



**SUBMISSION BY AIR TRANSAT TO
THE CANADIAN TRANSPORTATION
AGENCY**

Proposed Air Travel Complaints Fee

November 4, 2024



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VIA WEBFORM

Ms. France Pégeot
Chair and CEO
The Canadian Transportation Agency
60 Laval Street, Unit 01
Gatineau, QC J8X 3G9

Dear Ms. Pégeot,

Re: Proposed Air Travel Complaints Fee

Air Transat appreciates the opportunity to provide comments in response to the Canadian Transportation Agency's ('CTA') proposal to impose an Air Travel Complaints Fee (the 'Fee') for processing air travel complaints. As proposed, the \$790 Fee would apply only to airlines for all decisions rendered, retroactively, and regardless of outcome.

From the outset, Air Transat reiterates that it shares the goal of CTA and of the Government of Canada to improve the air passenger experience of our valued customers in Canada. Air Transat accepts its responsibility for events within its control and is singularly focused on the satisfaction of our customers.

Air Transat is an award-winning reliable and affordable Canadian airline. We fly 5 million passengers per year with the lowest level of passenger complaints for major airlines in Canada, alongside our joint-venture partner Porter Airlines, according to the CTA's data. We represent less than 2% of the complaints inventory in the CTA backlog, of which we are ultimately found responsible for some 20% of the complaints filed against us thus far. Rather than a punitive additional almost one-million-dollar annual additional cost for Air Transat under this new Fee proposal (at current complaint volumes) largely for events for which we have fully complied with our obligations, we submit that reputable customer-centred conduct should be incentivized. This data as well as the CTA's own data shows that there is no indication that airlines are refusing to compensate our customers. To the contrary, Air Transat reiterates that we accept responsibility for situations within our control and our business is built around the satisfaction of our valued customers.

In launching this consultation, the CTA indicated the Fee would be temporary as 'the CTA establishes broader cost recovery schemes to encompass the costs of all its activities.' For the reasons set forth below, Air Transat recommends that the CTA set aside its proposed temporary Fee, as it focuses on the creation of a reasonable, balanced and fair cost-effective streamlined complaints process for our customers.

We submit that the Fee as proposed is highly problematic, offends foundational legal principles, and is ultimately anti-consumer. This new Fee comes amid the backdrop of a national conversation about the cost of air travel and the cost of living generally. As stated by the National Airlines Council of Canada ('NACC'), 'the impact of excessive third-party fees, taxes and charges in Canada's air travel system has put the cost of air travel out of reach for many Canadians and has placed the Canadian aviation sector at a competitive disadvantage compared to other jurisdictions.'

Together with our industry partners, we are unable to identify any similar state adjudicative body cost recovery fee imposed solely on ‘defendants’, irrespective of the outcome of the matter. Most dispute resolution schemes impose filing fees either exclusively on claimants or on both parties. Courts and tribunals then often have discretionary power to waive administrative fees for certain plaintiffs and/or award costs against the unsuccessful party. For example, the fee to initiate a claim of up to \$35,000 before the Small Claims Court of Ontario is \$108 per claim. Like any state adjudicative body, a solution could lie in a system where a consumer could access such a state-run complaints resolution service upon payment of a fee or deposit (thereby limiting the growth of a claims industry and of the volume of complaints to those with merit) which would be returned and the airline charged a reasonable cost recovery fee in all completed cases where the airline is found to have breached its legal obligations.

A fundamental feature of the legal process in Canada is that the successful party in a contested proceeding is not held financially liable for the cost. As in any other adjudicative process, airlines should not be held to pay a fee when they are not found to be at fault. The proposed Fee takes on a potentially punitive tone in that it can be seen to be sanctioning airlines for defending complaints they legitimately consider to be without merit, as is borne out in the data for Air Transat. The punitive nature is further compounded by the significant quantum of the proposed Fee and the potential for marked future increases in both volumes of complaints and the costs to adjudicate them by the CTA were this proposal to be adopted.

The CTA concluded in its original Regulatory Impact Analysis for the *Air Passenger Protection Regulations* (‘APPR’), that the new regime would not result in any incremental increase in carriers’ compliance costs and predicted the Agency’s own forward-looking costs of administering the program at \$1.4 million per year. In launching this consultation a few years hence, the CTA now notes \$29 million in annual costs to be the object of the cost recovery scheme. To the extent the proposed Fee scheme heralds large increases in volumes of complaints and therefore CTA costs to administer them, Canadian consumers may ultimately find themselves with an even more costly adjudication system to fund via ever-increasing – and uncompetitive – costs to travel in Canada.

We submit the following additional comments as regards the Fee:

Fee Quantum In launching this consultation, the CTA states that it will process 22,615 claims per year at a cost of over \$29.7 million, or \$1,316 per claim. Further, the CTA has arbitrarily set airlines’ contribution rate at 60% of CTA costs, or \$790 per claim. The proposed Fee at \$790 is significantly higher than the average flight segment base fare in Canada, before taxes and fees. For most complaints processed by the CTA for delays or cancellations, the Fee would be more than the compensation amount to be awarded. This Fee could become a profit centre and if paid unilaterally and regardless of outcome, could disincentivize efficiency.

Complaints backlog By seeking to impose a unilateral (and retroactive) Fee on carriers regardless of outcome, a no-lose proposition for potential complainants, the CTA is encouraging an increase in complaints volumes and therefore in the backlog for adjudication. It would also therefore further increase the costs of the system, adding further to the costs of air travel in Canada at a time when consumers are facing affordability challenges. Stated otherwise, we are faced with a proposed solution that could very well compound the problem for our customers.

Retroactivity Contrary to principles of procedural fairness, the CTA is proposing that airlines pay the Fee not only prospectively after any coming into force, but also on pre-existing complaints in its backlog. Airlines have consistently sought efficiency improvements from the CTA so that our customers’ complaints can be adjudicated fairly and in a timely fashion. Consistent with legal principles in Canada, new Fees must be prospective from the date of coming into force, based on the date of receipt of each complaint by the CTA.



Unilateral Fee on Airlines The Fee is proposed as a cost on airlines alone, regardless of outcome, which offends notions of fairness and stands apart from the functioning of any other adjudicative body to our knowledge. We should add that no cost recovery fees are proposed for any other CTA tribunal user or any other aviation industry actor in the Canadian aviation ecosystem.

Legal, Procedural and Fairness Principles For brevity, we do not reproduce here the fundamental legal, procedural and fairness concerns elaborated elsewhere in the context of this consultation, including in the submission of the National Airlines Council of Canada, which should be fatal to the imposition of the Fee, as proposed. In the circumstances, we submit that the imposition of any similar fee be approved following independent study by the appropriate governmental bodies after careful reflection.

We look forward to working with the federal government and the CTA to improve Canada's air transportation system for the benefit of our customers.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bernard Bussières".

Bernard Bussières
Chief Legal and Government Relations Officer
Air Transat