstances.”<sup>11</sup> Such a change would involve eliminating the category of “within an airline’s control but required for safety purposes”, by removing Section 86.11(1)(b)(ii) of the *Canada Transportation Act*.

[Dr. Lukács](#) and [Mr. Gradek](#) explained to the committee that an “extraordinary circumstances” exemption, in line with the EU model, would not require airlines to compensate passengers in situations such as volcanic eruptions, snowstorms, political disruption, runway incursions, or other major events for which they could not reasonably be expected to plan. In all other situations, however, the airline would be expected to compensate passengers for any delays, cancellations or denial of boarding.

Some industry representatives expressed concern with such a change with respect to weather delays, which, [Mr. Morrison](#) said, “have a safety element related to them”. [Mr. Rainville](#) gave the example of delays related to de-icing, which he told Members “takes as long as it takes” to ensure that an unsafe amount of ice has not accumulated on the aircraft by the time it takes off. [Mr. David Rheault](#), Vice-President, Government and Community Relations at Air Canada, pointed out, in relation to extraordinary circumstances, that “(t)here is no protection regime in the world, including the (APPR), that requires air carriers to be liable for financial compensation in cases of force majeure.”

[Mr. Gibbons](#), meanwhile, told the Committee that WestJet would be open to a simplification of categories, with the strict provision that such a change would benefit the Canadian traveller without unfairly penalizing airlines, and that it would be accompanied by specific guidance from the CTA and Transport Canada as to how the remaining categories would be interpreted.

[Dr. Lukács](#) explained that, while the European model may seem harsh with airlines in effectively establishing a presumption of compensation, this simpler system allows for very straightforward determinations of entitlement, which in the long run is less expensive for the public overall. [He](#) added that this model also allows an air carrier to

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10 Canadian Transportation Agency, [Decision No. 89-C-A-2022](#), 8 July 2022; and [Decision No. 107-C-A-2022](#), 25 August 2022.

11 TRAN, *Evidence*: [Lawford](#) (PIAC); [Lukács](#) (APR); [Gradek](#) (as an individual); Options consommateur ([brief](#)).



recover the costs of compensation from a third party. Thus, for example, if a passenger's luggage were damaged by security personnel, an airline would be required to compensate the passenger directly but could then attempt to recover those costs from the security entity, without the passenger's involvement.

According to [Mr. Craig Hutton](#), Associate Assistant Deputy Minister, Policy with the Department of Transport, there is currently no way for an airline to recoup costs resulting from airport operations or instructions from traffic control. [Mr. Lawford](#) pointed to the Canadian example of the Commission for Complaints for Telecom-Television Services (CCTS), which takes on a consumer's complaint as its own and refers it to service providers. If no response is received within 30 days, he explained, the consumer is "given everything they asked for in the complaint they filed".

In response to the possibility of following an international model, [Mr. Gibbons](#) and [Mr. Morrison](#) pointed out that Canada's climate, geography and population base make for unique challenges when compared to Europe or the United States, with the latter adding that Canadian airlines face "significantly higher" fees. [He](#) also indicated that the CTA, as a "uniquely Canadian institution," provides an avenue for the adjudication of complaints that does not exist in either of those jurisdictions.

### **Denied Boarding and Cancellation**

In its [brief](#), Air Passenger Rights argues that Canadian legislation and regulations should also harmonize definitions of "denied boarding" and "flight cancellation" with the "common sense" definitions adopted by the EU. In fact, it points out that "flight cancellation" is not defined in either the *Canada Transportation Act*, nor the APPR, while the APPR's definition of "denied boarding" represents a step backwards by effectively limiting compensation to situations in which an aircraft has been overbooked. It proposes that a determination of denied boarding should be simple and based on facts that are within the passenger's knowledge, with exceptions only for such reasonable grounds as health, safety or security, or inadequate travel documentation. Meanwhile, flight cancellation should be defined in such a way as to prevent "misleading" references to "schedule change". Both [Mr. Charbonneau](#) and [Mr. Lawford](#) agreed with the need to update definitions.

During his testimony, [Dr. Lukács](#) pointed out that such definition changes could address the current situation under which passengers have no protection if an airline offers a flight departing within 48 hours of a cancellation, even if such a delay renders the trip without purpose for the passenger. [Ms. Sylvie De Bellefeuille](#), Lawyer, Budget and Legal Advisor with Option consommateurs, told the Committee that in such circumstances an

affected passenger should be able to obtain a full refund regardless of the reason for the delay or cancellation.

On the specific issue of overbooking, or the sale of more tickets than there are seats on an aircraft, [Ms. De Bellefeuille](#) said this “ is certainly a breach of contract law” and should be banned. [She](#) further added that

(t)he principle of a contract is that you pay a company to receive a service. If it is unable to provide that service, the rule normally is that the consumer is entitled to a refund. So why should it be different for an airline just because it's an airline?

[Mr. Charbonneau](#) sympathised with ticketholders who might be turned away from a flight, but offered the opposing view that overbooking is common practice in Canada as well as Europe and the United States simply because “5% to 10% of registered passengers don’t show up”. He pointed to an example from the United States and suggested the possibility of offering large incentives to encourage some passengers to voluntarily take a later flight, rather than forcing them to do so.

## **Burden of Proof**

Several witnesses identified what they perceived as an unfair burden of proof that is currently imposed upon passengers to demonstrate their entitlement to compensation<sup>12</sup>. In fact, [Minister Alghabra](#) told the Committee that his department is in the process of preparing changes to reverse this onus, with a proposal due in the Spring of 2023.

[The Minister](#) added that “airlines must continue to uphold passengers' rights, and when they violate them, they need to compensate their customers”, and that they should do so without needing the involvement of the CTA. [Mr. Hutton](#) explained that passengers are in fact required to attempt resolution of complaints directly with airlines prior to bringing their matter to the CTA. [Mr. Gibbons](#), at his appearance on 28 November 2022, said that WestJet has indeed compensated passengers in accordance with the APPR without CTA involvement and that this is the carrier’s preferred approach. [Mr. Corrado](#) said that Sunwing has an APPR portal available through its website to process claims.

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12 TRAN, *Evidence*: [Sylvie De Bellefeuille](#), Lawyer, Budget and Legal Advisor, Option consommateurs (Option consommateurs); [Charbonneau](#) (Late Flight Claim Canada); [Lukács](#) (APR); [Lawford](#) (PIAC).



## SHARED ACCOUNTABILITY IN THE “AVIATION ECOSYSTEM”

Several witnesses spoke of an “ecosystem” view, in which many entities share overlapping responsibilities to provide services to passengers.<sup>13</sup> This is a perspective that [Mr. Landry](#) also applied to the rail sector. In aviation, this ecosystem would include airlines and airports, as well as federal entities such as NAV CANADA, the Canadian Air Transport Security Authority (CATSA), and the Canadian Border Services Agency (CBSA).

[Mr. Gibbons](#) told the Committee that despite the complexity of the aviation system, the APPR place responsibility for compensation exclusively on airlines. [He](#) sees the establishment of a shared responsibility framework as a “top priority”. This would involve the establishment of service level standards, communications protocols and a reimbursement regime for all groups that provide a service that can result in a delay or cancellation. [Mr. Morrison](#) agreed, clarifying that a shared responsibility model is not meant to be punitive, nor even necessarily include a financial penalty, but that it must acknowledge that airlines are not solely responsible for all delays.

[Ms. Deborah Flint](#), President and Chief Executive Officer of the Greater Toronto Airports Authority, pointed out that airlines are the only entities in the aviation ecosystem that have a contract with passengers, that they can consider the facilities they use in their own risk management, and that the APPR include remedies that only air carriers can provide, such as rebooking flights to ensure the completion of a trip. Nevertheless, [she](#) supported the idea of establishing more service-level standards across the industry to improve coordinated preparation for day-to-day and extreme events.

[Ms. Tamara Vrooman](#), President and Chief Executive Officer of the Vancouver Airport Authority, agreed, as did [Dr. Lukács](#), who clarified that government entities should not be fined for failing to meet services standards, but rather that airlines should be able to resolve “corporate disputes” to recoup compensation costs caused by third parties, while remaining the single point of contact for passengers. [Mr. Gibbons](#) objected to airlines being made responsible for managing an APPR framework and relationships with government entities for the purposes of simplification.

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13 TRAN, *Evidence*: [Gibbons](#) (WestJet); [Morrison](#) (NACC); [Rheault](#) (Air Canada); [Rainville](#) (Aéroports de Montréal); [Flint](#) (GTAA); [Vrooman](#) (VAA).

## Baggage

As the Committee heard, the issue of baggage can be complex. Firstly, the responsibility for transiting baggage is shared between the airline, which puts the luggage on the aircraft, and the airport, which gets it “to the exit door.”<sup>14</sup>

Secondly, while the loss of baggage is regulated in accordance with the Montreal Convention, through the APPR and the *Carriage by Air Act*, the APPR provision that regulated compensation for delayed baggage was recently struck down by the Federal Court of Appeal.<sup>15</sup>

To remedy this, [Mr. Lawford](#), supported by [Dr. Lukács](#), recommended that the Minister of Transport direct the CTA to make regulations to compensate passengers for delayed baggage. In addition, pending a more permanent solution through an amendment to the *Canada Transportation Act* to address the issue raised by the Federal Court of Appeal, he recommended that a new regulation be passed under Section 40 of the *Canada Transportation Act*, to recreate the provision that was struck down.

When asked about an incident in which Air Canada donated passengers’ baggage, [Mr. Lukács](#) indicated this would be a criminal, rather than civil, matter.

## Infrastructure

**“[W]e as a country have to look at increasing the resiliency of our transportation infrastructure. Weather events are becoming more and more frequent. You hear about the storm of the century. Well, it arrives almost every year now.”**

[Martin R. Landry](#)

Interim President and Chief Executive Officer of VIA Rail Canada Inc.

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14 TRAN, *Evidence*: [Rainville](#) (Aéroports de Montréal); [Flint](#) (GTAA).

15 In his [testimony](#), Mr. Lawford indirectly referred to the matter of [International Air Transport Association v. Canadian Transportation Agency](#), 2022 FCA 211, in which the Federal Court of Appeal found that section 23(2) of the APPR went beyond the authority granted by the *Canada Transportation Act* to the Canadian Transportation Agency for the creation of regulations.



Several witnesses noted the need for modernized transportation infrastructure, notably at airports,<sup>16</sup> with some calling on the government to reinvest taxes, fees and airport rents towards increased digitization, facility upgrades, and other improvements.<sup>17</sup> [Mr. Rainville](#) told the Committee that the Montreal-Trudeau International Airport’s infrastructure “will not have the capacity to undertake the next decade”, despite significant technological input, due to “tremendous growth before the pandemic and an equally strong end to 2022”.

## CLAIMS PROCESS

When an airline and a passenger are unable to resolve a complaint themselves, the next step is to bring the matter before the CTA. [Mr. Tom Oommen](#), Director General, Analysis and Outreach Branch at the Canadian Transportation Agency, viewed the CTA’s role in this respect as facilitating interactions between passenger and airline. [He](#) also explained the CTA’s approach to complaint resolution, with the first step being informal facilitation. At this stage, during which the “vast majority of complaints” are resolved, the facilitator asks the airline, not the passenger, to provide information on the complaint. If this is unsuccessful, the next step is adjudication, which the CTA offers free of charge. No lawyer is required, and the CTA provides “extensive guidance material to assist passengers in understanding the regulatory framework”.

[Mr. Charbonneau](#) painted a somewhat different picture of this process, claiming that air carrier tariffs prevent passengers from involving legal counsel in their initial claims, that the CTA facilitation does not allow the passenger to present their version of the facts, and that formal proceedings take over a year. The entire process, [he](#) claimed, is unfairly balanced in favour of carriers. [Ms. De Bellefeuille](#) agreed with that depiction of the claims process.

[Ms. Michelle Greenshields](#), Director General, Dispute Resolution Branch with the Canadian Transportation Agency, confirmed that it can take up to 18 months to have a case processed, based on general average service times, although times can vary based on the individual case. [She](#) added that the CTA is making efforts to get back to its service standard and that the time to issue an adjudication decision has been reduced “from 144 days to 40 days in total”, as of 28 November 2022.<sup>18</sup>

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16 TRAN, *Evidence*: [Rainville](#) (Aéroports de Montréal); [Lukács](#) (APR); [Landry](#) (VIA Rail).

17 TRAN, *Evidence*: [Rheault](#) (Air Canada); [Flint](#) (GTAA).

18 TRAN, *Evidence*: [Greenshields](#) (CTA).

According to [Mr. Charbonneau](#), many passengers don't pursue claims because of the complexity of the process and because of a lack of information. [Ms. De Bellefeuille](#) pointed out that, to make a claim, passengers are dependent on information provided by the carrier, which has an interest in not recognizing when issues are within its control. [Mr. Oommen](#) shared this concern, and [he](#) told the Committee that, according to the CTA's estimates, roughly 1 in 5,000 passengers will issue a complaint. To address these challenges, [Mr. Jack](#) advocated for a simple and clear process.

## Data Sharing

One challenge to improving the claims process is a lack of publicly available data on the current system's success rate. [Ms. Greenshields](#) told the Committee that the CTA is increasing transparency on its own case status updates. However, according to [Ms. Pégeot](#), the CTA is not aware of how many complaints are resolved by the airlines before reaching its own claims process. [She](#) clarified that airlines are not required to provide that data.

[Mr. Morrison](#) was of the view that data sharing and transparency for all players in the ecosystem is needed to verify claims as well as the causes of disruption. [Mr. Lawford](#) told the Committee that this type of data sharing is already common practice in the telecommunications industry, while [Mr. Jack](#) claimed that airlines already have access to this data. In fact, [he](#) pointed to the example of many U.S. airlines that monthly publish their data, including on complaints, resolution, and baggage, which he claims leads to increased competition and better service.

## Backlog of Complaints

At her appearance on 28 November 2022, [Ms. Greenshields](#) informed the Committee that the CTA had a backlog of 30,000 complaints, of which 80% had been received since 1 April 2022. That number increased over the holiday period, to 33,000 complaints backlogged as of 12 January 2023, according to [Ms. Pégeot](#).

[Mr. Lawford](#) said that this level of backlog can partially be explained by bad timing, in that the APPR came into force mere months before the COVID-19 pandemic, the consequences of which in and of themselves caused an increase in complaints. According to [Ms. Greenshields](#), the CTA's incoming complaint volume increased significantly from a pre-APPR annual number of 7,600 in 2018–19 to 19,000 in 2019–2020. Numbers slowed somewhat but remained higher than 15,000 in 2021–22, and monthly complaint volumes for July and August 2022 were 3,000 and 5,700 respectively.



[Mr. Lawford](#) also argued for a much simpler process, calling the CTA’s current approach within a quasi-judicial formal framework a “ridiculous approach to dealing with high-volume, low-value consumer redress for such routine, and unfortunately now chronic, issues as flight delays and cancellations”. [Dr. Lukács](#) agreed, saying that “one should not be requiring 1,000 pages of documents to decide the fate of a \$400 compensation claim”. [Ms. De Bellefeuille](#), meanwhile, recommended that staffing at the CTA be evaluated.

CTA officials responded that their complaint capacity is already being increased through procedural improvements and modernization as well as increased capacity through a temporary funding increase in Budget 2022.<sup>19</sup> They also clarified that complaints regarding accessibility are being prioritized and as such there is no backlog in this area<sup>20</sup>, as well as the fact that backlogged complaints have simply been received, not evaluated for merit.<sup>21</sup> In response to the substantial change in the number of complaints, [Ms. Greenshields](#) did, however recommend a “reset” towards a more “operational organisation”, while [Ms. Pégeot](#) suggested that clearer regulations on the categorization of delays, cancellations or denials of boarding would help reduce the inflow of complaints.

In order to address the current backlog, [Mr. Lawford](#) recommended that the CTA triage and categorize complaints to issue directory decisions on similar cases, as was done with some early COVID-based complaints. Similarly, [Mr. Jack](#) believed that proactive compensation by the airlines would reduce backlog not only for the CTA but also internally within the airlines’ own complaint mechanisms. He added that national polling by the CAA shows 75% of Canadians believe carriers should be responsible for contacting passengers to compensate for flight interruption.

Specifically in relation to grouping complaints, [Dr. Lukács](#) claimed that it is “common sense” to assume that if one passenger is found to be eligible for compensation, the others on the same plane are as well. [Mr. Charbonneau](#) agreed that an automated system may work for refunds but argued that compensation needs to reflect the specific damages incurred by individual passengers. This point was echoed by other witnesses.<sup>22</sup>

[Dr. Lukács](#) agreed that the amount of compensation owed to each passenger would indeed be based on the delay at their destination but maintained that eligibility to

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19 TRAN, *Evidence*: [Greenshields](#) (CTA); [Hutton](#) (Department of Transport).

20 TRAN, *Evidence*: [Greenshields](#) (CTA).

21 TRAN, *Evidence*: [Pégeot](#) (CTA).

22 TRAN, *Evidence*: [De Bellefeuille](#) (Option consommateurs); [Gibbons](#) (WestJet); [Morrison](#) (NACC).

compensation can be determined on a flight basis. He added that, in fact, this type of determination is already allowed under section 67.4 of the Canada Transportation Act and section 113.1(3) of the Air Transportation Regulations, though he was not aware of this power ever being used.

Ms. Greenshields informed the Committee that the CTA has already begun batching cases that have a common flight to increase processing capacity, while Mr. Oommen advised of the agency's intention to use the powers mentioned by Dr. Lukács to extend decisions made for an individual complaint to the other passengers on the same flight, seeming to confirm that the agency had not yet used them as of November 2022. He clarified, however, that 97% of complaints to the CTA are resolved through adjudication, and so don't reach the stage where a decision would be issued. As such, the powers afforded to the CTA by section 67.4 of the Canada Transportation Act and section 113.1(3) of the Air Transport Regulations would not apply.

Mr. Charbonneau proposed that these powers be expanded to allow a decision to apply to different flights affected by the same issue.

## THE CANADIAN TRANSPORTATION AGENCY

CTA officials explained that the agency serves two functions: as a regulator, and as an administrative tribunal.<sup>23</sup> In response to allegations by Dr. Lukács of "encrypted emails exchanged with Transport Canada behind the scenes", Ms. Pégeot acknowledged the importance of open contact with Transport Canada to coordinate in developing regulations. She denied, however, that these communications take the form of encrypted emails and she stated that there is a "clear wall" dividing the CTA's administrative tribunal from Transport Canada as well as, internally, from the rest of the agency. She also clarified that tribunal members are not appointed "at pleasure" of the Governor in Council and so "cannot be fired if the government doesn't like their decisions."

Minister Alghabra stated that the CTA was purposefully designed as an arm's-length quasi-judicial body "to avoid the appearance of political interference in investigation, in fining and in holding the responsible parties accountable."

Mr. Charbonneau and Ms. De Bellefeuille believed that the CTA needs power to take action and be more proactive. Mr. Lawford recommended the establishment of a

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23      TRAN, *Evidence: Tom Oommen* Director General, Analysis and Outreach Branch, Canadian Transportation Agency (CTA); Pégeot (CTA).



dedicated administrative complaints agency with a regulatory overseer for systemic issues based on existing Canadian models like the Commission for Complaints for Telecom-television Services (CCTS) or the Ombudsman for Banking Services and Investments (OBSI), to simplify the complaints resolution process. [He](#) added that both the CCTS and OBSI are funded by industry, rather than the taxpayer.

## Enforcement

[Dr. Lukács](#) told the Committee that, in addition to harmonizing regulations with the framework employed by the EU, the CTA's enforcement capacity must be enhanced. [He](#) indicated that, in his view, the CTA currently lacks the ability to enforce regulations, to ensure that airlines "will think twice before they break the law".

CTA officials advised that the agency currently has six compliance officers, with a seventh due to begin "soon" as of their testimony on 12 January 2023. These officers follow-up with airlines to ensure compliance with CTA decisions and "conduct targeted enforcement blitzes and issue notices of violation and administrative monetary penalties".<sup>24</sup> According to [Mr. Oommen](#), mere contact between compliance officers and air carriers can sometimes result in carriers recategorizing flight disruptions as "within control" and compensating passengers accordingly.

Views on the issue of fines for carriers differed significantly between industry representatives and passenger rights advocates. [Mr. Rheault](#), for example, stated that the penalties available to the CTA under the APPR are comparatively very high. Meanwhile, [Mr. Lawford](#) pushed the need for higher fines, stating that "It has to look sort of bizarrely high, because you're assuming there will be a very small amount of enforcement with respect to those violations." [Mr. Charbonneau](#) and [Dr. Lukacs](#) similarly argued that it is currently more financially advantageous for airlines to deny compensation and risk a fine.

[Dr. Lukács](#) recommended introducing mandatory minimum fines, as the CTA has not been issuing fines "anywhere near" the limit already available. [Mr. Jack](#) also recommended replacing the current discretionary system with upper and lower limits for administrative monetary penalties (AMPs), along with automatic increases for repeat offences.

When asked whether higher fines would result in higher airfare, [Ms. De Bellefeuille](#) replied that this hasn't been the case in Europe, but that regardless the current impacts

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24 TRAN, *Evidence*: [Oommen](#) (CTA); [Pégeot](#) (CTA).

on passenger rights are unacceptable. [Mr. Lawford](#) thought it more likely that costs would indeed be passed on to consumers but argued it would result in better air service or at least an increased likelihood of compensation. [Mr. Jack](#) meanwhile suggested that, since the purpose of higher penalties would be to incentivize carriers “to do a better job in the first place,” fines would ideally be “quite rare” and as such there would be no additional cost to be passed down.

CTA officials told the Committee that the goals of investigations and administering AMPs are “compliance and changing behaviour.”<sup>25</sup> Given the relative recency of the regulations, and a focus on informal resolution of complaints, [Ms. Pégeot](#) confirmed that the agency had not yet, as of 12 January 2023, imposed any fines for failure to provide compensation under the APPR. It had, however, issued more than \$185,000 in AMPs under the APPR for issues such as an airline failing to respond within 30 days, following an incremental approach as required under administrative law.<sup>26,27</sup>

[Minister Alghabra](#) confirmed that his office is looking into the issue of fines and is open to suggestions for increasing the current amount. [He](#) clarified, however, that he does not want to interfere in the CTA’s decision-making authority with respect to issuing fines.

## CONCLUSION

Over the course of its study, the Committee heard from many witnesses on the shortcomings of the APPR, as well as potential methods of improvement. Many of these shortcomings were highlighted during the holiday period in December 2022 and January 2023. The Committee in particular heard about the ways in which a passenger’s eligibility for compensation is determined, the aviation “ecosystem” which shares responsibility for getting travellers to their destination, as well as the CTA’s role in ensuring that passengers are compensated for delays, cancellations, or denials of boarding.

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25 TRAN, *Evidence*: [Oommen](#) (CTA); [Pégeot](#) (CTA).

26 TRAN, *Evidence*: [Pégeot](#) (CTA); and [Pégeot](#) (CTA).

27 According to a list of [Enforcement actions taken by the CTA’s enforcement officers](#), the Agency has since issued several fines against airlines for failing to provide compensation required under the APPR.



## APPENDIX A LIST OF WITNESSES

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The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<b>As an individual</b>	2022/11/21	40
John Gradek, Faculty Lecturer and Academic Programs Coordinator School of Continuing Studies, McGill University		
<b>Air Passenger Rights</b>	2022/11/21	40
Gábor Lukács, President		
<b>Late Flight Claim Canada Inc.</b>	2022/11/21	40
Jacob Charbonneau, President and Chief Executive Officer		
<b>Option consommateurs</b>	2022/11/21	40
Sylvie De Bellefeuille, Lawyer, Budget and Legal Advisor		
<b>Public Interest Advocacy Centre</b>	2022/11/21	40
John Lawford, Executive Director and General Counsel		
<b>Canadian Transportation Agency</b>	2022/11/28	42
Michelle Greenshields, Director General Dispute Resolution Branch		
Tom Oommen, Director General Analysis and Outreach Branch		
<b>Department of Transport</b>	2022/11/28	42
Craig Hutton, Associate Assistant Deputy Minister Policy		
Colin Stacey, Director General Air Policy		
<b>National Airlines Council of Canada</b>	2022/11/28	42
Jeff Morrison, President and Chief Executive Officer		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>WestJet Airlines Ltd.</b> Andrew Gibbons, Vice-President External Affairs	2022/11/28	42
<b>Aéroports de Montréal</b> Martin Massé, Vice-President Public Affairs	2023/01/12	46
<b>Aéroports de Montréal</b> Philippe Rainville, President and Chief Executive Officer	2023/01/12	46
<b>Air Canada</b> Kevin O'Connor, Vice-President System Operations Control David Rheault, Vice-President Government and Community Relations	2023/01/12	46
<b>Greater Toronto Airports Authority</b> Deborah Flint, President and Chief Executive Officer	2023/01/12	46
<b>Sunwing Airlines</b> Len Corrado, President Andrew Dawson, President of Tour Operations Sunwing Travel Group	2023/01/12	46
<b>Vancouver Airport Authority</b> Tamara Vrooman, President and Chief Executive Officer	2023/01/12	46
<b>WestJet Airlines Ltd.</b> Andrew Gibbons, Vice-President External Affairs Jared Mikoch-Gerke, Director Government Relations and Regulatory Affairs Scott Wilson, Vice-President Flight Operations	2023/01/12	46
<b>Canadian Transportation Agency</b> Tom Oommen, Director General Analysis and Outreach Branch France Pégeot, Chair and Chief Executive Officer	2023/01/12	47

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Department of Transport</b>	2023/01/12	47
Hon. Omar Alhabra, P.C., M.P., Minister of Transport		
Craig Hutton, Associate Assistant Deputy Minister Policy		
Nicholas Robinson, Associate Assistant Deputy Minister Safety and Security		
Dominic Rochon, Acting Deputy Minister		
Colin Stacey, Director General Air Policy		
<b>VIA Rail Canada Inc.</b>	2023/01/26	48
Michael Brankley, Vice-President Railway Operations		
<b>VIA Rail Canada Inc.</b>	2023/01/26	48
Martin R. Landry, Interim President and Chief Executive Officer		
Rita Toporowski, Chief Customer Officer		
<b>Air Passenger Rights</b>	2023/01/26	49
Gábor Lukács, President		
<b>Canadian Automobile Association</b>	2023/01/26	49
Ian Jack, Vice-President Public Affairs		
Jason Kerr, Managing Director Government Relations		
<b>Public Interest Advocacy Centre</b>	2023/01/26	49
John Lawford, Executive Director and General Counsel		
<b>Transport Action Atlantic</b>	2023/01/26	49
Tim Hayman, President		
<b>Canadian National Railway Company</b>	2023/02/07	52
Olivier Chouc, Senior Vice-President and Chief Legal Officer		
Martin Guimond, Vice-President Transportation, Eastern Region		
Hoang Tran, Director Passenger Services		



## **APPENDIX B**

### **LIST OF BRIEFS**

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The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

**Air Passenger Rights**

**Canadian Automobile Association**

**Canadian National Railway Company**

**NAV CANADA**

**Option consommateurs**



# REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 40, 42, 46 to 49, 52 and 57 to 59](#)) is tabled.

Respectfully submitted,

Peter Schiefke  
Chair



## Liberal Minister Fails Canada's Air Passengers

### Introduction

Conservative Members of Parliament on the Standing Committee on Transport, Infrastructure and Communities would like to thank the Committee, its staff, analysts, and number of witnesses who shared their valuable insights concerning how to address the shortcomings of the Air Passenger Protection Regulations.

While the Conservative Members support the general direction of the report, we believe that this report does not go far enough in advancing the principle of shared accountability in the aviation ecosystem.

Further, the report does not hold the Minister of Transport, the Honourable Omar Alghabra accountable for his complete absence in the face of significant failures in Canada's air travel system during the Christmas travel season of 2022.

For these reasons, we are tabling this supplementary report. Conservatives recommend:

**That the Government of Canada implement a mechanism to allow airlines to recoup the costs of passenger compensation from a third party responsible for a delay or cancellation.**

### Background:

#### Christmas Travel Chaos

After a catastrophic summer travel season brought about by ineffective vaccine mandates, the ArriveCAN app, and short-staffed airports, the Minister promised that the problems in the air travel system had been resolved and that Canadians would not see a repeat of the summer chaos during the crucial Christmas holiday travel season.

Unfortunately, the Christmas holiday travel season was a disaster that saw thousands of Canadians stranded in airports, and foreign hotel lobbies, hundreds lose baggage, and others left stranded on airport tarmacs for up to 12 hours.

What we learned in Committee was that the Minister was missing in action during this entire travel crisis. According to witness testimony, at no time during this crisis did the Minister pick up the phone to speak with airport authorities in Vancouver, Toronto, or Montreal.

We were shocked to learn that the Minister did not speak directly with Sunwing Airlines whose passengers spent days sleeping in hotel lobbies not knowing when they would be able to return home, until two weeks after the crisis was resolved. Compare this with U.S. Transport Secretary

Pete Buttigieg who was publicly visible and personally engaged as a similar crisis unfolded in the United States.

Conservative Members believe that Ministerial accountability required the Minister to play a more active and visible role in addressing the crisis and to address why, despite his promises that the system was fixed, Canadians were subjected to consecutive disastrous travels seasons.

### **Shared Accountability in the Aviation Ecosystem**

Several witnesses spoke of the idea of shared accountability in the aviation ecosystem. While airlines are solely held responsible for delayed and cancelled flights, the Committee was told that there are many federally regulated entities responsible for ensuring a smooth travel experience. This includes airports, NAV Canada, the Canadian Air Transport Security Authority (CATSA), and the Canadian Border Services Agency (CBSA).

Conservative Members believe that the recommendation for establishing transparent service standards for all members of the aviation sector is a good start but doesn't go far enough. We agree with witness testimony in the Committee report calling for "a reimbursement regime for all groups that provide a service that can result in a delay or cancellation."

Recommendation 15 calling for automatic compensation "to all passengers affected by a flight delay, cancellation, or denial of boarding when circumstances fall within normal airline operations" could preclude compensating passengers when the cause of the delay, cancellation or denial of boarding is the fault of a federally regulated entity other than an airline.

Conservative Members believe that ensuring a federally regulated entity responsible for delays and cancelled flights is held responsible will incentivize all entities in the aviation ecosystem to ensure a better travel experience for passengers.

It is for these reasons that Conservative Members would add the following recommendation:

That the Government of Canada implement a mechanism to allow airlines to recoup the costs of passenger compensation from a third party responsible for a delay or cancellation.

### **Conclusion**

Conservative Members will continue to advocate for the rights of air passengers. We believe the best way to do this is to hold everyone who has a role to play in our aviation sector accountable for their actions or lack thereof, including the Minister, airports, and all federally regulated entities.



**Supplementary opinion**

**Report on the study of the Air passenger protection regulations**

By the office of Xavier Barsalou-Duval

Presented to The Standing Committee on Transport, Infrastructure and Communities

March 27th, 2023

## **Introduction**

First, the Bloc Québécois salutes the members of the Committee as well as the committee staff for the professionalism they have shown and the work they have accomplished during this study and thanks all the witnesses and citizens who shared their perspective the Air passenger protection regulation.

From industry players to consumer protection advocates, the same narrative has been heard: the APPR does not work in its current form and needs substantial reforms. We welcome the scope of the recommendations adopted by the committee and we ask the minister to include them all in his announced reform.

### **A transpartisan and necessary reform**

“Significant deficiencies that need to be addressed”, “structurally unsound”, “essentially a sham”, the witnesses were blunt when describing the current state of the APPR. Some were more cautious, saying that the pandemic had not allowed the APPR to prove itself during “a period of stability [...] outside of COVID chaos”. However, Ian Jack from CAA rightly pointed out that the situation, which has been getting closer to normal for the past six to nine months, shows that there are significant gaps that need to be filled.

The committee took note of these findings and chose to adopt a series of robust recommendations that should serve as the foundation for the reform of the APPR announced by Minister Alhabra. Let's study the fictional case of Ms. Tang-Beauséjour to see how the committee's proposals could change the situation:

Ms. Tang-Beauséjour has reserved a seat on a flight between Montréal and Moncton to attend her daughter's wedding. However, the carrier she chose did not adequately prepare and had to cancel the flight due to lack of available staff. At present, the carrier can invoke security reasons, refuse reimbursement to Ms. Tang-Beauséjour and inform her that her spot is postponed to another flight 37 hours after the scheduled departure time, 12 hours after the wedding. If our passenger wishes to appeal the carrier's decision and obtain a refund, the information is difficult to access, and it will only be 18 months and thousands of dollars in taxpayer's money later that she may be able to receive compensation. Complaint information will be kept secret, so other travelers will not be able to make choose their carriers accordingly.

Contrast this nightmare with the same situation after the implementation of the committee's recommendations. The carrier chosen by Ms. Tang-Beauséjour knows that a cancellation for lack of staff will result in reimbursement and possible compensations, so ensures that the flight has the necessary personnel to take off. If not, the passenger quickly and directly receives the information on the cancellation of her flight and obtains a refund on the credit card used to reserve her place on the flight. If the carrier believes that it does not have to pay a refund

or compensation, it is the carrier who will have to prove it to the CTA, which will quickly render its decision for all passengers on the flight. Complaint information will be publicly available, so other passengers can choose carriers accordingly.

The committee's recommendations not only aim to improve the refund and compensation process for travelers, but also put in place market mechanisms that will improve the reliability of air travel.

### **Going even further**

Despite the strength of the committee's recommendations, we believe we could go even further to protect passengers. Based on the testimony received, we believe that the Minister can, in his reform, extend the definitions of the terms “denied boarding” and “flight cancellation”. Indeed, as mentioned by France Pégeot, President of the CTA:

“Clearer regulations on the categorization of delays, cancellations or denials of boarding would help reduce the inflow of complaints”, “grey areas [...] are big”

The current definition of “denied boarding”, according to Gabor Lukács of the Air Passenger Rights group, “represents a step backwards by effectively limiting compensation to situations in which an aircraft has been overbooked.” We favor harmonization of the definition with that found in the European Union, which, again according to Dr. Lukács, “proposes that a determination of denied boarding should be simple and based on facts that are within the passenger’s knowledge, with exceptions only for such reasonable grounds as health, safety or security, or inadequate travel documentation.”

We also regret that the term “flight cancellation” is not defined in either the APPR or the Canada Transportation Act. We propose that it, as Dr. Lukács mentions, “should be defined in such a way as to prevent “misleading” references to “schedule change”.

We also recognize that many recommendations are aimed at carriers, but they are not always responsible for the issues that lead to flight delays or cancellations. Thus, we would like to recommend that the minister add a mechanism allowing carriers to recover the costs of compensating passengers from a third party.

### **Conclusion**

The minister received a clear mandate from the TRAN committee. Apply the recommendations to carry out a vast reform of the APPR which will avoid the committee having to consider the question for a third time. We will be on the lookout to assure travelers that the government enact these changes and doesn't shortchange Québécois and Canadian travelers once again.



## **SUPPLEMENTARY REPORT OF THE NEW DEMOCRATIC PARTY OF CANADA**

### *Air Passenger Protection Regulations*

Canada's New Democrats support many of the recommendations contained in the report of the Standing Committee on Transportation, Infrastructure and Communities, which details the shortcoming of Canada's Air Passenger Protection Regulations (APPR). These include:

- harmonizing categories of eligibility for compensation with those of the European Union;
- creating a system for automatic compensation;
- grouping of complaints by flight; and
- shifting the burden of proof from passengers to airlines.

However, the report falls short of addressing many of the recommendations made by witnesses that appeared before the Committee.

This supplementary report highlights witness testimony calling for stronger, more specific changes to Canada's air passenger protection regime than those reflected in the Committee's report. This witness testimony relates to:

1. financial advantages accrued by airlines that choose not to abide by terms of the Air Passenger Protection Regulations (APPR);
2. compensation for delayed baggage;
3. the need to more clearly and broadly define "denial of boarding" and "flight cancellation";
4. the need to consider expanding passenger protections to rail passengers; and
5. which party should bear the cost of complaint processing.

### **Failure to uphold the APPR**

While paragraph 69 of the committee's report mentions witness testimony from Mr. Lawford and Mr. Charbonneau regarding the need for increased maximum administrative monetary penalties, there was additional witness testimony from Mr. Lukacs that adds important illustrative detail:

*"Without hefty fines for violations, there is no incentive for airlines to comply with the APPR, or with any other regulation, for that matter. For example, if the odds of an airline being caught not paying a \$400 compensation is one out of 100, that being 1%, then any fine of less than \$40,000 per violation is ineffective, making it cheaper for the airline to pay the fine than to systematically comply."*

*- Gabor Lukacs, TRAN meeting 49, January 26, 2023*

This testimony provided an example of the financial incentive for airlines to deny compensation, as well as a solution to the problem of how to ensure that administrative monetary penalties provide a meaningful deterrent. This solution was echoed by Mr. Lawford's testimony:

*"I agree with Dr. Lukács' calculus that if you have a 1% sort of flaunting the regulation rate, you have to put fines on. In other words, if someone doesn't get paid their compensation, they have to have a separate penalty phase or enforcement fine from the CTA, which they have the power to do."*

*- John Lawford, TRAN meeting 49, January 26 2023*

### **Protections for temporary loss of baggage**

A recommendation in the Committee's report addresses the lack of protection for delayed baggage, since the Federal Court of Appeal struck down the APPR provision that regulated it. The Committee has recommended the government "...ensure that the protections afforded to passengers in relation to the temporary loss of baggage by that section are maintained in both the short and long term." The NDP supports the spirit of this recommendation, but wishes to highlight witness testimony from Mr. Lawford which provided a solution for long-term protection for delayed baggage.

*"Then—this is two parts—invite cabinet under section 40 of the Canada Transportation Act to pass a new regulation based on the old delayed baggage which was 23(2) of the APPRs and which was wiped out by the Federal Court of Appeal pending eventual amendment by Parliament to fix the Canada Transportation Act and to insert the word "delayed" in subsection 86.11(1)(c)."*

*- John Lawford, TRAN Meeting 49, January 26 2023*

Throughout the study, many witnesses cautioned that only changing the APPR would be insufficient to fix the problem related to delayed baggage, and that amending the *Canada Transportation Act* would provide a clearer, more long-term solution. Mr. Lawford's recommendation to instead amend subsection 86.11(1)(c) of the *Canada Transportation Act* provides a clear, actionable change the government can, and should, implement.

### **Defining "Denied Boarding and "Flight Cancellation"**

The Committee heard concerns from several witnesses regarding unclear or insufficient definitions in the *Canada Transportation Act* that have allowed airlines to avoid compensating passengers. Specifically mentioned were the definitions of "flight cancellation" and "denied boarding."

According to the Canadian Transportation Agency, the current definition of "denied boarding" only applies to instances when an airline overbooks flights:

*“Denied boarding occurs when a passenger has a valid ticket for a flight, but is not allowed to occupy a seat on board the aircraft because the number of passengers who have checked in and are at the gate on time is greater than the number of available seats that can be occupied.”*

- *Denied Boarding: A Guide*, Canadian Transportation Agency, 2021, <https://otc-cta.gc.ca/eng/publication/denied-boarding-a-guide>

Witnesses shared that this definition fails to serve travellers denied boarding for any other reason. Mr. Lukacs provided an example of a couple who were denied boarding – and compensation – when an airline agent mistakenly believed they did not meet travel requirements.

The term “flight cancellation” is not defined in either the *Canada Transportation Act* or the APPR. Testimony from Mr. Lukacs, reiterated by Mr. Charbonneau and Mr. Lawford, expressed that this lack of a definition allows airlines to deny compensation for flights that are re-scheduled, even if the re-scheduling renders a passenger’s trip useless.

Witnesses recommended defining “flight delay” and “flight cancellation” in the same way the European Union does, which would address the shortcomings of the Canadian definitions. While the Committee’s report recommends adopting the European Union’s categories for flight delays and cancellations, that recommendation does not cover the other changes witnesses recommended to align Canada’s APPR with the European Union, such as defining “flight cancellation” and “denial of boarding.”

*“The first change is incorporating in the Canada Transportation Act a clear definition of “denial of boarding” and “cancellation” that mirrors the European Union’s definition. We often hear, for example, that a flight was not cancelled; it was just a schedule change. The airline refuses to pay compensation on that basis.”*

- *Gabor Lukacs, TRAN Meeting 40, November 21, 2022*

## **Protections for rail passengers**

Though only minimally referenced in its report, the Committee heard testimony from witnesses regarding disruptions to VIA Rail service during the 2022 holiday season. This testimony included a discussion about the potential need for passenger protections for rail passengers. The rail disruptions during the holiday season showed rail passengers can be just as inconvenienced by travel disruptions as air passengers. In his testimony, the President and CEO of VIA Rail indicated he is open to the idea of passenger protection for rail services, but that the regulations would have to be substantially different from the APPR. This, he stated, is because the relationship between VIA Rail and host railways creates an operational ecosystem very different from that of air travel:

*“We'd welcome a discussion around better passenger protection for rail passengers, but I think for it to be relevant it would be important to have the host railways as part of this process. As we are so dependent on the host railways to deliver our service”*  
- Martin R. Landry, TRAN meeting 48, January 26, 2023

Mr. Hayman indicated that in the same way witnesses recommended aligning Canada's air passenger protections with those of the European Union, a similar approach could be taken with rail passenger protections, and that the European Union's protections could serve as a starting point in determining a Canadian approach:

*“I would also encourage on that front, there's been talk here about looking to the EU for passenger protection standards around air passengers, there's also some good existing standards there for rail passengers as well, so I think we wouldn't be reinventing the wheel here. Obviously, it's a slightly different situation in the Canadian context than in Europe, but there's definitely some good baselines there I think to start from.”*

- Tim Hayman, TRAN meeting 49, January 26 2023

### **Cost of processing air passenger complaints**

The Committee's report recommends that when the Canadian Transportation Agency reverses an airline's decision to deny compensation, the cost of investigating and resolving that APPR complaint be borne by the airline. This is meant as a way of incentivizing better customer service and fewer complaints. While the NDP agrees incentivizing airlines to pay compensation is important, we feel the Committee's recommended approach has several flaws. As such, the NDP does not support it.

The committee did not hear any testimony calling for such an approach. Mr. Lawford recommended the creation of a regulatory body, funded by industry rather than taxpayers, and based on existing Canadian models like the Commission for Complaints for Telecom-television Services (CCTS) or the Ombudsman for Banking Services and Investments (OBSI). His stated intent was to simplify the complaints resolution process. However, no witnesses suggested airlines bear the costs of processing air passenger complaints in the way the Committee's recommendation describes.

The NDP is concerned making airlines financially responsible for processing air passenger complaints in certain circumstances could undermine the independence and public accountability of the CTA's complaints process. The NDP prefers the use of administrative monetary penalties as a simpler deterrent, rather than requiring airlines to pay processing costs.

If, as recommended by the Committee, the categorization of flight disruptions is simplified and airlines are required to automatically compensate passengers, the cost of resolving complaints should dramatically decline.

## **Recommendations**

Further to the recommendations contained in the Committee's report, the NDP recommends the following:

### **Recommendation 1- Long-term Protections for Delayed Baggage**

**That the Government of Canada amend section 86.11(1)(c) of the Canada Transportation Act to read “prescribing the minimum compensation for lost, delayed or damaged baggage that the carrier is required to pay”**

### **Recommendation 2- Definition of “denied boarding”**

**That the Government of Canada amend the Canada Transportation Act to define “denial of boarding” to include reasons for refusal to carry a passenger unilaterally, and without consent, beyond only over-booking of the flight.**

### **Recommendation 3- Definition of “flight cancellation”**

**That the Government of Canada amend the Canada Transportation Act to define “flight cancellation” to include any failure to operate a scheduled flight.**

### **Recommendation 5- Passenger Protections for Rail Transit**

**That the Government of Canada study the viability of developing passenger protection regulations for other forms of mass transit, such as rail services, while respecting provincial jurisdiction.**

