The Association of Canadian Travel Agencies

Brief Submitted on
Bill C-49 / Transportation Modernization Act

Prepared for:

The Senate of Canada
Standing Committee on Transport and Communications

28 February 2018
Introduction

The Association of Canadian Travel Agencies (ACTA), which represents approximately 1,200 travel agencies and more than 12,000 travel agents across the country, is pleased to be a witness participating in the review of the proposed provisions of Bill C-49, The Transportation Modernization Act, and would like to thank the Senate Standing Committee on Transport and Communications for providing ACTA and its members the opportunity for comment during this review.

ACTA represents and defends the interests of retail travel professionals and, by extension, those of travel consumers. Our members, Canadian retail travel agencies, act as intermediary between buyers and sellers of travel products and services. Consumer-centric relationships that are based on loyalty and trust are the cornerstone of our industry. As travel agents, we have a responsibility to represent both our customers and suppliers in a non-biased way in order to add value to our clients’ travel experience.

Bill C-49 is an Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts. With respect to air transportation, it amends the Canada Transportation Act to require the Canadian Transportation Agency to make regulations establishing a new air passenger rights regime and to authorize the Governor in Council to make regulations requiring air carriers and other persons providing services in relation to air transportation to report on different aspects of their performance with respect to passenger experience or quality of service.

For the purpose of this brief, ACTA will focus on the establishment of a new air passenger rights regime, and put forward for Government’s consideration, suggestions that present a balanced approach that offers travellers quality service, and at the same time enables Canada to continue to build a healthy and sustainable travel industry.

Background

ACTA was involved in the initial consultations of the Canadian Transportation Act Review and submitted a brief to the Review Panel in December 2014. ACTA recommended that the Review consider points under the following areas of concern:

- Strengthening of Consumer Protection/Passenger Rights
- Security
- Canadian Tourism as an Economic Driver

ACTA had opportunities to address these concerns with the Review Panel, the Canadian Transportation Agency, the Minister of Transport and Members of Parliament in the years following our initial submission.

In 2017, ACTA formed the ACTA Canada Transportation Act (CTA) Review Committee which includes key board members, as well as travel agency leaders across Canada. Our committee
looked specifically at the legislation proposed for Air Passenger Rights (Clause 19), Section 86.11. The Committee also conducted a jurisdictional scan of the passengers rights regimes in Europe and the USA, along with their strength and weaknesses, and then identified areas of agreement and/or concern with the legislation and potential options for regulations. The points of interest were broken down into:

- Disclosure of Recourse
- Flight delay*
- Flight cancellation*
- Denial of Boarding*
- Downgraded
- Lost or Damaged Baggage
- Delayed Baggage
- Assignment of Seats
- Musical Instruments
- Tarmac Delays

*In each situation, within carrier’s control, within carrier’s control but required for safety (inc. mechanical) and outside of the carrier’s control were all considered.

Please see Appendix A attached for the complete jurisdictional scan.

**ACTA supports that Bill C-49 would mandate the Canadian Transportation Agency to develop, in collaboration with Transport Canada, a set of clear regulations to strengthen air passenger rights that would apply consistently to all carriers.** ACTA agrees with the statements made by Karen McCrimmon, Parliamentary Secretary to the Minister of Transport during the sitting of the House of Commons on October 31st, 2017, “The regulatory process would allow broad consultation with Canadians and industry stakeholders to develop world-leading regulations, which is what Canadians expect and deserve.”

**ACTA is also in agreement with the majority of the text as written in the legislation with a few concerns and recommendations. These concerns and recommendations are outlined in this brief.**

**Key Concerns and Recommendations**

1. **FLIGHT DELAY**

The proposed provision in the legislation for each of these situations under flight delay reads, “minimum standards of treatment and compensation and timely information and assistance” when the flight delay is within the carrier’s control and “minimum standards of treatment and timely information and assistance” when the flight delay is within the carrier’s control but required for safety (inc. mechanical). The ACTA CTA Review Committee points out that the definition for “within the carrier’s control” and “within the carrier’s control but required for safety (inc. mechanical)” is not clear. The ACTA CTA Review Committee therefore recommends
that these terms be subsequently defined in the Regulations, and explained with examples provided.

2. **DENIAL OF BOARDING**

Section 86.11 (1) (b) (iii) states that it is the carrier’s obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier’s control, such as natural phenomena and security events. The ACTA CTA Review Committee is in agreement with the proposed legislation but recommends that **explanations with examples are clearly outlined in the Regulations** when a carrier is required to complete an itinerary under a “denial of boarding” situation, when this situation is outside of the carrier’s control.

3. **DOWNGRADED**

The proposed legislation does not address the practice of downgrading. This may happen when a passenger purchases a ticket in a certain class and they are “bumped” or downgraded to a lesser class that had not been purchased. For example, when a premium seat (business class, premium economy, exit row) is purchased but the equipment is changed, or group seat selection is lost due to new aircraft configuration, it is not a “denied boarding” situation, but the consumer did not get what they paid for. This situation is identified in the European Passenger Bill of Rights. The ACTA CTA Review Committee recommends that the wording “downgraded” be included in Section 86.11 (1) (b) (i).

4. **ASSIGNMENT OF SEATS**

While both the European Passenger Bill of Rights and the U.S. Department of Transportation regulations do not address the assignment of seats, the ACTA CTA Review Committee is in agreement with the concept of establishing legislation on the assignment of seats for minors as proposed legislation under Section 86.11 (1) (d). The ACTA CTA Review Committee did recommend however, that the legislation be more aligned with the mandatory international rules for unaccompanied minors being under 12. If the rules allow children to sit unaccompanied over the age of 12, obliging the carrier to have children under the age of 14 sit in close proximity to a parent, guardian or tutor at no additional cost does not align. The recommendation therefore, is to lower the age to 12.

5. **MUSICAL INSTRUMENTS**

The ACTA CTA Review Committee finds specific regulations for musical instruments unusual. One could argue for other sensitive checked or cabin baggage such as sporting equipment, electronic equipment, medical equipment, etc. If musical instruments are checked, perhaps it is better worded more broadly as “sensitive equipment” while contemplating regulations for checked baggage under 86.11 (1) (c). For this reason, the ACTA CTA Review Committee recommend that the wording by changed as follows:
(e) requiring the carrier to establish terms and conditions of carriage with regard to the transportation of sensitive checked items such as musical instruments, sport equipment, medical or electronic equipment.

6. **TARMAC DELAYS**

The ACTA CTA Review Committee supports that minimum standards of treatment and compensation and timely information and assistance by carriers is legislated in the event of a tarmac delay. However, the ACTA CTA Review Committee recommended that the time “over three hours” be removed from the legislation and instead the time should be clearly defined in the Regulations. This allows more flexibility to consult with all stakeholders involved in the travel process. According to an exploratory study on the application and possible revision of Regulation 261/2004 (the European Passenger Bill of Rights), prepared for the European Commission by Steer Davies Gleave, one suggestion to address economic burden on air carriers that may have a negative impact on quality of customer service, is to extend the compensation threshold to 5 hours instead of the current minimum of 2 hours. This suggestion highlights the need to leave specific details out of legislation where it is much more difficult to change and keep them within regulations.

**SUMMARY OF RECOMMENDATIONS**

- The definition for “within the carrier’s control” and “within the carrier’s control but required for safety (inc. mechanical)” is not clear. The ACTA CTA Review Committee therefore recommends that these terms be defined in the Regulations, and explained with examples provided.
- Explanations with examples are clearly outlined in the Regulations when a carrier is legislated to complete an itinerary under a “denial of boarding” situation, when this situation is outside of the carrier’s control.
- Include the wording “downgraded” in Section 86.11 (1) (b) (i).
- The proposed legislation should be more aligned with the mandatory international rules for unaccompanied minors being under 12. The recommendation therefore, is to lower the age to 12.
- The proposed legislation pertaining to musical instruments be amended to allow for the transportation of sensitive checked items such as musical instruments, sport equipment, medical or electronic equipment, with specific details in the regulations, not the legislation.
- The time “over three hours” for tarmac delays be removed from the proposed legislation and instead included in the regulations.

**ADDITIONAL FEEDBACK AND POINTS TO CONSIDER FOR REGULATIONS**

- **Competition**: ACTA believes that Canadian consumers will benefit through a healthy competitive market. Whether that is through increased foreign ownership or joint ventures, more competition in air travel is good, so long as it is healthy and fair competition.
• **Improved Passenger Experience at Airports:** ACTA understands that there are many stakeholders involved in the travel experience of a passenger at an airport. ACTA member agencies speak to the frustration their customers experience such as long wait times going through security, but also in the backlog in customs and immigration halls or waits due to air traffic control matters. The goal should be to ensure that standards and efficiencies are put in place to improve the overall passenger experience. This may require additional government funding such as applying the full amount of the Air Travellers Security Charge (ATSC) back into the CATSA program. All stakeholders should take an active and collaborative role in improving the airport experience of a passenger.

• **Jurisdictional Conflict:** Section 86.11 (1) (b) (i) states “The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights, respecting the carrier’s obligations in the case of flight delay, flight cancellation or denial of boarding, including the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier’s control.” Considering there are other jurisdictions (such as Europe) with a Passenger Bill of Rights regime, application of the Canadian Passengers Bill of Rights should not conflict and allow the possibility of double compensation. Multiple jurisdictions polices and processes should be addressed in the Regulations.

In conclusion, ACTA appreciates the opportunity to provide input to the Senate Standing Committee on Transport and Communications. We are pleased to be a witness participating in the review of the proposed provisions of Bill C-49, The Transportation Modernization Act. Should you have any questions or concerns to the points our organization has made, please contact Wendy Paradis, ACTA President at wparadis@acta.ca / 905-282-9294 ext. 121 or Heather Craig-Peddie, ACTA Vice President Advocacy and Member Relations at hcroig-peddie@acta.ca / 905-282-9294 ext. 122.

Respectfully submitted,

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