CONSUMERS’ ASSOCIATION OF CANADA

11TH March, 2018

Via email: 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. In the past two decades, this has allowed public interest advocates, such as Dr. Gabor Lukacs 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 whose who are “adversely affected,” 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[4] 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.[5] 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 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
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, 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;[7]
- its decision lacking clarity;[8]
- failing to carry out its mandate to enforce the law;[9]
- interfering with freedom of speech and suppressing public criticism;[10] and
- refusing to hear a complaint based on a legal test that is impossible to meet.[11]

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


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


