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Response to Accessible Transportation Discussion Paper for Regulatory Modernization
By Chris Stark and Marie Stark

Introduction:

These few comments are made by two senior citizens who are blind and travel with guide dogs. They are based on our travel experiences over the years, but particularly during the past six years, following our retirement from work, and as our needs change with age and increased disabilities. During that time, we have primarily traveled by air for medical, visits to friends, and vacation reasons.

While the experiences leading to our comments are anecdotal, they are consistent each time we travel. Because of the nature of the customer service we receive when traveling by air, we do not travel as much as we would like.

The three goals:

The Regulatory Modernization Initiative will be anchored in three goals:

- 1 Ensuring that industry's obligations are clear, predictable, and relevant to a range of existing and emerging business practices.

Comments:

The above goal was the same as that for all the previous regulations, codes of practice and guidance documents. It has not been achieved. Each time a trip is planned and executed, it is a time of uncertainty, constantly shifting accessibility demands, and erratic customer service.

- 2 Ensuring that the demands associated with compliance are only as high as necessary to achieve the regulations' purposes.

Comments:

This goal is a negative reflection of our human rights. In our view, it stems from a belief that undue obstacle is an economic right. This goal has and will leave us and others extremely vulnerable when taking a trip, particularly by air. Regulations provide the expectation that we will be helped and respected with usable customer service when

traveling. The reality of air travel is a risky activity for no other reason than we are persons with disabilities. There needs to be a real time problem resolution mechanism during the trip.

*** Recommendation:

It is recommended that there be a regulatory requirement for service providers to have an accessibility resolution person on call that the traveler with a disability must be put in contact with, by staff, at any stage of the trip. This request must be documented in writing, and the traveler be given a reference number at the time and place of the problem.

- 3 Facilitating the efficient and effective identification and correction of instances of non-compliance.

Comments:

This goal conflicts with goal two above. It assumes that the regulations meet our evolving needs, as travelers who are blind. Our legitimate customer service needs have never been met, on a consistent basis, in the twenty plus years the existing air regulations have been in force. They are minimal service compromises.

Enforcement:

For example, the enforcement of the Terms and Conditions of Travel Regulations by the CTA has not, on its own motion, produced the expected results.

*** Recommendation:

It is recommended that the new Super Size Regulation should mandate an ongoing inspection program using persons with disabilities to ensure proper application by transportation service providers. .

This recommended approach has been long used by Transport Canada for safety and CATSA for security quality control.

Dispute resolution:

We have prepared a short position paper on dispute resolution by tribunals for submission to the expected federal government consultation on new legislation for persons with disabilities.

Our conclusion is that our service needs and expectations are not being met by complaint resolution processes. In our opinion, this fact is one of the major contributing factors for the call for the federal government to take legislative action.

The CTA portraying itself now as a neutral third party increases the inherent power imbalance in the complaint resolution process, regardless of its nature, resulting in an informal resolution, a mediated resolution, or a formal decision. The person with a disability is the only non salaried person participating in these complaint resolution processes. Complainants with disabilities are very vulnerable these days when participating in Agency adjudicative processes.

The missing link is action within thirty days to resolve a problem a traveler with a disability experiences, such as regular denial of sufficient space for service animals on aircraft.

Requests for help from the CTA which take months and years to take any action that may result in any positive travel assistance is exploitation of a person's disability, of the worst kind. Travelers with disabilities need protection from industry victimization, as part of the CTA's administration of its General Rules governing travel complaints.

*** Recommendation:

It is recommended that the new Super Regulation should contain a provision that allows the CTA to resolve a service problem covered by its standards that does not require any more involvement from the person with a disability, after notifying the Agency. There should be a requirement that these barriers be removed within thirty days, and that the CTA become the lead in these situations.

*** Recommendation

The regulation should require that CTA provide legal assistance to persons with disabilities at Agency expense, when the General Rules are used to address disability related service needs, and that this legal assistance include mediations. There is a legal recognition by Court case law that the CTA is the transportation subject matter experts responsible for protecting the human rights of persons with disabilities within Canada's transportation system under federal jurisdiction. Thus, the Agency interpretation of undue obstacle as an economic right has been rejected by the Federal Court of Canada on a consistent basis including the CCD cases. An undue obstacle is in point of case law a human right. The regulations, codes of practices, guidelines and other guidance material are written in economic commercial language. It is submitted that the proposed Super-Sized Regulation will violate the Canadian Human Rights Act if it fails to articulate our rights within the transportation system. Undue obstacle never means the same thing consistently, thus our rights need to be stated in clear and explicit language to avoid this constant shifting interpretation by service providers.

*** Recommendation:

It is recommended that the new Super Size Regulation be written in human rights language and spell out clearly the human rights of travelers with disabilities within Canada's transportation system under federal jurisdiction.

Service animals:

Traveling with a guide dog is the number one challenge for us when arranging and executing an air trip.

It is our consistent air travel experience that no carrier provides the recommended space for large and extra-large guide dogs on single aisle aircraft, as specified in the CTA Implementation guide regarding space for service dogs on board large aircraft. Extra seats do not provide the safe properly configured space for guide dogs. Carrier staff focus on the seat, which guide dogs do not sit in, rather than the floor space which is the need.

This sufficient space standard is consistently used as a screening tool for the acceptance of our reservations, rather than a service requirement.

Air Canada Special Needs/Medical Desk always insists emphatically that while they have to provide sufficient space for guide dogs on domestic flights within Canada, they do not have to offer this accommodation on flights to and from the United States, or on long international flights. This requirement is like carriage of mobility aids and not similar to the one person one fare issue!

They do not have a clear floor measurement for guide dog use and for human use. The information provided at reservation is always different than when the user is shown to their assigned seat.

The request for sufficient space is ALWAYS treated by the Air Canada Medical Desk as an attempt to con the airline into a free upgrade to business class rather than a legitimate service request, and a legal human rights obligation to provide a disability related accommodation. It is worth noting that the seats in the business section on single aisle aircraft do not provide appropriate floor space because of the seat foot rest mechanism etc.

Dealing with the Air Canada Medical Desk is always a degrading and discouraging experience. Agents are rarely knowledgeable and constantly put you on hold and check the policy as each request is made, thus lengthening the time considerably. Now there is an issue of baggage charges even when you have to carry the food for your guide dog. Charging for carriage of guide dog food is discrimination and is a duty to accommodate issue, as well as a transportation related issue essential for taking a trip. Guide dog food is similar to a wheelchair battery which is carried free of charge.

*** Recommendation

It is recommended that transportation service providers be prohibited from charging for the carriage of guide dog food and equipment.

Guide dog users are regularly asked for a letter from their doctor before their service animal will be accepted for carriage and their reservation confirmed by WestJet. Several of our friends have also faced this requirement even though we all have certification

from a recognized guide dog training school, as well as identification cards from legal entities like the Ontario Attorney General's Office, and offered to provided it in advance and not just at the check-in desk.

It is our experience that air carriers view these accessibility regulations, codes of practice and guidance materials as requirements and regulation of people with disabilities rather than as their service obligations. Service providers should strive to compete to make even better provision of service for travelers with disabilities.

*** Recommendation:

It is recommended that the new Super Regulation make it clear that the requirements are focused on service providers and that they are bare minimum requirements.

WestJet tries to require that passengers who are blind sit in window seats, when there is absolutely no requirement from Transport Canada or the CTA restricting us to window seats only.

WestJet also demands the guide dog measurements from guide dog users for their animal before considering the reservation. When this information is given, then there are further inquiries like who did the measurements, how were they done and the like. No answer is provided about how this information will be used to provide appropriate service, as the space offered is always configured in the same way, regardless of the dog's dimensions. There is no system to keep a record of dog measurements to facilitate future reservations. As elderly passengers who travel with guide dogs, the space issue is one of health and well-being for us. Having a dog lie on our feet for hours during a flight reduces blood circulation to our feet.

*** Recommendation:

It is recommended that transportation service providers annually provide to the CTA, and on their websites usable seat plans that clearly identify seats in each class of service that contain the recommended space for Large and extra large guide dogs and other service animals, and that the CTA regularly spot check these seats, with the results of this monitoring posted to the Agency website.

Relieving Area Inside Security:

There is now finally a relieving area at a large Canadian airport inside of security. A Dog relieving Room at Vancouver International Airport on air side, as reported by icolebourn@postmedia.com is good news. [Given that flight times for service animals are from relieving spot to relieving spot helps when coping with delayed flights and lengthy check-in and security screening time requirements.](#)

*** Recommendation:

It is recommended that the new Super Regulation require all LARGE terminals to have service animal relieving areas inside the secure zone (sterile area) that is very easy to reach.

Curb Side Assistance:

When departing, assistance at curbside airport entrances is a real problem, as hired vehicle operators cannot even guide us to the entrance door, let alone to the airline area within sight of the doors at the Ottawa Airport. Security staff swoop down on the vehicle operator insisting that the vehicle drive away, even before we have time to harness our guide dogs and locate our baggage. When the vehicle departs, these security staff most of the time walk away and do not even speak to us when we try to ask them a question like where is the entrance door?

It is ironic that when we arrive at a U.S. airport like Tampa, there is always assistance at curbside for passengers with disabilities traveling home on a Canadian carrier. Security myths are being used to discriminate against people who are disabled. Security and accessibility need can be harmonized to improve this situation.

*** Recommendation:

It is recommended that the new Super Regulation mandate ground assistance from curbside to curbside at the same terminal the passenger is arriving or departing from.

CATSA Screening:

CATSA screening poses significant barriers related to disability. Carrier ground staff are forbidden from helping or guiding us when we go through the security screening process.

*** Recommendations

CATSA should be required by regulation to provide talking signage, tactile wayfinding, prohibition of ribbon barriers and lanes without a floor ribbon for cane detection, descriptive narration of each activity in real time, return of possessions to passengers who are blind, and dialogue on screening options for guide dogs and their users.

Accessible In-flight Entertainment:

Now that there are talking book readers and smart phones usable by persons who are blind, wifi could be an option to provide access to these services to them. Like at airports, the login for these aircraft and terminal wifi's are not easily accessible and usable by persons who are blind. Aircraft services should be free for those who cannot use the entertainment systems.

*** Recommendation:

It is recommended that ALL terminal and in-flight entertainment and information systems be accessible and usable by persons with a sensory disability, particularly persons who are blind.

Terminals:

Transportation terminals in Canada have been and continue to be designed in a way that maximizes the dependence on help for travelers who are blind. How helpful is a

tactile washroom sign if the person who is blind does not know where the washroom is so that they can check the sign?

*** Recommendation:

It is recommended that all air terminals be required to install and maintain in working order consistent way-finding measures for independent travel by persons who are blind, which provide orientation, commercial, flight and travel route information, in real time, when navigating a transportation terminal independently.

International Air Services:

The CTA has long used the complaint mechanism to apply its jurisdiction to foreign carriers landing in Canada, and Canadian carriers ground services for passengers with disabilities at foreign stations. Two examples of Agency help come to mind for us: resolution of boarding barriers at the Tel Aviv airport, and the attack of unleashed drug dogs on the apron of the Punta Cana airport when we and our service animals were boarding a flight home.

Thus, the concept of Canadian legislation applying to Canadian carriers all the time is nothing new. This practice has been adopted by many countries, as well as Canadian airlines at foreign stations.

*** Recommendation:

It is recommended that Canadian carriers be required to provide consistent Canadian levels of service throughout the journey, regardless of the country they operate to or from.

Technical Standards:

Requiring transportation terminals to adhere to CSA, W3C and similar recognized technical standards are excellent measures. Without a regulatory requirement transportation service providers will continue to view these requirements as discretionary.

Transportation websites, on line reservation, advance check in, schedules, kiosks, information screens, smartphone applications, signage (CATSA, Customs and Immigration, for example), terminal directions, etc continue to be unusable by most passengers who are blind, even though the technical solutions have been identified and agreed to by industry.

*** Recommendation:

It is recommended that such technical standards as CSA barrier-free standards and the W3C 2.0 Website Accessibility Guidelines be required to be implemented throughout the transportation industry, including such services as websites, kiosks, in-flight entertainment, smartphone apps etc. Web sites should be annually tested by the CTA employees with disabilities using adaptive technology to ensure compliance and usability.

Because we have to use the telephone, and not the web sites, we encounter additional undue obstacles, Particularly with Air Canada. We consistently spend hours on hold to be connected, the reservation agents are reluctant to provide schedule information, terms and conditions, as well as sale fares. They try to charge us for

making a phone reservation because we did not use the web reservation system, even though it is unusable as we are blind and use adaptive technology. Particularly with Air Canada, it takes two phone calls, one to the reservation agent and a second one to the medical desk to complete a reservation. This is double the wait time and can drag out over 48 hours.

***Recommendations

Airlines and all transportation services should be obligated to answer phone calls within 15 minutes. Transportation service providers should be prohibited from charging persons with disabilities a fee for making a phone reservation. Service providers should be required to offer a one call reservation service for persons with disabilities.

Conclusion:

The time it takes to have regulations to come into force is the major drawback to this initiative. Most, if not all, requirements have long supposed to have been adopted and implemented by the transportation industry, as they have been either regulatory obligations or voluntary commitments made by transportation entities when Codes of Practice were adopted. It is predictable that delay and weakening of existing measures will unfortunately be the transportation industry's response to this initiative

*** Recommendation

Provisions of existing Regulations, Codes of Practices and guidance circulars be grandfathered in this process to provide a foundation for long overdue enhancements for travelers with disabilities.

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