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**To:** <[VictorSenna@sen.parl.gc.ca](mailto:VictorSenna@sen.parl.gc.ca)>  
**Cc:** Bruce Cran <[bcranbiz@telus.net](mailto:bcranbiz@telus.net)>  
**Subject:** RE: Bill C-40

# CONSUMERS' ASSOCIATION OF CANADA

11<sup>TH</sup> March, 2018

Via email: [Victor.Senna@sen.parl.gc.ca](mailto:Victor.Senna@sen.parl.gc.ca)

The Honourable David Tkachuk, Senator  
Chairperson  
Standing Senate Committee on Transport and Communications

Dear Senator Tkachuk:

**Re: Bill C-49, *Transportation Modernization Act* and travellers' rights**

I am writing on behalf of the Consumers' Association of Canada (CAC) to comment on the proposed amendments to provisions of the *Canada Transportation Act* affecting air passengers, set out in Bill C-49.

The Consumers' Association of Canada (CAC), founded in 1947, is an independent, national, not-for-profit, volunteer-based organization. The longest serving and most respected consumer organization in Canada, our mandate is to inform and educate consumers on marketplace issues, to advocate for consumers with government and industry, and to work with government and industry to solve marketplace problems.

## **Summary**

The proposed amendments seek to:

- bar public interest advocates from bringing regulatory complaints against airlines;
- roll back the existing rights of Canadian travellers; and
- delegate the creation of additional regulations to an unelected and “captured” regulator, known for its reluctance to act in the public interest.

We believe that these measures clearly and substantially harm Canadian consumers, and are antithetical with the government’s declared objective of improving the treatment and experience of air passengers.

## **Barring complaints brought in the public interest**

The current state of the law permits making a complaint against an airline in the public interest, without the complainant being personally affected by the subject matter of the complaint.<sup>[1]</sup> In the past two decades, this has allowed public interest advocates, such as Dr. Gabor Lukacs<sup>[2]</sup> or the Council of Canadians with Disabilities, to bring complaints that have significantly improved the treatment of Canadian consumers by airlines.

Bill C-49 seeks to rewrite the law by restricting the right to make a regulatory complaint to those who are “adversely affected,”<sup>[3]</sup> and thereby barring public interest advocates from the regulatory complaint process.

We consider these proposed amendments, serving solely the private interests of the airlines, an unmitigated attack on NGOs in general, and consumer rights organizations in particular, reminiscent of oppressive regimes, and unbecoming of a free and democratic society.

## **Rolling back existing rights of Canadian travellers**

Currently, passengers on an aircraft stranded on the tarmac for more than 90 minutes are entitled to beverages, snacks, and the option to disembark. These obligations are set out in the terms and conditions (tariffs) of major Canadian airlines, and as such they are legally binding and enforceable.

We find the proposal of Bill C-49 to *increase to 3 hours*<sup>[4]</sup> the amount of time passengers may have to endure confined to an aircraft on the tarmac, without water or food, utterly unreasonable and inhumane. We are concerned that this amendment, if passed, would expose the travelling public to serious health and safety risks.

We are perplexed by the exclusion of flight delays and cancellations caused by “mechanical malfunctions” from the circumstances where an airline must pay compensation to passengers.<sup>[5]</sup> This measure is inconsistent with the well-established international standard of the *Montreal Convention*, and the tested air passenger protection regime of the European Union.

## **Delegation of creating additional regulations to the Canadian Transportation Agency**

Bill C-49, other than barring public interest advocacy and clawing back existing rights of passengers, contains no new rights. Instead, it proposes to delegate the creation of additional regulations to the Canadian Transportation Agency (CTA). We believe this to be against the interest of Canadian consumers for two reasons.

First, we are concerned about the lack of accountability. Unlike elected representatives, the CTA is not accountable to and cannot be held accountable by the Canadian public. At the same time, the delegation of the the creation of regulations to the CTA would likely shield the elected representatives from accountability, permitting them to say: “It was not us. It was an arm’s length

body.”

Second, we do not believe the CTA to be independent, impartial, or acting in the public interest anymore. In addition to media reports questioning the CTA's integrity and cozy relationship with the airlines,<sup>[6]</sup> the CTA has also been criticized by civil rights organizations and the judiciary for:

- lack of transparency and interfering with public access to its public records;<sup>[7]</sup>
- its decision lacking clarity;<sup>[8]</sup>
- failing to carry out its mandate to enforce the law;<sup>[9]</sup>
- interfering with freedom of speech and suppressing public criticism;<sup>[10]</sup> and
- refusing to hear a complaint based on a legal test that is impossible to meet.<sup>[11]</sup>

Yours truly,

Bruce Cran,  
President and Director, CAC

PS

Confirmation of receipt would be appreciated.

Cc: The Honourable Patricia Bovey, Senator  
The Honourable Dennis Dawson, Senator  
The Honourable Pierre-Hugues Boisvenu, Senator  
The Honourable René Cormier, Senator  
The Honourable Raymonde Gagné, Senator  
The Honourable Rosa Galvez, Senator  
The Honourable Diane F. Griffin, Senator  
The Honourable Michael L. MacDonald , Senator  
The Honourable Ghislain Maltais, Senator  
The Honourable Fabian Manning, Senator  
The Honourable Terry M. Mercer, Senator  
The Honourable Donald Neil Plett, Senator  
The Honourable André Pratte, Senator  
The Honourable Pierrette Ringuette, Senator

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[1] “SCC rules public interest standing rules developed by courts don’t apply to complaints to federal agency,” *The Lawyer’s Daily*, January 19, 2018.

[2] Founder and Coordinator of Air Passenger Rights.

[3] Proposed section 67.3 and proposed subparagraph 86(1)(h)(iii).

[4] Proposed paragraph 86.11(1)(f).

[5] Proposed subparagraphs 86.11(1)(b)(i) vs. 86.11(1)(b)(ii).

[6] See, for example: “When airline passengers fight back,” by Catherine McIntyre, *Maclean’s*, May 19, 2017; and “Air Transat got heads up on Canadian airline regulator’s decision: court document,” by Sean O’Shea, *Global News*, February 1, 2018.

[7] *Lukacs v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, para. 10.

[8] *Lukacs v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, para. 40.

[9] *Lukacs v. Canada (Transportation Agency)*, 2016 FCA 220, para. 19.

[10] Justice Centre for Constitutional Freedoms: “Canadian Transportation Agency agrees to cease its censorship of Gabor Lukacs,” September 14, 2017; and [letter of the British Columbia Civil Liberties Association \(BCCLA\) to the CTA, dated September 5, 2017](#).

[11] *Delta Air Lines v. Lukacs*, 2018 SCC 2, paras. 17-21.