



NACC CNLA
National Airlines Council of Canada
Conseil national des lignes aériennes du Canada



30 January 2023

France Pégeot
Chair and CEO
Canadian Transportation Agency
15 Eddy Street
Gatineau, QC, K1A 0N9

By email: secretariat@otc-cta.gc.ca

Re: Case 22-41428 - Letter Decision No. LET-AT-55-2022

On behalf of our members that operate services to, from and within Canada,¹ the International Air Transport Association (IATA), the National Airlines Council of Canada (NACC) and Airlines for America (A4A) (collectively “the Associations”) appreciate the opportunity to provide the Canadian Transportation Agency (CTA) feedback on its decision related to Emotional Support Animals (ESAs) and why the Agency should not finalize this preliminary finding regarding Emotional Support Dogs (ESDs) and provide a copy to all other parties.

Our members fully recognize the needs of persons with disabilities that travel with a trained and certified service dog. Airlines commit significant resources to accommodate passengers with service dogs, while ensuring that other service dogs and customers or staff in the vicinity have a safe travel or work environment.

Our members also recognize that ESAs, in appropriate circumstances, provide comfort and support to passengers with disabilities. However, our members agree fully with the CTA’s conclusion that it would constitute undue hardship for carriers to transport untrained animals (including dogs) on board other than in pet carriers, for safety and hygiene reasons.

The core issue facing these passengers is that in Canada, there is no national agency responsible for establishing training standards and validating and certifying a service dog’s training. Thus, there is a dearth of training resources for passengers with disabilities. Accordingly, in the absence of any such national resource, passengers with disabilities have few options to meet the ATPDR requirement that the service dog has been individually trained by an organization or person specializing in service dog training—this is not the fault of the airlines. Moreover, there is no internationally recognized standard, with the result that passengers with disabilities face an inconsistent or even contradictory patchwork of rights and obligations on a global scale, further reducing accessibility. Instead of solving the underlying issue, the CTA’s Decision inappropriately shifts the burden from the Government of Canada to

¹ IATA represents 300 airlines around the world. NACC’s members include Air Canada, Air Transat, Jazz Aviation LP, WestJet. A4A’s relevant members are Alaska Air Group, Inc.; American Airlines Group, Inc.; Delta Air Lines, Inc.; JetBlue Airways Corp.; and United Airlines Holdings, Inc. Air Canada is an associate member.



airlines, their employees, and other passengers, while concurrently creating many more problems with the proposed “appropriate conditions and safeguards” for air travel.

The best approach therefore is to establish a national framework for training, validating and certifying service dogs for travel, rather than creating a new framework for untrained dogs on board.

The CTA’s Proposal for ESDs Does Not Address Root Issue

The CTA’s proposal to require carriers to transport ESDs in pet carriers at no cost is not the appropriate solution, as it causes two new problems without solving the original one:

1. Passengers with Large Dogs Have Few Viable Options

Many passengers with disabilities with large service dogs other than guide dogs have few resources to train, validate and certify their dogs for travel as per ATPDR. For example, a large dog that has been self-trained to recognize its owner’s PTSD episodes and intervene in advance does not qualify as a service dog pursuant to ATPDR and would not fit in a pet carrier. This creates a new equity issue for which the frustration of such passengers will inevitably and unfairly be directed at the airlines and their frontline employees. In the absence of any national training validation and certification, carriers cannot assess whether the dog has been adequately trained to safely travel. As such, this situation would deter passengers with disabilities from traveling and/or in some instances, lead to fraudulent documents being submitted.

2. Pet Fee Waiver Will Lead to Fraud

This scenario may lead to some passengers without disabilities with small pet dogs misrepresenting themselves and their dogs to have the pet fee waived. Passengers already currently present fraudulent documentation regarding their disability or their requirement for an ESD, requiring lengthy and tedious verifications by carrier staff. Such fraud not only circumvents pet fees, but poses in-cabin safety issues (e.g., allergies) that airlines mitigate through their pet transportation policies. Furthermore, in keeping with Section 31(2) of the ATPDR, the pet fee waiver could only apply to domestic travel, as applying it to travel between Canada and a foreign country would violate international agreements on pricing freedoms. If a national body were established to train, validate, and certify legitimate service dogs, including for mental health conditions, passengers with mental health conditions could have their dogs trained and certified as psychiatric service dogs, eliminating the need for ESDs entirely.

Documentation and Fraud

Our members are encouraged by the CTA’s recognition of the real risk of fraudulent claims regarding service dogs or ESDs. Unfortunately, the CTA’s current proposal does not address the root cause of these fraudulent claims, nor does it give any relief or resources to carriers when they are faced with these fraudulent claims.



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As proposed, airlines are left to determine whether a customer has a disability or not, whether the ESD has the requisite health documentation to travel, and whether the ESD's behaviour poses a threat to the health or safety of others. Although the CTA proposes to allow airlines to require, at least 96 hours in advance of travel, proof from a treating physician or medical health professional that the person has a mental health disability and requires an ESD as an accommodation for travel, such proposal has serious flaws and imposes significant resource burdens on airlines that have not been considered in this Decision. Airlines cannot confirm the validity of such documentation. In fact, as experienced in the United States under U.S. Department of Transportation's ("DOT") past policies, airlines were frequently presented with false documentation that could be easily purchased online from questionable "practitioners" that asserted the passengers need for an emotional support animal. In sum, there is no reasonable manner for airlines to validate such documentation—there exists no method to confirm the document is valid, the physician or medical health professional is actually treating the passenger, or that the physician or medical health professional (e.g., a dermatologist) has the necessary training to prescribe an ESD. Additionally, the CTA does not require that the physician or medical professional is actually treating the passenger for the condition that requires an ESD as "an accommodation for travel." As proposed, a podiatrist could prescribe an ESD for a condition for which the podiatrist is not treating the passenger. We also question whether an ESD that is kept in a carrier at the passenger's feet provides the benefits necessary for requiring the "accommodation *for travel*."

The conditions do not require proof that the dog traveling with the passenger is indeed a bona fide ESD or the ESD relates to the documentation presented to the carrier, such as the standardized attestation allowed by airlines on the DOT form which is submitted to the airlines under penalty of perjury.² The conditions do not ask for any documentation about the training the ESD has received leaving carriers to determine what documentation would be sufficient to satisfy the animal is a legitimate animal trained to work in a public and closed in flight setting. For example, the documentation conditions contain no assertion by the passenger or any party that the dog will not bark uncontrollably during the entirety of the flight, creating a serious safety and travel disruption for passengers and crewmembers. Concurrently, the Decision does not allow for any opportunity to assess the dog's behaviour in advance of the flight. Moreover, we understand that there are no clear methods to determine if any documentation issued by a training organization is valid and not fraudulent. These are crucial details that must be addressed before foreclosing such requirements.³

The certainty of fraud is strongly supported. For example, in the United States from 2018 to 2019, the number of passengers traveling with trained service animals increased modestly by 2.8% and the number of passengers traveling with pets increased by 5.97%, but the number of passengers traveling with ESAs increased by more than 10.7% with one A4A member

² See DOT, U.S. Department of Transportation Service Animal Air Transportation Form – Sample, <https://www.transportation.gov/individuals/aviation-consumer-protection/us-department-transportation-service-animal-air-0> (last updated Jan. 19, 2021).

³ Unlike the CTA's proposal, air carriers are free to impose such conditions in their pet carriage policies.



experiencing an increase of 27.9% (while the carrier's increase in total passengers was just 6.1% over the same period).⁴ The data is further supported by clear cases of fraud.⁵

We submit that the CTA must have the resources, capability, and willingness to regulate passengers that fraudulently attempt to fly with their pet as an ESD. Like the conditions imposed by DOT, this may involve certifications on CTA forms that are punishable for perjury. Additionally, CTA must be prepared to prosecute cases of fraud, including against unscrupulous physicians, medical health practitioners, veterinarians, and others that are involved in fraudulent representations. Without such commitment, passengers will continue to abuse the air transportation system to fly with their pets, including using different airlines that are unaware of the passenger's past fraudulent conduct.

Emotional Support Animals (ESAs)

We strongly support the CTA's preliminary finding that requiring carriers to accept species of ESAs other than dogs would constitute undue hardship. However, the assessment doesn't go far enough.

As recognized in the CTA decision, ESAs and ESDs cannot be viewed the same. Most species simply cannot be trained to meet the necessary safety and health standards for air transportation. This is fully supported by the *Expert Report Regarding the Carriage of Emotional Support Animals On Board Transportation Equipment* (hereinafter "Expert Report"), which was prepared for the CTA.⁶ Due to the lack of training, aggressive and disruptive behaviour and waste elimination of ESAs are highly likely to occur during flight.⁷ This conclusion is supported by past incidents that resulted from the DOT ESA requirements that resulted in the transportation of turkeys, reptiles, arachnids as ESAs. ESAs not only put the health and safety of the crew and other passengers including those travelling with service animals at risk, but also inhibits the safe and efficient operation of transportation equipment, particularly in the context of air travel and raises animal behaviour and welfare concerns for the animals themselves.⁸

Airlines also regularly face fraud, including fraudulent claims of training and behaviour that result in poorly behaved animals being transported that lead to serious safety and health issues, both for its passengers and crew. In some jurisdictions, unfortunately, travelling with an ESA has become a very popular and a fashionable trend that is increasing year after year with clear safety risks to and evident discomfort of all passengers and cabin crew. Our members strongly believe that the concept of ESAs is wholly unsuitable for air travel and strongly

⁴ A4A, *Joint Comments of Airlines for America, the Regional Airline Association, and the National Air Carrier Association* at 4 (Apr. 6, 2020) (Docket No. DOT-OST-2018-0068) (Traveling By Air With Service Animals, Notice of Proposed Rulemaking) available at <https://www.regulations.gov/comment/DOT-OST-2018-0068-19240>.

⁵ See e.g., *In the Matter of the Accusation Against Carla Jeanne Black*, Stipulated Settlement and Disciplinary Order, Case No. 2002016001583 (Bd. Of Behavior Sciences Dept. of Consumer Affairs, Cal., Oct. 18, 2018) (disciplining a licensed marriage and family therapist for providing fraudulent emotional support animals letters).



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supports the CTA by discouraging acceptance for travel in the cabin. As such, IATA, A4A and NACC fully agrees that ESAs should be explicitly excluded from the Decision.

Accordingly, the carriers should continue to have the freedom to apply their policies regarding the transportation of pets in the cabin and pursuant to their contracts of carriage.

Next steps

In light of the above, we propose that the best solution is to establish a national agency that is responsible for establishing training standards and validating and certifying trained service dogs for travel. This has been accomplished in other countries, such as Argentina, where a single national agency provides a registry of service dogs, training schools, and users, and provides the service dog identification.

This solution ensures that all passengers with disabilities with legitimate service dogs are able to travel, while ensuring that safety and hygiene on board are not compromised. It also minimizes the risk of fraudulent claims, which cause significant operational issues for carriers, and also endangers passengers, staff and legitimate service dogs.

IATA, A4A and NACC strongly suggests the CTA and this new national body to engage in collaborative work with other state regulators to develop a global and consistent definition and standard for certified assistance or service dogs. Specifically, the Associations urge state regulators to collaborate towards the introduction of a definition of an “assistance trained dog” that establishes parameters for the acceptance and use of assistance trained dogs in society more generally and not only in the narrow context of aviation. This will enable the industry and passengers to have a clear and easily recognisable document to reflect the acceptability of service dogs. Moreover, this definition should include an explicit exclusion of ESAs. The Associations will gladly support this initiative.

While our members appreciate the CTA’s attempt to act efficiently by grouping the 6 complaints in question, these changes are too significant to apply only to the carriers against whom the complaints were brought. Furthermore, the adjudication process necessarily does not include the cost-benefit analysis and the weighing of all consultations that the full regulatory process does. As such, our members urge the CTA to address the training, validation, and certification of service dogs through the regulatory process, and ultimately with clear amendments to ATPDR.

For airlines, it is vital that the requirements only include dogs individually trained to do work or perform tasks for the benefit of an individual with a disability (visible or invisible) and at the same time clearly excludes all other species of animals, whether wild or domestic, trained or untrained. The regime should also be supported by CTA’s enforcement branch that can address fraudulent conduct by passengers. This is a common-sense approach that recognises that dogs are the primary species that can be trained to assist an individual with a disability and be trained to behave in a public setting. This would provide airlines confidence that the training company used was bona fide, therefore providing the airline confidence the animal would not in any way jeopardise safety on board the aircraft.



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Conclusion

We thank you for the opportunity to contribute to this exercise and reiterate our request for the review of the items of concerns mentioned above. We would be happy to discuss any further questions you may have.

Yours truly,

A handwritten signature in black ink that reads "Douglas Lavin".

A handwritten signature in black ink that reads "Jeff Morrison".

Douglas Lavin
Vice President
Member & External Relations, North America
International Air Transport Association

Jeff Morrison
President and CEO
National Airlines Council of Canada

A handwritten signature in blue ink that reads "Graham Keithley".

Graham Keithley
Vice President and Associate General Counsel
Airlines for America