

**High Hopes and Low Standards!**  
**The Life and Times of Airline**  
**Travel in Canada**

**Author: Andrew Reddick**

**October 18, 2001**

**Public Interest Advocacy Centre**

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## **Executive Summary**

The purpose of this study was to analyze how well the existing policy and regulatory frameworks protect the interest of airline passengers in Canada.

Air transportation is an essential service for Canadians and communities across Canada. It is, however, a system in crisis, featuring:

- High prices
- Low quality of service
- Degraded regional service
- Safety below international standards
- Poor choices for consumers
- A ticketing contract system that is one-sided and biased against consumers, whereby carriers unilaterally determine terms, conditions of carriage and redress.
- An ineffective policy and regulatory framework.
- Exclusion of the public from policy and regulatory decision making.

As both a private sector activity and an essential public service in Canada, air passenger service requires increased public oversight and intervention to restore order to the system, featuring a proper balance between the interests of shareholders and the public. Historically, in our market system, services which are essential for societal economic, social and cultural relations have been deemed to be affected with a public interest and subsequently regulated.

Canada's other major trading partners (e.g., EC, U.S.) are pulling back from ideologically based policy frameworks. Ideological policy bias reflects either an over-reliance on heavy handed government intervention and

regulation, or, as in the case of transportation policy in Canada, heavy handed deregulation and market decision making. As with Canada, the recent period has featured an over-reliance on market forces and deregulation. Instead, these countries are seeking a more balanced set of results for public policy by relying on the best features of public regulation and market regulation. This moderation in policy is a return to the more appropriate role for government to be representative of the full range of interests in society, and as guardians of the broader public interest, as opposed to special interests.

Many of the problems in the Canadian air transportation system are attributable to failed policies of privatization and deregulation. The academic ideal of a deregulated, highly competitive market that is well managed, efficient, responsive to user demands, and is disciplined by consumer choice and spending is an imagined market only. Instead, a post-competitive market exists dominated in different areas of the country either by monopolies or oligopoly suppliers. The result is an imbalance of market power and decision making at the expense of passengers and communities who, without the protection of effective public regulation, are little more than pawns in the system.

The state of the industry before September 11 was already that of crisis, largely facilitated by the over zealous application of deregulation. While this experiment has produced a mixed bag of successes and failures, for passengers and communities across Canada, the failures outweigh the successes. It is no longer credible to defend the indefensible.

Privatization policies, particularly with regard to airports, were unrealistic and ignored the public service dimensions of the air transportation system. The problems in the system have been further aggravated by an overly aggressive downsizing of Transport Canada staff and the removal of funding for important public service components in the system. These changes removed or hampered effective and proper public oversight of many important activities, such as safety, pricing fairness, conditions of carriage, frequency of service, equipment maintenance, etc., as well as created conditions where public services, such as some airport operations, are questionable as being economically viable.

While the policy and departmental changes of the 1980's and 1990's went too far, the corrective measures introduced by Bill C-26 in 2000 clearly did not go far enough. The inability for the Canadian Transportation Agency to deal effectively with issues relating safety, pricing, conditions of carriage, regional service, etc., can be succinctly summed up in the words of one federal employee – “we don't have the authority”.

Policy and regulatory changes made by Bill C-26 have been of some benefit in protecting consumers, but overall these have fallen short of conveying the necessary authority and powers on the CTA to address important problems in the airline industry. The establishment of the Complaints Commissioner has been a success story even though the mandate and powers of the office are too limited. The inability for the CTA to address pricing and conditions of carriage across the entire industry on a proactive basis (including monopoly and competitive routes) is a major failure of policy, and has created a barrier to realizing consumer fairness, as well as the efficient operation of the airline system. Issues pertaining to

service to rural and remote communities remain unresolved and risk becoming more aggravated with price increases and service reductions.

Consumers have a misperception that the federal government is 'minding the store' in the airline industry and that minimum standards and rules to protect their interests exist in legislation and regulation. The reality is that consumers are only protected in marginal ways, and are still largely subject to unilateral decision making by a handful of companies. Many of the problems in the industry were addressed by the consumer coalition the Canadian Association of Air Passengers (CAAP) in their *Airline Passenger Bill of Rights* in 1999.

The *Airline Passenger Bill of Rights* addressed both long-standing problems in the system, as well as issues arising from the Air Canada and Canadian Airlines merger. With little improvement in the industry over the past two years it is still relevant today. The *Bill of Rights* addressed issues relating to: Public Participation in Decision Making; Safety; Service Quality and Conditions of Carriage; Pricing; Frequency of Service; and Regulation. The *Bill of Rights* is intended to establish minimum standards in these areas so that a balance exists between the rights of passengers, and carriers and airports. While the government adopted a few measures mentioned in the *Bill of Rights*, such as the appointment of a Complaints Ombudsman, the majority of recommendations have been ignored. At this juncture in the ongoing crisis of the system, the *Airline Passenger Bill of Rights* would provide a useful framework for addressing many of the outstanding problems, and do so in a fair and balanced way.



The events of September 11 have, and for some time will continue to, occupy the attention and resources of Transport Canada. Both the industry and policy will take time to adjust to this crisis. In this context of change, however, it would require comparably minimal resources and effort, and reflect prudence, good sense, responsibility and foresight, to address the other service related problems in the industry which are raised in this report.

## **Summary of Issues and Recommendations**

### Public Participation

Representatives of the public have largely been excluded from policy and regulatory decision making processes of the government and advisory groups such as the Canadian Aviation Regulation Advisory Council. Over time, decisions about numerous issues which have great importance to passengers, such as safety, pricing, availability and frequency of service, and consumer redress, are taken with little or no input from consumers.

- The CTA and Transport Canada should consult with consumer organizations on a regular basis on policy and regulatory matters.
- The CTA and Transport Canada should consider establishing consumer advisory groups.
- The CTA and Transport Canada should provide funding to consumer organizations to assist them in developing expertise in this policy area and to have the resources to represent their members.

### Safety

Safety issues are one of the greatest and most shameful silences about the Canadian airline system, and one of the biggest messes. The cost-

benefit risk analysis used by government and industry, backed by policies of privatization and deregulation puts profits before human lives. Safety has been considerably compromised by a number of government policies, including the National Airport Policy. The cost of air travel is not inexpensive compared to other means of transportation. Safety across the system could be greatly improved with only a relatively modest extra cost per ticket.

- For all carriers and airports, a senior manager should be responsible for safety.
- Transport Canada should increase the number of inspectors.
- The federal government should establish mandatory dates for the removal of capton wiring and flammable insulation from fleets.
- The number, and skill levels, of pilots and mechanics needs to be increased.
- Carriers and the government should publish information on: the safety and risk levels of different aircraft; summaries of incidents and accidents, including resolutions or outcomes.
- Transport Canada should conduct a full public review of safety issues for airports and carriers.
- All airports should be brought up to international safety standards for fire and rescue.
- The federal government has a responsibility to fund the costs of emergency fire and rescue services at all airports providing passenger service.
- Safety analysis should be based on broader criteria than risk-cost-benefit analysis – this puts profits before people.
- (see Airline Passenger Bill of Rights for other recommendations)

### Quality of Service and Conditions of Carriage

Quality of service issues comprise the range of normal, front line services and practices that passengers experience as part of air travel. These involve practices guided by formal rules established by the carriers (tariffs – conditions of carriage) and informal rules or practices. Quality of service for many customer services is at a low standard. Similarly, conditions of carriage rules (e.g., over sales, baggage rules, etc.) are also problematic because: some of these are unfair to passengers; there is no consistency or common standards of basic rules across carriers; and these are set by the airlines without any public review or input from the public. The changes in Bill C-26 have been of little benefit to passengers because this legislation limits the effectiveness of the CTA by not giving the agency the permanent authority to review or establish service standards, and only having the authority to deal with conditions of carriage tariffs problems in a haphazard, complaint by complaint fashion. In both instances, the need to establish common standards balancing the interests of passengers and carriers cannot be realized.

- The Transportation Act needs to be amended to convey the authority to the CTA to establish, through a public process common, system-wide conditions of carriage, and basic quality of service standards (see *Airline Passenger Bill of Rights*).
- Regulated standards should be published and made available to the public (e.g., airports, travel agents).
- Service standards should be created for airports.

## Tickets

Airline tickets are one-sided contracts biased against passengers. Carriers solely define the terms and conditions of these contracts, as well as dispute resolution.

- The Act needs to be amended to permit the CTA to review and set the terms and conditions of the ticket contract through a public process.

## Ticket Pricing

The variable and confused approach in airline ticket prices amounts to 'hit-and-run' capitalism. The Act needs to be amended so the CTA has the authority to review the underlying costs of the whole industry and any ticket price, whether on a monopoly or competitive route. Some of the marketing practices of carriers for different classes/prices of tickets discriminate against Canadians, particularly those who do not have access to the Internet.

- The Act should be amended to permit the CTA to review costs and fares proactively (own motion) or based on complaint for any route in Canada.
- The CTA should have the authority, and be required by the Governor-in-Council, to conduct a public review of airline pricing, costing, conditions of carriage, frequency of service, and to do so without limits on evidence.
- The Act should be amended to remove time limits on pricing and conditions of carriage reviews.
- All carriers should be required to file pricing and other tariffs with the CTA, and these should be made public.

## Regulatory Issues

### Voluntary Codes

Voluntary codes have largely proven to be a dismal failure in protecting the interests and rights of consumers. Codes don't work because they are unenforceable and do not offer consumers substantive redress options.

### Canadian Transportation Agency

The CTA Tribunal Commissioners should be appointed based on the criteria of representativeness and balancing the different interests in transportation in Canada – consumers and industry.

The CTA and Transport Canada need to develop and foster an employee culture of active and positive public service. Deregulation and privatization have left a legacy of ideological bias, attitudinal indifference and disinterest in responding to issues, problems or opportunities involving consumers and transportation related matters. As guardians of the public interest, TC and CTA employees need to be encouraged to look for opportunities for positive action as opposed to 'loop-holes' for inaction.

### Commissioner of Complaints

The office of the Air Transport Commissioner of Complaints has been one of the more successful changes of Bill C-26, however he is a referee without a penalty box. The effectiveness of this office could be improved by broadening the 'watch-dog' role of the Commissioner (e.g., airports), and adding powers to issue mandatory orders or penalties.

## Section 5

Section 5 of the *Canada Transportation Act* outlines the objectives for our national transportation policy. However, many of the economic and social objectives have not been included in decision making about fares or levels of service in Canada.

- The CTA should use Section 5 as the context for a system-wide review of pricing, costing, conditions of carriage and frequency of service, and implement regulations to balance the needs of passengers and communities with those of carriers.

## Competition Bureau

While there is a role for the Bureau in the areas of predatory pricing and abuse of dominant position, much of the uncertainty in the market could be addressed through the CTA being more proactive in reviewing and establishing rules on costing, pricing and service standards. This would obviate the need for frequent Bureau intervention. The authority to do this requires the above mentioned amendments to the *Canada Transportation Act*.

## Competition and Foreign Entry

The approach adopted by the federal government to foster domestic competition as opposed to foreign entry, remains the best approach for the development of sustainable competition in the core market areas of Canada. Foreign entrants would cream-skim the most profitable routes and likely do harm to Canada's low cost airlines.

In the absence of competition in rural and remote areas, a mixed public/private approach will likely be required. Performance requirements through regulation, and subsidies will need to be considered to ensure that adequate levels of service, at affordable rates, exists to meet the needs of communities, business, individuals and carriers. Notions that all that matters is market competition and deregulation ignore the very real social and economic needs, and activities of citizens, communities and regions. Air transportation occupies a primary role in modern society to fulfill these needs as compared to the alternatives. Moreover, in many instances, reasonable alternatives, such as rail transport, no longer exist.

## **Introduction**

The purpose of this study was to undertake an analysis of how well the existing policy and regulatory frameworks protect the interests of airline passengers in Canada. The report also considered issues and circumstances in the E.C., the U.S. and Australia where these had some relevancy to experiences in Canada. The project also assesses the degree to which increased consumer participation may be of benefit in the Canadian market oversight, policy and regulatory processes in the area of passenger airline service.

Analysis in the report is guided by such questions as: to what degree does the policy/regulatory framework protect consumers? What avenues are available for consumer redress? What outstanding issues exist which may need to be addressed?

Several methodologies were used for this research. These include: a review of literature, including other research studies, legislation, reports and other written materials; consultations and interviews with industry, government and consumer interests in Canada and other countries. Major competitors were asked to complete a detailed questionnaire dealing with their views on specific matters relating to regulation, consumer participation, standards and quality of service. These carriers were non-responsive. Analysis was guided by a review of the objectives and goals of the *Canada Transportation Act* and amendments to this and the *Competition Act* by Bill C-26. This review was also conducted in the context of the Airline Passenger Bill of Rights, produced in 1999 by a coalition of consumer organizations known as the Canadian Association of



Airline Passengers (CAAP). This Bill of Rights provides a framework of the key concerns of passengers about air travel, as well as issues arising from the merger of Air Canada and Canadian Airlines.

### *“We Don’t Have the Authority”*

The title of this report “High Hopes and Low Standards” in many ways reflects both the recent experiences of passengers with domestic air service and the policy approach taken by Transport Canada and the Canadian government over the past decade. The state of the industry today is very much a product of the deregulation and privatization policies and down sizing of government activity and responsibility over the past ten to fifteen years. At the outset, the intent of this study was to attempt to be as fair and balanced as possible between the interests of carriers and passengers while analyzing air service from a consumer perspective. As evidence in the report indicates, this became a difficult task given the degree to which the current policy and regulatory frameworks, and industry practices, are biased and skewed against the rights and interest of the traveling public.

### Background

The fiscal problems of the government in the early 1990’s required a major review of expenditures and departmental activities with a view of reducing these, all the while maintaining a government role where this was necessary. This fiscal crisis followed on the heels of a shift in ideology in government towards a neo-liberal policy framework introduced in the 1980’s that proscribed reliance on competitive markets, economic

efficiency and deregulation as primary tools to achieve desired market and public policy outcomes.

In this context, the Transport Ministry (TC) made one of the largest human resources, policy and program transitions in the entire civil service.

Targeted changes in staffing levels from 1993 to 2001 were to reduce the number of employees from 19,375 to 3,500. The Ministry's budget was to be reduced from \$3.9 billion in 1993 to \$1.2 billion by 1999. The National Transportation Agency, remade into the Canada Transportation Agency (CTA), was also given a new mandate, staffing levels and budget. Under this new framework, the transportation system was to be developed in a safe and efficient way and to contribute to government objectives.<sup>1</sup>

There were a number of inherently contradictory goals built into the new policy strategy developed in the 1980's and 1990's. On the one hand, policy was to focus on economic efficiency and competitiveness and entrepreneurial decision making. At the same time, policy also required that essential needs of Canadians be met, and that the system be safe and secure. Greater reliance on the market through deregulation was introduced to bring "market discipline and business principles ...to traditional government activities."<sup>2</sup> As part of this philosophy, consumer choice and spending power was expected to discipline the behaviour of companies competing in the market place.

Deregulation, reducing government oversight and intervention were, among other objectives, intended to:

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<sup>1</sup> Transport Canada 1996-97 Business Plan.

<sup>2</sup> Ibid.

- Reduce subsidies
- Promote efficiency and rationalization of infrastructure
- Encourage a competitive system to meet essential needs of Canadians
- Make the transportation system responsive to user demands
- Prevent excessive regulation
- Encourage good management<sup>3</sup>

By 1999, it had become apparent that such an extreme reduction of public oversight and devolution of decision making to the market, had created a major imbalance between the interests of the public, the objectives of government and those of the market. The imagined power in the market of individual consumers to discipline the market activities of a handful of carriers was another 'high hope'. The services standards expected by consumers became less and less a marketing tool for carriers, and more an expense to be avoided. Moreover, significant market failure had occurred with the collapse of Canadian airlines, following a period of intense market consolidation. These failings were highlighted by the Minister of Transport's response through the introduction of five principles as part of a modified air transport policy in Canada. These principles are:

- Consumers must be protected
- Regional services are to be guaranteed
- Employees rights and concerns are to be addressed
- Industry competition is to be fostered
- Effective control must remain in Canadian hands.

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<sup>3</sup> Ibid.

Effectively, what these principles and C-26 added back in to transportation policy are the beginnings of re-establishing a balance between the rights of citizens and companies, and fundamental regulatory and other mechanisms to moderate the practices of carriers so that a broad range of economic, social and citizen developmental and participatory needs are met throughout Canada. Economic efficiency and rationalization are important for the market, but the important concern of companies to maximize profitability, at the same time limits their will or incentive to provide for other public policy objectives in the absence of a reasonable interventionist role by government. The new principles are a far cry from the “use it or lose it” philosophy of the Ministry of Transport in 1996. As the findings of this report demonstrate, the overly narrow 1990’s view of the economically efficient ‘functional’ use of transportation services, while interesting as academic theory, has ignored and eroded many of the broader economic, social, developmental, and standards of service issues important to Canadian communities and individuals, as well as to the federal government. As noted by one observer, if our forefathers had applied the economic efficiency and ‘use it or lose it’ rationales to transportation policy in the development of Canada, then “we’d have a paved road from Quebec City to Windsor and the rest of us would still be paddling canoes.”<sup>4</sup> Put simply, the point is that economic rationality and efficiency are relevant to the market because the market only serves those willing and able to pay, whereas the government is mandated to serve all Canadians through policy and regulations, even if this is not, in every instance, economically rational. Instead, it is politically and civically rational as a right of citizenship.

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<sup>4</sup> Public Interest Advocacy Centre, 2001.

Changes in the mid-1990's clearly went too far. The corrective measures of Bill C-26 were a good step to bringing fairness and balance back to the system, but these efforts were incomplete. In discussions with government employees since the passage of C-26 of the reasons why the outstanding issues relating to safety, pricing, conditions of service, and many other issues have not been addressed, the answer was the same – “we don't have the authority.”

## **Canadian Association of Airline Passengers and the Airline Passengers Bill of Rights**

Consider, for example, the twin jewels of the new order – privatization and deregulation. It is inarguably proven that these two scourges of the public interest destroyed the airline industry through an ethos of greed and a fixed, reckless disregard for public safety. In its lust for profit, the airline industry sacrificed human comfort, human health and human life. Neither its pilots, passengers or the general public mattered a damn; the only interest to the airline industry was in profits for its shareholders and its executives. It hired cheap, risked high and pocketed the difference.

Dalton Camp, “Leadership sadly lacking at critical time.”  
September 19, 2001, Toronto Star.

In Canada there has not been a particular consumer organization that represents the broad sweep of interests of passengers in matters relating to scheduled airline service. Some groups, such as the Air Passenger Safety Group and Transport 2000, represent consumers on specific issues when sufficient resources are available to facilitate participation.

In the 1980’s the federal government introduced a neo-liberal policy framework in a number of areas including transportation. This had the effect of re-regulating air transportation so that decision making about such matters as pricing, levels of service, quality of service, and so forth, were largely shifted to companies, and public oversight and regulation was greatly reduced. This market-centric framework also meant that bureaucrats, normally considered guardians of the public interest, had their normative roles of market oversight and intervention considerably reduced. This has been reinforced by a managerial culture and ideology of not only dissuasion of bureaucratic interventionism, but also a corollary disengagement in regular consultation with consumers about

transportation services based on the assumption that consumer sovereignty (product choice, expenditure patterns) could have some impact (ostensibly discipline) on the market behavior of companies.

This has not meant that policy and regulatory initiatives have been non-existent during this period. In fact, there are continuous consultations among industry players and government about rules and procedures for various aspects of airline industry activities. The well financed and organized industry players have been able to participate with government in these initiatives. Consumer interests have largely been left out of substantive policy and regulatory consultations, and decision making. Reasons for this include: little financing or other available resources; a weak set of relationships with other consumer groups; low levels of consumer expertise; and the culture of disengagement on the parts of Transportation Canada and the CTA.<sup>5</sup>

Consumer participation in airline industry affairs changed markedly in 1999 with the collapse of Canadian Airlines and the pending restructuring of the industry. Both Onex Corporation and Air Canada were circling, looking for an opportunity to pick the remnants of either the airline or its market share in the industry. With the prospects of one company dominating the industry, that would be implementing a wholesale restructuring of services, pricing and related issues, a number of consumer organizations banded together into a national coalition to represent the concerns of airline passengers.

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<sup>5</sup> Interview, Canadian Transportation Agency, June, 2001.

This coalition, the Canadian Association of Airline Passengers (CAAP) was formed in September 1999. CAAP's main purpose was to respond to the restructuring of the Canadian airline industry and to advocate policy and regulatory requirements which were considered fundamental to protect passengers' rights.

The founding members of CAAP were the Air Passenger Safety Group, the Council of Canadians, Options Consommateurs, the Public Interest Advocacy Centre and Transport 2000. Organizations joining subsequently include: the Manitoba Society of Seniors; the Canadian Federation of Students; Rural Dignity of Canada; and the Ontario Society of Senior Citizen Organizations. Together, these organizations represent over two million Canadians.

Rather than simply responding to the pending Canadian Airlines merger/take over at the time, CAAP elected to broaden its representation to deal with a broader set of policy, regulatory and industry-wide service issues. Regardless as to whether the merger with either Onex or Air Canada went through, a monopoly developed or a competitive market was re-created by the government, CAAP was of the view that there were a number of long standing unresolved, and emerging, consumer protection issues which needed to be addressed. These issues included: health and safety; service quality; pricing; regulation; and public participation in decision making. To facilitate these objectives as well as addressing the Canadian Airlines merger issue, CAAP produced *an Airline Passengers Bill of Rights*.



Canadian Association of Airline Passengers (CAAP)

**Airline Passenger Bill of Rights**

General Principle: Airline passengers flying in or out of Canadian airports or on flights operated by air carriers based in Canada are entitled to a safe flight, with a high quality of service at affordable, predictable prices on a year round basis.

Specific Principles:

1) Public Participation

The current operation of Canadian airports, air carriers and the air navigation system requires increased public oversight and fair, enforceable rules to protect passengers rights. There are numerous outstanding issues relating to safety, pricing, and service which must be resolved in the public's interest. Proposed changes in the status quo of the airports or air carrier industry have the potential for adverse effect on passengers, communities, employees and the general public interest. In addition to the application of consumer rights as part of normal industry operation, any pending or future mergers or restructuring in Canadian airports, air carriers, air navigation system or aviation regulatory authority should be subjected to a publicly open, mandatory test of public and passenger interests. These matters should be heard by a competent and impartial party, such as the CTA, TSB or Civil Aviation Tribunal.

As part of a public process, the Minister of Transport should require any party proposing change, to state in their proposal how passenger interests will be accommodated in both a transition period, and the longer term.

The Minister of Transport should establish a public involvement process with respect to the development of safety policy and regulations that affect the safety of passengers. This process, whether integrated with or independent of the current Canadian Aviation Regulatory Advisory Council (CARAC) should offer bona fide members for travel and accommodation expenses plus a reasonable per diem.

Regulation and policy through the CTA or Transport Canada should ensure compliance with such undertakings.

Any public process, including the CTA, must include intervenor funding to facilitate representation on behalf of the 18 million passengers in Canada.

Public interests representing passengers should also be given status on the Boards of the major national and regional airports, air carriers and the air navigation system in Canada.

## 2) Safety

- Priority of Public Safety in Decision-Making.

The safety of passengers should always be the foremost consideration in all areas of air carrier, airport, air navigation system and aviation regulatory decision-making;

Air passengers are entitled to the safest trip possible given the current state of knowledge about technology, design, materials, air navigation, meteorology and other considerations;

Commercial considerations such as selling services that are not essential to traveling safety must never take precedence over passenger safety considerations either in the air or on the ground;

While quantitative analyses of risks, costs and benefits are legitimate factors for consideration by managers in the air passenger business, they must not displace the policy stated above.

- Normal and Emergency Levels of Services.

Air carriers, airports, air navigation systems and the aviation regulators shall comply with all applicable regulations and avail themselves of the most up-to-date best practices in the world for normal and emergency operations. Federal authorities should conduct a comprehensive, annual evaluation of services related to public safety, and should provide such reports provided to Parliament.

- A Culture of Safety.

The Chairman, CEO and President of all companies with safety responsibilities are expected to make public their commitments to operate with a culture based on openness, justice, flexibility and learning, and to be accountable for that culture.

- Additional Safety Risks Arising From Mergers, Restructuring.

A special review and verification of safety procedures should be required for any merging or restructuring of air carriers. Such reviews should include assessment of, and proposed mitigation measures for, transition issues for the airline plus current identified but unresolved safety issues, such as defective aircraft wiring and airport emergency response capability.

### Safety Continued:

- Access to Public Safety Information.

Passengers and the public are entitled to complete and timely disclosure of all information on any aspect dealing with safety standards and compliance with safety regulations that could affect passenger safety. This includes the type of aircraft, the aircraft operators, owner operation and the country of registration.

Air carriers, airports and regulatory authorities should provide passengers with information on request and should publish monthly statistics and records, including on a well-identified Internet website, within 45 days of the end of each month the following information:

- The level of activity (e.g. number of passengers and departures);
- The level of safety (e.g. number of fatal and non-fatal accidents);
- A list of incidents over the last five years and the resolution of each, including a contact number;
- The results of the last two government safety inspections and audits and their resolution by the air carrier and/or airport;
- The safety and compliance records of air carriers and airports over the last 5 years.
- Accidents.

In the event of an accident taking place at an airport, passengers are entitled to rescue and fire-fighting services that are equal to or better than international standards and recommended practices, to shelter and first aid, to prompt first and secondary medical aid, to counseling, to consideration of their loss of earning, and standing at any subsequent investigation by the Transportation Safety Board, including reasonable expenses and compensation.

In the event that the traveler is killed in an air carrier or airport accident, the family of the deceased passenger should be compensated immediately and generously in order to carry on at an equivalent standard of living and to seek any additional compensation. Any immediate compensation must not serve as a barrier to any subsequent compensatory or punitive settlements.

The Minister of Transport should publicly account, including via the official Transport Canada website, for post accident recommendations of the Transportation Safety Board, including the status of any action taken or the reasons why safety action has not been taken.

## Service Quality:

### · Full Passenger Information Disclosure.

Passengers are entitled to complete, timely and full disclosure of all information that is material to their flight, including information on: Routing, connections, fares, accommodation, facilities, and baggage rules;

The passenger is entitled to be informed of changes in respect of reservations contracted with the carrier, and is to be informed in advance of overbooking or commercial practices that could annul the reservation or materially affect the passengers' plans. Where delay is inevitable, he/she is entitled to complete information as to the reasons and, reasonable accommodation (hotel overnight) until the carrier can accept the passenger on board. Where an air carrier fails to comply with these rules, monetary penalties should be assessed through regulation, in addition to being available to consumers through civil law.

### · Onboard Quality.

The passenger is entitled to comfortable seating and adequate space on board the flight with which to make an emergency evacuation, including protection against the excessive carry-on baggage of other passengers.

Information on seat pitch and width should be provided to passengers on request and every effort will be made to find seating adequate to the passengers height, girth, etc.

The passenger is entitled to the satisfaction, in hygienic and humane conditions, of basic human needs; including breathing fresh air, availability of fresh drinking water, elimination in clean, accessible and sufficiently numerous toilet facilities.

### · General Service Standards.

The passenger is entitled to courteous service with full explanations of safety regulations and answers to questions in his or her Official Language.

Timely information on delays or safety problems should be given in full, with understandable vocabulary.

The passenger is entitled to careful handling of baggage and on time delivery of same at the proper destination in good condition with all property intact.

Where problems delay or misdirect baggage the passenger is entitled to full explanation, diligent search, fast forwarding (within 24 hours), and full reimbursement of damage or loss.

The passenger is entitled to protection by airport and air carrier personnel against harassment, excessive noise, and obstreperous behavior and, specifically, against the results of excessive drinking by other passengers of drugs and of alcoholic beverages, and in particular those latter furnished on board by the airport or air carrier's employees.

### Service Quality Continued:

Discrimination against disabled passengers should be prohibited. Disabled persons should be afforded the same rights as other passengers. Disabled passengers should be seated to accommodate the safe evacuation of the aircraft by them and other passengers in emergency situations. Airports and air carriers should furnish reasonable accommodation for disabled persons including an extra seat where necessitated by a person's condition for accommodation of the person, his or her prostheses, or a person accompanying him or her.

Passengers should be able to easily contact sales and reservations staff on a 24 hour per day basis. There should be a maximum waiting time of 10 minutes on an airlines' 1-800 number. Staff should be available at airports in situations where flights are being delayed and/or cancelled.

The airlines' complaint service should include a designated staff person at each airport to handle customer complaints. The designated person's name, phone number, and e-mail address should be made available at ticket counters and gates. Complaint forms that can be mailed in should also be available. The airline should be required to answer every complaint within 30 days. An Ombudsperson should be appointed to mediate customer disputes with an airline. The Ombudsperson should be independent, appointed by the government and, should issue quarterly reports.

The airport and air carrier should provide a complaint service, and should publish monthly, including on the Internet, within 45 days of the end of each month the number of complaints received by letter and e-mail messages on the following topics;

- Flight problems (total) and on subcategories: missed connection; diversion; cancellation; delay leaving gate; delay after leaving gate but before takeoff; delay after landing but before deplaning; arrival delay;

- Over sales;
- Reservations, ticketing, boarding;
- Fares;
- Refunds;
- Baggage;
- Customer service;
- Disability discrimination;
- Other discrimination (including by race, colour, national origin, official language);
- Advertising;
- Pricing including fares;
- Credit;
- Tours;
- Frequent flyer program;
- Smoking;
- Safety -related observations.

- Regulations should be introduced with set fines, payable to passengers, for breach of any service standards.

#### 4) Pricing

The passenger is entitled to pricing of basic and discounted fares in accordance with a competitive market for the travel being purchased. In the event that a competitive market does not exist for the travel being purchased, the passenger is entitled to a fare set in accordance with a regulatory scheme that sets just and reasonable fares and conditions which apply to basic and discounted fares. (i.e. seat sales, advance and weekend stay over booking)

In the absence of exceptional circumstances, changes in basic fares should not be made without reasonable notice. Where travel fares are set by market forces, the federal government has the obligation to ensure that anti-competitive conduct such as abuse of dominant position, collusion and price fixing does not affect the price of travel.

Key barriers to market entry must be swiftly removed and predatory pricing prevented.

Where fares are set in accordance with regulation, it should be done in an open, accessible, transparent, public process by the regulator.

Where the required levels of service to rural, remote or small communities cannot be maintained in a competitive or regulated market without:

- (i) fare increases greater than the country wide average
- (ii) restrictions on availability of discount fares that differ from service elsewhere in Canada

The Canadian Transportation Agency should initiate a public process to prevent the occurrence of the same, and should establish a contribution regime as part of licensing requirements to assist, where warranted, in the provision of fair, reasonable and affordable service for all air travel consumers across Canada.

#### 5) Regulation

The Canadian Transportation Agency (CTA) should mandate through new regulations the passenger rights, oversight procedures and redress mechanisms listed above. Public participation should be required as part of the CTA's monitoring, review and regulatory activities.

Amended November, 1999

## **Public Participation**

The principles in the *Bill of Rights* dealing with public participation speak to several outstanding problems at the time of the 1999 – 2000 industry restructuring. Most of these remain unaddressed since then. Outstanding issues include: safety, pricing, frequency of service, quality of service, as well as participation in government and CTA consultations, and CTA proceedings.

One of the key principles of Canadian democracy is that citizens should be able to participate in government decision making in matters relating to policy and regulation in a fair and effective way such that their interests are balanced with those of other interests. This principle of democratic fairness and participation pertains to parliament, government departments, the courts, tribunals and agencies of the Crown.

Public participation as it relates to transportation policy is possible through activities of the Department of Transport, the Canadian Transportation Agency, as well as with industry/policy fora such as the Canadian Aviation Regulatory Advisory Council (CARAC). As well, consumer interest representation could also be a feature of the Boards of the major national and regional airports in Canada, most of whom are now managed by communities, as well as scheduled air carriers and the air navigation system in Canada. Each of these elements are intricately involved in decision making about and/or provide services that affect different and important aspects of the air passenger travelers experience.

There has been an astounding dearth of representation and inclusion of representatives of the public in all of these venues. This means that decisions about numerous issues which have great importance for consumers, such as safety, pricing, availability and frequency of service, quality of service, and consumer redress, are taken with little or no input from consumers. The result is that opportunities are not created to realize fair and balanced decisions about

rules and services that could be of benefit to the interests of air carriers, government and consumers. Such opportunities would have the effect of contributing to the overall improvement in passenger airline service in Canada.

There are several reasons for the lack of consumer involvement in matters relating to air transportation. These include: the lack of effective consumer organizations; the absence of government and corporate management mandates and organizational cultures that promote citizen engagement and inclusion, the lack of availability of institutional mechanisms to facilitate consumer involvement; and the lack of funding support for groups.

There is a 'chicken and egg' aspect to the problem of citizen involvement. Without core funding or other forms of support from government, it has been difficult if not impossible for a consumer group, or several groups working together, to develop expertise in air transportation matters and to contribute to various government and industry initiatives and proceedings in any substantive or sustained way. At the same time, because significant and sustained consumer interest is not represented to government and industry, a perception can arise whereby the apparent lack of credible, expert and representative organizations, obviate any initiatives to include consumer views in decision making activities.

However, consumer participation in airline matters has not been totally bereft. The Air Passenger Safety Group, Transport 2000 and the Public Interest Advocacy Centre have intervened in matters when resources permitted on matters of importance in the past. More recently, throughout the policy and regulatory processes dating from 1999, a number of groups represented by the CAAP were involved in the legislative process of Bill C-26. The main barrier to substantive participation has been the chronic lack of resources as opposed to interest by the groups over the years.



The federal government missed an opportunity to facilitate greater consumer expertise and involvement in these matters in the early 1990's. Such support would have gone a long way in ensuring that the consumer voice was both effective and heard before, during and since the debacle in the industry in 1999. At the time that the former Department of Consumer and Corporate Affairs was disbanded as part of the federal government down sizing in 1994, it was intended as part of this strategy to establish consumer directorates in each federal government department. These directorates were to have funding available to ensure consumer groups could develop expertise in the policy and regulatory mandates of each department, and have sufficient resources to be able participate in industry and government matters relating to policy and service delivery. In the event, only Industry Canada established a funded consumer directorate. This directorate has had to provide funding support not only for policy matters relating to this Industry Canada, but also those of others, including Transport, Finance, HRDC, Heritage, and Health, among others. The Department of Finance rectified the omission relating to consumer participation in financial services policy in 2001 by contributing funds to the Industry Canada Office of Consumer Affairs to facilitate grants in this policy area.

## **Safety**

Safety issues relating to both aircraft and airports were not addressed during the Air Canada/Canadian merger, and have not been discussed as a policy issue since. The issue receives sporadic attention, usually when an incident significant enough to make headlines occurs, such as the SwissAir 111 accident or the Transat incident. There are several basic initiatives which could be undertaken to improve the overall safety of air travel in Canada and the confidence of passengers.

How safe is scheduled commercial air travel for passengers in Canada? Overall it is relatively safe. However, the answer also includes caveats. One caveat is that there are a great many incidents that are not known about by the general public, occurring on a daily or near-daily basis, which portend possible greater problems that raise questions about safety protocols and public oversight. A second caveat is that the level of safety depends on whether or not a passenger is involved in an accident – if you are, then it matters! The third caveat is that with little more effort and minor expenditure safety could be greatly improved.

Given the number of passengers traveling each year and the large number of flights, the actual accident, injury and death rates are very low. In spite of this, the possibility of an incident or accident, even a severe one such as a crash, has crossed the minds of more than a few passengers. This concern is not unfounded however. In point of fact, the number of incidents (those occurrences which don't make the daily news) is disturbingly high. If a serious incident does occur, then questions about safety, rescue standards and procedures become important. The environmental extremes under which airline service operates (e.g., speed, altitude, etc.) leaves little ground between a safe flight, an incident and serious ramifications when an accident does occur.

Questions about conditions before an incident, such as adequate maintenance, inspection and so forth also go begging. Transport Canada, as the regulatory authority, has a role to ensure that carriers are carrying out maintenance and other procedures as required. A current problem in Canada is that while the quality of Transport Canada staff is very good, there is a shortage of inspectors. There has also been a decline in the number of experienced pilots and mechanics in the industry that raises concerns about safety at the carrier level.<sup>6</sup>

In 2000, for example, there were three accidents involving Canadian registered airliners. As outright accidents these would qualify as newsworthy. One of these accidents led to fatalities. At the same time, in addition to accidents there were 346 reportable incidents involving all types of aircraft. Reportable incidents include collisions and close calls, declared emergencies, engine failure, smoke or fire, and other incidents. In 2001, by June, there had been no major airliner accidents, however there was a significant increase in reportable incidents (see Table One). In the first six months of the year incidents involving collisions or risk of collision, declared emergency, and smoke/fire had already exceeded the totals for 2000.

Table One: All Aircraft – Reportable Incidents.

	2001 (6 mos.)	2000
All Incidents	437	346
Collision/Risk of Collision/ Loss of Separation	106	90
Declared Emergency	146	104
Engine Failure	85	74
Smoke/Fire	54	38
Other	46	40

Source: Transportation Safety Board of Canada, August 2001.

<sup>6</sup> “Cutback threaten air safety”, *Straight Goods*, September 6, 2001.

While there are few actual accidents, the relatively high and increasing number of incidents, many of which could easily lead to greater problems, including a serious accident, should raise concerns from passengers, airlines, and particularly the government, who ostensibly bears the responsibility to protect the public's interest.

Part of the problem in dealing with the safety issue and airline travel is the conceptual framework that the industry and to a degree, government, has adopted for safety. While on the one hand there is rigor in matters of aircraft construction and airworthiness, at the same time a minimalist approach is adopted with respect to the level of some standards, and remedial action when incidents or accidents occur. From a passengers perspective these differences are exemplified in how safety is dealt through the choices in the industry between the 'precautionary principle' or the 'risk approach' (also referred to as risk analysis or cost benefit analysis). Contrary to the assumptions of passengers, the 'risk' approach receives too much currency in the industry.

In a precautionary approach, standards are created, and investments and initiatives are undertaken to prevent, or greatly reduce the potential for, a possible occurrence, and to provide resources to appropriately deal with an occurrence. In a risk approach, it is calculated that the likelihood of an event occurring is minimal or a low probability. As such, it is then considered more financially effective and efficient to not pursue certain undertakings. In this framework, when an incident does occur, the cost will still be less than that of the proactive precautionary approach, up to a certain level. For example, through actuarial calculation, for some airlines it is less expensive to pay out claims in the case of injury or death to a certain financial level than to carry insurance or make equipment upgrades. This is of little solace to those passengers falling into the wrong statistical grouping when the 'risk' approach is used. As noted by Lyn Romano, head of the International Air Safety Association, the cost benefit

analysis taken by airlines and regulators means it is “cheaper to pay out big settlements than prevent an aviation disaster in the first place...This is a reactive, Tombstone Mentality approach, rather than a proactive approach...Too many of the safety issues have been known for years, but swept under the carpets.”<sup>7</sup> Beyond the obvious ethical questions about the value of life as opposed to money and equipment, from a strict methodological view point, this approach raises serious questions about whether a broad enough set of criteria are used to undertake cost-benefit-risk analyses which truly reflect the concerns, interests and circumstances of all parties, e.g., airlines, airports, passengers and their families.

One of the problems in addressing safety issues is that it is difficult to know the degree to which there are safety problems unless these are made publicly available in sufficient detail by the airlines and government. While some general incident and accident reporting is available, and daily incident reports are collected, thorough ongoing public reviews and analyses (e.g., Transport Canada, CTA) of manufacturing, maintenance, and operational activities and incidences are not undertaken. Such reviews would not only ensure that the rules and standards as they exist are being appropriately applied, but making these public would also bring pressures on the industry to be more responsive to the needs and concerns of the traveling public, as opposed to relying on economic theorem of risk assessment.

The safety issue in Canada is one that has largely been down played or ignored over the past couple of years, with more attention given to the merging of Air Canada and Canadian Airlines, and other aspects of restructuring of the Canadian airline industry.

In terms of flight safety, a number of outstanding questions exist as to whether sufficient remedial action is planned to prevent possible catastrophic incidences.

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<sup>7</sup> “Not the stock standard air tragedy widow”, *Straight Goods*, September 6, 2001.

For example, known existing problems include size of doors, the number and placement of seats, in-flight fires, capton wiring, flammable insulation, among others. Recent incidents involving in-flight fires in North America (e.g., ValueJet 592, SwissAir 111) raised the issue of the need to add fire suppression systems to commercial aircraft. Anecdotal evidence suggests that as much as fifty per cent of the currently active airliner fleet in Canada still has capton wiring. The slow response of the industry or even lack of action with some issues brings back the issues of cost effectiveness and 'risk'. In the United States, for example, the FAA values a human life at \$U.S. 2.7 million. So based on statistical projection, it is often less expensive for airlines to pay the costs of individual deaths up to a certain number of people than to adopt a precautionary approach and effect equipment changes or repairs.<sup>8</sup> In Canada, Transport Canada estimates human life somewhat higher based on the average settlement in recent U.S. wrongful death in the air occurrences.<sup>9</sup>

The same 'risk' approach logic is used for safety at many of Canada's small and medium sized airports. Canadian Aviation Regulations (CAR) require the largest airports (28 airports under CAR 303 – where there are 2800 or more aircraft movements on runways of certain size planes per year) to provide some form of onsite emergency response services (ERS). In essence, the regulations require emergency equipment to be onsite within three minutes of mobilization (not from the time of alarm which could actually add some time). Three minutes is the average 'burn time' it takes fire to burn through the skin of an aircraft into the passenger cabin. However, under another proposed Canadian regulation (CAR 308) the more than 200 smaller airports in Canada would be able to provide this service using off-site equipment with a response time of 20 minutes; risking leaving passengers out done and well done. In addition to a response time six times beyond the estimated survival window for passengers, the standards for fire extinguishing agent can be as much as five times below international

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<sup>8</sup> "Unsafe at Any Altitude", R. Nader, Conde Nast Traveler Magazine, 1999.

standards.<sup>10</sup> The whole area of airport emergency response has become such a mess that CAR 308 has not been implemented, leaving many of these airports with no effective standards.

Under the federal government's National Airport Policy, the operational responsibility of many airports in Canada has been transferred to communities. This change has left many of these airports without sufficient resources to provide safety equipment and service at a level that passengers would normally expect and assume to exist. These airports are under a great deal of financial pressure just to stay afloat let alone properly address the many safety issues including ERS, staff training, equipment, runway resurfacing, lighting, etc. Most airports derive the majority of their revenues from landing and take-off fees. Consolidation and rationalization by carriers has reduced these fees for many airports, and coupled with little growth in the industry, ERS and safety, which represents about 10% of airport operating costs, is one of the areas where cuts to expenses are made.

With airports, like airlines, the same concern exists that passengers' interests take a back seat to money because airports also adopt a 'risk' approach to safety. For example, a fact sheet released by the Coalition of Concerned Airport Users (CCAU) (users not including passengers!) on September 14, 2000, bemoaned the lack of risk analysis or cost-benefit analysis by the federal government in implementing the ERS regulation. Moreover, the group argued that funds should be "allocated for safety to address what are deemed to be the most likely eventualities in statistical terms."<sup>11</sup>

Well statistics don't fly, people do! Reports and analysis resulting from previous crashes (e.g., 1992 Moshansky Report, Dryden crash; Fredericton, 1997)

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<sup>9</sup> *Evaluation of Emergency Response Capability at Airports in Canada*, revised 2000, Cadmus Corporate Solutions Limited, p.iv.

<sup>10</sup> *Evaluation of Emergency Response Capability at Airports in Canada*, revised 2000, Cadmus Corporate Solutions Limited, p.v.

underscored the need for vigorous rescue and fire fighting capabilities at airports as opposed to a best bet on what incidents might occur. As indicated by the incident reports above, any number of particular problems do occur almost daily and betting on one over another for a particular airport leaves the system open to accusations of being morally and ethically reprehensible, let alone a disservice to passengers.

Ironically, while the airports lack the funds to adequately provide this service (largely due to under funding and cut backs by the federal government), Transport Canada (TC) does not. TC collects over \$200 million per year in rent from these airports with the potential for this to increase to several hundred million. By 2000, TC had collected \$800 million in rents from privatized airports. It is estimated that the cost of providing adequate ERS would range between \$20 and \$40 million per year. Seen another way, these costs could be recovered by adding a dollar or two to the price of each ticket. In June, 2001, as part of a new policy proposal for Canada's airports, Transport Canada indicated that Canada's Airport Capital Assistance Program will provide \$190 million in financial assistance over the next five years. However, it was not clear that this would address the ERS concerns discussed above.<sup>12</sup>

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<sup>11</sup> Press Release, CCAU, Fact Sheet, September 14, 2000.

<sup>12</sup> Press Release, *Transport Minister to Develop Legislation and Review Rent Policy for Canada's Airports*, Transport Canada, June 12, 2001; *Evaluation of Emergency Response Capability at Airports in Canada*, revised 2000, Cadmus Corporate Solutions Limited.



## **Quality of Service**

Quality of service issues comprise the range of normal, front line services and practices that passengers experience as part of air travel. A number of quality of service issues involve formal rules, or conditions of carriage, which apply when a passenger purchases an airline ticket. These would include, for example, baggage, over booking, rebooking a ticket, among others. Other quality of service issues involve industry practices which may or may not be informed by regulatory frameworks, such as seat spacing, onboard air or food quality. Other areas involve general customer services, such as timely and relevant information disclosure to passengers about such matters as flights, access to sales and reservation staff, and customer complaint resolution.

Quality of service and pricing issues (discussed below) are very important for passengers because these have such an impact on the basic aspects of traveling. These issues also involve the services and practices most likely to be associated with customer dissatisfaction with a particular flight, or airline.

### **Tariffed Quality of Service Issues**

While perhaps the greatest concern to passengers, quality of service issues set by tariff were addressed in only a minimal way by Bill C-26. C-26 restored powers to the CTA to review conditions of carriage for domestic service. Conditions of carriage are those rules established by carriers, though often assumed by passengers and airline employees to have been set by government, which apply to classes of tickets and some general service standards (e.g., full fare as opposed to discount fares have different rules applied).

In the C-26 policy framework, quality of service issues involve such matters as lost baggage, bumping, changing tickets, the transport of pets, minimum stay over rules, etc. Issues such as food quality, information disclosure about service status, flights etc., are not covered by this category.

C-26 empowers the CTA to ensure that the carriers have, and apply, terms and conditions that are reasonable and non-discriminatory. The CTA is also empowered to suspend, disallow or require substitutions of those terms and conditions, as well as order compensation for persons who have been adversely affected. While the agency has had this power for international flights, it has never been used. Since the passage of C-26, the CTA has issued some rulings on tariffs (e.g., Air Canada, Westjet) based on specific complaints.

### Limitations of C-26 and Conditions of Carriage

The changes made through C-26 as regards to protecting the interests of both individual passengers and passengers overall in Canada have largely been ineffectual. There are several reasons for this.

There is a taken-for-granted assumption by passengers that there are a common set of rules that apply to all carriers. In point of fact, there are no such industry standards in Canada. Moreover, since reregulation, domestic carriers establish their own rules or tariffs, and these are implemented without any public review, or even an requirement that they be filed with the CTA. In effect, this process makes the airlines not only the rule makers, but also the judge and jury when problems or disputes arise. Such one-sided rule making puts individual passengers at a great disadvantage in relation to the power of a carrier, even more so where monopoly service conditions exist, where the choice of using an alternative service provider is precluded.

A further limitation of this part of C-26 is that any CTA review of a tariff is based on a complaint driven process. The Canadian airline system does not operate on a one-to-one basis with each passenger, but as a system whereby a set of rules and practices apply to all passengers in all parts of the country. Where particular tariffs or rules are attached to a particular class of ticket, then this normally

applies system-wide as well. As such, dealing with problems on a reactive, case-by-case basis does not address the broader question of whether all passengers on a flight, or using a carriers services are also being subjected to unfair, unreasonable or discriminatory treatment.

The complaint driven, or 'cure by a thousand band aids', approach means that substantive changes in the culture and practices of the industry leading to the establishment of fair tariffs (balancing the interests of passengers and carriers), is undertaken piece-meal, in a long, drawn out process. So in spite of a suggestion in C-26 that the CTA can be more diligent in ensuring that tariffs are fair and just, and applied fairly, the opposite is true. The agency is precluded from pro-actively intervening to review and set standards of service or tariffs for those general rules or practices that are common to each carrier regardless of class of ticket.

As part of a competitive market, the ability for carriers to establish different tariffs or rules specific to different classes of tickets (e.g., minimum stay overs) to differentiate their production from competitors and to create incentives/disincentives for passenger flow is understandable. However, these too should be at least subject to public review by the CTA on a proactive as opposed to a reactive basis. This is necessary to ensure that the rules are fare and balance the interests of both passengers and carriers. At issue here is the need to establish a set of industry standards, as is expected by the public, and which are enforceable by public authority not just the carriers.

Without the power of own-motion, or proactive intervention and public review, the CTA is left with little more for tools to protect consumers than moral suasion (e.g., this approach was used to establish rules about self-identification of persons with disabilities with international carriers) or a piece-meal Tribunal approach for problem solving. In this latter approach, ensuring the development

and maintenance of a fair market place will be arduous for consumers, inefficient and costly for the CTA, and protracted, spanning years.<sup>13</sup>

There are a number of general (not involving ticket price) tariffs or conditions of service that have little to do with competition, but much to do with quality of service and customer satisfaction. The lack of consistency of these between carriers can result in dissatisfaction and unfair treatment of passengers. A common set of standards across carriers, and across similar types of aircraft operated by different carriers, could easily be established through a CTA public process. Common standards would mean that both carriers and passengers would have transparent information and clear understandings of the basic rules about service. A review of a number of different tariffs set by domestic airlines reveals a mish mash of rules and procedures unsupported by rationality or explanation. To expect the average passenger to be aware of, and understand, the tariffs of each airline before purchasing a ticket is also unreasonable. Storage of the paper versions alone of the tariffs of the major domestic carriers would fill a small library.

Examples of the number and variation in tariffs are plentiful. With onboard baggage, passengers face airlines setting their own rules about type of baggage, weight, size, shape and volume. While there is justification for this between different types of aircraft, the logic is lost by passengers when rules vary between carriers using the same or similar types of aircraft.<sup>14</sup> For changing or re-booking a ticket, depending on the airline, passengers may face a minimal charge (e.g., WestJet \$20), a standby charge (e.g., Canada 3000 \$50) or a substantial charge (e.g., Air Canada \$50 - \$145 depending on whether competition is also in a market). The wide range and subjective application of such rates, or even the existence of a charge in the first place, without a public process and justification by a carrier again raises the questions of fairness and lack of common

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<sup>13</sup> Interview, CTA, June 2001.

<sup>14</sup> *Fly Smart*, CTA, 2000, p.11.

standards.<sup>15</sup> Where pets are allowed on some carriers (e.g., Air Canada, West Jet), they are prohibited with the exception of seeing eye or hearing ear dogs on others (e.g., Canada 3000). Where baggage is lost or damaged, each carrier sets the limit of what they will reimburse a passenger (e.g., \$250 West Jet, \$1500 Air Canada). With pregnancy, women require a medical certificate stating that they are acceptable for travel, but the number of weeks for this varies by carrier (e.g., Canada 3000 – 36 weeks, West jet – 32 weeks).<sup>16</sup>

## Non-Tariff Quality of Service

There are a number of other practices of the carriers that affect quality of service which are not set through the carriers' tariffs, but none-the-less are of particular importance, and at times of considerable concern or aggravation, to passengers. These involve practices that a consumer would normally expect a carrier to offer at a reasonable standard as part of customer service.

Issues involving these quality of service concerns can be generally categorized as:

- full information disclosure
- onboard quality
- general service standards

Normally in society, when consumers purchase a product or service, they have a good idea about what the product is, how they can use it, and the conditions under which it can be used. This is not always the case with airline travel.

Attempting to stipulate good practices through public regulation or legislation, given the complexity of airline service, may risk over-regulation or inappropriate rules for different circumstances. However, regulation requiring the provision of

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<sup>15</sup> Interview, Blaine Thomas Travel, Fredericton, September, 2001; Air Canada "Flash" notice to travel agents, August 29, 2001.

<sup>16</sup> Air Canada's Customer Service Plan 2001; WestJet [www.westjet.com](http://www.westjet.com); Canada 3000 [www.canada3000.ca](http://www.canada3000.ca); Air Canada General Rules.

basic quality of service standards, with flexibility for implementation, would go a long way to better balancing the needs of passengers and carriers.

When booking travel with an airline, consumers should receive full disclosure with respect to relevant fare and route information, including whether code-sharing is involved, or whether extras such as departure taxes, reserve seat charges, surcharges, or airport transit charges are included in pricing.

Disclosure of this information is not automatic and can vary depending on whether a ticket is purchased directly from an airline salesperson, on the Internet, or through a travel agent. The variable prices of tickets on the same flight, without explanation, also adds to passenger confusion and disgruntlement. Such information disclosure practices could be regulated either federally or provincially. With the absence of federal rules, and variable provincial regulations, no standard currently exists in Canada.

Passengers also need to be informed in a full and timely fashion about pertinent information regarding the status of their flight, such as delays, over booking and cancellations. This information not only includes the cause of delay and when travel will be available, but also advance notice, when possible, that a flight problem exists.

Without complete and timely information, passengers' lives and schedules can be unnecessarily interrupted. An open, transparent approach also affords passengers the opportunity to make alternative arrangements (of course, where other airline, or train service, still exists). These rights should also extend to delays when passengers are already on board an aircraft. When extended delays occur (e.g., greater than one hour) and passengers are already on board, passengers should not be held hostage at the discretion of the carrier, but afforded the choice of leaving the aircraft to pursue other arrangements, or to re-board later when the carrier has resolved its problems.

With respect to on board quality, passengers have complained about the lack of standards pertaining to washroom facilities, air quality, drinking water, seat size and leg room. While flexibility in on board service for such things as food, commodity beverages, etc. needs to exist, minimum standards need to be established as part of the national system. For most airlines, there are more minimum standards or rules about accommodation size, fresh air, physical movement, water and feeding for pets than for people.

The lack of on board standards, such as seat size, pitch, leg room etc., has become an increasing annoyance for passengers, particularly on longer flights. These issues have also become growing health concerns.<sup>17</sup> Disclosure about these basic comfort and health issues is not enough. It is little comfort to passengers, that in future, as part of improved service practices, carriers may tell them in advance that they will be 'canned like sardines' on their next flight, instead of improving the physical conditions for passengers.

Information about on board quality, standards and services should also be readily conveyed to passengers at the time they are purchasing a ticket as part of their right to be fully informed consumers. If consumer sovereignty is to hold any merit, it must not be 'constitutional' in nature, but real and effective.

While most airlines make efforts to deal with customer inquiries and complaints, often there are not easy to find (e.g., at airports) or easy to call (e.g., 1-800 numbers) representatives who are clearly designated to address and resolve inquiries and complaints in a timely fashion. These circumstances vary considerably by airline, and some improvements (e.g., Air Canada) have been made with the burgeoning of passenger complaints over the past couple of years.

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<sup>17</sup> *Improving Quality Service Standards for Airline Passengers*, Ministry of Consumer and Commercial Relations, March 28, 2000, pp.8-9).

Where practical, based on the size and resources of the carrier, standard protocols should include:

- the ability to contact sales/reservation staff 24hrs/day
- a maximum waiting time for 1-800 numbers
- available, designated staff at airports to deal with delays, cancellations, flight information, and complaints
- airline contact information (name, phone, email), and federal (CTA, Complaints Commissioner) forms and contact numbers available at ticket counters and gates.

In keeping with the principles of providing full and complete information to passengers about the overall service of a carrier, which permits passengers to make informed decisions, as a minimum all carriers should be required to publish each month:

- number of complaints and type (see CAAP *Bill of Rights*)
- flight statistics (number, delays, cancellations)
- type of equipment in fleet, including on board conditions and services
- all pricing information, including lowest prices.

The narrowness of the scope of C-26 in addressing only formal conditions of carriage as defined by airline tariffs has meant that many of these quality of service issues have missed scrutiny in the recent restructuring and review of airline service in Canada.

Where these issues have become increasingly obvious problems, as detailed in the first report of the Air Travel Complaints Commissioner, the CTA has been limited in its ability to substantially deal with them on a systemic basis, again because of the narrow scope and short comings of C-26.



Some may observe that initiatives to improve safety, conditions of carriage and quality of service in general may add a cost to the industry, and thereby passengers. But in a more considered and broader view, as matters of good sense and prudent forethought most of these issues should have been addressed in the initial design of equipment and services. Minimum standards should be a normal part of business practices as opposed to anomalies and exceptions. The application of these would on one level provide a common framework of rules for all carriers and passengers, and would benefit both passengers and carriers. Passengers would benefit by experiencing a more satisfactory travel experience, and carriers would benefit by having more satisfied customers and providing safer, high standard services. Moreover, any added costs would be amortized across millions of flights originating in Canada each year, thereby amounting to a few dollars per ticket.

As an example, there are about 58,500,000 airline passengers traveling in and from Canada each year.<sup>18</sup> A ten dollar surcharge would bring in over \$580 million per year. About three dollars per ticket would improve security screening at airports and bring all airports up to international standards for fire and rescue services. The remaining amounts could be used for any range of problems, such as: providing operational subsidies to smaller, rural airports (to entice carrier service by reducing fees - better than a direct carrier subsidy); upgrading fire trucks, runways, etc.; improved quality of service and communication initiatives for passengers, and so forth. This would probably still leave a hundred million or so each year for other initiatives. Research in the United States has indicated that passengers are willing to pay up to as much as \$40 per ticket for improvements to safety, security and quality of service. It would be expected that Canadians would also be willing to pay a small surcharge where clear benefits to passengers, as opposed to carriers, existed.<sup>19</sup>

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<sup>18</sup> Regional Enplane and Deplane Passenger Summaries, *Annual Report*, Transport Canada, 2000.

## Quality of Service and the Complaints Commissioner

The concerns of CAAP and its member groups have been more than borne out by the range of complaints received by the Air Travel Complaints Commissioner.

Before Bill C-26, consumer groups in Canada advocated for the establishment of a federal complaints ombudsperson. The groups consider the establishment of this position through Bill C-26 as a key factor for improvements in service over the past several months. Where the CTA has lacked the tools or the will to intervene in the public's interest, the Commissioner's responsive approach has assisted many consumers and has helped to bring clarity to the weaknesses still evident in the policy and regulatory frameworks.

Since 1999, there have been two general categories of complaints from consumers. One set were directly related to the disruption of service and erosion of the quality of service stemming from the Canadian/Air Canada merger. While a number of these complaints persist, the overall number has declined since 2000. The other category are long standing structural problems which pre-existed the merger and continue today, involving most airlines.

While the Commissioner received complaints in sixteen different categories, the lion's share of these involved quality of service. The more than 1100 complaints received by the Commissioner dealt with over 3500 issues or problems. A true measure of passenger dissatisfaction is hard to gauge. On the one hand, compared to the overall number of people flying, the number of complaints would appear to be low. However, almost 95 per cent of the population has never heard of either the CTA or the Complaints Commissioner. As such, the potential number of complaints, assuming all disgruntled passengers knew how they could complain, could reasonably be expected to be much higher. In addition to complaints received by the Complaints Commissioner, carriers also received

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<sup>19</sup> Interview, Air Passenger Safety Group, October 2001.

complaints directly from passengers. But rather than a numbers game, more to the point, for passengers it is not the volume of complaints that matters, but the individual experience of problems when they occur.<sup>20</sup>

For domestic carriage, the majority of problems experienced by passengers, as evidenced by formal complaints, involved the non-tariff quality of service issues, followed by scheduling (flight delays, etc.) and baggage. As discussed above, no national minimum standards exist for these service issues. Throughout the Commissioner's report, there is a common theme that much of the problems and aggravation experienced by passengers could have been resolved through better communication by carriers; a more positive, consumer friendly attitude by carriers; an improved, consistent and timely response and remedial action on the part of a carrier; providing passengers with reasonable explanations; minimal compensation; and a simply apology.<sup>21</sup>

The Commissioner's report also identifies a number of other problems that confirms that there is confusion for consumers in knowing what their rights are, as limited these may be.

From a consumer perspective, in general terms it is abundantly clear that most passengers are not aware of what their rights are, even if these are set unilaterally by a carrier, or the avenues which are available for complaints/problem resolution (carrier, Commissioner, CTA). A simple way of providing information to passengers to resolve this problem – providing forms, booklets etc., at ticket counters and gates at airports, or through travel agents, has not been implemented.

To its credit, Air Canada has attempted to address complaints by passengers through the establishment of a complaints ombudsperson and a Customer

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<sup>20</sup> Interview, Complaints Commissioner, June 2001; *The Report of the Air Travel Complaints Commissioner*, Spring, 2001, pp. 23,27.

Service Plan. These initiatives are commendable because they are improving customer service for passengers. At the same time, these types of voluntary initiatives are limited because they address symptoms as opposed to the underlying systemic problems. These problems are not unique to Air Canada. As well, without redress mechanisms, including penalties, there is nothing to guarantee a carrier will live up to voluntary codes, or to do so on a consistent basis.

### Canada Third in a Three Horse Race

Beyond the merger related problems faced by passengers in Canada, the structural problems involving tariffed conditions of carriage, other quality of service issues, and pricing/ticketing issues are also major concerns in other countries. In a comparison with experiences in the U.S. and the Europe, Canada is following the same pathway of decreasing or low service standards, but has yet to catch up by implementing substantive initiatives to resolve these issues. The U.S. is arguably not much further ahead of Canada in dealing with outstanding problems for passengers, particularly with a market where service standards are well below those experienced by passengers in Canada. But while service in Canada is comparably better than what passengers experience in the U.S. market, comparing the best of the bad is much less productive than ensuring that the best service possible is provided, as is due to passengers.

### European Commission (E.C.)

There have been ongoing efforts in the E.C. to improve market fairness and the rights of passengers since a single E.C.-wide market was established for air transport in 1992. Early legislation in the E.C., like C-26, only provided limited

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<sup>21</sup> Ibid, pp. 27-34.

improvement in the areas of passenger rights and protection. In addition, general E.C. directives on consumer protection did little to protect consumers.<sup>22</sup>

The lack of a sufficient level of passengers rights and the clear inability of the market to produce desired outcomes led to an E.C. initiative in 2000 to develop legislation to protect air passengers in the European Union and to leverage other service improvements through voluntary commitments by carriers. In the E.C., voluntary codes on some service standards were considered an important element due to a concern that legislation that was too broad could risk standardizing products and thereby reducing competition. This circumstance is different from Canada where competition is minimal, and, where choice of service is available, price and convenience appear to be the main differentiators of service. The E.C. also borrowed the idea of codes from the approach adopted in the U.S.. As described below, the code approach has proven to be a dismal failure in the U.S..

A common problem for all jurisdictions is the airline ticket system. The key problem is that the ticket is a contract between a passenger and a carrier, but one that is biased in favour of the airline. The terms of agreement and dispute resolution are solely determined by the airlines. In the E.C., proposed legislation on these contracts is intended to better define, and create certainty for both parties about, their rights. Legislation would also improve redress options for consumers.<sup>23</sup>

The range of issues identified by the E.C. and other interested parties, which required an improvement in the rights of passengers, were extensive and

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<sup>22</sup> Council Directive 90/314/EEC, June 13, 1990 on package travel O.J.L158, 23.06.1990; Council Directive 93/13/EEC, April 5, 1993 on unfair terms of consumer contracts O.J.L95, 21.04.1993; Council Directive 84/450/EEC, Sept. 1984 on misleading advertising O.J.L250 of 19.09.1984 as amended by Directive 95/55/EC.

<sup>23</sup> Communication from the Commission to the European Parliament and the Council, Protection of Air Passengers in the European Union, Brussels, 21.6.2000, COM(2000) 365 final, pp. 9,11.

comparable to the problems faced by passengers in Canada. The E.C. standards issues include:

Carriers.

- improve the balance of rights between passengers and carriers
- transparency of fees, charges and taxes additional to the fare
- no post-booking fare increases
- code-sharing transparency
- contracting airline responsibility under code-sharing, inter-lining
- transferability of tickets
- sequential use of tickets; use of both outbound/return ticket portions
- compensation for denied boarding
- offer of the lowest fare available
- canceling reservations without penalty within a time limit
- informing passengers of schedule, equipment changes
- full information disclosure about delays/cancellations
- adequate care for passengers when delayed on board aircraft
- protocol on best practice in treatment of disabled people
- high limits on liability for baggage
- delivery of baggage within a given time
- minimum assistance to passengers when baggage is damaged or lost
- compensation for failure to meet standards

Airports.

- Line up times
- Signs to assist passengers
- Staff customer service training
- Safety management
- Cleanliness and maintenance
- Customer complaint resolution.<sup>24</sup>

To improve the ability for consumers to make good choices about service options, the E.C. also proposed legislation to require carriers to provide information on various aspects of service. This could include: denied boarding; complaints; proportion of seats sold at a lower fares, etc..<sup>25</sup>

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<sup>24</sup> Communication from the Commission to the European Parliament and the Council, Protection of Air Passengers in the European Union, Brussels, 21.6.2000, COM(2000) 365 final, pp.14-18.

<sup>25</sup> Ibid, p.21.

As with Canada, the E.C. faces a problem of the lack of strong representation by passengers in government and industry policy and service related groups, organizations and initiatives. In a recognition of the need to balance the interests of airports and carriers with those of passengers, the E.C. is reviewing different options to increase the presence and effectiveness of consumer participation. In Canada, the government does not provide funding for consumer organizations to develop expertise in the area of airline service or for participation in sector initiatives or groups, nor does the government take adequate steps to ensure groups are involved, such as inviting them. The E.C. is assessing methods to ensure that groups are sufficiently resourced to be able to participate, and to conduct their own research and analysis to be effective in their representations.<sup>26</sup>

The proactive approach by the E.C. for broad legislation has been influenced by the lack of good will on the part of airlines to deal with these issues, and the inability for the International Air Transport Association (IATA) to resolve these matters. There has been little incentive for carriers to make changes in the absence of legislation or the threat of some other form of redress. While IATA has been attempting to have their members adopt a framework of voluntary service standards, the organization has no force of law. Carriers and countries may implement such recommendations as they see fit, or not at all.

## U.S.

While the E.C. is optimistically relying on a mix of regulation and voluntary codes, experience with voluntary codes in the U.S. have proven that such an approach to be largely a failure and little more than a ruse by airlines to avoid making real changes and respecting the rights of consumers. The problem is simple: with rare exceptions, codes don't work. They don't work because they have no force of law or consumer redress mechanisms. When codes are made mandatory, with real redress options, this is called legislation and regulation. To pretend some

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<sup>26</sup> Ibid, pp. 22-23.

middle ground can exist and be viable is being either naïve or intellectually dishonest with consumers.

In the U.S., in September 1999, 14 large U.S. airlines, who are members of the Air Transport Association, released Customer Service Plans (“Customers First”). The intent of these was to commit to voluntary standards of service for passengers. This was driven largely by the introduction in Congress of legislation that would have created a Bill of Rights for passengers, as opposed to good will by the airlines.<sup>27</sup> A review of service the following year concluded that not only had airlines failed to live up to their promises of improved service, but with the exception of baggage handling, all other areas of service actually worsened, with passengers complaining in record numbers. By 2001, several new Bills had been introduced into Congress to establish passenger rights and redress.<sup>28</sup>

## Trends

There were two other interesting developments in the E.C. over the past two year, both originating in the United Kingdom (U.K.).

As the number of people flying has increased over the past few years, as well as the average distance of travel increasing for most passengers, the issue of safe and comfortable seating has gained in importance. Over the past year there have been a number of stories in the media about passengers experiencing deep vein thrombosis associated with the lack of movement and restricted seating on long flights. Passengers in general have also come to rue long distanced schedules and charter flights due to cramped, ‘sardine can style’, seating.

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<sup>27</sup> “ATA Airlines Announce Customer Service Plan”, [www.air-transport.org/public/news/view1999.asp?UniqueID=432](http://www.air-transport.org/public/news/view1999.asp?UniqueID=432) .

<sup>28</sup> “Airlines fared worse in 1999”, R. Schmid, [www.abcnews.go.com/sections/travel/DailyNews/AirlineRanking00410.htm](http://www.abcnews.go.com/sections/travel/DailyNews/AirlineRanking00410.htm) ; “Congress puts airline services under scrutiny”, J. Cienski, National Post, May 4, 2001, P. A10.



To address concerns about seating, the U.K. Civil Aviation Authority (CAA) has funded a research study to review the minimum spacing and size of airline seats. This U.K. is unique in already having a seat spacing air worthiness requirement. The study will report on whether regulatory changes are required and will review such issues as: arm rest and seat cushion height; seat width; seat recline; and reduction in mobility following prolonged sitting. Beyond the immediate value of researching this issue, this example of a proactive policy initiative in another country is another useful indicator that the laissez-faire, lackadaisical approach to consumer rights and quality of service in Canada is no longer appropriate for policy makers or industry service providers.

The other initiative is a complaint filed by the consumer organization the Air Transport Users Council (AUC) to the Office of Fair Trading (OFT) about the small print in airline ticket contracts. The AUC challenges the practice of airlines selling tickets under contractual terms that are outdated and biased against consumers. Essentially, the problem with the airline ticket as a contract, and this applies not just in the U.K., but also Canada and other countries, is that it is a one-sided contract. As such one party decides the terms and conditions, bears little or no risk, and holds all authority in all matters of dispute. Often the terms of the contract provide no legal redress for passengers.

Other reasons that one-sided contracts are a disservice to passengers include:

- Passengers are in a weak negotiating position
- Passengers may not have an alternative choice for service, so must deal with the carrier
- Conditions of carriage and business practices are decided unilaterally by the carrier
- The full and complete terms and conditions of the contract are not conveyed to the customer
- The customer must pay for the service well in advance of using it.

The carrier is able to make changes to equipment, conditions of service, scheduling, or even provide sub-standard service, all the while bearing little or no obligations, responsibility, and in the case of breaches of the terms of the ticket, not be required to compensate the other party to the contract, the passenger.

## A Ticket To Ride

The contract issue involving tickets leads into the other set of closely related issues for consumers, pricing and availability of seats.

James Joyce's *Finnegan's Wake* is probably easier to understand than the airline pricing system in Canada. A usefully descriptive analogy is what Dalton Camp has referred to as "hit-and-run capitalism". It is hit-and-run because pricing and available seating are controlled and changed with impunity by carriers. Most consumers are shocked by what they consider to be inordinately high regular or basic air fare prices, and offer grudging acceptance when presented with pricing gymnastics by carriers featuring variable priced discounted tickets which ostensibly bring some relief to passengers, though the pricing levels still remain suspect.

The issue of ticket pricing is not limited to Canada. Consumers Union, publisher of *Consumers Report*, stated in a September 2000 media release that "when consumers are quoted prices for tickets, they often presume that these fares represent the best prices among all of the available flights. But that is not always the case."<sup>29</sup> The seller may omit certain fares, and bias marketing in favour of one group of prospective customers. For example, Air Canada's new online ticket service Destina.ca discriminates against the 50% or so of Canadians who do not have Internet access by only making the lowest fares available online.<sup>30</sup>

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<sup>29</sup> "The Airline Ticket Pricing Game", M. Janigan, *Straight Goods*, April 17, 2001.

<sup>30</sup> "Air Canada Introduces Destina.ca, Canada's Newest Online Travel Site", Press Release, Air Canada, September 6, 2001.

Confusion for consumers caused by the complexity of the fare system includes understanding both the fare for tickets and the pricing of different seats on the same airplane. On a flight, there may be anywhere from a few to ten or fifteen different fare classes (different prices and conditions attached to a ticket), and a different number of seats available for each. As an example, Figure One shows the range of fare classes (prices) for Ottawa to Fredericton flights in September, 2000. Similar ranges of fares are common across flights in the system. In the industry pricing game, there is a basic fare established, but contrary to what one might expect, this is really the full price as opposed to the lowest price. Also available, may be seat sale classes, minimum stay over (7 and 14 day advance booking) among others.

Figure One. Fare classes, Ottawa to Fredericton, September 2000.

Fare Class	Price (2 way)
LLX7FAL	299.00
LL7LEAF	299.00
M3RT	863.00
QHW7FAL	479.00
QHX7FAL	459.00
QH7LEAF	359.00
QLW7FAL	349.00
QLX7FAL	329.00
QL7LEAF	329.00
QSKYRDR	439.00
Q7CDSNR	406.00
Q7CD2SNR	406.00
V14SNR	366.00

Source: Transport Canada, December 12, 2000.

Each seat is assigned a fare class with an associated price. Most of the seats are in the higher price ranges with a minority in the lower priced classes. These prices and seat assignments are not fixed, however. As the seat inventory for a flight changes, the fare classes (prices) and number of seats these are assigned to also change. As lower fare seats are purchased, most other fare classes or tickets also change, with the total number of lower fare tickets reducing, but with the highest priced tickets/seats remaining unchanged.

As an example of how this system works with Air Canada, two tickets were purchased on Tuesday, February 13, 2000. It was not possible to try the same experiment with WestJet or Canada 3000 because they do not make their inventory available to travel agents. On February 13, 2000, Air Canada flight 8167 had the following inventory of seats available (there were actually less seats available on the flight).

Ticket Classes

AC8167    Y9    M9    T0    B9    H6    V5    Q5    L3

(the letter indicates the class and the number how many are available, for example, Y is full fare with 9 available, L is the lowest cost ticket with 3 available)

When two of the lowest (L) pricing seats were purchased, not only did this ticket class change to reflect a reduction of two in the overall inventory, but all other non-full priced tickets were also reduced by two. The full fare (y) class inventory remained the same.

Ticket Classes

AC8167    Y9    M7    T0    B7    H4    V3    Q3    L1

Anyone purchasing more than one ticket, for example a family of four, would likely end up paying different prices for at least some of the tickets on the same flight.

This computerized inventory management system maximizes the return for any given flight. While this may be understandable from an airline's point of view, it also reduces low fare options for passengers. There is also confusion on the part of consumers about how and why prices are set this way. Without some public process to assess whether the different classes of fares, and the total number of

seats available at different prices are fairly established, this system is suspect by passengers as being patently unfair and perhaps gouging.

Aggravating things even more for passengers is that they have faced a series of overall fare increases, at least with Air Canada and perhaps by competitors, both overtly and by stealth over the past few years.

The majority of domestic passengers in Canada fly with Air Canada (65%) while the other two main competitors have considerably less market shares (Canada 3000 – 9%; WestJet – 14%).<sup>31</sup>

For Air Canada passengers, in 2000 fares increased 9 per cent, of which 3 per cent was for an increase in fuel costs. A further six per cent price increase, again for fuel costs was applied in late 2000. These fuel surcharges are somewhat puzzling because Air Canada had previously stated that fuel costs in 1999 had actually declined by 5 per cent. In addition to these explicit price increases, there was an overall price increase by stealth since the merger with Canadian. This increase was realized because the overall number of lower priced seats and total available seats had been reduced as part of systemic rationalization. For example, Air Canada and Canadian Airlines (merged) cut capacity by 15 per cent in 2000. These changes meant that passengers could still purchase a discounted ticket, but there were fewer available and there were fewer of the lowest fare tickets available. The discounted priced tickets can also be more expensive than what was available before the merger. The majority (85% or more) of passengers in Canada travel on discounted fares, however, the reduction in lowest priced seats and higher cost for other discounted seats results in an overall fare increase. Passengers only receive a little more benefit with the other two major competitors. In both instances, Canada 3000 and WestJet also use variable priced seating, and there is a limited number of the

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<sup>31</sup> *The Impact of Airline Restructuring in Canada, 2<sup>nd</sup> Interim Report*. D. Ward, September 2001, p.5.

very popular extremely low priced seats. The remainder of prices are comparable to those of Air Canada.<sup>32</sup>

## Regulatory Dimension

The changes of powers for the CTA in the area of pricing in Bill C-26 have to date been an empty promise for passengers. The changes to Section 66 of the Canada Transport Act limit the CTA to respond to specific complaints about fares instead of acting proactively. Furthermore, the CTA is only able to do this for service on monopoly routes. If the CTA finds in favour of a complainant, then they may disallow the fare or increase, order a carrier to reduce the fare, and refund specified amounts to the claimant.<sup>33</sup>

There are several problems with this approach. First, it is unrealistic to consider the pricing/costs of a specific route or segment of a flight in isolation from the rest of service offered by the carrier across the system. Under the changes, the CTA is supposed to compare the route in question to a comparable route, which if the Prince Rupert – Vancouver rate (2000) rate complaint is any example, is an exercise of near futility because there are so many differences between any two routes and the service provided on the same in Canada.<sup>34</sup> It is not impossible to calculate the actual cost and profits of each route in Canada. In the United States, the cost and profit of every route and every leg of every route is calculated by the airlines, and is accessible by pilots for seniority reasons. Carriers in Canada also make such calculations, but do not make this information publicly available. A more reasonable and useful procedure in Canada would be

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<sup>32</sup> Interview, Blaine Thomas Travel, August 22, 2001; "Air Canada Squeezing Customers, ACTA says", M. Mackinnon, *Globe and Mail*, May 4, 2000, B2; "Air Fare Statistics", *The Daily*, Statistics Canada, March 26, 2001; "The Air Ticket Pricing Game", *Straight Goods*, April 17, 2001; "Air Monopoly to Cut 15% of domestic seats; Air Canada CEO says travelers will hardly notice change", P. Fitzpatrick and C. Cattaneo, *National Post*, February 10, 2000, p. C8; "Speaking Notes", R. Milton, Air Canada, Annual and Special Meeting of Shareholders, Ottawa, May 16, 2000.

<sup>33</sup> Canada, Bill C-26, 2000.

<sup>34</sup> CTA, Decision No. 99-P-A-2001.

for the CTA to use similar information gathered by airlines in Canada, to assess fairness of pricing for routes.

Second, the CTA is supposed to use historical data in an analysis of the fare in question when a complaint is forthcoming instead of actual cost-based analysis. In addition to not considering the real underlying cost of providing service, what this methodology ignores is that the historical fare prices may in fact be inordinately high or unjust, rendering moot any useful interpretation of a fare under investigation or complaint. This section also severely limits the ability of the Agency to consider the full range of relevant information including studies from government, private or university sources with respect to levels of costs, prices, or cost allocation in the industry.

Thirdly, just because more than one carrier provides service on a route, does not mean that fares are just and reasonable or kept low due to competition. The experience of Vista and Greyhound in attempting to compete with Air Canada and Canadian in the Ontario market demonstrated that while competition reduced prices for a period of time, once these new competitors had left the market, prices of the duopoly returned to previously high levels, and arguably well above costs given the differential in prices under competition. Finally, in the absence of a public review of the costing of service across the industry, similar to that which has been undertaken in the telecommunications and electricity industries in Canada, no one besides the airlines really knows what the true cost of airline service in Canada is, and what fair and reasonable prices should be.

There is a small window for the CTA to proactively investigate the pricing of service on any monopoly route in Canada. Section 66 permits the CTA on its own motion to research and make findings on fares up to two years from the passage of Bill C-26 (July 2000).<sup>35</sup> While ostensibly useful to protect consumers, there are three problems with this section.

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<sup>35</sup> Canada, C-26, 2000.

First, this power should not be limited to two years. Pricing problems, conditions of service, and monopoly routes will exist long after two years. Second, this power is limited to pricing on monopoly routes, which presumes without evidence that these are the ones most likely to be problematic for consumers, and that competition even in its most rudimentary form will automatically reduce prices in other areas. Beyond a few loss leader seats offered by the competitors, there is no evidence available that indicates that prices for the majority of seats are fair, just and reasonable. If examples from other sectors can provide insights or lessons, for example, telecommunications, in some instances prices may decline under competition (e.g., long distance telephone calling), but for other services competition has failed to reduce prices (e.g., the price of local telephone service). The difference in understanding the reasons for pricing and the results of competition between airline service and telephone service is that telecommunications has been subject to public regulatory proceedings on costing and pricing, whereas airline service has been largely been subjected to ideology about the market place and wishful thinking.

The third problem with this section is that the CTA staff was not provided with enough resources (employees, financial, time) to be able to undertake such a review. This problem has been aggravated by the flood of complaints that the same staff have had to handle (and must respond to within 120 days of a complaint being made), plus other obligations under C-26.<sup>36</sup>

The other major gap in C-26 is that carriers were not required to file domestic tariffs with the CTA. Such wording was in earlier drafts of the legislation, but was excised before the final version. This greatly hampers public review of the current system of pricing, including the ability for the CTA to effectively commence an 'own motion' review of monopoly routes.

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<sup>36</sup> Interview, CTA employee, June 2001.



To establish fairness in pricing, the following steps would improve the protection of consumers and create better information and transparency in the market place:

- The *Canada Transportation Act* should be amended to permit the CTA to address fares proactively or based on complaint on any route in Canada, regardless if this is competitive or monopoly.
- The CTA should conduct a system-wide public review of airline pricing and costing in Canada, without limits on evidence.
- The Act should be amended such that there is no time limit on pricing and conditions of carriage reviews.
- All carriers should be required to file pricing and other tariffs with the CTA and these should be made public.

## **Regulatory Issues**

### Commissioner of Complaints

Perhaps the most successful aspect of Bill C-26 has been the creation and role of the Air Transport Commissioner of Complaints. Though receiving little support from industry and the federal bureaucracy at the outset, the dedication and commitment of the Commissioner has made this office effective for consumers, and has greatly improved the lot of passengers who experience problems.

The diligence and expediency of response in the interests of passengers by the Commissioner's office suggests that an opportunity may exist to expand the role to include other industry watchdog functions that have been omitted from oversight, such as airport service. The Commissioner's response to passenger problems has been a considerable contrast to the CTA's in the recent past. Beyond legislative limitations, criticisms of both Transport Canada and the CTA have largely stemmed from their narrow interpretation and application of the *Canada Transportation Act* and a seeming preference to look for loop holes to avoid acting in the interest of the traveling public.

Pricing and tariffed conditions of carriage complaints are the responsibility of the CTA. Other service issues, many of which are not covered by government rules though perhaps by some written by the airlines, or involve general service and operations activities, are the concern of the Complaints Commissioner. Without specific rules or proscribed redress tools (e.g., fines) for many customer service related issues, the Commissioner has had to rely on mediation and suasion. The Commissioner has been fairly successful with this approach, and, in fact, many of the issues involved would be difficult to regulate, such as good staff attitude, quality of food, etc.

Issues involving tariffs or other regulations under the Act can be referred to the Tribunal or CTA for enforcement for redress. Given the severe limitations of C-26

in many consumer protection areas, the role and effectiveness of the Commissioner could be improved if the office had the ability to issue mandatory orders or fines as a redress option. It may not be possible to regulate specific attitudes, behaviour or practices of a carrier or its staff that lead to complaints. However, where these are egregious or repeat problems occur, the availability of such penalties at the discretion of the Commissioner may be a useful incentive for change on the part of carriers. There is good reason for the Commissioners' office to be long term, given the effectiveness of the office to date in dealing with complaints and doing so in a timely fashion. As such, an increase in powers is likely to lead to improved service for passengers across the system much more expeditiously than the piecemeal approach available through the Tribunal.

## Section 5

A rather disturbing silence by the CTA has been the lack of attention, or application of, the full range of objectives of Section 5 of the *Canada Transportation Act*. Section 5 deals with objectives for national transportation policy in Canada. The objectives of the section include a number of political, economic and social goals. As an overall set of objectives, theoretically none should be given greater priority or force than others. Instead the framework implies that a series of outcomes are desired, and that the means for achieving these require some fairness and balance in approach to meet the needs of different interests.

At the same time, there is a tension within the section in that some objectives are inherently contradictory to others. For example, on the one hand, objectives call for a policy approach featuring a network of viable, economic, efficient transportation services, relying on competitive markets and competition whenever possible. These are in keeping with the deregulation and privatization policies of the federal government stemming from the late 1980's and early 1990's. On the other hand, these but up against objectives of high safety,

regulation when necessary, balancing commercial viability with regional interests for development purposes, fair and reasonable compensation, and rates that are not disadvantageous or undue obstacles to the mobility of people, the development of primary or secondary industries and export of goods from the regions. These latter goals require an interventionist role for government because these would not normally be provided by the market given that they would lead to inefficiencies or distortions under 'purist' market ideology.

In keeping with the general theme of deregulation and privatization, that has left consumers and regions to the vagaries of the market place, there has been no review by the CTA of the Canadian air travel system, in whole or in part, to assess whether the national transportation policy objectives are being met, or how they should be met.

Since the Canadian/Air Canada merger, regions in Canada have seen rescheduling of flights leading to poorer service, a reduction in levels of service, changes in equipment (a downgrading) and increasing fares. As the 2<sup>nd</sup> report of industry observer D. Ward noted, "urban centers have increased competition but rural regions characterize service as expensive, spotty and a disincentive to economic development."<sup>37</sup> Ward also observes that rural capacity was reduced by 7 per cent in 2000, and 13 per cent in 2001, and the difference in service was not made up by other carriers.<sup>38</sup>

In observing the importance of air access for economic and social well being, Ward noted in this report that "some communities think government intervention will be required to ensure a minimum level of service to some communities."<sup>39</sup> Presumably, such intervention could include subsidies, required minimum number of flights and types of equipment, and pricing regulation. Before intervention by the Minister, however, it would be a useful interim step if the CTA

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<sup>37</sup> The Impact of Airline Restructuring in Canada, 2<sup>nd</sup> Interim Report", D. Ward, 2001, p. 1.

<sup>38</sup> Ibid, p.5.

conducted a public review (one in which the public was allowed to participate) of the different issues relating to service in the regions, as well as pricing for all areas in Canada in the context of Section 5. Where the government and the CTA seem unwilling since deregulation to proactively undertake such a review, it may be necessary for some municipalities or provinces to file formal complaints pertaining to the objectives of Section 5. The changes in service since the Air Canada/Canadian merger and transport policy over the past twenty years have clearly demonstrated that ideology about an imagined competitive airline market is no substitute for research, insight and balance in policy or the market place. It is incumbent and long overdue for the government, and the CTA, to be proactive through a system-wide analysis about whether and to what degree the various objectives of the Act are being met, and to do this in the public interest, which means more than just that of the carriers.

## Competition and the Competition Bureau

A useful illustration of the problems which arise by not having the CTA conduct a systemic review about pricing and the underlying costs of the industry have surfaced through interventions into the market by the Competition Bureau.

Canadians have long complained about air fare pricing in Canada and would take some comfort in knowing whether or not they are paying a reasonable amount for air service. But how should this be assessed? Should costs and prices be assessed on a specific flight between two points? Should these be determined considering the overall routes flown by an aircraft during a day, or a week? Should costs and prices be analyzed based on quarterly, semi-annual or annual patterns? Should costs and pricing also be considered in relation to other underlying costs of operating an airline? How are the results of such analyses interpreted in the context of Section 5 of the Act?

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<sup>39</sup> Ibid. p.9.

To approach any of these cost/pricing questions in a piecemeal way in isolation of relevant broader circumstances and criteria or context is unlikely to convey any accurate, complete or useful understanding or resolution.

Under the *Competition Act*, provisions exist to address predatory behaviour. C-26 made changes that permit the Governor-in-Council to define, by regulation, anti-competitive acts or predatory behaviour in the airline industry. As well, C-26 made changes to the *Competition Act* [Section 104.1(1)] that gave the Commissioner the power to issue temporary cease and desist orders in the case of predatory behaviour in the airline industry.

These changes, and in particular the last one, have been a double edged sword for consumers. In application, anti-competitive behaviour is considered on a complaint-based process specific to a locality or flight. In the absence of a broad pricing/costing review of the industry and airlines, no one actually knows what it is they are assessing in terms of pricing and costs, and any conclusions drawn are as speculative and specious as the evidence used. Secondly, as a quick fix solution, this change potentially is very useful for consumers because it permits a response by government at the time a problem occurs.

Historically, however, the *Competition Act* has been of little benefit to consumers because it largely deals with disputes between companies. Issues of concern to consumers (e.g., pricing fairness, quality of service, availability of service, etc.) lie outside the scope of the Act. As a very general application of law in matters of market behaviour competition law is also a blunt instrument. As such there is some question about how well suited it is to deal with the more complex intricacies of airline service at the community and flight level of analysis. Examples to date suggest that the analogy forming is that a 'shovel' approach to conflict resolution is being pursued, when finesse or a 'scalpel' approach is required. Again, this raises the question about why the CTA, holding a mandate

on pricing, does not intervene. The simple answer is that since deregulation, it no longer has this ability.

Without the CTA being able, or being interested in, intervening proactively in matters relating to pricing, conditions of carriage, cost reviews, the application of Section 5 objectives, and so forth, a conflicting policy environment is developing, and this has already become apparent with early interventions using the *Competition Act*.

This conflict features a distorted market where pricing is established by carriers in the absence of any public review, mixed with occasional complaint driven interventions adjudicated by the CTA using one set of criteria, and on the other side, the Competition Bureau entering the fray adjudicating and making determinations on pricing and costing but using different criteria again. There are two illustrative examples of the types of problems emerging from this policy confusion.

In response to a complaint by a passenger about the price of service by Air Canada on the Vancouver-Prince Rupert route, the CTA issued a preliminary decision that would direct Air Canada to reduce its tariff (fare) by about 50 per cent (Decision No. 99-P-A-2001). In the midst of adjudicating this complaint, Hawk Air started offering service in competition to Air Canada. The irony that resulted was that Hawk Air was charging a fare higher than what the CTA indicated it would order as a new fare for Air Canada under Decision No. 99-P-A-2001. As such, the proposed new fare for Air Canada would then be challengeable by Hawk Air through competition law and the Competition Bureau as predatory pricing. The language of the Acts in question are of little help in this matter. Section 4 (1) of the *Canada Transportation Act* states that this Act prevails over the *Competition Act*, but the next section states that this Act does not affect the operation of the *Competition Act* – so no one and everyone is in charge. Such “catch-22” policy distortions with the *Competition Act* are not

unique to the airline sector, for example, they are also evident with the *Telecommunications and Broadcasting Acts*. The types of problems arising from these policy distortions when attempting to resolve industry problems and abuses can be expected to be repeated, where a piecemeal approach or individual cases are pursued prematurely and divorced from an effort to first establishing cost, pricing and service fundamentals through a more thorough public regulatory review of the industry.

The problem of attempting to address issues in isolation of industry wide or systemic realities also arose with complaints by WestJet and CanJet about Air Canada pricing (abuse of dominant position) in the eastern Canadian market, and with the Competition Bureau's proposed approach to defining airport market areas in the eastern market.

A consideration of these price related complaints for the several routes in question, raise some important broader contextual issues and questions, such as: the ability for competitors to match or undercut prices; how 'dominant position' should be appropriately defined at the levels of analysis of flight, routes, region or nationally, and how 'avoidable cost' (the costs that would not be incurred if a service was not provided) should be calculated again at these different levels of analysis. Without some broader public review of these industry basics, for all carriers not just those subject to a complaint, interpretations of issues will be little more than ideologically informed, speculative or risk being specious. Issue resolution risks doing as much harm to consumers as aiding them.

An example of the problems inherent with acting with this type of policy myopia is reflected in the Commissioner of Competition's application to the Competition Tribunal on Air Canada anti-competitive pricing dated March 5, 2001. In this notice, four cities in two provinces [Moncton, Saint John, Fredericton (New Brunswick; Charlottetown (PEI))] are considered to be in the same market or



catchment area, defined in this case as the Moncton market. This is an argument not unlike stating that Ottawa and Montreal, or Edmonton and Calgary are in the same market because the drive time between them is a reasonable distance. Notwithstanding that such an approach ignores the unique political, economic and social differences and relations of these cities and provinces (for example, the objectives of Section 5 of the *Canada Transportation Act* if in force presumably would acknowledge such differences), this approach effectively negates the possibility of the increase of capacity by a carrier providing sole service in any of the cities besides Moncton. Where these cities do not have competitive service offerings (e.g., Fredericton), any increase in capacity by the service provider would logically be addressing economic and social needs and demands of the public and communities. An increase in capacity would, however, mean that in the near term the incumbent would incur some costs/losses while passenger load builds for the improved service. Because this would mean that service was for a time priced below avoidable costs, any competitor only providing service in Moncton could complain under the *Competition Act*. In doing so, the resultant application of the definitions of predatory pricing and abuse of dominant position would mean that the sole carrier in these other markets would never be able to increase service even though there were no competitors in these markets – service would effectively be frozen at existing levels. This would have several other repercussions, including threatening the viability of three airports, render the three airports non-competitive, and harm the economic and social stability and developmental prospects of these areas. The logic is as much the same as a carrier that only served Ottawa, preventing through complaints another carrier increasing capacity in Montreal.

## Competition and Foreign Entry

Through the Air Canada/Canadian merger and subsequent restructuring of the airline industry in Canada, there has been a particular hand wringing by many about the need to throw open Canada's borders in order to solve the ills of our

industry and realize some idealized nirvana of competition from coast to coast to coast. However, if we take time to muddy the chorus with facts, findings suggest that the approach adopted by the federal government (fostering domestic competition) is, and will likely be, the most coherent approach to the development of a sustainable Canadian industry featuring some competition in the core market areas. Moreover, this approach in the long run is more likely to serve the broader economic and social needs and interests of Canadians in all regions because carriers will be catering to, and expanding in, one system, as opposed to having our core markets poached or cream skimmed by foreign carriers.

The proponents of allowing foreign entry have yet to bring forth one airline that is willing to commit to providing service anywhere beyond the lucrative core markets. These markets are already served by Canada's three main domestic competitors, with the market share of WestJet and Canada 3000 growing. Substantial competition already exists for Air Canada for the international market. Both the Ward report and the Minister of Transportation have noted that domestic-based competition in the core, lucrative urban market areas has been growing, and given reasonable time, should continue.<sup>40</sup>

Domestically owned competitors bring many ancillary benefits to Canadians, beyond just the choice of service provider. These benefits include: aircraft maintenance and service business/jobs; staff (pilots, crew); local carrier expenditure for services support; development of expertise; investment opportunities; among others. For example, WestJet's 1500 employees benefit from a profit sharing plan that paid out \$13.5 million in 2000. Moreover, servicing such functions as passenger services, maintenance, sales and marketing, flight

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<sup>40</sup> "The Impact of Airline Restructuring in Canada, 2<sup>nd</sup> Interim Report", D. Ward, 2001, pp. 1,5; "More airline competition post-merger: Collenette", K. MacArthur, *Globe and Mail*, January 19, 2001, p. B7.

operations, reservations, and administration in Canada as opposed to a foreign centre of operations added hundreds of millions of dollars to local economies.<sup>41</sup>

A potential foreign entrant, most likely to be U.S. based, would easily provide, and would have an incentive from a cost point of view, a significant percentage of these services from a cross border location. Canada would benefit little more than having another carrier for choice in core domestic markets. Moreover, it is conceivable that the deep pockets of any likely foreign entrant would allow it to outlast Canada's main low cost competitors (WestJet, Canada 3000) in any ensuing price competition for passengers.

Evidence also demonstrates that contrary to ideology or wishful thinking, competition in the U.S. and Australia, countries often pointed to as examples of a competitive model for Canada, is illusory. For example, in the U.S., single carriers dominate 70 per cent or more of the available seats in major markets (hubs), which is comparable to Air Canada's share of the Canadian market. Many airlines in the U.S. are under great financial pressure and are doubtful for long term survivability, a circumstances further aggravated by the terrorist attack of September 11, 2001. Australia attempted the foreign entry game. The results have been that the incumbents still provide service in the marginally profitable areas, often on a monopoly basis (not unlike Canada), an indigenous domestic carrier has been knocked out of the market (Impulse), with another carrier owned by New Zealand Air (Ansett Australia) in receivership. In the absence of better evidence than failure, there is little to suggest that Canada is not on a reasonable course, at least for the larger urban market areas.<sup>42</sup>

In the absence of competition in rural and remote areas of Canada, a mixed public/private approach may be required. This has been the long standing successful policy approach in Canada given our historical economic and

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<sup>41</sup> Annual Report, WestJet, 2001.

<sup>42</sup> "Keep foreign airlines out", W. Everson, Globe and Mail, September 6, 2001, p. A19.

geographical realities. Before any decision is made about permitting foreign entry, a substantive review of the status of the Canadian industry (costing, pricing, needs of communities, etc.) and the implications for foreign entry in light of international examples would provide useful references for the government, industry, communities and the public (users).

Given the importance, of air service to communities, as Ward notes in her report, one possible option is government intervention to ensure minimum levels of service.<sup>43</sup> Moreover, if Section 5 of the Act has any meaning, and if all Canadians regardless of where they live are considered equal as citizens, then issues such as pricing/cost, availability of service, and subsidies or performance requirements will likely need to be reviewed. The history of Canada, regardless of the economic sector, social or cultural activity, has also been the history of regulation, cross subsidy, direct subsidy, tax expenditures and incentives to subsidize business. There is nothing to suggest some of these tools won't be required to ensure fair, just and reasonable air service for Canadians. The sword cuts two ways in these matters. For example, public oversight and interventions are used to both meet the needs of the public as well as companies. Industry and some industry observers may bristle at the suggestion that increased public involvement through oversight and regulation are needed to protect the public's interest in matters relating to availability of service, pricing, quality of service, etc.. However, when the self interest of the industry is at stake, views about the sanctity of the market take a 180 degree flip flop with companies showing up on the door step of government requesting relief. For example, in the past Canadian Airlines was bailed out, all airlines have benefited from tax relief (at a cost to individual tax payers) over the past few years, and on the heels of the terrorist attack in New York, Air Canada is asking government, not its shareholders, for billions of dollars in subsidy and aid.<sup>44</sup>

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<sup>43</sup> Ward, D, 2001, p. 9.

<sup>44</sup> "Air Canada seeks billions", K. McArthur, Globe and Mail, September 19, 2001, p. B1.

This raises the issue of whether airline service is a private market activity similar to other commodities and should be bereft of significant government intervention, or whether it is an essential public service requiring public oversight and intervention. In point of fact it is both. Historically in our market system, services that provide an essential utility function for economic, social and cultural relations, have been deemed to be affected with a public interest. Examples of services considered essential include, aspects of telecommunications, broadcasting, water, banking, among others. In view of the importance of such services to meet public objectives, and in recognition of the limitations of the private market to meet these objectives, tools such as regulatory oversight and public ownership have been employed to balance the interests of private ownership with those of public access and use. Airline service is one of the core utility services (others would include; for example, communications, energy, financial services) underlying modern economic and social activities. In fact, somewhat embarrassingly for Canada, there are several provincial capitals where air service is the only viable option for modern transportation having lost train service (e.g., New Brunswick, Saskatchewan, P.E.I.). Many of the problems existing in the industry today in Canada derive from an imbalance brought on by poorly conceived deregulation and privatization policies.

This does not mean that only 'all or nothing' approaches should be pursued with respect to private or public ownership, or regulation. There are instances where the market is able to provide services better than government, and instances where it cannot. There are also instances where a public or private entity can provide services effectively but to do so a firm set of rules is required guiding behaviour and outcomes. In the real world, what this means is that in order to balance the interests of public users and owners of systems (whether public or private) providing essential services, public oversight and regulation are required to ensure that adequate service at fair terms is available for all citizens.

## Post September 11

The terrorist events of September 11 in New York and Washington, and the subsequent impacts on airline service have focused the attention of the public, the aviation industry and governments on specific security and safety issues. These issues obviously require immediate and near term remedial action. Initial security reactions by governments and carriers have suggested a degree of desperation due to low standards and a lack of preparedness. Going forward, it is important that a considered approach be taken to address the immediately pressing issues but also others in the complex areas of security and safety.

Increases in security and safety will require more resources for prevention and detection; maintaining reasonable service levels and passenger flows in airports; communicating new protocols to passengers; and handling increased and new types of passenger complaints, among others. Safety and security is a complex system involving many linked and interdependent players, services and resources. The resolution of the security and safety issues arising from the September 11 attack in New York and Washington should not be undertaken in isolation of the other safety problems identified in this report.

Changes and modifications need to be made with a consideration of the overall set of practices and shortcomings of the current safety and security system. A comprehensive approach is more likely to improve the overall safety of air travel for passengers, as well as being more prudent and effective from a resources perspective. There are a number of important issues which will need to be addressed stemming from the events of September 11. Many of these issues have already been identified by the industry, experts and government. Some of the more important include:

- Whether sufficient levels of security staff and resources, and staff expertise, exists to achieve a high a level of security as necessary.

- Whether there are sufficient numbers of staff employed at passenger check in counters to maintain reasonable flows.
- Whether pamphlets, notices or other materials are being produced with some detail and coherency to properly advise passengers about new safety and security protocols, including baggage restrictions. As well, are such materials being distributed in the best manner to passengers (e.g., through travel agents, at airports, the Internet, etc.).
- Whether information and communication technology links can be enhanced to improve security.
- Whether sufficient levels of new technologies are being deployed to increase security involving baggage.
- Whether all workers at airports are subjected to rigorous, daily security screening.
- Whether sufficient concern and analysis is being given to the implications of security changes, both for air travel and more broadly in society, for personal privacy, and in particular, how to best balance security with privacy rights.
- How Transport Canada, the CTA and Complaints Commissioner will need to adapt to deal with new issues and problems experienced by passengers that arise from the new security practices.

Perhaps one of the more obvious conclusions drawn from the events of September 11 is that government has both moral and legal responsibilities and obligations to be directly involved in the operational aspects of air travel. These obligations and responsibilities include protecting the interests of the public, maintaining the safe and effective operation of an essential utility service, the stability and effective operation of airline service as part of supporting other economic and social activities, and the health of the industry, among others. The disaster of September 11 added another layer of woes to an industry already in crisis. The piecemeal approach taken with Bill C-26 has proven to be short

sighted and ineffective in addressing these broader problems. The problems added since September have only aggravated circumstances.

Overall, the call for change could not be any louder. Complex problems require comprehensive solutions; solutions not informed by ideology, but through insight, education and a balanced regulatory approach.



## **Conclusions and Recommendations**

Air passenger Service is both a private sector activity and an essential public utility service in Canada. As such, increased public oversight and intervention is required to restore order to the system, featuring a proper balance between the interests of shareholders and the public. Historically, in our market system, services which are essential for societal economic, social and cultural relations have been deemed to be affected with a public interest and subsequently regulated. The failures of deregulation, privatization and the downsizing of federal responsibilities and obligations requires a significant government response on a system-wide basis in the public interest.

Policy and regulatory changes made by Bill C-26 have been of some benefit in protecting consumers, but overall these have fallen short of conveying the necessary authority and powers on the CTA to address important problems in the airline industry. The establishment of the Complaints Commissioner has been a success story even though the mandate and powers of the office are too limited. The inability for the CTA to address pricing and conditions of carriage across the entire industry on a proactive basis (including monopoly and competitive routes) is a major failure of policy, and has created a barrier to realizing consumer fairness, as well as the efficient operation of the airline system. Issues pertaining to service to rural and remote communities remain unresolved and risk becoming more aggravated with price increases and service reductions.

Safety issues are one of the greatest and most shameful silences about the Canadian airline system, and one of the biggest messes. The cost-benefit risk analysis used by government and industry, backed by policies of privatization and deregulation puts profits before human lives. Safety has been considerably compromised by a number of government policies, including the National Airport Policy. The cost of air travel is not inexpensive proportional to other means of transportation. The relatively modest extra cost per ticket for a clear benefit such

as improved safety is likely to be greeted favourably by passengers as opposed to being a disincentive to fly.

There is a lack of transparency and coherency with costing, pricing, services, scheduling and structure of the industry in Canada. Coupled with a public oversight vacuum, this means that problems are either dealt with not at all, or in a piecemeal, haphazard fashion, with analysis having little grounding in fact or reality, and with little relationship to the overall whole of the system. The adherence to a failed liberalized market orthodoxy and ineffective means of redress has left passengers as little more than paying pawns in the system. A narrow interpretation of the *Canada Transportation Act* by Transport Canada and the CTA, and an apparent disinterest by bureaucrats, has aggravated problems, and limited the potential for problem resolution, at the expense of the public interest.

## **Recommendations**

### Consumer Representation and Participation

- Consumer groups representing airline passengers have been largely excluded from policy and regulatory activities, and consultations. The CTA and Transport Canada should ensure that consumer organizations are regularly consulted, as is done with industry. The CTA and Transport Canada should establish consumer advisory groups to facilitate participation and inclusion. Consumer groups should also be better represented in such government/industry groups as CARAC.
- Funding resources should be made available to consumer organizations from the CTA and Transport Canada. Such funding would assist these groups in developing expertise to better represent the interests of passengers, including participating in government policy, regulatory and program consultations.

- Carriers, airport authorities and the air navigational system should include consumer representatives on their Boards and in other advisory capacities. Such representation affords opportunities to better consider customer service and other important consumer concerns in service-related decision making.

## Safety

- For both carriers and airports, an employee at senior management level should be responsible for safety. This role should include developing a culture of safety and strict protocols for the management decision making process, and for all aspects of operations and employees.
- Transport Canada should increase the number of inspectors.
- The federal government should establish fixed, near term dates for carriers to retire leased and owned aircraft in their fleets which have capton wiring and flammable insulation.
- The federal government and industry should work together to increase the number of qualified pilots and mechanics in the industry, and to increase skill levels.
- Carriers and the federal government should make public, information on safety and the risk levels for airports, and for different aircraft used in the system. This information should also provide detailed summaries of reportable incidents listing airport, carrier, aircraft type, nature of incident/accident, resolution and date.
- Transport Canada should conduct a full, public review of safety issues for carriers and airports. This review should lead to firm actions to improve safety across the system.
- Risk cost-benefit analysis is too narrow an approach on which to base decisions and investments relating to safety. Broader criteria for analysis, including a precautionary approach, should be added, and the principle 'the best safety possible' should be the main criterion used for decision

making. This means that state-of-the-art design, materials, technology, and air navigation should be required for all new and in-service aircraft, as well as for airports.

- Access to Public Safety Information (See Passenger Bill of Rights).
- Accidents (See Passenger Bill of Rights).
- Normal and Emergency Levels of Services (See Passenger Bill of Rights).
- Additional Safety Risks Arising From Mergers, Restructuring (See Passenger Bill of Rights).
- All airports in Canada handling scheduled (passenger) services should be required through regulation to provide Emergency Response Services that meet international standards (International Civil Aviation Organization) and, the federal government should pay the full cost of this from revenues from airport rental fees or surcharges on tickets.

## Quality of Service

### Tariffed

- Tariffed conditions of carriage (e.g., baggage, over booking, etc.) should be established as common, system-wide standards through regulation. To do this, the Act needs to be changed to convey proper authority to the CTA. The CTA should undertake this activity through a public proceeding, and should review these on a regular basis, as well as in response to complaints. These standards should apply to all classes of tickets and all routes, regardless of whether they are monopoly or competitive. Redress options should be comparable to those already existing in the Act.
- These regulated standards for conditions of carriage should be published in a pamphlet format and made available at gates, ticket counters, through travel agents and the Internet.
- Regulations should also be made for:

- Full Passenger Information Disclosure (See Passenger Bill of Rights).
- Onboard Quality (See Passenger Bill of Rights).
- General Service Standards (See Passenger Bill of Rights).

## Non-Tariffed

- Regulations should be established requiring carriers and airports to provide for basic quality of service standards. This regulatory framework should not be overly proscriptive, allowing for flexibility in implementation.
- Regulations should be established to require full information disclosure in a timely fashion on flight status, e.g., delays, cancellation, over booking, and advance notice to passengers should be required whenever possible.
- For passengers already on board an aircraft when a delay occurs, passengers should have the right through regulation to disembark after one hour of delay and the carrier should be required to facilitate alternate travel arrangements for passengers.
- Minimum standards need to be established by regulation for on board quality in the areas, at a minimum, of fresh air, washroom facilities, seating and leg room, fresh water. Transport Canada should conduct a public consultation to review other areas of service quality that may need to be included in standards.
- A surcharge for each ticket should be considered to provide funds for improvements to safety, security and quality of service. These funds should be collected and distributed by government, not carriers.

## Ticketing

- As a contract, airline tickets are one-sided and biased against the rights of passengers. Carriers solely define the terms of contract and dispute resolution. Policy change is required to balance passenger and carrier

rights whereby the terms of these contracts, the rights of passengers and carriers, and redress mechanisms are established either in legislation, in regulation through a CTA Tribunal public proceeding, or both.

## Ticket Pricing

- The variable nature and fluctuations in airline ticket pricing amounts to ‘hit-and-run capitalism’. The CTA needs to have the authority to review the actual cost of all air fares in Canada, and to approve or change pricing for the different classes of tickets. The marketing practices (selling tickets) should also be subject to the approval of the CTA to avoid discrimination against Canadians (e.g., different pricing through the Internet, travel agents, etc.).
- To establish fairness in pricing the following changes are required:
  - The *Canada Transportation Act* should be amended to permit the CTA to address fares proactively (own motion) and based on complaint for any route in Canada.
  - The CTA should have the authority, and be required, to conduct a public review of airline pricing, costing, conditions of carriage, and to do so without limits on evidence.
  - The Act should be amended to remove time limits on pricing and conditions of carriage reviews.
  - All carriers should be required to file pricing and other tariffs with the CTA and these should be made public.

## Regulatory Issues

### *Voluntary Codes*

- Voluntary codes have largely proven to be a dismal failure in protecting the interests and rights of consumers. Codes don’t work because they are unenforceable and do not offer consumers substantive redress options.

When codes are enforceable with redress, this is called legislation and regulation.

## CTA

- The CTA Tribunal Commissioners should be appointed based on the criteria of representativeness and balancing the different interests in transportation in Canada – consumers and industry.
- The CTA and Transport Canada need to develop and foster an employee culture of active and positive public service. Deregulation and privatization have left a legacy of attitudinal indifference and disinterest in responding to issues, problems or opportunities involving consumers and transportation related matters. As guardians of the public interest, TC and CTA employees need to be encouraged to look for opportunities for positive action as opposed to ‘loop-holes’ for inaction.

## *Commissioner of Complaints*

- The office of the Air Transport Commissioner of Complaints has been one of the more successful changes of Bill C-26. The effectiveness of this office could be further improved by broadening the ‘watch-dog’ role of the Commissioner, and adding powers to issue mandatory orders or penalties. Without these powers of enforcement, the Commissioner is a ‘referee without a penalty box’.

## *Section 5*

- Many of the economic and social objectives of National Transportation Policy in the *Canada Transportation Act* have not been included in decision making about fares and service levels in Canada. The full range of the objectives of Section 5 should be applied in decision making by the

CTA and the Tribunal. Given the recent major changes and upheavals in the airline industry in Canada, the CTA should use Section 5 as the context for a system-wide review of pricing, costing, conditions of service, and frequency of service, and implement regulations to balance the needs of communities and passengers, with those of carriers.

### *Competition Bureau*

- While there is a role for the Competition Bureau in dealing with matters of market dominance and predatory pricing, much of the uncertainty in the market, and obviating the need for frequent Bureau intervention, could be addressed through the CTA being more proactive in reviewing and establishing rules on costing, pricing and service standards. The current approach of dealing with specific problems in isolation of the broader context and realities of airline service in Canada, fails to address the overall practices of the industry and address the wider concerns and needs of the public.

### *Competition and Foreign Entry*

- The approach adopted by the federal government to foster domestic competition as opposed to foreign entry, remains the best approach for the development of sustainable competition in the core market areas of Canada. Foreign entrants would only serve, and cream-skim profits from, the most lucrative core urban markets. Moreover, they would like erode the market share of Canada's existing low cost carriers as opposed to Air Canada. Domestic-based competition provides many other benefits beyond choice of carrier and price, including: Canadian-based maintenance/service business and jobs; staff (crew); local expenditures for flight services; development of expertise; and investment opportunities. Before any decision in future is made about foreign entry, a substantive



review of the status of the Canadian industry in the context of economic and social policy (e.g., Section 5), and the implications of foreign entry in light of international examples should be undertaken. This would provide the government, carriers and the public with the necessary scope of information to make an informed decision.

- In the absence of competition in rural and remote areas, a mixed public/private approach will likely be required. Performance requirements through regulation, and subsidies will need to be considered to ensure that adequate levels of service, at affordable rates, exists to meet the needs of communities, business, individuals and carriers. Subsidies would likely be most effective if targeted to airports to reduce takeoff/landing fees, as opposed to paying these to carriers. Such fee reductions would be an incentive for a number of potential service providers to consider operating flights as opposed to just one.