



Submission by Sunwing to the Canadian Transportation Agency Consultation on Proposal for Air Travel Complaints Fee November 4, 2024

Background

On June 22, 2023, the *Budget Implementation Act, 2023* (BIA) came into force. Less than six months later, the CTA introduced a new air travel complaint resolution process to improve and streamline the process for Canadians who wish to dispute their APPR-related complaints. This e-services portal was introduced at a time when the Agency was dealing with a backlog of over 60,000 complaints. When the e-services portal was in the development phase, there was little clarity on how each case would be handled. It was initially understood that the process would allow air carriers to defend their position on each flight disruption and then subsequently defend each passenger-specific claim. However, once the process was implemented, the process forced air carriers to explain and defend each flight's disruption within each individual claim.

With this approach, air carriers along with the Agency are forced to repeat efforts for each claim. To contextualize this with an example, one flight disruption may result in 180 submissions to the Agency. That is 180 times that the air carrier would need to provide an explanation and supporting documentation to defend against the same disruption, and 180 times that the Agency would need to analyze and provide a decision on the categorization of that same flight disruption. This subsequently leads to redundant work and just as importantly, differing decisions on the same flight disruption. Had this process allowed air carriers to explain and defend a flight disruption once, any subsequent work for both the Agency and air carriers would only be surrounding passenger-specific claims (ie refund eligibility, out of pocket expenses, etc). The workload wouldn't be nearly as heavy as it currently is.

In addition to the above, the BIA also requires the Agency to establish fees to recover the costs for processing eligible air travel complaints. From the date the BIA came into force, the Agency took 15 months to establish a temporary cost recovery plan, which is planned to be implemented in fall 2024.

Proposal

To recover the costs associated with this new process, the Agency has proposed a fee of \$790 to be applied to all closed decisions, regardless of the outcome. The only exception to this imposed fee would be ineligible claims; submissions that do not meet the Agency's criteria.

The Agency has identified various activities that are included in the process of handling eligible complaints and the associated costs, and the Agency is proposing that air carriers cover 60% of the total costs of those related tasks.

As dictated in the BIA, this proposed fee is intended to be temporary; the CTA is supposed to establish broader cost recovery schemes to encompass the costs of all its activities. However, the Agency has not provided any information on this, nor how they intend to approach a more permanent cost recovery scheme. The published proposal has not provided Canadians with any approximate timeframes, leaving the Agency to freely implement this fee for an indefinite amount of time. It is unrealistic and shocking that the Agency is expecting air carriers to pay this fee.

Issues

As discussed in the Background, the air travel complaint resolution process forces air carriers and the Agency to respectively defend and analyze the same flight disruption several times. This work is detailed, lengthy, redundant, and is the biggest contributing factor to the Agency's workload. The Agency's work would be significantly lower if they were analyzing each flight disruption once. Any subsequent work on each related complaint would be focused on passenger-specific entitlements only. As such, air carriers should not be forced to recover the costs associated with the work that the Agency has imposed on themselves.

Further to this, the redundant work done by the Agency has resulted in differing decisions on the same flight disruption. This proves to Canadians that the current process doesn't work, and that the Agency is not uniform in their approach with reviewing air travel complaints. The inconsistencies found between decisions on the same flight disruptions are creating mistrust between the Agency, air carriers, and traveling Canadians. A process that is ineffective should not be funded by air carriers; the Agency should instead focus their efforts on improving a process that Canadians and air carriers alike can support and be confident in.

Since the outcome of these complaints appears to be random, this encourages consumers to submit baseless complaints, with the hopes of possibly winning. Without a strong process in place, this fee structure can have a risk of abuse of the complaint system. Sunwing submits two examples from the Agency's Air travel complaint decisions and orders dashboard below.

Decisions and orders					
Filter items		Showing 1 to 2 of 2 entries (filtered from 9,488 total entries)			Show 25 entries
Decision number	Flight Number	Flight Date (y-m-d)	Issue	Carrier Control	Order Statement
384540-CO-2024	WG434	2023-02-05	Flight Disruption	Outside of carrier's control	Dismissed
394352-CO-2024	WG434	2023-02-05	Flight Disruption	Within carrier's control	Order to compensate for inconvenience

Decisions and orders

Filter items Showing 1 to 3 of 3 entries (filtered from 9,488 total entries) | Show entries

Decision number	Flight Number	Flight Date (y-m-d)	Issue	Carrier Control	Order Statement
374497-CO-2024	WG4347	2023-07-30	Flight Disruption	Within Carrier's Control but required for safety	Dismissed
374978-CO-2024	WG4347	2023-07-30	Flight Disruption	Within carrier's control	Order to compensate for inconvenience
375126-CO-2024	WG4347	2023-07-30	Flight Disruption	Within Carrier's Control but required for safety	Dismissed

The above examples show that each flight disruption has had contradicting decisions, which shows the inconsistency within the Agency's complaint resolution branch.

The Agency is proposing to apply this fee on all closed decisions. Meaning, air carriers would be charged a fee for meeting their obligations. If this fee is to be applied regardless of the outcome of the decision, air carriers will be forced to incur costs for disruptions in which they are found to be compliant with the APPR. As a result, the fee doesn't support a culture of continuous improvement, as any complaint dismissals would still be met with a fee from the Agency. This would be a great detriment to the traveling Canadian public, who are counting on the aviation industry to maintain certain standards of quality, care, and affordability.

Having this fee will lead to increased operational costs for all air carriers, which may ultimately be passed on to consumers in the form of higher ticket prices. Considering the uncertainty surrounding how long this temporary fee will be in place, it makes it impossible for air carriers to plan and budget for the future. Furthermore, this fee is significantly more than the average ticket price for a domestic flight, and more than the average revenue air carriers make per ticket. Additionally, the fee is more than the average compensation for inconvenience owed under the APPR for both small and large carriers combined. Respectively, the average compensation for inconvenience is \$495 per passenger. Meaning, this imposed fee would be 60% higher than the average payout for air carriers in Canada.

Furthermore, it is ironic that the Agency is imposing this cost recovery fee while the Competition Bureau is performing an analysis of the competitive landscape of the domestic market. The Bureau launched a study in July 2024 with a purpose of examining the barriers to entry and expansion that exist in the domestic industry, along with the impediments to Canadians seeking to make more informed choices for air travel. As mentioned, this cost recovery fee would drive up operational costs for air carriers which may subsequently be absorbed by traveling Canadians. From an air carrier perspective, the fee would restrict competition to enter and expand within the Canadian market. And as we've observed, several Canadian carriers have unexpectedly exited the market within the last two years. The implementation of this fee would risk the future of the remaining Canadian air carriers, and therefore risk air travel overall.

This proposed fee would apply to all complaints that have been submitted to the Agency, including complaints submitted prior to the implementation of the new air travel complaints resolution process in September 2023. Following the previous process, air carriers have already responded to these complaints. However, since the criteria established in the new process also include complaints pre-September 2023, the Agency has further exacerbated their backlog as it has forced air carriers to re-submit responses to these complaints. As one



example, following the Agency's previous process, Sunwing received a complaint on April 24, 2023, and provided a response on May 8, 2023. However, following the new process, that same complaint is currently sitting in queue to be processed within the Agency's e-services portal.

The severe backlog of these complaints was created by the mismanagement of the Agency's resources, and the misalignment of their goals and objectives. It is unacceptable for the Agency to impose a fee for complaints that that were backlogged by their own negligence. It is also completely unreasonable for the Agency to force air carriers to recover costs for complaints that they have addressed twice. The retroactive application of this proposed cost recovery fee will only place a further financial strain on the aviation industry.

Understanding that the implementation of this proposed fee is an eventuality, it should not be applied retroactively, nor should it be applied without a defined effective period. Sunwing contests the Agency's proposed application structure, as it is punitive and nonsensical. The Agency should consider applying this fee on a per-flight basis solely for flight disruptions determined to be within the carrier's control and not required for safety. The Agency should also consider applying a consumer fee for any complaints dismissed in the favor of the air carrier.

The Agency encourages air carriers to resolve complaints proactively, however the proposed fee would instead incentivize disgruntled consumers to proceed with the process knowing that either outcome would result in a fee for the air carrier. Additionally, there is nothing preventing consumers from submitting unsubstantiated complaints in hopes that air carriers will offer them compensation in exchange for withdrawing their claim. The Agency should refocus their resources on strengthening their eligibility criteria, as that is the determining factor whether the proposed fee will be applied. Moreover, the Agency should complete the eligibility step concurrently with the release of a start notice. This would ensure that air carriers are only receiving cases that meet the Agency's eligibility requirements. The onus should not be on the air carrier to use time and resources to vet the complaints that the Agency receives.

Conclusion

In closing, Sunwing is disappointed in the Agency's lack of consideration of the effect that the application structure of the proposed fee will have on the aviation industry. It reflects a significant disconnect between the Agency and the air carriers that it is obligated to regulate. This cost recovery scheme would have been better received if the complaints resolution process was more effective. Overall, this fee is counter-intuitive to the overall goal of clarifying, simplifying, and strengthening the Canadian air passenger protection regime.