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Chair: Mr. Peter Schiefke



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• (1305)

[*Translation*]

The Chair (Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.)): I call this meeting to order.

Welcome to meeting number 49 of the Standing Committee on Transport, Infrastructure and Communities. Pursuant to Standing Order 108(2) and the motion adopted by the committee on Thursday, February 3, 2022, the committee is meeting to discuss air passenger protection.

Today's meeting is taking place in a hybrid format, pursuant to the House Order of Thursday, June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

[*English*]

I wish to inform committee members that all witnesses have been tested for today's meeting and have passed the sound test.

Members, appearing before us are the following. Mr. Gábor Lukács is president of Air Passenger Rights. He is appearing by video conference. We have, from the Canadian Automobile Association, Mr. Ian Jack, vice-president, public affairs, and Mr. Jason Kerr, managing director, government relations. From the Public Interest Advocacy Centre, Mr. John Lawford is the executive director and general counsel. Finally, from Transport Action Atlantic, we have Mr. Tim Hayman, president, joining us by video conference.

Welcome to all of our witnesses.

We'll begin today by turning it over to Mr. Lukács for five-minute opening remarks.

The floor is yours.

Dr. Gábor Lukács (President, Air Passenger Rights): Mr. Chair and honourable members, Air Passenger Rights is Canada's independent non-profit organization of volunteers devoted to empowering travellers. We take no government or business funding. We have no business interest in the travel industry. We speak for passengers, whom we help daily in their struggle to enforce their rights.

In our December 19, 2022, submissions to the committee, we cautioned that the air passenger protection regime is broken. We proposed specific legislative amendments as a solution. Mere days later, during the holiday season, Canadians witnessed a second meltdown of air travel in 2022, compounded by airlines' flagrant disregard for passengers' rights under the APPR. During inclement weather, airlines left hundreds of passengers confined to aircraft on

the tarmac without proper food and water for up to 10 to 12 hours, contrary to sections 8 and 9 of the APPR. Earlier this month, you heard testimony that airlines did not ask the airport for help with getting food and water to passengers on the tarmac, even though the airport had available resources.

Once the inclement weather passed, the airlines still failed to re-book passengers in a timely manner, contrary to section 18 of the APPR. WestJet refused to re-book passengers on available Air Canada flights, even when no WestJet flights were available for days. Air Canada was selling "next available" flights on its website at a premium and re-booked stranded passengers days later. Sunwing left passengers stranded abroad for days and blamed the government for Sunwing's own irresponsible decision to sell flights without having enough pilots. We recently learned that Air Canada has been donating passengers' missing bags to a charity instead of returning them to their rightful owners. You also heard that the CTA's backlog has risen to 33,000 complaints following the holiday season, with an 18-month or longer wait time.

It is now clear to everyone that the status quo is untenable. We propose to eliminate two points of failure in the current regime—namely, the lack of enforcement and the unnecessary complexity. Airlines have the single objective of maximizing their profits. The only reason that airlines violate passengers' rights is that the cost of compliance exceeds the cost of flouting the law. While the Canada Transportation Act permits the CTA to fine airlines up to \$25,000 per violation, per passenger, per incident, that power has largely fallen into disuse.

You have heard testimony that the CTA has never fined an airline for failing to pay compensation owed under the APPR. From an airline's perspective, the worst consequence of failing to obey the APPR is occasionally being ordered to pay what the passenger was owed anyway.

This must change. Without hefty fines for violations, there is no incentive for airlines to comply with the APPR—or with any other regulation, for that matter. For example, if the odds of an airline being caught not paying a \$400 compensation is one out of 100, that being 1%, then any fine of less than \$40,000 per violation is ineffective, making it cheaper for the airline to pay the fine than to systematically comply.

Fines alone, however, will not get rid of the CTA's backlog. The APPR not only creates an undue hurdle for passengers seeking compensation. It also requires a complex evidentiary record whose consideration consumes disproportionately large resources compared with the amounts at stake. This unnecessary complexity is also partly responsible for the CTA's backlog, which has ballooned in spite of the additional resources allocated to the CTA in the 2022 budget.

A regime that requires over 1,000 pages of documents and a full-day trial to determine the fate of \$400 is doomed to fail. In comparison, under the European Union's regime, a passenger's eligibility to compensation can be decided with limited publicly available information and minimal documentary evidence in most cases.

In Canada, Parliament's intervention is warranted. We implore you, the lawmakers, to amend the Canada Transportation Act by both enhancing enforcement and harmonizing the framework with the European Union's passenger protection regime. Doing only one of the two will not make the problem go away.

Thank you.

The Chair: Thank you very much, Mr. Lukács.

Next we have the Canadian Automobile Association.

The floor is yours. You have five minutes.

[*Translation*]

Mr. Ian Jack (Vice-President, Public Affairs, Canadian Automobile Association): Mr. Chair, honourable members, thank you for giving me the opportunity today to speak to you about something very significant that resonates with all Canadians.

[*English*]

My name is Ian Jack. As mentioned, I'm the vice-president of public affairs for our national office in Ottawa. My colleague Jason Kerr joins me today to help answer your questions.

Most of you will be familiar with the CAA brand founded in 1913. We are a federation of eight clubs, today providing more than 6.8 million Canadians coast to coast with emergency roadside service—you all know about the tow truck—but also automotive insurance, rewards and travel services. We're also a not-for-profit that has always advocated on issues of concern to our members.

Through our store network and online, we are one of Canada's largest leisure travel agencies, with close to 100 retail outlets. We are a member-driven organization that, at its heart, is an advocate for the Canadian traveller.

Our travel agents work with air passengers every day, so we understand the business. This allows us to take a strong, informed position in favour of air passenger rights while at the same time rec-

ognizing that the consumer interest is best served by a healthy and competitive industry.

When Canada's air passenger protection regulations were originally being developed, CAA called for an efficient and effective regime. We said the process for passengers to claim what they have a right to from the airlines should be simple and proactive. Unfortunately, this is not the case today.

The average passenger in this country does not have the protections that come with premium status or full-fare tickets. The APPR needs to help these passengers most of all and today is missing the mark. The goal of the system should be to incentivize carriers to take care of passengers without the need to resort to the government complaint process. For those cases that do make it to the Canadian Transportation Agency, the process needs to be simple and clear enough that answers can be delivered in a timely manner.

I would like to highlight for you quickly four of our many recommendations to improve the air passenger experience in Canada.

One, the APPR regime does not require direct, immediate payments of compensation to passengers in straightforward, clear-cut cases. If it's obvious that an entire planeload of passengers is owed compensation, the airline should tell all passengers they are owed this compensation and simply ask them how they would like to be paid. The lack of proactive compensation slows a carrier's ability to process other complaints and has helped choked the CTA with an unacceptable backlog.

What do Canadians think of this idea, by the way? Our recent national polling found that 75% of Canadians believe carriers should bear the responsibility for contacting passengers to deliver compensation for a flight interruption.

Two, the minister should have clear authority to refer matters to the CTA for investigation and should also have the ability to make orders affecting the air sector generally under extraordinary circumstances. We would expect these sticks to be used rarely, but their presence would likely affect behaviour.

Three, maximum and minimum AMP limits should replace the discretionary system in place today, and for repeated offences, applicable AMPs should automatically increase.

Four, there should be public reporting of performance by carriers and others in the system. Transparency will allow passengers, parliamentarians and advocates to judge how well the air system in Canada is functioning for passengers. Carriers are supposed to deal with complaints within 30 days. What's their success rate? How many cases do they accept or reject? How many bags were lost in the last quarter? None of us knows. We should.

Players in the system have this data. In the U.S., many of these statistics are published month by month online, and airlines compete against each other in these areas. This translates into better service and treatment for travellers.

• (1310)

[*Translation*]

Mr. Chair, I will stop here.

[*English*]

We welcome your questions.

[*Translation*]

Once again, thank you very much for inviting me to appear before you today.

The Chair: Thank you very much, Mr. Jack.

[*English*]

Next we have the Public Interest Advocacy Centre.

The floor is yours. You have five minutes.

Mr. John Lawford (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Mr. Chair.

Honourable members, my name is John Lawford. I'm the executive director and general counsel at the Public Interest Advocacy Centre. PIAC has advocated in the field of air passenger protection for over 20 years.

Until just before this Christmas travel season, PIAC had hoped that the air passenger protection regulations were adequate. Then we were concerned that this committee would overreact to airline pressure and either completely remove them or at least significantly amend them and actually weaken them in a misguided effort to fix them. We recommended "a dedicated administrative complaints agency with a regulatory overseer for systemic issues."

Then December happened. Horribly, sadly and very predictably, conditions arose and the backlog of complaints to the CTA rose to over 30,000. I'm here to say that we were wrong. The problems with the APPR are not superficial, and it's not about improving them around the edges. They are structurally unsound.

The three conditions or aspects of events that define the effects of the APPR on consumers—namely, "within the airline's control", "for safety" or "outside the control"—have shown themselves to be unnecessary complications that bring the complaints system to a practical halt and usually actually resolve against the interests of consumers.

We now believe, based on this experience, that this whole "control, safety, outside control" structure is completely unworkable and will always generate lengthy disputes that must be slowly and

painfully decided. This creates more problems, as the APPR now generates more complaints than the prior CTA tariff review track yet must still be adjudicated formally and done so based not only on those three criteria but also with no clear burden on the airlines to bring forward their claim—and they have all the evidence of the claim within their control. Lastly, the regulations are not clear on these matters.

As a result, PIAC is now withdrawing our support for the APPR as drafted, and we are now recommending to this committee that you rewrite them in the format of the European rules, namely, that consumers are owed all of the refunds, care and compensation in the regulations, tariffs and the Montreal Convention, with the only exception being not paying out standardized compensation in "extraordinary circumstances".

Assuming this committee will simply recommend those structural changes—maybe not—PIAC has concerns about the immediate travel challenge for Canadians: March break 2023. To avoid another travel Armageddon, we need to fix baggage delays; re-booking, rerouting and refunds for weather; and definitions of "denial of boarding" and "flight cancellation", and we need to make clear that the evidentiary onus lies on airlines, not passengers, in all complaints.

Therefore, we recommend that this committee—and this is quite technical—invite the minister to issue a direction, under CTA subsection 86.11(2), to ensure the CTA makes regulations to compensate passengers for delayed baggage. Then we recommend that the committee—this is in two parts—invite cabinet, under section 40 of the Canada Transportation Act, to pass a new regulation based on the old delayed baggage one, which was subsection 23(2) of the APPR and which was wiped out by the Federal Court of Appeal pending eventual amendment by Parliament to fix the Canada Transportation Act, and to insert the word "delayed" in paragraph 86.11(1)(c).

We also invite you to invite cabinet to direct all carriers, including the small carriers, to refund, re-book and reroute—even on a competing carrier—all passengers for any cancellations or long delays. This may require an amendment to the definition of “carriers” as large or small. We note here that the threshold for passengers is two million a year. It may have to be lowered quite significantly.

Secondly, we invite cabinet to replace the APPR definitions with those of the EU for “denial of boarding” and “flight cancellation”.

Lastly, we ask that you recommend that Parliament amend the Canada Transportation Act to declare that in subsection 86.11(1), which is the source of all these regulations, it was always intended that the airline should bear the burden of proof in establishing exceptions to refunds, care and compensation.

• (1315)

Lastly, to do with the backlog, we believe that justice delayed is already being denied, and consumers with complaints in the 33,000-case backlog have no reasonable prospect of relief. The CTA must at least triage and categorize these complaints and issue directory decisions on each type in a show-cause style notice to the air carriers for all similar cases.

We note that this was done with some early COVID-based complaints. It could be done again.

I look forward to all of your questions.

Thank you.

The Chair: Thank you very much, Mr. Lawford.

Finally, we have Mr. Hayman from Transport Action Atlantic.

The floor is yours. You have five minutes.

Mr. Tim Hayman (President, Transport Action Atlantic): Thank you, Mr. Chair and honourable members.

Good afternoon. My name is Tim Hayman. I'm the president of Transport Action Atlantic and a board member of Transport Action Canada. Transport Action is a non-profit organization advocating for convenient, affordable and sustainable public transportation, with a particular focus on passenger rail.

I was also one of the hundreds of Via Rail passengers affected by train delays and cancellations on December 23, 2022. That's what I'll be speaking to this afternoon.

While much attention has been focused on incidents in the Quebec City-Windsor corridor, particularly in this morning's session, Via Rail's eastern trains—including *The Ocean*, which runs between Halifax and Montreal—also suffered issues as a result of the winter storm and the failure of the infrastructure owner or host railway, namely Canadian National or CN, to effectively provide safe passage for the Via trains that operate on their network.

I was travelling home on board Via train 14, which was scheduled to depart Montreal at 7 p.m. on December 23. Our train departure was initially delayed by over 11 hours, as we were informed that a section of the line ahead in the Mont-Joli subdivision in eastern Quebec was impassable. This delay was needed to provide CN adequate time to reopen the line.

When we finally departed, we made it only as far as Rivière-du-Loup, when we were informed that CN repair crews had reportedly called it quits for the day—fortunate as they were to go home for Christmas Eve—and wouldn't return until some time the following day. With apparently no other option, short of an overnight layover in Rivière-du-Loup, our train was sent back to Montreal, arriving after three in the morning on Christmas day, exactly where we started and over 30 hours after we first boarded the train.

Passengers on the westbound train 15 from Halifax fared no better. Their train was left stranded for as many hours at Campbellton, New Brunswick, before being sent back to Halifax.

I was fortunate enough to find a flight home late on Christmas day at significant personal expense, but many passengers simply saw their plans to visit family for the holidays forfeited entirely. In some cases, they were left waiting in Montreal for several days, due to train cancellations in the corridor.

My experience, and those faced by other passengers, raised a number of questions that are applicable and need to be asked about the issues affecting both *The Ocean* and Via's corridor trains. These mirror much of what was discussed during Via's testimony before this committee this morning.

In short, first, what was the exact nature of the issues making train lines impassable? In the specific case of the Mont-Joli subdivision, why were CN crews unable to clear the line as expected?

What efforts did CN make to prioritize opening rail lines and avoiding stranding Via trains and their passengers?

What contingency planning does CN have in place for these scenarios? How did their efforts here compare to the efforts that would be made to clear a high-priority freight line? In particular, how do holidays such as Christmas affect the ability to provide crews to maintain rail operations?

In the case of stranded corridor trains, what prevented CN locomotives and crews from the Oshawa and Belleville yards being dispatched to assist stranded Via trains?

There were power failures affecting CN's level crossing protection and signal systems. Are sufficient backup supplies in place to maintain these critical safety systems during power failures?

Was there any consideration of alternative routing for Via trains, for example, over the Napadogan subdivision through New Brunswick, or the parallel Canadian Pacific lines in the corridor?

Does Via have recourse within their train service agreements with CN to seek compensation for a failure to move their trains in a timely fashion or to their destinations at all? How could this train service agreement be strengthened in the future to provide sufficient priority for Via services?

In terms of Via's own planning, what more could be done to ensure that trains are stocked with adequate emergency supplies? Are on-board staff adequately trained and prepared to deal with these situations? How can Via improve communications and the sharing of information with passengers? Transport Action previously wrote to the Railway Association of Canada in September 2022, calling for changes to improve protections for stranded passenger trains.

What considerations did Via management give to alternative transportation for passengers to ensure that they could reach their destinations?

Finally, Via is to be commended for their commitment to an internal investigation and for their willingness to appear this morning before this committee. It is disappointing that CN has not done so. Will CN make any commitment to investigate their own performance?

In closing, Transport Action believes that the abysmal performance of Canada's tattered passenger rail system this holiday season should be grounds for a full investigation, beginning with the work of this committee, to determine where government, Via Rail management and the host railways have failed, and recommending immediate action to address this national embarrassment. We hope that actions under consideration will include better contingency planning at Via Rail, a re-examination of the train service agreement between Via and CN, adequate government funding to Via Rail to address equipment and staff shortages that may have contributed to this situation and an exploration of adopting passenger protection standards for rail passengers, similar to those in place for air passengers, whether through policy or legislation.

Thank you for the opportunity to address this committee. I will be happy to take any questions you may have.

• (1320)

The Chair: Thank you very much, Mr. Hayman.

We'll begin our line of questioning today with Mr. Strahl.

Mr. Strahl, the floor is yours. You have six minutes.

Mr. Mark Strahl (Chilliwack—Hope, CPC): Thank you, Mr. Chair.

I appreciate that previously we heard from some witnesses here on the APPR in general. The reason we're meeting now, in advance of the House returning, is that the situation is urgent. These are emergency meetings based on particular incidents that occurred

right around the Christmas break. I want to just reiterate that we are here on an urgent basis because of that breakdown.

Mr. Lukács, I want to talk to you about the system whereby, as I understand it, if someone sitting in seat 13A is capable and files a successful APPR claim, the airline does not automatically give the same benefit...even though everyone on the plane likely experienced the same delay or cancellation or had the same experience. Have you heard whether there is any movement towards that, or do you believe that an airline, once it has been determined that one passenger on a flight should receive compensation, should automatically compensate all passengers on the same plane?

• (1325)

Dr. Gábor Lukács: Thank you for your question.

There is no doubt that common sense dictates that, if one passenger is eligible for compensation, then others on the same plane should be as well. What we have actually been hearing is quite the opposite. People sitting next to each other, possibly a husband and wife, both file a claim and one receives compensation and the other receives a rejection citing the various excuses that are provided under the APPR.

What we also need to bear in mind though is that the compensation amount is based on delay at the destination. If you have two passengers travelling to different destinations, the delay of the given flight or the cancellation of the given flight can affect their arrival time at their final destination differently.

Eligibility can be determined on a flight basis, but the actual amount of compensation may vary based on a passenger's travel plans.

Mr. Mark Strahl: Okay.

In our previous discussions, we've been focused on stranded passengers—people who were sleeping on couches in hotel lobbies in foreign countries—but in your testimony you raised the issue about baggage. That is one that I think has been overlooked.

Obviously the focus of the media and so on was more on the stranded people, but as you said, there have been TikTok videos and media reports of individuals who have been able to track their own bags because they have tracking devices in them. They have discovered that, quite frankly, there has been outrageous routing from Montreal to Toronto to warehouses to.... Even when the bags were found, it was determined that the private property of the individual had been, as you said, "donated", in this case, by Air Canada.

Are there remedies in the APPR to punish the airline for that outrageous behaviour, or do people have to go to the courts, to small claims court and so on, to get back what they're entitled to?

Dr. Gábor Lukács: Let's separate the APPR from enforcement.

You see, the APPR is a regulation. The problem with the APPR is that the airlines don't follow the APPR. Whether you go to small claims court or use other means of enforcement, that's about how you enforce your rights as a passenger.

The APPR, with respect to baggage, incorporates the Montreal Convention, which is an international treaty and it's part of the Carriage by Air Act. It extends to domestic baggage loss and damage. For what Mr. Lawford mentioned, delays, there is a little bit of a problem that was created, but for baggage loss it's clear that it's just the Montreal Convention.

In situations of the airline wrongfully disposing of baggage, as in those we have been hearing about, that would be an exceptional case under the Montreal Convention, in which the airline has uncapped liability for the content of the baggage as opposed to the usual approximately \$2,300 Canadian liability cap per passenger.

What we have been seeing—an airline taking a passenger's property and donating it without authority to a third party—is not really within the realm of a civil matter. It's a criminal matter, as we heard from a Toronto lawyer. In my view, what we would need to see there is a criminal investigation into how that is possible when it is happening on a large scale.

Mr. Mark Strahl: That's very interesting.

My next question, Mr. Lukács, is about what we heard this morning from Via Rail. When I asked if passengers who use rail should come under some sort of compensation regime like the APPR when they're delayed, as they were for 13 hours, they talked about factors outside their control. They don't control the lines, etc.

We hear the same from airlines when we talk about passenger compensation. They say they don't control the airports, they don't control Nav Canada, they don't control the security lineups, they don't control the CBSA and so on. They talk about shared responsibility or shared accountability.

How do we factor in the fact that there are times when airlines are on the pointy end of the stick but other entities have perhaps had an impact? Is that simply a way to deflect responsibility?

• (1330)

Dr. Gábor Lukács: We need to distinguish between the responsibility vis-à-vis the passenger and the ability of the airline to seek compensation from third parties. In the European Union, they thought about this. That's why you have article 13 of the European regulations, which makes it clear that the airline's obligation to passengers does not derogate in any way from the airline's ability to go after those third parties.

These types of excuses are something that the two large corporations, the airline and maybe the subcontractor, should resolve between themselves in commercial litigation. It isn't a consumer matter. So—

The Chair: Thank you very much, Mr. Lukács. Unfortunately, I have to cut you off there. We're out of time.

Mr. Badawey, the floor is yours. You have six minutes.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Mr. Chairman.

I want to express my sincere appreciation to all the witnesses who have come out today. I think what we're looking for here is to attach the how to the what. We all understand what the challenges were—maybe not as intimately as those who were experiencing it directly—but from the testimony we've heard throughout the past two meetings, we understand the what. I'm more interested in the how. How do we deal with these challenges? We've heard from the travel industry, such as airlines and rail, but more importantly I want to hear from you.

I want to remind those who are giving testimony that the testimony will be placed in the paper, and it will help us come forward with the how—namely, the recommendations that this committee will be presenting to the minister, with an expectation for his response to be appropriate and accordingly. With that, I'm going to get more into the weeds and get more granular in terms of my questioning, just as I did with the providers.

First, Mr. Lawford, do you think the airlines as well as the rail companies have been short-sighted in their approach to passenger rights?

Mr. John Lawford: Yes. The first obligation they feel, of course, is to profitably operate. The negative externalities of running too many flights without adequate staff or enough co-operation among these shared accountability partners means that the consumers have to absorb any difficulties first and most painfully.

That would be my answer.

Mr. Vance Badawey: With that good answer, which was, quite frankly, what I expected, at the same time, just to get a bit more granular in terms of the capacities.... That's what you were referring to in terms of the resiliency, the capacities and the lack thereof with respect to what could have been made available, whether it be from the capital side, the equipment side or the human resources side in terms of the individuals who were part of the response on behalf of their organizations.

My second question to you, Mr. Lawford, is this: Who should pay for the passenger rights system? Whether it be the costs borne by the CTA to investigate complaints, to offer mediation or arbitration services, or to adjudicate when mediation fails, who do you think should actually pay for those processes?

Mr. John Lawford: At the moment, I guess they are paid by taxpayers through the CTA. There is another model. You can have an ombudsman's service that is paid for by the industry, such as in telecommunications or in banking and finance with the OBSI. That's another model.

I believe when we did our first paper for Mr. Emerson, that was the idea we had. It was to have this extra compensation system run as a pure ombudsman, with the industry paying for it under a non-profit corporation. That model can work. Whether it was something the CTA was ready for, or whether the airline industry rules were too complicated for that system, I'm not sure now.

• (1335)

Mr. Vance Badawey: Again, just going along that line of thought, I'm happy you mentioned the Emerson report, because within that report he comments on a lot more on this issue that we want to investigate as part of our recommendations moving forward. That report has actually been a great reference for us in many of the studies we've done.

I have another question for you. Do you think larger administrative penalties for systemic rights violations would change the behaviours of both the airlines and the rail industry?

Mr. John Lawford: I do, and I agree with Dr. Lukács's calculus that if you have a 1% sort of flouting of the regulation, you have to administer fines. In other words, if someone isn't paid their compensation, there has to be a separate penalty phase or enforcement fine from the CTA, which it has the power to carry out, and that has to be high. It has to look sort of bizarrely high, because you're assuming there will be a very small amount of enforcement with respect to those violations.

Mr. Vance Badawey: I want to go to you, Mr. Hayman. I was really interested in your opening comments, so I want to give you the opportunity to get on record any further comments with respect to how to address these issues in terms of the recommendations to the minister that this committee is going to be moving forward with. I want to give you some time to expand on your original opening comments since you had limited time.

Mr. Tim Hayman: Certainly. Thank you. I appreciate that opportunity.

There are two main points in terms of thinking about the how, or at least where to focus that effort, when we get to the discussions around, specifically, the rail sector and how Via Rail's performance was affected at times like this.

I think a huge part of that—and I know it came up quite a bit this morning when Via was talking and members were raising questions—is looking again at that relationship and the communication and interplay between Via and CN—particularly CN. Also, you could look at any other infrastructure owners that Via operates over, but it is predominantly CN.

A lot of that, I think, really come down to the need for some evaluation of the agreements that are in place between Via and CN, which provide track access and actually spell out what obligations each party has, the financial agreements and everything else. Despite the fact that Via is a Crown corporation and publicly funded that way, those agreements are not public information and those

aren't things that any member of the general public can look at. I think that would be a really good place to start in terms of seeing where things could potentially be shored up.

The Chair: Thank you very much, Mr. Hayman. Unfortunately, I'm going to have to cut you off there.

[*Translation*]

Mr. Barsalou-Duval, you have the floor for six minutes.

Mr. Xavier Barsalou-Duval (Pierre-Boucher—Les Patriotes—Verchères, BQ): Thank you very much, Mr. Chair.

I'd like to thank all the witnesses for being with us today.

I must say, quite frankly, and I'd say somewhat cynically, that I feel like it's Groundhog Day today. Every time we return from vacation, I feel like we're meeting the same witnesses and talking about the same issues. The good news is that we talk about them. The bad news is that the issue remains unresolved. We continue to see airlines showing little respect for the rights of passengers, on a massive scale. It's extremely frustrating.

I feel that you've brought meaningful solutions to the table today, and I hope we can get them adopted and move forward, because I feel like we've been getting the same solutions for too long. The government deserves credit for trying to enshrine rights in its much-touted passengers' bill of rights. However, it's clearly got some major loopholes, particularly when it comes to how complaints are handled.

You work with people, and consumers come to you. How do you see these airline passenger protection regulations? People say they are too complicated. How could they be simplified so that they can be enforced quickly and people don't have to wait forever for cases to be resolved?

I'd like to hear from Mr. Lukács first.

• (1340)

[*English*]

Dr. Gábor Lukács: Thank you for the question.

The way to simplify the regulations, first and foremost, is to harmonize with the European Union's classification approach for entitlement to compensation. Under the European system, there are only two categories. The first is flight disruptions, which are caused by events that are normal to an airline's operation. That would include maintenance issues. The second is extraordinary circumstances, which would involve events like sabotage and acts of terrorism, or a situation when a whole fleet of a particular aircraft model is being grounded around the world because of some manufacturing defect.

What that allows is... Even if one may argue that it is, perhaps, harsh with the airlines on its face, it results in a system that is very simple and, therefore, saves money for the public overall. This is because in that type of system, determining entitlement to compensation takes very few numbers and bits of information, such as the flight's supposed arrival time, when the passengers actually arrived and whether there was an extraordinary circumstance. That's it.

[*Translation*]

Mr. Xavier Barsalou-Duval: Thank you.

I've heard several suggestions from you and the other witnesses. For example, one suggests that airlines should proactively pay compensation to all passengers when an issue comes up with a flight. Another is to eliminate the category of complaints about safety-related situations outside the airline's control.

Do you all agree with these recommendations?

Perhaps Mr. Jack from CAA could answer this question.

[*English*]

Mr. Ian Jack: I don't know that I can talk personally on whether we're unanimous or not among the three of us. We'd have to caucus, I suppose.

There are a bunch of measures that I heard from my two colleagues that we would be supportive of, and I hope the same is true for them. I think there are, as you said, many obvious problems. Some of them have obvious solutions. Some don't and that's fair, but some do. The perfect can be the enemy of the good. I hope that when these recommendations are put forward by the committee, we can push forward with the low-hanging fruit, at least.

We can expect a lobby from other folks who are affected by this stuff on some of this, but there should be some very simple things that we can agree on. I would go, for instance, to the transparency piece. It's very difficult to argue against that. Here we are, talking about what a poor job the carriers are doing, and we all believe that, but I don't know that any of us know exactly how many complaints they're receiving internally, how many they're disposing of, how many people they're saying yes to and how many people they're saying no to. That information they keep to themselves.

There are other industries.... I think telecom was cited. You can look up in this country how many complaints each of the telco carriers had, as an example, and how they were disposed of. In the U.S., you can do that now. A lot of these carriers fly in the U.S. In the U.S., you have to provide this information, and it's available online for anybody to judge performance.

That's not the be-all and end-all, but it is a very simple example of something that would help all of us do a better job and put on pressure where it's warranted.

[*Translation*]

Mr. Xavier Barsalou-Duval: Thank you.

It feels like people who file complaints with the Canadian Transportation Agency go to war with the weapons the airlines give them, because the airlines have the information and they also give it out, which makes it very difficult for passengers. It seems they don't have what it takes to get justice.

If I'm not mistaken, I've heard people from CAA and Air Passenger Rights talk about how important it is that the burden of proof be reversed. Mr. Lawford, I'd like to know if you agree with that.

Mr. John Lawford: We absolutely agree with Air Passenger Rights that it's crucial the burden of proof be shifted. If we manage to put the onus on the airlines, that will solve a lot of problems with the regulations. However, we also have structural issues related to the three categories, as I said—

The Chair: Thank you very much, Mr. Lawford. Time is up, unfortunately.

Mr. Boulerice, you have the floor for six minutes.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Mr. Chair.

I would simply like to let Mr. Lawford finish responding.

Mr. John Lawford: Thank you, Mr. Boulerice.

I was going to say that we don't need the three categories. The European Union regime doesn't include these little differences and it works very well. As Mr. Lukács said, most of the time when there are issues with flights, all passengers are given a very clear course of action. Some airlines even offer to file the complaint for people because it's so clear. We could do the same thing here, but we would have to completely change the regulations.

● (1345)

Mr. Alexandre Boulerice: Thank you, Mr. Lawford.

Our statutory and regulatory provisions are insufficient to protect the rights of passengers. I feel we can all agree today that we need to do much more.

Mr. Hayman, you had a very unpleasant experience during the holiday season, when you were virtually trapped on a train that was delayed for over one day, 30 hours even.

Based on your experience and your analysis of the situation, how much responsibility for what happened do you assign to VIA Rail and how much do you assign to CN as the owner of the premises and the tracks?

[*English*]

Mr. Tim Hayman: Certainly in the case of the train that I was on, I think the responsibility for the actual delay largely falls on.... It's a combination of CN and, obviously, weather conditions as well. I think the major thing that falls on their shoulders in that particular case is the particular planning and the scheduling around what would be done to clear the line ahead of us and the decisions that were made from an operational standpoint.

I mean, in that case, we had a train that left Montreal and made it a significant distance along, through our route, all based on planning that had been laid out by CN around when that line would be cleared. It seems that there were some failures, I think, in communication there between CN and Via in terms of what was realistic to expect. I did hear things this morning in terms of similar comments about some communication failures on trains in the corridor as well. I think, for that part of things, I'd definitely put quite a lot of blame on CN.

Again, I think there were some potential communication issues on Via's front as well. I will give credit to the on-board staff we dealt with. They were generally doing the best they could in the situation, but they were often pretty strapped in terms of the amount of information that was provided to them or that they had to pass on to passengers. There wasn't a lot of clarity as we went along about exactly what would be happening.

I think some things could be improved on Via's front, but certainly on the way the situation unfolded, I think there's a lot of focus to go on CN. Again, this is why I think it's really unfortunate that they haven't been here and speaking to this committee.

[Translation]

Mr. Alexandre Boulerice: You just made an excellent point, Mr. Hayman. I actually pointed out earlier today. You are right: VIA Rail staff are very professional and I really like their service every time I ride the train.

Mr. Hayman, don't you think this would have been a little easier—I'm not saying ideal, but a little easier—if a public rail service owned the tracks and the location where the train transported passengers, and we weren't dealing with a private company that also refuses to answer any questions in public?

[English]

Mr. Tim Hayman: Yes, absolutely. At the end of the day that would alleviate a lot of issues. I understand that, obviously, there are I guess logistical challenges with all of that, but we've certainly been able to see, when you look at Via's on-time performance reporting across their system, generally how smoothly things run within their operations. Particularly, I'm thinking of the areas where they routinely perform the best, which are the particular stretches of track between Montreal and Ottawa. Also, for some parts between Ottawa and Brockville, where they are in fact the owners of the infrastructure, things can actually be properly scheduled and planned to accommodate passenger operations. Things around there definitely run more smoothly in the general run of things.

You need look no further, even outside of these exceptional situations, for the routine delays and routine issues that face Via trains, particularly on longer-distance services, but even in the corridor where there are many more frequent trains, there are still chronic delays and chronic issues that have to do with CN dispatching and the conflicts between the freight and passenger operations that are running there.

Anything that moves towards better control for that and better scheduling with priority being given to passenger trains would absolutely improve that situation, in my perspective.

• (1350)

[Translation]

Mr. Alexandre Boulerice: Thank you, Mr. Hayman.

Mr. Chair, how much time do I have left?

The Chair: You have 45 seconds left, Mr. Boulerice.

Mr. Alexandre Boulerice: All right.

Mr. Lukács, what do you think of the prospect of automatic refunds being issued to air passengers in the event of delayed flights, of which there were many during the holiday season? Isn't it a fairly simple solution that the federal government could apply?

[English]

Dr. Gábor Lukács: Absolutely, and I strongly support not only simple criteria that match the European regime, but also that airlines would be required to proactively pay those compensations to passengers without the passengers having to run after the airlines and ask for the compensation.

[Translation]

The Chair: Thank you very much, Mr. Boulerice.

[English]

Next, we have Mr. Lewis.

The floor is yours. You have five minutes.

Mr. Chris Lewis (Essex, CPC): Thank you, Mr. Chair.

Thank you to the witnesses this afternoon.

I'm learning some pretty neat things here, too, specifically with regard to the EU and how that model looks compared with our model here in Canada.

I would start by saying that perhaps what we should be looking at is not only the air passenger protection act, but the air and rail passenger protection act. In some dialogue this morning with the previous witnesses, I asked this question: Does our rail system have the same constraints, if you will, about how much time somebody can be on a train compared to how much time somebody can be on a plane, sitting on the tarmac? The answer that I heard was "no". This is very important testimony.

The first thing I'd like to share is from January 24, this year. It's a CBC article entitled "Flair Airlines cancels service from Windsor to Montreal without notifying customers". The last flight from Windsor to Montreal via Flair is on February 6. It goes on to say that they're going to cancel it.

Further on in the article, it says:

On Jan. 5, Aidan Gendreau booked a flight to Montreal [from Windsor] to visit his girlfriend in Ottawa on Feb. 17.

He was able to put in his reservation code and see his flight was confirmed through Flair's app, but when Gendreau went on the airline's website to book another trip in March he saw there were no flights available.

He was able to book it. He's paid for it and now they're saying that he won't be flying, because they've cancelled that flight.

Further on in the article, it talks about all of the costs incurred by this gentleman to go and see his loved one. He's booked trains to get from Montreal to Ottawa. He's talking about cancelling hotel rooms and whatnot. To add salt to the wound, the last sentence says, "Gendreau said he had to book a new flight that cost an extra \$150." That's not with Flair. That will be with another airline.

My first question is to Mr. Jack. Do you believe that it should be not only about the passengers who have shown up at an airport and didn't get to fly, but those who have booked in advance and now they're saying, "No, you're not flying. If you want to fly, it's going to be more money"?

Is that part of this conversation?

Mr. Ian Jack: Absolutely, it is. In fact, there are some rules around that. The rules may not be good enough, but there are rules about how much notice you have to be given for a cancellation and what a carrier has to do for you if it cancels within a certain amount of time.

Certainly, it's within the committee's purview to look at whether you think those time limits are good or not, and whether the compensation is good or not. We would point you to the fact that, when the APPR was written, there was a bit of a carve-out for what were then considered smaller carriers—which was everybody smaller than Sunwing, Transat and the big two—as well as what they're calling the ultra low-cost carriers, which would be Flair and Swoop right now.

Mr. Chris Lewis: Thank you, sir.

Through you, Mr. Chair, this question is to Mr. Lawford.

Thank you, by the way, for bringing options for us.

You mentioned that you would like to see the minister have the power to change this, but also that he could go back to his cabinet. Would it not make more sense to use all 338 members of Parliament, as each one of our regions is unique? We know what passengers are facing in all of our ridings.

I would love some comment on that, please.

Mr. John Lawford: I'm sorry if I was unclear. I will be happy to provide our recommendations in written form to the committee so that you can read them.

What I was referring to is that there are already two different powers. There's one for the minister to direct the CTA to make new regulations under subsection 86.11(2). There's also a direct cabinet power to tell the CTA what to do in section 40 and, in effect, make regulations. I was referring to those.

I invite Parliament to change the Canada Transportation Act to put the full burden of proof on the airlines, which is something all of you members can do together. I would love to see that in a bill. I agree that Parliament is usually the best place to say the real will of Canadians.

• (1355)

Mr. Chris Lewis: Thank you, Mr. Lawford.

This question is to Mr. Hayman.

Sir, would you agree with me—going back to my original remarks that I believe there's a disconnect between rail and the airlines—that the ministry should, indeed, be making life easier for the rail lines in setting out those guidelines for them? That way, when there's a 13-hour delay, they don't have to make a decision. It's already in black and white for their people.

Would that make sense to you, sir?

Mr. Tim Hayman: Yes. I would certainly agree with that. I think there's definitely some merit to that.

On that front, I would also say there's been talk here about looking to the EU for passenger protection standards around air passengers. There are also some good existing standards there for rail passengers as well, so I think we wouldn't be reinventing the wheel here. Obviously, it's a slightly different situation in the Canadian context than in the European one, but I think there are definitely some good baselines there to start from.

Mr. Chris Lewis: Thank you, sir.

The Chair: Thank you very much, Mr. Lewis.

Thank you, Mr. Hayman.

[*Translation*]

Next, we go to Mr. Iacono.

You have the floor for five minutes.

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you, Mr. Chair.

I'd like to thank all the witnesses for being here today.

My first question is for John Lawford.

The Minister of Transport has said that he intends to update the Air Passenger Protection Regulations (APPR), simplify the process, and shift the burden of proof from consumers to the airlines.

Do you have any specific recommendations as to how he could introduce these new measures?

Mr. John Lawford: I brought up a few immediate changes that are a little technical to eliminate some of the hassle for passengers. To a larger extent, I feel we need a new bill to amend the Canada Transportation Act, because there are loopholes.

We need to introduce a more effective system, like the existing regime in the European Union. To do that, I believe we need a new bill.

Mr. Angelo Iacono: In the meantime, you can send your comments to the clerk on what types of changes you would like to make.

My next question is for Mr. Jack or Mr. Kerr.

Under the current regulations, we've heard a lot of testimony that financial incentives work in the airlines' favour when they let cases go to the Canadian Transportation Agency rather than refunding or compensating passengers who feel their rights have been violated.

Do you agree with that statement?

If so, what might be effective ways to change these incentives?

[English]

Mr. Ian Jack: We certainly think the incentives today are skewed.

We talked in our opening remarks—and I think some of our colleagues here have talked as well—about needing potentially higher AMPs, fines if you will, so that the carriers are aware of that and they prioritize more highly taking care of their customers—let's put it that way—and processing complaints within their systems. Some of this is within the business operations of these companies, and they need to do a cost-benefit analysis. I think, right now, doing a cost-benefit analysis would suggest to them that they wouldn't have to invest as much in this as we would all like to see so that we end up with a system....

Ultimately what we all want here is a system where there would be no complaints to the CTA because every carrier would feel incented to take care of their passengers properly before they have to complain to a government body. That's clearly not where we're at right now when we look at that backlog.

[Translation]

Mr. Angelo Iacono: My question is for the two witnesses before me.

What means other than monetary penalties would lead to greater accountability?

• (1400)

[English]

Dr. Gábor Lukács: I'm happy to answer your question.

Our view is that it is not a single-solution problem. One needs to have pillars that, together, result in the solution to the problem.

On the one hand, we need to have much simpler eligibility criteria so there will not be a backlog, so that it will take just a few minutes or less than half an hour to determine, in any case, whether compensation is owed.

For those outliers, on which the airline is not conforming to the law, there should be sufficiently strong penalties that create a disincentive for disobeying the law and that make it cheaper for the airline to comply with the law than to actually engage in a fight and disobey the law and flout the law.

One or the other may result in some improvement, but only by doing both at the same time will the problem be solved.

[Translation]

Mr. Angelo Iacono: Mr. Lawford, would you like to comment on this matter?

Mr. John Lawford: I think we are in agreement on those comments.

I would add just one comment with respect to telecommunications complaints. If you can't resolve complaints with the providers, you have the option of referring them to the Commission for Complaints for Telecom-Television Services (CCTS), and it will treat them like their own complaints and refer them to the providers. With that system, if there's no response within 30 days, consumers are given everything they asked for in the complaint they filed.

We could use the same method, but we don't have that regime in place for air travel.

The Chair: Thank you very much, Mr. Iacono.

[English]

Thank you very much, Mr. Lawford.

[Translation]

Next, we go to Mr. Barsalou-Duval.

You have the floor for two and a half minutes.

Mr. Xavier Barsalou-Duval: Thank you very much, Mr. Chair.

I was excited and smiling from ear to ear when I learned that the Minister of Transportation planned to review passenger rights. It's good news. I hope it will produce results.

However, if I remember correctly, the last time anything was reviewed in terms of passenger rights was during the pandemic. At that time, people said that we should never find ourselves in a situation like that again, where passengers don't get refunds for their tickets when flights are cancelled. It took a long time to meet that commitment. It was a very awkward situation. In the end, the government refunded travellers, not the airlines. Later, to fill in the gaps, the government said it would now be mandatory to offer passengers an alternative flight within 48 hours, otherwise passengers can demand a refund when a flight is cancelled.

Do you find that a 48-hour period before you can get a refund or getting a flight 47 or 46 hours, or 36 hours later, is a reasonable timeframe?

Mr. Lawford, you can answer my question.

Mr. John Lawford: No, it's not reasonable.

If I may, I will ask Mr. Lukács to answer this question, because he has much more experience in this area.

[English]

Dr. Gábor Lukács: Thank you.

In terms of the refund issue, the current APPR is actually a step backwards compared to what has been declared by consumer protection law for the past 20 years, and it is also inconsistent with provincial consumer protection laws. There's a very obvious no-brainer standard that, if a flight is cancelled for any reason, the bare minimum a passenger can do is seek a refund, even if the airline offers them an alternate flight in three or six or nine hours. It doesn't matter. They had a booking for a given flight. That flight is no longer operating and, therefore, the passenger has to get their money back.

[*Translation*]

Mr. Xavier Barsalou-Duval: I'd like to give the CAA representative the opportunity to answer my last question as well. However, I'd also like to have time to ask another question, so I'll ask it at the same time.

I learned that the large carrier category and the small carrier category are currently subject to different penalties and regulations. I was really surprised to learn that carriers like Air Transat, Sunwing and Flair Airlines are not subject to the large carrier rules.

Do you think that makes sense? If not, what would you recommend in terms of legislative changes to have things make sense?

[*English*]

Mr. Ian Jack: No, that's not normal and it needs to change. I won't get into the long story, but it's sort of a COVID effect. The way the government set this up was about how many passengers you had flown over the last couple of years. They then took an average and determined who was big and who was little. That doesn't work in a world where nobody flew any airline for pretty much two years, so we need a new way of determining that. We would agree with you that carriers such as Sunwing and Transat should absolutely be included with the others.

The small category was originally intended just for truly small carriers. Let's take Air Creebec for example. It would be unreasonable to put the same burden on them as on a multi-million or multi-billion dollar corporation.

As for the other question, I think Jason can help with that.

• (1405)

The Chair: Unfortunately, we don't have time to expand on that. Perhaps we can in the next round.

[*Translation*]

Thank you, Mr. Barsalou-Duval.

Next, we go to Mr. Boulerice.

You have the floor for two and a half minutes.

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

My question is for Mr. Lukács.

We witnessed some truly absurd situations during the holiday season, with airlines unable to operate their flights because they were short-staffed. It had nothing to do with weather conditions like a snowstorm or freezing rain. They didn't have enough pilots or flight attendants to provide service.

Do you think that it makes sense for airlines to sell airline tickets when they don't have enough staff to be able to provide flights?

[*English*]

Dr. Gábor Lukács: Thank you for the question.

In my view, it is absolutely abnormal for any merchant, any service provider, to offer services or goods that they don't have the resources to deliver.

This is a matter that should also be looked under the Competition Act, rather than simply in terms of air passenger rights. It is obvious that this type of cancellation and some delays caused by crew shortages are within the carrier's full control, and they have to compensate passengers accordingly.

[*Translation*]

Mr. Alexandre Boulerice: As you said earlier, compensation should be paid automatically. It's not the consumer's responsibility to do all the paperwork, which is a bit cumbersome. That should be the airlines' responsibility.

We had disruptions during the holiday season. We had disruptions at airports last summer. Spring break is coming up. What can the federal government do right now to keep these horror stories from happening at airports in the coming weeks?

[*English*]

Dr. Gábor Lukács: I support the recommendation of Mr. Lawford about the short-term solution. The minister has some powers under subsection 86.11(2) to direct the agency to make regulations.

The cabinet, under section 40 of the Canada Transportation Act, also can promptly amend the air passenger protection regulations to at least fix some of the definitions, to fix the small carrier versus large carrier problem and lower the threshold maybe to 100,000 or 50,000 passengers per year between small and large carriers, and to deal with the baggage issues. These would be only stopgap measures. Ultimately, it should be Parliament that is fixing the problem. These are just short-term measures to solve the problems.

[*Translation*]

The Chair: Thank you very much, Mr. Boulerice.

[*English*]

Mr. Muys, the floor is yours. You have five minutes.

Mr. Dan Muys (Flamborough—Glanbrook, CPC): Thank you, Mr. Chair.

I welcome back to the committee a couple of the witnesses who were here on November 21.

As you articulated, Mr. Lawford, "December happened", so obviously we're back. We've had a few meetings now on this topic, given what happened in December. We heard this morning from Via Rail, of course, on the fact that they did not hear from the minister until the 11th of January. We heard that he had not contacted airports, and we heard that the airlines were slow in hearing as well.

You've talked about some really urgent things. I'm glad that you articulated them in your testimony and that you've offered to provide more written comments. You talked about ministerial direction. You talked about cabinet powers and, of course, eventually, parliamentary changes to the CTA.

You've also raised the fact that March is coming. Here we are at the end of January. There's really a sense of urgency here to act on this. I noted with some interest that yesterday the minister said, "Mark my words", and that there are changes coming this spring. Well, "this spring" is after March.

What is the reaction to that, and how can we expedite this?

Mr. John Lawford: Forgive me if I don't know what power this committee has to make the minister move. I'm presuming that you can rush out a report as quickly as possible. That would be appreciated and, ideally, yes, the technical recommendations I'm making—and they're not that technical—would be something that could get under his nose.

We're trying to get people a right to compensation for delayed baggage, not just lost baggage. We're trying to get people home when there are weather incidents, whether they're on a sun carrier or Air Canada, because there's really no difference. If that's painful to those carriers temporarily, I think that, given the emergency situation and the performance in December, it's very reasonable. That's what I would be looking for.

Again, I'm happy to provide you with the other ones, but in the longer term you're right. The act, at the least, has to make clear that the burden is always on the airlines and, ideally, the way I'm recommending it, also take these categories out of the system, but that's a longer lift.

• (1410)

Mr. Dan Muys: In your view, some of these changes could happen quickly, given that March is coming.

Mr. John Lawford: Absolutely, yes. As long as you can get cabinet and the minister on the same page.

Mr. Dan Muys: All right. Thank you.

Mr. Lukács, thank you again for being back at committee. We did receive your rather robust set of written recommendations. Thank you for those 26 pages, including the appendix, in which there are at least seven years of history for cases you were involved in, although I think you referred to the fact that there were more beyond that.

On pages 19 and 20, you talk about the culpability of the federal government in a couple of aspects. Given the fact that you wrote this in December, prior to what we saw transpire over the holiday period with the baggage issues and the airport mess and all that we saw, maybe you can expand upon it.

What you refer to there is the campaign to sort of defeat the passenger rights that took place around the beginning of the pandemic, and I think that speaks to maybe one of the two aspects you were talking about: the lack of enforcement. Maybe you can expand on that in view of the fact that we've seen what has happened in the past month.

Dr. Gábor Lukács: Thank you for the question.

When the pandemic started, several emails were floating between Transport Canada and the Canadian Transportation Agency—emanating primarily, it seems so far, from Air Transat—requesting help to defeat provincial consumer protection laws requiring refunds for passengers whose flights were not operating. The

Canadian Transportation Agency and Transport Canada were complicit in that. Ultimately, a misleading statement was issued on the Canadian Transportation Agency's website on March 25, 2020, giving passengers false information or the false impression that they had no right to actual refunds and that they somehow had to just accept vouchers. We are currently continuing litigation to unearth everything that happened there and to hold the Canadian Transportation Agency accountable for that.

That type of disinformation campaign continued in the recent amendments to the APPR, where the government was misleading the public into believing there was a gap in the APPR, while none existed. The obligation to refund passengers has been the law in Canada since 2004. It just hasn't been consolidated into a single piece of legislation in the APPR.

The government has now, as of September 2022, actually backpedalled on the existing right for a refund and created the impression—again, the false impression—that passengers do not have the right to a refund if their flight is cancelled for reasons outside of the carrier's control and the airline offers them an alternative flight within 48 hours. One reason—

The Chair: Thank you very much, Mr. Lukács. Unfortunately, we have to end it there.

Ms. Koutrakis, the floor is yours. You have five minutes.

Ms. Annie Koutrakis (Vimy, Lib.): Thank you, Mr. Chair.

Welcome to our witnesses this afternoon.

Critics have described Canada's air transportation system as having a data black hole, wherein reliable data on on-time performance or customs and security queues are inaccessible or unreliable.

Mr. Jack, I think you touched on that earlier in your testimony. I'm wondering if you agree with that statement or if you can expand on it. If you can, how can the Government of Canada increase data transparency to empower all participants in air travel to make an informed decision, which will improve operational performance?

Mr. Ian Jack: Absolutely. That was one of the four things I mentioned as well in the opening remarks—specifically, more transparency for the carriers so that we can all understand what their rate is for resolving complaints. We know how many complaints come to the CTA, but we don't know how many complaints go to a carrier in which people have asked for something. We don't know how many times the carrier says yes or no, or how many bags they're losing, etc. This information should all be public, as it is in other jurisdictions, so that people can judge and people can put pressure on carriers. People can even decide who they want to fly with based on who's losing more bags out of Pearson, if they want to. Why not?

To the broader point of data, though, I think you're quite right that we've had long-standing concerns that go back to even before the APPR—about CATSA, let's say, and their on-time performance and how that's measured and how transparent they are. We think all the players in the system absolutely should be making performance standards public. They should have them. They should be public, and we should be able to measure against them so that we understand what the performance is like among all the players.

• (1415)

Ms. Annie Koutrakis: Is there a role for the Government of Canada, though, to empower all the participants in air travel? Do you see a role for the government? Is it through legislation? Is it through regulation? How do you see that?

Mr. Ian Jack: On whether it's legislation or regulation, I won't offer an opinion. That's for the lawyers, I think, but yes, somebody in government has to do that.

As I also said earlier, the carriers have all this information. They're choosing right now not to make it public. Somebody's going to have to tell them to do it. None of them will want to go first. If there's a rule from government, whether regulatory or legislative, and they all know that as of a certain date they have to make this information public, it's more likely to happen.

Ms. Annie Koutrakis: We also know that Canadian airlines have significantly more work to do to ensure that they meet the needs of all their travellers, including Canadians with accessibility needs and those flying with mobility aids. We've heard a lot about unfortunate incidents that have happened recently. If a traveller is flying with their mobility aid, they rightfully expect that it will make it to their destination and that it will be undamaged. Anything else is absolutely unacceptable.

Mr. Lawford, maybe you can weigh in on this. How could the APPR be strengthened to improve accessibility and inclusivity, particularly for persons with disabilities?

Mr. John Lawford: I wish I were an expert in this area. I will beg off and say I'm not sure that the new Accessible Canada Act has been compared to the regulations in detail. I presume that Transport Canada is doing that and recommending changes to the APPR to match.

I've seen the same stories that you've seen. Unfortunately, we're not a disability rights group, so I don't have better information. I'd throw it to any of the other witnesses, if they can answer it.

Ms. Annie Koutrakis: I wonder if Mr. Lukács has something to say about that.

Dr. Gábor Lukács: I do. Thank you for the question.

There is also a set of regulations with respect to the transportation of persons with disabilities, which impose on the airline various responsibilities with respect to assistance and liability in the case of the damage, loss and delay in the transfer of mobility aids.

Part of the problem is, as usual, compliance. Yes, those rules exist. Yes, those obligations exist. However, I'm not aware of any case where an airline was held seriously accountable by the Canadian Transportation Agency for breaches of these obligations.

Ms. Annie Koutrakis: Thank you for that.

This is my last question, and it could go to anyone who is willing to weigh in on this. We've recently heard about flight cancellations made by Sunwing in Saskatchewan—I believe in Winnipeg, as well—effectively ruining the plans of thousands of Canadians.

We've heard that compensation is the way to go, but what responsibility do you believe airlines should have toward their customers in these circumstances, besides compensation? Is that the ultimate, or are there other things that air carriers should be responsible for?

Dr. Gábor Lukács: Thank you for the question.

The law is already quite clear in this area that airlines have to re-book passengers on alternative flights. Certainly, that has been applicable to large carriers, both domestic and international. It is applicable through the Montreal Convention. Even the small carriers operating internationally...although it may be harder for passengers to enforce that.

That's one more reason why we so strongly support abolishing the distinction between small and large carriers, or lowering the threshold for small and large carriers. It's to clarify that point.

The Chair: Thank you very much, Mr. Lukács.

Unfortunately, we don't have any time to expand on that.

Thank you, Ms. Koutrakis.

[Translation]

Mr. Lehoux, it's your turn. You have the floor for five minutes.

Mr. Richard Lehoux (Beauce, CPC): Thank you, Mr. Chair.

I'd like to thank the witnesses for being with us this afternoon.

I'd like more than one organization to answer my first question.

This isn't the first time these issues have come up. This situation happens year after year. We're talking about models used abroad, especially in Europe.

In your opinion, why are we still questioning the reasons for which changes haven't been made? What's keeping things from moving forward?

Is there a lack of interest or willingness on anyone's part, anywhere, to protect travellers and the public?

• (1420)

Mr. John Lawford: The path we chose lies between two roads. It's the Canadian path, so to speak. We have a three-category regime that differentiates between small and large carriers. Perhaps the issues we had were foreseeable, maybe they weren't, but we can back up and choose another path. It's going to take a lot of effort, help from Parliament and a report recommending it. Of course, the pandemic has been hard on the airlines as well.

Mr. Ian Jack: I agree with Mr. Lawford.

The Air Passenger Protection Regulations came into force three months before the COVID-19 pandemic, so the circumstances were anything but normal. Things still aren't back to normal, but we've been getting closer to that for six to nine months, and in that time we've seen that the regime has significant deficiencies that need to be addressed.

So I wouldn't say it's negligence because there was nothing to look at during the pandemic. Now we have proof that the regime needs to change.

Mr. Richard Lehoux: Mr. Lukács, would you like to comment?

[*English*]

Dr. Gábor Lukács: I do.

I agree that we now need to take a different route, because when we were talking in the past, it didn't require some kind of crystal ball to see that the way this path, with respect to how the APPR, was constructed would result in the current situation. We predicted that already in February 2019, in a 52-page report that we published. It was foreseeable.

Why the government would go against what everyone who knows and understands the industry was able to foresee is a matter of political influence, in terms of which advisers the government was or wasn't listening to and what type of influence and clout the airline industry had with the government as opposed to consumers.

[*Translation*]

Mr. Richard Lehoux: Thank you.

Mr. Hayman, would you like to add something?

[*English*]

Mr. Tim Hayman: I don't have anything further on that particular subject.

Thank you, though.

[*Translation*]

Mr. Richard Lehoux: Earlier, in response to a number of questions from my colleagues, you talked about the minister's and cabinet's authority to make changes, and to do so in a very short period of time, since the March break and new situations are around the corner.

In your opinion, if the minister really wants to, is there anything he can do to ensure that the disastrous situations that occurred over the holidays don't happen again?

Mr. John Lawford: The minister can change things quickly by issuing directives to the Canadian Transportation Agency, but I don't know if cabinet is deadlocked or not. In terms of fundamental changes, it's going to take a lot longer.

Mr. Richard Lehoux: Mr. Chair, how much time do I have left?

The Chair: You have less than 10 seconds left, Mr. Lehoux.

Mr. Richard Lehoux: Thank you.

[*English*]

The Chair: Next we have Mr. Rogers.

Mr. Rogers, the floor is yours. You have five minutes, sir.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Chair.

First of all, welcome to all of our witnesses today. There have been very interesting suggestions and testimony for sure. I can understand some of the perspectives.

Flying back and forth between Newfoundland and Labrador and Ottawa is not an easy task, as you're never guaranteed to arrive as scheduled. You often encounter storms between Halifax and Ottawa, and there is no direct flight. Many of my fellow Newfoundlanders were stranded in Toronto at Pearson, having flown from western Canada with WestJet. Those from the south and warmer temperatures who were heading home for Christmas were stranded. In fact, I was getting emails from a couple hundred people who were trying to get back home for Christmas, who were told on December 21, 22 and 23 that there would be no flights going into Newfoundland until Boxing Day. We spent a lot of time dealing with these issues. Eventually most of them found a way through other airlines, Air Canada and others.

One astounding thing that happened during that period was that WestJet flew into St. John's. A good friend of mine sent me pictures of how he got on that flight to St. John's, travelling back to my riding, and he counted 64 empty seats. There were 200-plus Newfoundlanders stranded at the Toronto airport, yet the flight flew out of Toronto to St. John's. I was astounded at how these kinds of things happened. To me, there was certainly a flagrant disregard for passengers. Many of them also talked about their air passenger bill of rights and they weren't very well versed in terms of what their rights were.

The question I have is about how we can better educate and inform Canadian air travellers about their rights. They know they're there, but how do we help them?

• (1425)

Mr. Ian Jack: It's a very good question.

If I could go back to your anecdote, I would point out that it highlights another issue with the regulator and with the system as it is set up, which is that you have to be a passenger on a plane to make a complaint. I can't imagine that any of the people who were lucky enough to have the actual seats would be complaining. It would be the empty seats complaining—wouldn't it?

There should be a way for the CTA to initiate investigations about matters when they are brought to their attention, whether or not somebody's actually on the plane. Yours is the perfect illustration of a case where the problem wasn't that. It was the people who didn't get into those seats.

In terms of public education, we try to do our part. I know these other groups do as well. We do media and we put things on our websites. The government does some work in this area. I think, though, we shouldn't put the cart before the horse. The system right now is very complicated. We've all made that point. It all needs to be simplified. We could get every single passenger in this country to go to the CTA website and start reading what's there. It's 60-odd pages, I believe. Their shortened version of these rules, in what they call plain English or French, is dozens and dozens of pages long, so good luck to you.

I think we need to start with the things we've been talking about around this table, so that we get to a point where you could understand that simply.

Mr. Churence Rogers: Some others may want to comment on this, but before you do.... If airlines, as some people suggest, start having to pay more fines and penalties, is it, as the assumptions some people make...? Is there any way to avoid these costs simply being passed on to consumers?

Mr. Lawford, I don't know if you want to comment on that or a previous question.

Mr. John Lawford: Sure. You're raising the costs, and they may well be passed on.

Now we're on to the discussion of competition in this country, the airlines, the many efforts to try to bring new airlines online and all the challenges they face. Yes, I think it would increase prices and they would be passed down. On the other hand, maybe I would get where I'm going and maybe I would get compensation if I didn't

get there, which is not a bad thing. That's putting the public interest ahead of corporate interest.

As long as they're not going out of business, I think it's a good thing.

Mr. Ian Jack: If I can just say, the point of higher AMPs is not to raise money for the government. It's to incent the airlines to do a better job in the first place. We shouldn't assume that there would be tens and hundreds of millions of fines against the carriers and that the cost would, in the end, if the system was working properly, be all that high. It would, as Mr. Lukács said, be for very egregious situations, which we can all hope would be quite rare.

The Chair: Thank you very much, Mr. Jack.

Thank you very much, Mr. Rogers. That concludes the time, sir.

[*Translation*]

Mr. Barsalou-Duval, you have two and a half minutes.

• (1430)

Mr. Xavier Barsalou-Duval: Thank you very much, Mr. Chair.

So far, we've talked a lot about the airlines. Of course, I am very interested in this issue, particularly with respect to passenger rights. However, Mr. Hayman is also with us, and I'd like to perhaps ask him a question or two.

So far, this morning and this afternoon, and maybe even a bit before that, we heard that there may be some interest in introducing rail passenger rights. We have regulations in place that give rights to passengers who travel by air, although they haven't been as successful as we'd like.

Mr. Hayman, first, I must confess that I'm very supportive of the idea of regulations protecting passengers. However, I'd like to hear your thoughts on the subject. Given what you're hearing about the situation in the airline industry, do you have any concerns about what a complete mess it is, how difficult it is to enforce regulations and how very often consumers ultimately get shortchanged?

Are you a little concerned about the same situation happening for rail transportation?

[English]

Mr. Tim Hayman: That's definitely a potential concern. I hope that if there is a movement to adopt passenger protection in regulations for rail passengers as well, similar to what's there for air passengers, the government would look first at the experience with the air passenger regulations and where those have succeeded, but also—as it has been quite clear today—where those have failed and where there are shortcomings and try to incorporate those kinds of considerations right from the outset. That's where, again, I say there are other models to look at. Look to the EU and see some other examples of how things could be structured.

I recognize that it is.... In a lot of ways, it could be a slightly different situation because you're dealing with a different kind of playing field. The airlines, obviously, operate in a different kind of environment and structure. On the passenger front, we're predominantly talking about a single Crown corporation, although there are other passenger operators in some parts of the country, and there would be benefit to having that in place.

You would need to think pretty carefully about how that applies, given the unique situation that's set up. I would also suggest—

[Translation]

The Chair: Thank you very much, Mr. Hayman.

Unfortunately, Mr. Barsalou-Duval, your time is up.

Mr. Boulerice, you have the floor for two and a half minutes.

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

My question is for Mr. Lukács and Mr. Lawford.

In theory, in a capitalist system, the customer is king. However, if you look at the situation for airline passengers at airports, you get the impression that customers become livestock to be exploited and to help bring in the most profit.

In your view, how did we get to the point where it's more beneficial and profitable for an airline to eventually pay compensation than to provide the service consumers are entitled to and have paid for? It's truly pretty absurd.

[English]

Dr. Gábor Lukács: The problem in Canada is that we don't have adequate competition when it comes to the airline industry. That relates to barriers to entry to market as well as limitations on foreign ownership when it comes to air travel services within Canada. What we are seeing is more a race to the bottom, as you have observed, than a meaningful competition in providing better service to passengers.

In order to have the trend change, one would need far more competition. Even then the negotiating power of a single passenger is very limited compared with airlines. That is why one needs to have some state regulatory intervention, in a wise way, to ensure it becomes more profitable for an airline to provide standards of treatment to passengers rather than disobey the law.

The role of good regulation is to set a level playing field for all competitors that they all have to meet as a bare minimum.

[Translation]

Mr. Alexandre Boulerice: Thank you.

Mr. Lawford, would you like to comment?

Mr. John Lawford: I would just say that the data Mr. Jack mentioned will also give us and consumers purchasing power that doesn't exist right now.

• (1435)

Mr. Alexandre Boulerice: Thank you very much.

Mr. Hayman, do you feel that we should also have regulations to protect the rights of rail passengers, since we more or less have regulations for air passengers?

[English]

Mr. Tim Hayman: Yes, I definitely think there is a way it could be done. I think that there's also an incentive for that, partly to ensure that there's actually something that is enshrined there that has some more permanence to it or some greater legal underpinning, partly primarily because when we look at Via's policies, for example, there have been different standards over the years for how passenger compensation, alternative transportation, refunds and travel credits, and those sorts of things, are given.

That has changed over time with different management and different policies and whatnot. Having something that's actually a little more clearly laid out for the passenger to be able to understand would make a lot of sense, especially as we start looking at some of these rather concerning developments around the high frequency rail proposals and moving towards potentially contracting operations to a private operator. I think there would be even more of an incentive there to ensure those standards are enshrined in law.

The Chair: Thank you very much, Mr. Hayman.

[Translation]

Thank you, Mr. Boulerice.

[English]

Next we have Mr. Strahl.

Mr. Strahl, the floor is yours. You have five minutes.

Mr. Mark Strahl: Thank you, Mr. Chair.

My first question is for you, Mr. Lawford. You mentioned this, and I think part of what we need in terms of data visibility would be the CTA as well. What is their service standard? Also, quite frankly, what is their plan to clear up their backlog of 33,000 cases?

You spoke of an option in your introductory remarks to create—I forget the words you used but—tranches or to group together cases that have similar circumstances and treat them as perhaps a single case or consider them together. Does the CTA have the power to do that on their own or would the minister or the cabinet have to give that specific direction?

Mr. John Lawford: No. I think that's well within the rules of the CTA. They have done it before. At the start of COVID, they had eight large questions they had to settle about the way they were going to handle COVID questions. There were some 3,000 complaints and they handled all of them, at least with regard to those issues, altogether.

The system I'm suggesting is done in telecom all the time. You pick one case that seems representative of many, and you say, here's how we adjudicated it, and then to anybody else, show cause that your case is different, in the expectation that the industry would then settle them all because the answer, except in very special situations, would be exactly the same. I think that's well within their rules.

Mr. Mark Strahl: Right. Certainly, we would welcome their taking that sort of action to get back on top of their caseload right now. It's unreasonable to have someone wait for days for a flight and then wait for months to have their issues resolved.

I think Mr. Rogers raised a valid concern, that we're here talking about air passenger rights. I think if there is a dramatic increase in costs...and we know that Canada does have a high-cost environment for air travel in terms of fees, the barriers to entry that Mr. Lukács mentioned and so on. Our fees and regulations are perhaps a deterrent for new entrants.

Leaving aside cost, is there a risk that airlines will abandon certain routes or certain destinations if they are troublesome in terms of having crew availability, or they're prone to sudden weather changes, etc.? I guess the worst thing we could do is eliminate an option for a passenger by unintentionally causing the airlines to abandon certain locations. Do you see that as a risk? Is there anything we could recommend to government that would prevent that perhaps unintended consequence of changing the APPR to benefit passengers?

Mr. John Lawford: Who's answering that?

Mr. Mark Strahl: Both of you.

Mr. John Lawford: Okay. I'll be very brief.

I would say that you might want to consider an obligation to serve on certain routes, especially rural routes. I don't believe that's necessarily imposed by the minister or the CTA at the moment. I think that would help.

I'll pass it over to Gábor.

• (1440)

Dr. Gábor Lukács: In terms of the cost aspect, insufficient competition also means that the ability of airlines to pass on costs is somewhat limited when you look at oligopolistic pricing. In terms of deterring airlines from certain routes, you know, operating an airline is not a charity. At the same time, they provide a service, and that service has to be reliable.

We also have to weigh the concerns of how much damage there is and how much it actually costs the economy when passengers don't get to their destinations on time and they get stranded. How much lost productivity does that mean? We should think in terms of how we can help the airlines become more reliable and what kinds of infrastructure grants and development funding can be provided to airlines to become efficient, rather than worry about them abandoning routes.

Mr. Mark Strahl: Okay.

Mr. Lukács, could you talk about the barriers to entry? Maybe you could rattle off a few that would be interesting to this committee with regard to competition.

Dr. Gábor Lukács: The main barrier to entry is foreign ownership requirements. Only a company that is deemed Canadian can operate a domestic service within Canada. Currently, if you have a Lufthansa flight coming into Toronto, they cannot pick up passengers from Toronto and transport them to Montreal before they fly back to Europe.

With some trusted countries and their trusted airlines, it would certainly be helpful to open up the domestic market for more competition.

The Chair: Thank you very much, Mr. Strahl and Mr. Lukács.

Finally today, we have Ms. Koutrakis.

Ms. Koutrakis, the floor is yours. You have five minutes.

Ms. Annie Koutrakis: Thank you, Mr. Chair.

Mr. Lawford, you said in your testimony that, following the December events, PIAC is now recommending that we perhaps adopt the European model for the APPR. Some have suggested simply cutting-and-pasting the European passenger rights. Is this something that you agree with? Is this the approach that you would recommend? Can you see any unintended consequences that might arise from that in Canada?

Mr. John Lawford: I don't think, if you're cherry-picking certain more extensive rights, it will fix the backlog or necessarily result in more compliance by the airlines. Because of the three streams we have in Canada, it's needlessly complicated. Ultimately, the idea is to get rid of those so that there's only extraordinary circumstances as an excuse to not pay the compensation that is otherwise owed. Apart from that, then you can add on additional European requirements if you feel the air passenger is not being treated in accordance with the Montreal Convention or what we want to have for flights in Canada.

It's tempting to just cherry-pick them, but as I said in my remarks, I think we're going structural here. At the very least, the burden has to shift to the airlines, because that would give the consumers a result in most cases more quickly.

Ms. Annie Koutrakis: Do we have any data to know how satisfied European travellers are with their passenger rights? Do we have any data on that?

Mr. John Lawford: I'm going to throw that to Dr. Lukács, who I think would have that, or maybe Mr. Jack.

Dr. Gábor Lukács: I don't have the data with me.

Ms. Annie Koutrakis: Could I possibly ask one of you to maybe come back to us with something like that?

I'll also ask my team to see if they can find something like that. Is that something that is doable?

Mr. John Lawford: We'll be happy to have a look. I think you might find some results in the companies that do claims for European travellers.

Ms. Annie Koutrakis: Some have suggested that the APPR regime be expanded to include other parts of air travel systems, such as airports, CATSA and the CBSA. What are your thoughts on this?

Dr. Gábor Lukács: In terms of responding to the relationship between passengers and other players, that interface between CATSA should be with the airline. The international standard established by the Montreal Convention and the European regime is that passengers have a single address, and that's the airline. Even for baggage that may be damaged by CATSA, say, the airline pays the passenger, and the airline then claims from CATSA.

It's a corporate dispute resolution between those large players, where the passenger should have a single address for their complaints. However, we certainly do support that airlines should have an avenue to recoup some of their damages, some of their expenses, from third parties who are responsible for the situation.

• (1445)

Mr. Ian Jack: The only comment I would make is that there's the APPR and then there are changes in the system more broadly to make it work better for everybody, including passengers. I certainly don't know that I'd be looking under the APPR for the answers. I think the APPR has enough problems as it is, but you do raise a very valid point that should be addressed.

Ms. Annie Koutrakis: I'm just wondering, in the case of the federal entities, would this not be a case of fining organizations that are already funded entirely by taxpayers? The government effectively would be fining and collecting monies from itself. Does that make sense?

Dr. Gábor Lukács: I'm not suggesting fining those organizations. I'm saying that if these organizations cause damage to airlines, then, like any other player, the airlines should be reimbursed for that.

However, if what we saw this past summer happens again, with the airlines knowing perfectly well that CATSA or CBSA didn't have adequate staffing and they still sold tickets, that's entirely within the airlines' control. Where the CBSA, CATSA and other governmental players can be held to account is where they don't inform the airlines in advance of problems that they may be having.

Mr. John Lawford: I'll just add briefly that the airlines and the airports don't seem to be talking, because when the baggage belt breaks down, the airline can't get the baggage to their customers, who leave, and then they are stuck with the problem. I know that there are disputes between how much rent is paid by the airlines to the airports, but I mean, really, get these folks in a room. They keep talking about shared responsibility. How about having some meetings?

The minister should be jumping on that and having another session like he had in the fall, but with these resiliency questions on the agenda.

Mr. Ian Jack: That's why one of our recommendations is an explicit power for the minister to direct in extraordinary circumstances. Again, it's to have that stick in the background, so that when he or she convenes a meeting of the players, they know that it's more than just a chat and they're going to have to come up with a solution.

The Chair: Thank you very much, Ms. Koutrakis.

On behalf of our committee, I would like to thank all our witnesses for joining us today and for their testimony.

I'd also like to thank all members who have given their time, not only for today's special meeting but also for the special meeting we held on January 12 in order to ask questions on behalf of Canadians.

With that, this meeting is adjourned.

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