



**Brief to the**  
**Standing Senate Committee on Transport and Communications**  
**On**  
**Bill C-49, An Act to amend the Canadian Transportation Act and other Acts**  
**respecting transportation and to make related and consequential amendments to**  
**other Acts (the Transportation Modernization Act)**

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**February 28, 2018**

The International Air Transport Association (IATA) appreciates the opportunity to submit these comments to the Standing Senate Committee on Transport and Communications as it considers Bill C-49, the Transportation Modernization Act.

IATA was created in 1945 by a special act of the Canadian Parliament. Although incorporated in Canada and headquartered in Montreal, IATA's responsibilities are global in scope and vital to the efficient, seamlessly networked conduct of international commercial air transport. IATA's mission is to represent, lead and serve the airline industry. Our members comprise some 275 airlines in over 117 countries, carrying 83% of the world's air traffic. In Canada, IATA members include Air Canada, Air Transat, Cargojet and WestJet.

### **Introduction**

IATA greatly appreciates the opportunity to comment on Bill C-49 as it would have a direct impact on the majority of the approximately 70 IATA member airlines flying to and from Canada. As you know, Bill C-49 seeks to address the findings of the Canadian Transportation Act (CTA) Review that were captured in the 2015 Report entitled



“Pathways: Connecting Canada’s Transportation System to the World.”(hereinafter CTA Review).

IATA appreciated the opportunity to contribute to the CTA Review. We were pleased with the key CTA Review findings, particularly its focus on cost competitiveness of Canadian aviation compared to other jurisdictions that are subject to significantly lower government taxes and fees. The CTA Review recommendations included a phasing out of airport rent, a reform of the user-pay policy for air transport to prevent the government from collecting taxes in excess of their investment in services and infrastructure, and the reduction in the Air Travelers’ Security Charge.

In his November 2016 speech before the Chamber of Commerce of Metropolitan Montreal, Transport Minister Marc Garneau echoed this competitiveness focus when he noted that, along with passenger rights, the major theme he heard in conversations with travelers was concern with the high cost of air travel within Canada, driven by what he called a “litany of fees and charges.” He promised that the government would take steps to address these concerns.

Unfortunately, Bill C49 as currently drafted does nothing to address the high cost of commercial aviation in Canada. There is no mention of reducing airport rent, of reforming the user pay policy or reducing the Air Travelers’ Security Charge. While the Government suggests that liberalizing international ownership restrictions will potentially increase competition, it is high taxes and charges, more than a lack of competition, which is the major impediment to commercial aviation reaching its full potential in Canada. Conversely, implementation of the passenger rights regime contemplated by Bill C-49 could potentially decrease competition in the area of passenger services while increasing costs to consumers as a result of passengers having to cover some of the costs of regulatory compliance.

To be fair, Minister Garneau has stated publicly that Bill C49 is only the first phase of the Government’s vision for the future of air transport in Canada and that the next phase will address the challenges associated with the high cost of doing business in this country. We are very pleased with the collaboration we have had with Minister Garneau and his team since the introduction of Bill C49 on issues like airport rent, airport governance and airport security. While we applaud the Minister and his team for these efforts, we continue to question the need for the passenger rights regime envisioned in Bill C-49.

### **Survey of Existing Passenger Rights Regimes**

As you know Bill C49 authorizes the Canadian Transportation Agency (CTA), supported by Transport Canada to initiate consultations with Canadians and air sector representatives to develop new passenger rights regulations. As noted earlier, IATA



represents the interests of approximately 275 member airlines around the world. As part of our advocacy activities, we are working with multiple governments to help shape passenger rights regimes in ways that protect both the interests of passengers and the airlines that serve them. We would like to share IATA's perspective of these regimes in the hope that Canada can fashion its regulations in a way that promotes passengers' well-being without reducing competition or re-regulating this deregulated industry.

The most well-known passenger rights regimes in the world took effect in the European Union in 2005 and the United States in 2009. In Europe, EU 261/2004 established common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations and long delays. In three major rulemakings, the US Department of Transportation (DOT) addressed what they considered "unfair and deceptive practices" by US and foreign airlines operating in the US market that negatively impacted airline passengers. In the process, they imposed large fines for excessive tarmac delays, required airlines to clearly set forth their ancillary fees and to establish enforceable customer service plans.

While both the EU and US Governments have pointed to the imposition of large fines under these rules as evidence of their success, the facts tell a different story. In the EU, poor drafting on the part of regulators has led the courts to interpret the rules in a variety of different ways, causing confusion on the part of both airlines and their customers. For example, European courts concluded that aircraft technical difficulties and lightning strikes are not the type of "extraordinary circumstances" that would exempt the carrier for being late. In effect, this punishes airlines for placing passenger safety above schedule keeping. The European Court of Justice also arbitrarily concluded that passengers should have the right to compensation after a 3 hour delay despite the fact that nothing in the regulation dictates that time limit. Finally, the high fines have generated a new business: claim farms that exploit the loopholes to generate high commissions. It is to no one's surprise that the EU is now pursuing a major rewrite of the regulation to provide better definition for both airlines and passengers.

In the US, DOT stretched the statutory definition of "unfair and deceptive practices" far beyond what was intended by Congress, while making only a cursory attempt at a cost-benefit analysis that is required for all US regulations. As a result, airlines need to expend significant resources complying with proscriptive regulations that at times have diminished, rather than improved the passenger experience. A prime example of this is the tarmac delay rule, which imposes fines of up to \$27,500 per passenger, for flights that are delayed on the tarmac for more than three hours (4 hours for international flights). To avoid the fines aircraft must return to the gates within the prescribed time limits to enable passengers to disembark. The US Government Accountability Office as well as Dartmouth College concluded that this provision resulted in an increase in cancelled flights as carriers sought to minimize the risk of punitive fines. Moreover,



carriers found themselves being fined in a wide variety of circumstances, including instances where airports did not have gates for aircraft to return to in the case of snowstorms or when US Customs Officers were not available to process passengers.

Other countries have carefully monitored the US and EU prescriptive passenger rights regimes and have decided to take different approaches, with positive results. In Australia, rather than singling out aviation for special treatment, the Government passed the “Australian Consumer Law”, to provide baseline protections for customers of all Australian industries. To supplement the broad consumer rights law, Australian airlines have worked with the Government to develop “Customer Charters” that outline each airline’s service commitments and complaint handling procedures. Travelers can distinguish between the levels of services to be provided during times of delay and cancellation and factor that into the price they are paying for their ticket. This softer regulatory touch contributed to a 37% decrease in air fares over 10 years, improved on-time performance and lower rates of cancellation.

For its part, China published new passenger protection rules in January 2017. Rather than mandating specific compensation policies for delays or cancellations, the Chinese directed carriers to publicize their conditions of carriage and clearly state their respective delay and cancellation policies at the time of purchase. As in Australia, this allows passengers to make their own price-service trade-offs rather than having the government decide for them. Importantly, the regulations also distinguish between what is and what is not in control of carriers in the provision of care and assistance during delays and cancellations, which avoids airlines being hit for uncontrollable costs that in the end must be passed onto consumers.

It is important to note that there are already protections in place for passengers flying commercially in Canada. Canada is a Party to the Montreal Convention 1999 (MC99)<sup>1</sup> which provides Canadian airline passengers on international flights with comprehensive protection and compensation in the case of flight delays or in the case of delay, loss, damage or destruction of their baggage. Canadian carriers as well as foreign airlines serving Canada already publish their tariffs on their websites and the conditions attached to each fare level. In November 2016, at the request of the Canadian Transportation Agency (CTA), Canadian airlines voluntarily ensured that their tariffs were fully searchable and written in plain language that passengers could understand.

If passengers feel that airlines have violated those conditions and they do not feel they are getting relief from the carrier, they can ask the CTA to intervene on their behalf via facilitation with the airline, mediation or, if necessary adjudication. In 2015–2016, CTA

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<sup>1</sup> *Convention for the Unification of Certain Rules for international carriage by Air done at Montreal on 28 May 1999*, [https://www.icao.int/secretariat/legal/List%20of%20Parties/MtI99\\_EN.pdf](https://www.icao.int/secretariat/legal/List%20of%20Parties/MtI99_EN.pdf)



received 834 new travel complaints, of which 757 were resolved. Almost 95% of air travel complaints were resolved through facilitation, whereby the CTA would contact the airline and ask them to address the particular issue raised by the passenger. The number of complaints to CTA have been growing, in part because of a recent public education campaign conducted by that agency. However, the fact that there were 85 million air passengers in Canada in 2016, less than a thousand of whom filed formal complaints, 95% of which were resolved, calls into question the need for the implementation of a broad passenger rights regime in Canada.

As currently drafted, Bill C-49 directs the CTA and Transport Canada to develop regulations that are in effect a hybrid between the transparency approach of Australia and China and the punitive EU/US approach. It requires carriers to ensure that passengers are able to access and read applicable conditions of carriage and recourse information in as clear language as possible. IATA strongly supports transparency as it enables passengers to make informed choices as part of their ticket shopping process. Bill C-49 goes on to require CTA and Transport Canada to develop regulations setting forth carrier obligations in case of irregular operations, including minimum standards of treatment and compensation. IATA opposes this punitive approach as the US and EU experience demonstrates that the free market is better equipped to promote a positive passenger experience than the government mandating customer service standards. This approach will inevitably mean less passenger choice, less competition, higher cost for Canadian passengers and likely increased confusion on the part of airlines seeking to meet the new requirements.

Transport Canada and the CTA have both indicated during the development and consideration of Bill C-49 that Canada should implement a passenger rights regime in part because the United States and Europe already have one in place. Given that, it is important that the Committee take note of the current regulatory review being undertaken by DOT. This review will consider how to reduce the \$3.2B annual burden that DOT regulations impose on the US private sector by modifying or eliminating those regulations where the benefits do not substantially outweigh the costs and/or where they impose unnecessary burdens on the private sector. While this review is in process, we anticipate that many of the DOT regulations Bill C49 anticipates that the CTA will emulate will no longer be in place in the United States. The costs of passenger rights regulations fall primarily on airlines and their passengers. It is critical that this Committee express its concern about the economic impact of the regulations anticipated by Bill C49 in light of the already high cost of doing airline business in Canada.

In addition, we urge the regulators to take the opportunity to learn from the experiences of some of the other 70 countries that have implemented passenger rights regimes. Those lessons, which are consistent with ICAO-endorsed passenger rights principles, include:



- **Targeted:** Regulations should have specific and well defined objectives that respond directly to the problem being identified. Airlines should be given the flexibility to meet defined objectives. Governments should avoid the temptation of imposing passenger rights regimes based on specific incidents that are not reflective of normal circumstances facing airline passengers.
- **Proportionality:** Compensation for delays or cancellations should not be punitive in nature but instead be designed to reasonably compensate impacted passengers for their inconvenience.
- **Customer choice:** Government should not substitute its judgment as to what products and services are attractive to passengers. As long as passengers have full information on their options, they will chose in a manner that best meets their particular needs. If there is a market demand for particular products and services, the market will produce those options.
- **Cost benefit analysis:** There must be a clear demonstration that the benefits of the regulation substantially outweigh the cost of that regulation. A regulation based on sentiment rather than facts is doomed to fail.
- **Unintended consequences:** There must be consideration of unintended consequences of any regulation and a mechanism to correct the regulation if those consequences arise post-implementation.
- **Scope:** Customer service standards must apply to all parts of the air transportation ecosystem, including airlines, airports, travel agents and governments. Airlines cannot be held responsible for factors impacting passengers that are outside of their control. Care will be required when defining “outside a carrier’s control” in any new regulation.
- **Consultation:** The CTA and Transport Canada must continue to provide the industry with the ability to contribute to the shared goal of advancing airline passengers rights in the most efficient way possible.
- **Extraterritoriality:** Care must be given to ensure that Canadian passenger rights regulations do not extend beyond the Canadian border. Airlines must not be in a position to have to comply with two sets of inconsistent regulations of the same activities on the same flights. From a passenger point of view, overlapping regulations confuse passengers and create uncertainty as to their entitlements.

IATA and its member airlines appreciate the opportunity to provide this statement to the Committee and look forward to supporting the CTA, Transport Canada and the



Canadian Government generally as it seeks the proper balance between government regulation and consumer choice.

Sincerely,

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