



NATIONAL AIRLINES COUNCIL OF CANADA
CONSEIL NATIONAL DES LIGNES AÉRIENNES DU CANADA

NACC Presentation on Bill C-310
House of Commons Committee on Transport, Infrastructure
and Communities

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Introduction – The National Airlines Council of Canada

- Thank you Honorable Members of the Committee for the Opportunity to appear today on Private Members Bill C-310 – which as you'll hear contains measures deeply troubling not only to air carriers but also to consumers and Canadian communities.
- I am here today on behalf of the National Airlines Council of Canada (NACC), which is an industry association comprised of Canada's 4 largest passenger airlines – Air Canada, WestJet, Air Transat and Jazz Air LP.
- Together, the member carriers of the NACC directly employ 34,000 Canadians and directly serve 59 Canadian communities.
- We operate on average 1,800 flights a day – or 657,000 annually.
- And we carry 126,027 passengers a day (roughly the entire population of Kelowna, BC) or 46,000,000 annually (about 1.36 times the current population of Canada).
- This massive undertaking occurs each day despite the best that Canada's climate can throw at us, and within the regulatory and security frameworks of the Government of Canada and the international jurisdictions we serve.
- Most importantly, it takes place safely.

Canada's Airlines Want to Find Solutions

- Inevitably, when dealing with that volume of passenger traffic, there are going to be instances where passenger inconvenience – either beyond the control of the airline or within the control of the airline – is bound to occur.
- Airlines work hard to limit such instances, but like any other customer service industry, we are not perfect. Mistakes happen, and when they do, passengers should have rights, and they should have effective recourse if those rights are not respected.
- NACC's member airlines understand this – and have adopted into our tariffs the provisions of the Flight Rights Program announced last year by Transport Canada.
- Let it be understood clearly by members of this Committee – this is a significant step. It is a formal, legal change to the contract between ourselves as carriers and the customers we serve.

- If we fail to live up to those conditions, the Canadian Transportation Agency has the power to investigate the circumstances of our failure and – I must emphasize this – determine individually and according to circumstance the appropriate restitution (or compensation) due the aggrieved passenger.
- Furthermore, I would like to re-state a commitment we made when Mr. Byrne’s original motion on Passenger Rights was passed by the House of Commons.
- NACC urges Parliamentarians, through this Committee, to undertake a serious and detailed study of the public policy issues around passenger service in Canada – including an evaluation of airlines, Canada’s airports, CATSA, NAV Canada, CBSA and the regulatory regimes which affect international destinations served directly from Canada – most prominently those in Europe and the United States.
- As was the case at the time of the original motion, NACC member carriers are willing to come to the table in partnership with Parliamentarians to participate in this process.
- We want to find solutions. We want to move our passengers more efficiently. We welcome your interest and, were it in the context of a sincere effort to help our customers, we welcome your scrutiny.

Bill C-310 is about Penalties Not Passengers

- Which brings us to the reason we are here today – a discussion of Private Members Bill C-310.
- Unfortunately, Private Members Bill C-310 – although attractively titled – is not going to help passengers in Canada. C-310 is not about rights for passengers and it does not aspire to improving the travel experience or growing the travel options of Canadians.
- There is not one single provision contained in Bill C-310 which would in any way serve to actually reduce instances of passenger inconvenience if the legislation is adopted.
- Bill C-310’s only aspiration is to penalize airlines, in numerous instances for situations clearly far beyond the control of even the most conscientious carrier.
- And let there be no mistake, the penalties proposed in C-310 are severe. If imposed, C-310 will hurt airlines operating in Canada, profoundly affect the cost structure of our businesses, force dramatic price increases on Canadian consumers and lead directly to service reductions not only in Canada’s busiest airports, but in rural communities across Canada – specifically airport communities in the Atlantic, Northern Canada and in rural Northern Quebec – that are dependent on reliable scheduled air service to provide a business and social link to the rest of the country.

Bill C-310's Legal Quagmire

- Firstly, of concern to both passengers and consumers, easily understood and consistent compliant adjudications are not going to be the result of C-310's passage.
- Because Bill C-310 employs Canada's court system as a dispute resolution mechanism, and because imprecise terms like "undue risk", "all reasonable measures", "extraordinary circumstances" and "significant impact" are sprinkled through virtually every major provision of the Bill – no one, be they airlines, passengers or the Parliamentarian who drafted this legislation can determine with any certainty at this point how C-310 will actually be applied – and no one will know until a series of protracted and costly legal battles take place.
- So, while "If Airlines don't do anything wrong they won't pay" is certainly catchy – there is absolutely no basis on which to make that statement until a court of law in a yet to be determined jurisdiction makes a ruling on vague terminology.
- Neither airlines nor passengers will have any certainty what "significant impact" constitutes until a judge defines it. Neither the pilot of a Boeing 777 nor the person sitting in seat 23A will be able to actually know what an "undue risk" would be until lawyers are done battling it out – and no one will know for quite some time with any degree of certainty whether compensation was required or not.
- Undoubtedly you will hear/have heard that this language is based on European Legislation – an assertion which is deeply troubling – because in Europe the legal wrangling over these exact terms continues even today.
- The courts of EU member states are so confused by the wording and intent of the regulations on which C-310 is based that they have – after numerous protracted legal proceedings – referred questions to the Court of Justice of the European Communities. Essentially, they've thrown up their hands.
- Surely these are not problems Canada is seeking to replicate in the creation of our own framework for passenger rights.

Bill C-310 Fails to Recognize that Air Travel is a Complex, Multi-Stakeholder Business

- As was stated earlier – air carriers are, for whatever reason, the exclusive focus of this bill. Federal agencies or entities such as NAV Canada, CATSA, CBSA, and Canada's Airport Authorities are not contemplated and there is no consideration given to any foreign entity or legal framework, despite the complex and vital roles those organizations play in every trip Canadian passengers make.

- By ignoring these obvious connections, C-310 fails in any meaningful way to address the problems it identifies – instead leaving it to airlines to deal with circumstances beyond their control, or face excessive penalty.
- But more troubling than not acknowledging other stakeholders in aviation service delivery – Bill C-310 doesn't provide any allowance in key clauses for the most obvious and frequent culprit in airline disruptions – Bill C-310 makes airlines responsible for the weather.
- For instance, in Clause 5, in case of delay airlines must provide a total of two phone calls / emails / faxes or telex for each passenger, as well as meals and hotel accommodation if required. If the airline fails to comply with any of these obligations, it must pay each affected passenger \$500. If a flight is delayed more than 5 hours the airline must also offer to reimburse all airfares.
- Once again, while the phrase “If Airlines don't do anything wrong they won't pay” is admittedly charming, it's not true – Clause 5 offers no exemption – even in the form of loose “extraordinary circumstances” language I mentioned a moment ago – from obligations if the delay is caused by weather event or a safety concern. Clearly, an airline is not doing anything wrong if snowfall in Gander or Trois-Rivières is preventing the on-time departure of an aircraft. But the airline is liable.

Bill C-310 Positions Convenience above Safety

- Driving up the cost of travel, reducing the number of flights, discouraging service to particular communities through onerous penalties, creating total uncertainty around enforcement or application of the law, necessitating needless and expensive court proceeding to one day achieve any degree of clarity, focusing solely on airlines to the exclusion of every other pertinent factor in the operation of an aircraft, and holding airlines financially accountable for circumstances obviously beyond their control, these are all serious problems with Bill C-310.
- But these are not Bill C-310's most egregious flaw. C-310, in numerous instances, discourages and will outright penalize airlines for ensuring the safe operation of a plane – imposing substantial financial liability on carriers when flights are cancelled or delayed for safety reasons.
- As such this Committee is faced with the choice deciding if safety is the primary concern of aviation public policy. If that is the case, this Committee should not pass legislation that, by definition, imposes financial penalties on an air carrier when the airline is ensuring the safety of its passengers and crew.
- It is counter intuitive to the promotion of aviation safety for the Government of Canada to implement a system of penalties to be imposed on airlines precisely because they will not operate in instances when public safety could be jeopardized. Throughout the entirety of Canada's regulatory

framework governing aviation, safety is the top priority. In adopting this legislation, Members would in effect undo that principle. Passenger convenience is of greater concern than public safety in the drafting of Private Members Bill C-310. That cannot be acceptable.

Conclusion – Need for a Cooperative and Comprehensive Approach to Passenger Rights in Canada

- These are our top-line concerns with Bill C-310 – but by no means is my presentation here today comprehensive in terms of the significant problems legislation like C-310 would create for commercial aviation in Canada and the significant expense and inconvenience it would create for the public at large. I could quite literally go on for hours – but I’m sure members have questions.
- Before I close, I would like to address the assertion that Bill C-310 can somehow be quickly amended to deal with its deficiencies. This is not practical.
- The Bill’s reliance on punitive measures, its adoption of open-ended definitions, and its complete exclusion of all other aspects of the aviation supply chain, mean it is fundamentally flawed.
- C-310 requires complete re-drafting of almost every clause contained in the legislation as proposed. Undertaking the work to do so would likely require the House of Commons Committee undertake a comprehensive review of the entirety of the aviation service and value chain to ensure Committee members can make the necessary amendments without unduly negatively affecting the state of Canadian aviation.
- This cannot likely be accomplished within the context of a Private Members Legislation which must be returned to the House of Commons in 60 to 90 sitting days. Each of the NACC member airlines would need to be called individually before this committee, to explain to Members the significant consequence C-310 would have on their operations. Additionally, I am aware of a long line of aviation operators and stakeholders who not only oppose generally the approach C-310 takes, but would lend willingly their insight into specific problems C-310 creates.
- Moreover, given the limitations on the scope of amendments that can be made to legislation after passing second reading, it is likely impossible – even if the process above were somehow thoroughly undertaken in a manner satisfactory to all stakeholders, that the legislation could be amended sufficiently to function as an effective platform through which to address the issue of air passenger service.
- In summary, Bill C-310 does nothing to improve the passenger experience and has the potential for wreaking havoc on industry costs and the viability of air services. It needs to be withdrawn and replaced with a new initiative which the NACC would wholly support which would be based on a



balanced, reasoned approach that considers the concerns expressed today and the totality of Canada's aviation system.

- We hope that this cooperative approach is the path this Committee chooses to follow, ultimately to the benefit of all Canadians. Bill C-310, unfortunately, benefits no one.
- Thank you for your time.