Enhanced Accountability, Shared
Responsibility and Service Standards in
Canada's Air Travel Ecosystem

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Prepared By: YYZlaw – William F. Clark, Ehsan T. Monfared and Shaul
Gordon

Prepared For: National Airlines Council of Canada c/o Mr. Jeff Morrison,
President, and CEO

NACC
National Airlines
Council of Canada

CNLA
Conseil national des lignes
aériennes du Canada

600 – 116 Lisgar Street
Ottawa, Ontario
Canada, K2P 0C2

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Introduction

Restart of Travel Post-Pandemic

In Canada, demand for air travel following the COVID-19 pandemic was unusually steep when compared to elsewhere in the world. COVID-19-related travel restrictions were maintained longer in Canada than in many other countries, where travel resumed more progressively.[1] Indeed, a meaningful easing of travel restrictions by the Canadian Government only occurred in the second quarter of 2022, over two years after the aviation industry came to an almost complete halt.[2] During that time, service providers in the air travel industry, financed through 'user-pays' systems, had to significantly reduce their staffing levels. The concentration of air travel demand placed Canadian air carriers and other travel stakeholders in Canada's air travel ecosystem, under significant strain.

Summer 2022 Disruptions

Air travel is a complex, interdependent ecosystem involving chains of interactive service providers and governmental agencies. When links are strained or broken, disruptions occur. This was highlighted by the travel disruptions at Canadian airports in June of 2022. Staffing shortages throughout the travel-chain, lack of experienced staff, and underinvestment during the pandemic in key airport infrastructure components, caused rampant delays that reverberated throughout the ecosystem, and which culminated in the June 2022 disruptions. These issues were caused by the strict application of complex health related entry requirements combined with the lack of qualified and experienced personnel to replace those employees who were laid off or retired during the pandemic, in a context of pent-up demand for travel following the easing of travel restrictions in Canada.

As delays accumulated one flight after the other, aircraft and crew were put out of position for their next planned flight. Several factors beyond airlines' control contributed significantly to these delays, such as aircraft hold on the tarmac, long queues at security, and reduced aircraft movement due to air control staffing constraints. As a result, passengers were delayed, misconnected, and had to be re-accommodated on already full flights. Baggage too had to be reconnected with their owners and reintroduced into the system.

Appendix A Figure 1 illustrates some of the disruptions which rippled through flight networks as a result of the knock-on effects of delays outside the air carriers' control.

Causes of Summer 2022 Flight Disruptions

According to the Air Transport Action Group, there were 2.3 million fewer jobs in the global aviation industry by September 2021 when compared with pre-Covid levels. These figures include a 29% decrease in contracted employees at airports, such as ground handlers and

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[1] IATA, "Canadian Government Urgently Needs to Remove COVID-19 Travel Restrictions," July 15, 2022.

[2] From April 1, 2022, fully vaccinated travellers were no longer required to provide a negative pre-entry COVID-19 test result; randomized testing for fully vaccinated travellers was temporarily suspended from June 11, 2022 (since resumed July 10, 2022); and vaccination requirements were lifted on June 20, 2022.

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security screening, where 1.7 million jobs were lost.[3] This situation set the stage for the Summer 2022 disruptions.

Canadian Border Services Agency ("CBSA")

Average processing times for customs clearance were significantly increased for passengers arriving from international destinations, with passengers in some instances having to wait for hours to cross customs.[4] Issues were reportedly due to a shortage of trained and skilled CBSA agents, and glitches with the ArriveCAN application, the tool that was meant to speed up the processing time that had been lengthened by complex new entry requirements related to the pandemic. It is estimated that the verification of vaccine certificates and assistance to complete the ArriveCAN application increased passenger screening times to between 4 and 5 minutes, as compared to the 30-60 second screening prior to the pandemic.[5] Without the additional staff needed to absorb this lengthened processing time, severe delays at customs led to congestion in the arrival hall. Passenger volumes were so high at arrivals that concerns of fire hazards were expressed. This led to airports prohibiting passenger disembarkation, which caused tarmac delays, and delayed passengers and baggage for their connecting flights, as well as crew for their subsequent operations.

The impact on carrier operations was significant. At Toronto Pearson International Airport ("**YYZ**"), for example, the situation persisted for several weeks and attracted media attention.[6] Between late-May and end-June 2022, dozens of flights were delayed at arrival in YYZ each day, as shown in Appendix A Figure 2. According to figures provided by the Greater Toronto Airports Authority, approximately 490,810 travellers, or about half of all international arrivals, faced delays in May 2022, as they were held inside planes on the tarmac or faced staggered off-loading to ease pressure on overflowing customs areas.[7]

Canadian Air Transport Security Authority (CATSA)

Long security cues materialized at airports across Canada due to a combination of staffing shortages – particularly at peak times – inexperienced new recruits, and weekend sick outs. There have been reports of CATSA experiencing a large amount of attrition.[8] Passengers and crew were delayed in such high volumes that flights had to be held either to allow

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[3] Airports race to fill thousands of jobs cut during pandemic (June 7, 2022), https://www.ft.com/content/352bd6fd-2178-40d2-b7ee-0c54e0141326

[4] https://www.ctvnews.ca/canada/airport-delays-couple-waited-for-hours-at-pearson-after-returning-from-honeymoon-1.5900274

[5] Tom Yun & Heather Wright, "How delays at Pearson Airport got so bad: Aviation experts weigh in," CTV News, June 9, 2022.

[6] It was reported that the situation was due "to a reduction in throughput capacity in processing arriving international passengers, as a result of government-mandated processes and agency staffing." Brian Lilley, ", Toronto Sun, July 3, 2022 "Pearson so bad that backups a National Fire Cide Violation," Toronto Sun, July 3, 2022

[7] Christopher Reynolds, "Nearly half a million international flight passengers held up at Pearson in May," CBC News, June 10, 2022.

[8] Christopher Reynolds, "Canadian airport security screeners to protest in streetwear for better conditions," Global News, June 20, 2022.

passengers or crew to arrive, or to remove the baggage of missing passengers. These delays caused multiple knock-on effects, which accumulated and exasperated operations.

The data that was communicated to the public through the dashboard on processing times was not representative of the actual situation at airports in the Summer of 2022. CATSA wait times are calculated once the passenger enters the CATSA security entrance, which can be down the line from where the queue begins.[9] There were multiple reports last summer of passengers waiting outside the entrance to security, even outside the airport at times.[10]

NAV CANADA

 NAV CANADA took significant measures to drive their operating expenses down as a result of the pandemic, including through a significant reduction in workforce and trainees.[11] Many of these employees were highly skilled and difficult to replace, which caused NAV CANADA to struggle with a surge in training needed for new recruits.[12]

Since May 2022, NAV CANADA restricted flight operations through ground delay programs ("**GDPs**") – allowing a lower number of flights to operate than originally planned – at YYZ, Vancouver International Airport ("**YVR**") and Montreal-Trudeau International Airport ("**YUL**"). At YYZ, for example, NAV CANADA imposed 16 days of GDPs in May 2022. In June 2022, 17 days experienced GDPs. Several enroute restrictions were also implemented during these months, which had the effect of restricting carrier operations in a meaningful way and affected on-time performance, be it through inefficient routes and increased fuel burn, increased spacing between aircraft, or altitude and route restrictions.

This situation significantly contributed to rampant delays rippling through air carrier networks, causing flight disruptions due to delayed inbound aircraft and crew. The table in Appendix 1 Figure provides a list of GDPs in YYZ, YUL, and YVR imposed by NAV CANADA, from mid-May through to the end of June 2022.

Air Transportation Infrastructure Deficit

Canadian airports saw a significant increase in passenger volume before the pandemic, which increased pressure on the existing airport infrastructure. In Canada, most air service infrastructure providers, including major airports and air navigation service providers, rely primarily on the 'user pays' business model. This means that the operating revenue those

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[9] "Wait times for queues at security screening are calculated through the scanning of boarding passes when you enter the beginning of the queue, and once again, before you begin your individual screening process." https://www.catsa-acsta.gc.ca/en/airport/montreal-trudeau-international-airport

[10] On Friday morning, cars were backed up around 500 metres (0.5 km) to get to the airport's Terminal 1 departures area, with hundreds of passengers inside waiting to reach the security checkpoints. https://www.reuters.com/business/aerospace-defense/canadas-busiest-airport-battles-delays-ahead-summer-travel-2022-05-20/ See also https://globalnews.ca/news/9004782/edmonton-international-airport-gardaworld-security-screening-reject-offer

[11] https://www.navcanada.ca/en/news/news-releases/nav-canadaannounces-additional-workforce-change.aspx

[12] Mark Brooks, "CANADA'S BIGGEST POST PANDEMIC PROBLEM – RESTARTING AVIATION," Friends of Pickering Airport, April 12, 2021.

travel-chain actors generate derive mainly from volumes of passengers flown and entities that use the travel infrastructure.

The impact of Covid-19 on airport revenue and investment plans was unprecedented, and the air service infrastructure in Canada was hit especially hard: its self-funded model was not designed to absorb the sudden financial shock arising from the drastic drop in passenger volume.

The pandemic exposed the flaw of the user-pays model. For instance, the inability of airports to invest and maintain baggage handling systems led to mechanical malfunctions and outages that significantly impacted flight operations, and generated baggage delays and complaints against air carriers, for reasons that were beyond their control.[13] In August 2022, CEOs from three of the largest airports in Canada highlighted the infrastructure deficit in their facilities and the need for Government support.

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[13] https://www.cbc.ca/news/business/missing-baggage-1.6503736

Summer Disruptions Reveal Structural and Regulatory Gaps

The 2022 summer disruptions exposed structural and regulatory gaps relating to i) the operations of other travel-chain stakeholders in Canada's air travel ecosystem that play an integral role in facilitating air travel in Canada ("**travel-chain stakeholders**"), and ii) the current air passenger protection regime in Canada.

The *Air Passenger Protection Regulations* (the "**APPR**")*,* which came into force in multiple stages since 2019, were hailed as "world-leading" by the former Minister of Transport, the Honourable Marc Garneau, with the intent to give "air travellers the rights and treatment they pay for and deserve."[14] The APPR established an air carrier's minimum obligations towards its passengers, including standards of treatment and compensation levels in certain circumstances. In particular, the APPR included obligations in relation to flight delays, cancellations, tarmac delays, denied boarding, and lost or damaged baggage. The level of air carriers' obligations towards their passengers for flight delays, cancellations and denied boarding depends on the degree of control the air carriers have over the situation. However, the APPR were only truly tested during the first fully operational year post-pandemic, revealing a number of failures which demonstrate that only holding air carriers responsible cannot achieve the intended results.

Passengers that experienced disruptions over the 2022 summer and whose claims were denied by air carriers – given that the disruptions were caused by other travel-chain stakeholders and were beyond air carriers' control – turned to the Canadian Transportation Agency (the "**Agency**") for recourse, contributing to the growing backlog of complaints.

Appendix 1 Figure 4 demonstrates the surge in passenger complaints to the Agency in Q3 and Q4 2022.

The Agency's backlog currently sits at over 42,000 cases, more than tripling the number of cases that have been submitted over the past year.[15] A review of public decisions issued by the Agency since 2022 demonstrates that the average time between the initial passenger complaint and the time a final decision is rendered, is approximately 24 months.

The *Canada Transportation Act*[16] (the "**Act**") mandates the Agency to issue decisions as expeditiously as possible, but no later than 120 days after the originating documents are received.[17] Lengthy delays in adjudicating complaints frustrates the purpose of the Agency's complaint system, as a delegated authority of the legislature, to deliver decisions on

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[14] Transport Canada, "Canadians to benefit from new Air Passenger Protection Regulations," May 24, 2019.

[15] Michael Pihach "Air passenger complaints triple in one year, NDP calls for automatic compensation," PAX News, March 3, 2023.

[16] S.C. 1996, c. 10

[17] See s. 29(1) of the Canada Transportation Act

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transportation matters expeditiously and in a simplified manner as opposed to the traditional court system.[18]

Surveys show a rising level of dissatisfaction with the Agency's dispute resolution process. Results from a 2019 survey show that only 25% of passengers were either dissatisfied or very dissatisfied with the time it took for the Agency to process their complaint. That number rose to 71% in the 2022 survey.[19]

As a result, many air travelers have foregone the Agency's complaint process in favour of small claims court, creating a further backlog in the general Canadian justice system.[20]

Air carriers resolve the vast majority of claims and complaints made to them and pay compensation when owed under APPR. Air carriers also win the vast majority of complaints that are brought to adjudication before courts. Passengers are frustrated with the lack of compensation when air carriers are not responsible, because other service providers in the air travel-chain are not held liable for the delivery of their services.

The interdependence of aviation infrastructure systems must be taken into account for any passenger-compensation regime to meet its objective of compensating Canadians when disruptions occur, and of stimulating performance with service standards by the responsible organization. Only a model of enhanced accountability and shared responsibility amongst all actors in the travel-chain can improve the current system, in addition to alternative dispute resolution mechanisms.

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[18] Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 29. https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18078/index.do

[19] Darren Major, "Surveys show Canadians increasingly frustrated by lengthy air passenger complaint process," CBC News, March 11, 2023.

[20] Jill Macyshon and Tom Yun, "Backlog of airline complaints balloons by 6,395 since December travel chaos: Canadian Transportation Agency," CTV News, January 31, 2023; Darren Major, "Fed up with federal agency delays, air passengers turn to courts for compensation instead," CBC News, December 29, 2022.

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Mandate

The National Airlines Council of Canada ("NACC")[21] engaged YYZlaw[22] to conduct an expert review of the current air passenger protection regime in Canada and consider the steps that are required to implement a model of enhanced accountability and shared responsibility amongst all travel-chain actors, with the goal of improving the air passenger experience.

The focus of this report is on improving the experience and service delivery for air passengers within the Canadian air travel system. While we reviewed external examples of passenger protections, enhanced accountability, shared responsibility and/or compensation from outside of Canada, none of the contents of this report shall be taken as providing legal advice or analysis as to any matters of law in any jurisdiction outside of Canada.[23]

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[21] The National Airlines Council of Canada is a trade association representing Canada's largest air carriers and advocating for policies that improve the air travel experience.

[22] YYZlaw is a Canadian law firm specializing in aviation law. The firm provides legal services to airlines, airports, and other aviation-related businesses. See more in Appendix A

[23] Please see Appendix B for the material reviewed in preparing this report.

Recommendations

Implementing a model of shared accountability for the provision of air travel services is not meant to be punitive, but rather affords a means to ensure that passengers are treated fairly and for other service providers to be incentivized to perform per clear standards.

Additionally, we agree with the Government of Canada that transparency is important to passengers, who should be provided with clear and accurate information as to why their journey has been impacted, which can only be done effectively by the entity responsible for the delay. Our recommendations are designed to address gaps in present legislation and regulations which are governed under the overall air passenger protection regime. NACC members do not want to skirt their responsibility toward passengers.

The following recommendations are proposed with a view of improving the passenger experience during their end-to-end interactions with Canada's air travel ecosystem.

Recommendation 1: Prescriptive regulations are needed to create a true shared accountability and responsibility model in Canada's air travel ecosystem.

The correct approach for implementing changes to move towards a model of enhanced accountability and shared responsibility is one that is based on prescriptive regulations. This recommendation is consistent with the approach taken under the APPR, vis-à-vis air carriers. Currently, a large pool of suppliers participating in all levels of the travel-chain categories of supply (air navigation services, airport services, airport security services, and customs clearing services) are missing from the passenger protection framework. A government-delegated self-regulation model would be impractical and likely to be ineffective. For the same reasons, voluntary codes of compliance are also unlikely to achieve the intended outcomes – otherwise, they would already have been implemented.

True ownership and responsibility for compliance with service standards can only be achieved through legal requirements.

Recommendation 2: Service standards and capacity regulations should be imposed upon travel-chain stakeholders under the Canada Transportation Act.

Clear service standards are essential for maintaining a consistent, dependable, and satisfactory experience for passengers, and to encourage travel-chain stakeholders to prioritize functionality and performance. Service standards should cover all key aspects of air travel, including air navigation services, security screening, customs processes and reliability of essential airport infrastructure elements, such as baggage systems.

Implementing consistent national standards will also improve resilience of the aviation ecosystem during unexpected weather conditions or other extraordinary circumstances, as each stakeholder will strive to perform to standards, and will know they can rely on other service providers in the ecosystem to perform as expected.

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For maximum effectiveness, these service standards should be applied at the most practical business unit level, such as individual terminals rather than entire airports.

Recommendation 3: All stakeholders should be required to communicate the reasons behind their services disruptions in real time.

One key difference between the APPR and other passenger rights regimes in the world, including Regulation (EC) No 261/2004 ("**EU261**"), is that s. 13 of the APPR mandates air carriers to communicate the reason for the flight disruption. However, even in Canada, no service provider in the air transport industry other than carriers has similar real-time communication requirements.

While in Summer 2022, most passengers were disrupted due to events outside air carriers' control following the breakdown in the aviation ecosystem, carriers often do not have complete and accurate information in real time on the reasons for disruptions, particularly when disruptions result from the knock-on effect of other disruptions in the ecosystem.[24] Carriers cannot be expected to gather accurate and complete information and the data behind it, without input from other stakeholders.

The first recommendation provided by the *Standing Committee on Transport, Infrastructure and Communities to strengthen air passenger rights in Canada* is to ensure that airlines communicate service problems (ex. flight delays, flight cancellations) in a detailed, timely and more transparent manner.[25] This can only be achieved by extending the requirement to disclose service disruptions to other service providers in the travel-chain. This should be readily achievable once performance standards are established, per our Recommendation 2 above. Once such standards are set, performance should be measured against them, and these metrics could be published in real time.

Service disruption information sharing within the travel-chain will increase transparency for Canadians, as well as support the assessment of root causes for disruption and allow the Agency to resolve air travel complaints more efficiently. While CATSA does publish certain wait times, those are not calculated from where the wait actually begins in those situations when queues flow outside the entrance to security checkpoints.[26] CBSA and NAV CANADA, to our knowledge, do not publish their performance at airports.

This issue has become increasingly critical in light of the proposed legislation which could reverse the onus of proof onto carriers to disprove whether a flight disruption was controllable, which necessitates a more stringent evidentiary record to be produced. The only available recourse at the moment for air carriers to obtain the necessary information from third parties is by issuing a subpoena, which further complicates proceedings and is wholly disproportionate to the value of compensation for which passengers can claim under the APPR. Carriers will be able to provide information to their customers and air transportation

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[24] The reason for which a navigation provider imposes a GDP for non-weather-related issues, or why Canadian customs is backed up to the extent that passengers are prohibited from disembarking, is often unavailable to carriers in real time.

[25] Canada. Parliament. Report of the Standing Committee on Transport, Infrastructure and Communities, 44th Parl., 1st sess., (2023)

[26] Supra note 9.

partners in a real time manner if they have the full picture from the outset. Passengers should be entitled to understand what the cause of their disruption may have been, both in real time, and upon further analysis, should they wish to pursue a claim for compensation.

Recommendation 4: Passengers should be entitled to compensation where they are delayed due to the failure of a travel-chain stakeholders to comply with the applicable service standards.

Passengers should be compensated when other service providers in the aviation ecosystem do not meet performance metrics under applicable service standards, similarly to carriers who remain liable for flight disruptions caused by controllable events. For example, the Amsterdam Airport Schiphol, in the Netherlands, introduced a temporary scheme through which passengers who missed their flight between April 23 and August 11, 2022, due to exceptionally long waiting times at security control, could file a compensation request directly to the airport for any reasonable costs they incurred.

Compensation for disruptions outside the carriers' control could be awarded from a pool that is funded by travel-chain actors (other than airlines, given the existing APPR), based on their adherence or lack-of, to established service standards. The pool could be managed by the Agency, given its existing role and jurisdiction in the Canadian transportation justice system.

Recommendation 5: The Agency should be granted clear powers to conduct compliance audits of travel-chain actors' adherence to service standards.

The adherence of all travel-chain actors with their specified service standards falls within the Agency's general powers to direct inquiries. The *Canada Transportation Act* should be revised to provide clear jurisdiction for inquiries by the Agency in the event a travel-chain actor's operations fail to adhere to established standards which result in delays or losses for air travellers and air carriers.[27]

This model provides a transparent, independent assessment of whether performance against standards have been measured and reported as intended in the applicable regulations.

Recommendation 6: Data collection requirements under the Transportation Information Regulations should be expanded to require performance data from those involved in the air transportation ecosystem.

Current data collection laws and regulations focus on air carriers, but they do not consider how delays from other travel-chain stakeholders can affect the entire system.

Furthermore, the complex Canadian air travel ecosystem makes it difficult to find the root causes of disruptions. To address this, a systematic data-based approach is needed, starting with collecting and reporting data from all entities who play a role. In addition to setting

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[27] Section 37 of the Canada Transportation Act grants the Canadian Transportation Agency the general power to inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done that is administered in whole or in part by the Canadian Transportation Agency.

service standards and posting real-time performance information against those standards, as suggested in Recommendations 2 and 3, broader data collection and regular reporting from all travel-chain stakeholders is a necessary next step to creating a baseline of enhanced accountability and shared responsibility.

Public reporting can provide Canadians a clearer idea of the state of Canada's air travel ecosystem prior to their journeys and understand what to expect. Governments will also be able to more efficiently allocate resources to improve the functioning of Canada's air travel system, once metrics become available for analysis and identification of systemic issues.

We recommend that the *Transportation Information Regulations* be revised to include all air services undertakings, their wait times, and performance in respect of expected service standards, in a manner that provides useful insight (e.g., per time of day, per airport, per terminal, with root cause when standards are not met, etc.).

This information has become increasingly critical in light of the proposed legislation which could reverse the onus of proof onto carriers to disprove whether a flight disruption was controllable, which necessitates a more stringent evidentiary record to be produced.

Recommendation 7: An expedited mechanism for adjudication should be implemented.

While the Government of Canada has suggested that through data sharing and service standards carriers can hold airports to account through commercial contracts, better options could be contemplated.

For more than a century, Canadian railways have been subject to federal regulations imposing service standards. If a shipper is dissatisfied with the level of service they receive, they can file a complaint with the Agency. Upon receiving the complaint, the Agency will initiate an investigation, and based on its findings, decide if the railway fulfilled its service obligation. The establishment of service standards and the requirement for "commercially fair and reasonable" conduct are enshrined in the *Canada Transportation Act*.

Expedited adjudication mechanisms between air carriers and travel-chain stakeholders exist outside of Canada. In the United Kingdom, the Civil Aviation Authority introduced in 2008 a Service Quality Rebate Scheme, implemented at Heathrow and Gatwick airports. The scheme was introduced to identify the service standards air carriers and passengers could expect from these airports in return for the airport charges they paid, and to provide airports with a financial incentive to meet a set standard of service quality. Where there is a failure to meet such standards, the airport must repay a proportion of the charges levied, monthly, back to the air carriers.

Given the proposed amendments to the Agency that would require carriers to pay fees to the Agency for their handling of complaints, carriers should be free to pay another dispute provider for their services, as an alternative for Canadians to bring their complaint under the APPR through an expedited process. Such a process has proven successful in Europe for complaints made pursuant to EC261/2004 through the implementation by EU Member States

of the directive on alternative dispute resolution[28], as dispute resolution providers have developed expertise in applying and interpreting the regulatory framework. Competition in the market for the dispute resolution business has incentivized efficiencies and innovation in this area, eliminating backlog and allowing for better proportionality of processing costs with the value of claims.

Conclusion

In the aftermath of the COVID-19 pandemic, the Canadian air travel industry faced a steep demand curve and significant strain on its complex, interdependent ecosystem.

However, learning from the lessons of the pandemic means closing the structural and regulatory gaps that have now become apparent. All stakeholders have an important role to play in the air travel system and a cohesive interplay of all stakeholders is necessarily rooted in comprehensive and enforceable service standards.

The increasing backlog of complaints before the Agency as a result of last summer's travel disruptions, highlights the need for improved accountability and shared responsibility among all actors in the travel-chain. The expenditure of public resources on addressing these complaints should be redirected towards implementing a more comprehensive and effective model that ensures a better travel experience for air passengers.

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[28] See EC Directive on alternative dispute resolution for consumer disputes, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0011

Appendix A – Graphs

Figure 1 – Scenario of Knock-On Effects on Aviation Ecosystem
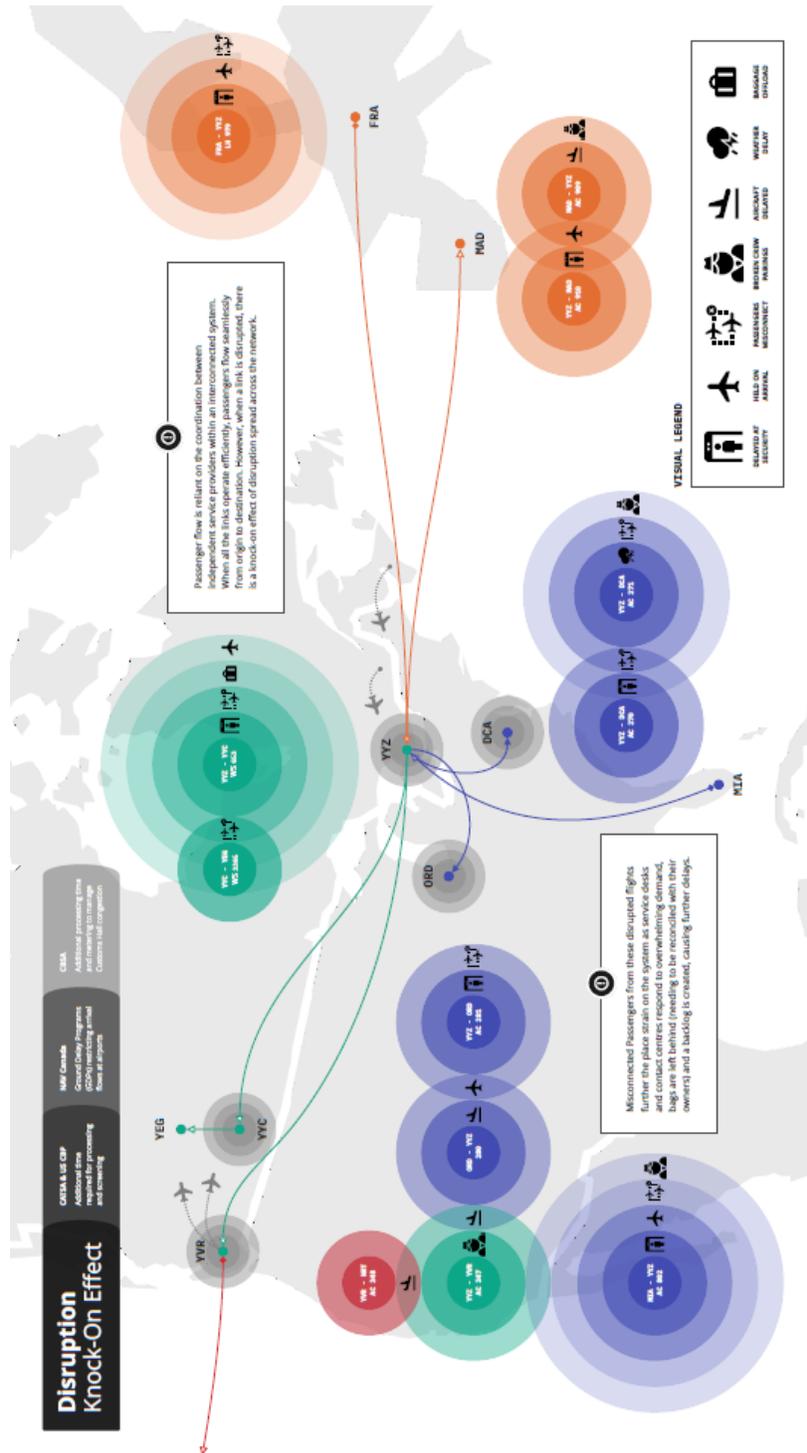
Figure 2 – Metering in YYZ in end May-mid June 2022

Date	Max Hold Time
15-May	87 min
16-May	24 min
17-May	30 min
18-May	24 min
19-May	78 min
20-May	62 min
21-May	52 min
22-May	24 min
23-May	93 min
24-May	45 min
25-May	n/a
26-May	n/a
27-May	n/a
28-May	n/a
29-May	45 min
30-May	45 min
31-May	49 min
1-June	14 min
2-June	52 min
3-June	56 min
4-June	n/a
5-June	63 min
6-June	79 min

7-June	16 min
8-June	27 min
9-June	42 min
10-June	31 min
11-June	n/a
12-June	31 min
13-June	59 min
14-June	5 min
15-June	3 min
16-June	48 min
17-June	29 min
18-June	23 min
19-June	11 min

Figure 3 – NAV CANADA GDPs - YUL, YYZ, YVR June 2022

Airport	Date	GDP Time	Longest Delay Captured
YUL	23-May	2200-0130	Over 30 min
YUL	25-May	2030-2259	Over 22 min
YUL	27-May	1830-2259	97 min
YUL	4-Jun	2000-2359	37 min
YUL	18-Jun	2015-2359	188 min
YUL	19-Jun	1900-0059	180 min
YUL	20-Jun	2030-0159	137 min
YUL	21-Jun	1900-0129	139 min
YUL	25-Jun	2304-0030	n/a
YVR	12-Jun	1830-0359	86 min
YVR	14-Jun	2300-0359	95 min
YVR	16-Jun	1630-0059	187 min
YVR	24-Jun	2300-0359	86 min
YYZ	21-May	1600-0130	Over 30 min
YYZ	22-May	2200-0100	Over 30 min
YYZ	26-May	1900-0200	90 min
YYZ	28-May	1800-0359	180 min

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YYZ	29-May	1845-0350	173 min
YYZ	30-May	2030-0029	Over 10 min
YYZ	31-May	1830-0359	Over 80 min
YYZ	1-Jun	1830-0159	113 min
YYZ	3-Jun	2015-0200	153 min
YYZ	4-Jun	1900-0359	189 min
YYZ	5-Jun	1830-0159	188 min
YYZ	6-Jun	2000-0100	106 min
YYZ	7-Jun	1830-0029	109 min
YYZ	8-Jun	1945-0259	283 min
YYZ	9-Jun	1900-0259	212 min
YYZ	11-Jun	2045-0159	170 min
YYZ	12-Jun	2030-0259	211 min
YYZ	16-Jun	1900-0059	175 min
YYZ	17-Jun	1900-0129	127 min
YYZ	18-Jun	2000-0059	94 min
YYZ	19-Jun	1845-0229	334 min
YYZ	22-Jun	1900-0014	268 min
YYZ	26-Jun	2000-0229	290 min
YYZ	28-Jun	1830-0059	67 min

Figure 4 – Number of Agency Complaints per 100 Flights, by Air Carrier in 2022
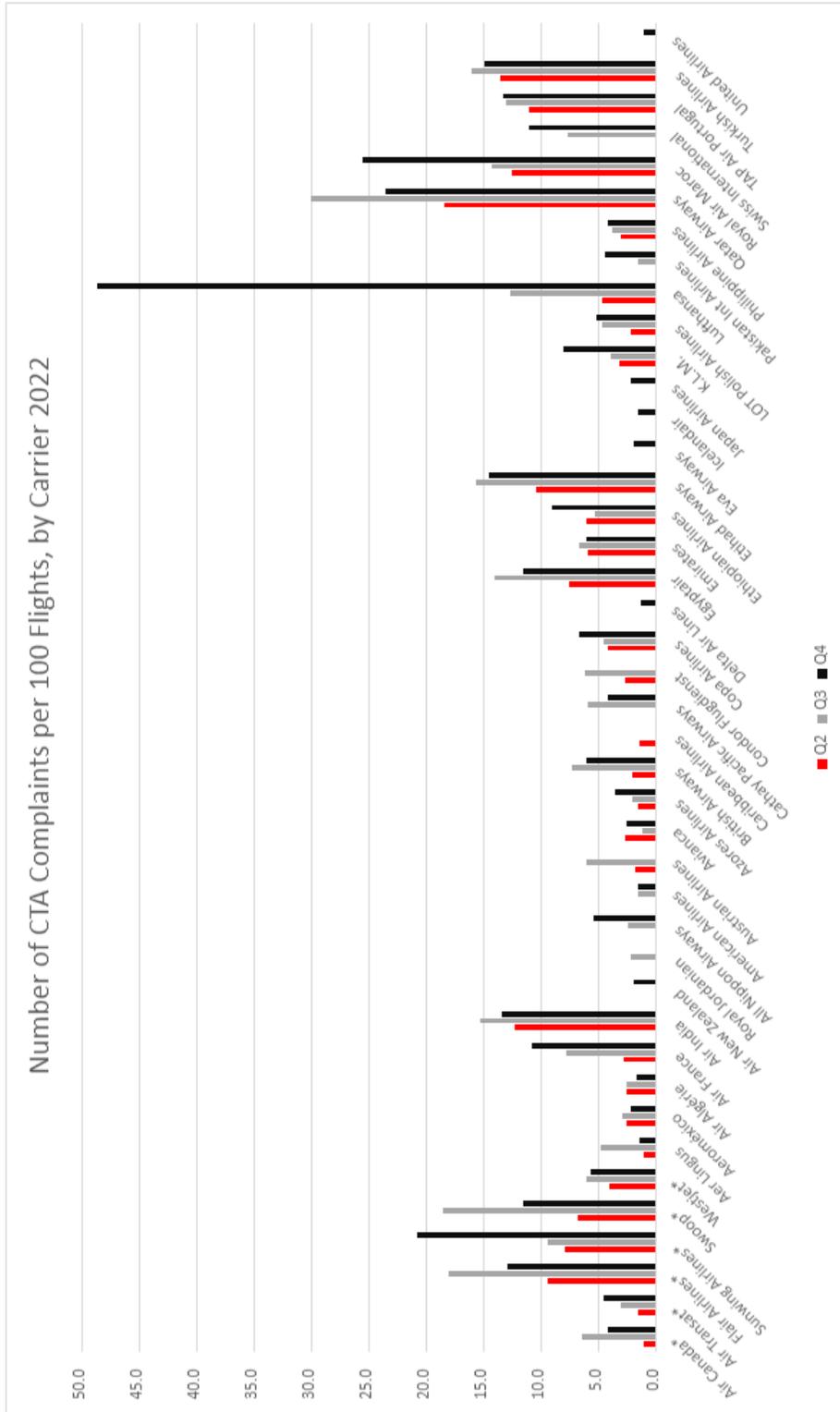
Appendix B – Materials Reviewed

Legislation

1. <u>Aeronautics Act</u>, RSC, 1985, c A-2

    a. <u>Canadian Aviation Security Regulations, 2012</u>, SOR/2011-318

2. <u>Canada Transportation Act</u>, SC 1996, c 10

    a. <u>Transportation Information Regulations</u>, SOR/96-334

    b. <u>*Air Passenger Protection Regulations*</u>, SOR/2019-150

3. <u>Airport Transfer (Miscellaneous Matters) Act</u>, SC 1992, c 5

4. <u>Transportation Modernization Act</u>, SC 2018, c 10

5. <u>Civil Air Navigation Services Commercialization Act</u>, SC 1996, c 20

Commentary and Guides

6. <u>Guidelines on air travel performance data collection for large and small air carriers</u>

Public Reports

7. *2021 Annual and Sustainability Report*, Vancouver Airport Authority

8. YVR 2021 Annual Report: Accountability Data, YVR

9. 2022 OIT Year in Review Fiscal Year 2022, U.S. Customs and Border Protection (2022).

10. 2020 U.S. Customs and Border Protection STRATEGY 2021-2026, U.S. Customs and Border Protection (2020).

11. 2022 Annual Report 2022, NAV CANADA (2022).

12. 2022 Pearson Strong GTAA ANNUAL REPORT 2021, GTAA (2022).

13. 2020 Study on the current level of protection of air passenger rights in the EU Final report, Study Contract, no. MOVE/B5/2018 - 541, European Commission (2020).

14. *Civil Air Navigation Services Commercialization Act*, **S.C. 1996**, c. 20.

15. 2021 CBP Trade and Travel Report, U.S. Customs and Border Protection.

16. <u>Canadian Transportation Agency Annual Report</u>, 2021–2022.

17. 2022 Canada Border Service Agency 2022-23 Departmental Plan, the Honourable Marco E. L. Mendicino, P.C., M.P. Minister of Public Safety (2022).

18. 2022 Annual Report, Canadian Air Transport Security Authority (2022).

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Other Materials

27. Canadian Air Transport Security Authority's Customer Service Commitment to Passengers

28. Canadian Air Transport Security Authority's Screened Passenger Data

29. Toronto Pearson Airport Service Levels and Standards

Appendix C – Backgrounder
Travel-Chain Actors

Airport Authorities

In Canada, major airports are managed by airport authorities, which are non-profit organizations responsible for the day-to-day operations and development of the airports. The airport authorities are governed by boards of directors, which are appointed by the federal government, local government, and other stakeholder groups. The boards are responsible for ensuring that the airports operate safely, efficiently, and in the public interest.

The recent history of airport management in Canada dates back to the 1980s, when the federal government began to transfer ownership and control of airports to local airport authorities. Prior to this, most airports in Canada were owned and operated by the federal government through Transport Canada. In 1994, the National Airports Policy was introduced, which set out the framework for the transfer of airports to local authorities. Under the policy, the federal government transferred ownership and control of 26 airports to local authorities. Today, there are 26 airport authorities operating 28 airports across Canada, including major airports in cities such as Toronto, Vancouver, and Montreal.

The airport authorities are responsible for managing all aspects of airport operations, including the maintenance and development of airport infrastructure, baggage systems, gates, runway and tarmac maintenance, and the provision of fuel. Technical operations by airport authorities relating to safety and security matters are overseen by Transport Canada.

At present, there appears to be no clear legal mechanisms for oversight of airports as it relates to economic matters, such as service standards, equipment failures and outages, slot allocations, runway and airside maintenance, or the allocation and use of airport improvement fees or air carrier landing and facilities fees.

In April 2006, "An Act respecting airports, airport authorities and other airport operators and amending the Transportation Appeal Tribunal of Canada." (Bill C-20 (39th Parliament, 1st session)) was introduced. The main purpose of Bill C-20 was to establish a framework for the governance and operation of Canada's major airports. Airport authorities were given broad powers to manage their facilities, set fees and charges for airport services, and enter into contracts and agreements with other parties. The Bill did not contain any provisions about the service standards, equipment failures and outages, slot allocations, runway and airside maintenance, or the allocation and use of airport improvement fees or air carrier landing and facilities fees, nor did it aim to provide any clear jurisdiction on these economic matters.

This Bill died on the order paper, without the benefit of a second reading or any committee review, in the context of a minority parliament at the time and under the oversight of then-Minister of Transport, Hon. Lawrence Cannon.

Data Collection Obligations

We have not been able to identify any data collection obligations, nor any publicly available, real time performance data linked to travel disruptions, on airport authorities. The

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Transportation Information Regulations only set out reporting obligations on airport authorities, to the extent that the airport is not served by NAV CANADA.

Service Standards Obligations

Different airports have instituted operational, customer and third-party satisfaction standards. There are, however, no clear and nationally applicable service standards for airport operators generally in the delivery of their services.

Canadian Air Transport Security Authority

CATSA, the Canadian Air Transport Security Authority, is a Crown Corporation that was established in response to the terrorist attacks of September 11, 2001. Its responsibilities include screening individuals and luggage and administering identity cards at designated airports throughout Canada. CATSA replaced the responsibility of airport screening that was previously the responsibility of the air carriers under Transport Canada's direction. To fund the agency, the Canadian government introduced a user-pays system called the Air Travellers' Security Charge (ATSC), which requires air carriers to collect a fee from their customers at the time of purchase and remit it to the Canada Revenue Agency. Although the fee was intended to finance CATSA, between 2010 and 2016, it generated a significant amount of money for the government's general revenues. CATSA is funded through discretionary federal appropriations and is accountable to Parliament through the Minister of Transport.

CATSA's responsibilities include providing pre-board screening services at designated airports across Canada to ensure that air travel remains safe and secure. They screen passengers and their belongings, as well as airport workers and their vehicles, for prohibited items such as weapons and explosives. In addition to screening, CATSA also conducts various training programs for aviation industry personnel, develops security regulations and standards, and provides guidance and advice to stakeholders. CATSA works in collaboration with other federal government departments and agencies, air carriers, and airport operators to ensure civil aviation security.

CATSA is responsible to the Minister of Transport, and there are no economic levers or means of holding CATSA to account for resource allocation decisions it may make. This contrasts with the fact that CATSA's operations are paid for by ATSC fees collected for the purposes of delivering security service. Passengers and air carriers have no means to affect performance where CATSA may fail to deliver timely service on its obligations in the travel-chain.

The *Canadian Aviation Security Regulations, 2012* are a set of regulations established by Transport Canada that prescribe the security requirements for air transportation in Canada. The regulations outline the responsibilities of air carriers, airport operators, and other entities involved in the aviation industry, in relation to security screening, restricted items, access control, and other security-related measures. The regulations also provide guidance on the handling of security incidents and the reporting of security breaches. The objective of the regulations is to maintain and enhance aviation security in Canada, in compliance with international standards established by the International Civil Aviation Organization (ICAO).

In 2019, there were discussions about the possibility of privatizing CATSA, and the *Security Screening Services Commercialization Act* was passed to allow a private not-for-profit corporation to take over CATSA's screening duties. However, due to COVID-19, the privatization plans have been delayed, and there is no clear timeline for when discussions will

resume. The security screening process can impact the travel-chain by causing delays and inconvenience for passengers.

Data Collection Obligations

CATSA is subject to data reporting obligations under the *Transportation Information Regulations*. The information that must be provided to the Minister of Transport for each passenger screening checkpoint at an airport where boarding pass scanning technology is available, for each 15-minute period, on a monthly basis, includes:

    i.   The airport's International Air Transport Association (IATA) airport code;
    ii.   The start and end time of the 15-minute period;
    iii.   The average wait time for a passenger to reach the passenger screening checkpoint;
    iv.   The greatest number of lanes used to screen passengers; and
    v.   The number of passengers screened.

The collected performance data can shed some light on the causes and length of any delays arising at airport passenger screening checkpoints under the responsibility of CATSA. Information on the number of passengers screened, coupled with the number of lanes used to screen passengers and average wait times per passenger, is useful in establishing a baseline through which to hold CATSA accountable for any travel disruptions.

CATSA also publishes on its website the number of daily screened passengers across the 8 and 17 largest airports in Canada and updates it on a weekly basis. Below is an excerpt:

Date	Total Number of Passengers Screened									
	Eight Largest Airports (note 1)					Seventeen Largest Airports (note 2)				
	2023	2022	2021	2020	2019	2023	2022	2021	2020	2019
2023-01-01	147,357	82,278	36,788	167,771	163,408	165,797	91,703	40,567	188,075	182,370
2023-01-02	156,934	79,100	27,425	157,641	144,461	178,235	88,616	31,085	173,503	160,526
2023-01-03	143,741	72,224	20,049	139,711	135,122	162,399	80,036	22,261	155,980	150,842
2023-01-04	141,105	70,459	21,979	136,000	134,642	156,873	78,078	24,217	150,524	149,677

It is worth noting that wait times and passenger volumes are calculated by CATSA using the Boarding Pass Security System ("**BPSS**"): the scanning of boarding passes at different checkpoints during the screening process.

Service Standards

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While CATSA has made efforts to implement customer service commitments and wait time standards, the measures taken to date may not be sufficient to address all passengers' needs and expectations. The Customer Service Commitment to Passengers, which focuses on communication, assistance, and handling of belongings, may still leave room for improvement in terms of responsiveness and individualized attention.

Moreover, CATSA's Wait Time Service Level standard, targeting an average of 85% of passengers waiting 15 minutes or less for screening at Class 1 airports, might not be ambitious enough to minimize inconvenience and frustration for travelers. Although the 2021-2022 Annual Report shows that 91.6% of passengers waited 15 minutes or less, the current targets may not adequately account for future increases in passenger traffic or potential bottlenecks in the screening process.

Overall Passenger Satisfaction

CATSA also tracks the percentage of passengers surveyed who express satisfaction with their overall experience with the security screening at Class 1 airports. Satisfaction is calculated from results of completed passenger surveys, and is defined as answering 5, 6 or 7 on a 7-point scale survey questionnaire. The service standard is set at 85%. In 2021-2022, CATSA averaged an overall experience satisfaction of 89.4%.

Service Standards Observations

The current data collection methodology employed by CATSA appears to be restricted to the scanning of boarding cards at designated checkpoints. This limitation results in an incomplete representation of the passenger journey from the non-sterile to the sterile area. To enhance the accuracy of data collection, it is imperative to incorporate information from entry and exit points of security areas and the moment passengers join the queue. Such an approach would facilitate a comprehensive evaluation of systems, such as CATSA+, in terms of their efficacy in expediting passenger screening.

A thorough analysis of potential bottlenecks within the travel-chain necessitates visibility into the duration spent by passengers at each stage. The existing screening efficiency standard, which indicates that 85% of passengers are screened within 15 minutes on a yearly average, may not accurately depict the range of processing delays experienced during distinct time periods throughout the year. Evaluating service standards based on peak travel times could provide a more precise understanding of CATSA's performance during periods of high demand.

Increased granularity of data concerning components contributing to delays is essential for travel-chain stakeholders to optimize processes and allocate resources appropriately. Moreover, it is recommended to assess overall passenger satisfaction standards on a monthly or weekly basis, given that the current 85%+ satisfaction standard might not accurately represent customer sentiment during peak travel times or exceptional events leading to disruptions. Obtaining additional information from survey questionnaires and identifying reasons for dissatisfaction would prove advantageous.

It is also essential to account for situations when the BPSS is unavailable or non-operational, such as when queues surpass the entry point, in order to ensure that service standards accurately encompass all potential scenarios.

Canadian Border Services Agency

The Canada Border Services Agency (CBSA) is a federal law enforcement agency that is responsible for managing the nation's borders and enforcing border-related laws. It was established on December 12, 2003, through the Canada Border Services Agency Act, which consolidated the border-related functions of the Canada Customs and Revenue Agency, the Department of Citizenship and Immigration Canada, and the Canadian Food Inspection Agency.

The CBSA is headed by a President who is appointed by the Governor in Council, and it reports to the Minister of Public Safety and Emergency Preparedness. The Minister is responsible for overseeing the agency and ensuring that it operates in accordance with its mandate and the laws and regulations that govern its activities.

The CBSA's border management and security programs and services are funded through a combination of government appropriations. The agency receives funding from the federal government through annual appropriations, which are allocated to support its operations and activities. It is unclear if any of the ATSC charges are considered to be directed to the CBSA's function at airports. However, this user-pay approach would be inconsistent with the fact that the CBSA's function and services are available at non-airport ports of entry without user-specific fees or charges.

The CBSA engages in a range of activities that can impact the travel-chain. These activities include screening passengers and their belongings at border crossings, airports, and other ports of entry to ensure compliance with border-related laws and regulations. The agency also manages and enforces trade agreements, collects duties and taxes on imported goods, and monitors the movement of people and goods across Canada's borders.

Additionally, the CBSA works closely with other law enforcement and government agencies to detect and prevent criminal activities such as smuggling, human trafficking, and terrorism. This collaboration can lead to increased wait times at border crossings and airports as passengers and goods are screened and inspected for potential security risks.

Overall, the CBSA plays a critical role in ensuring the safety and security of Canada's borders and the traveling public. Its activities and responsibilities are governed by a range of laws and regulations, including the Canada Border Services Agency Act, the Customs Act, and the Immigration and Refugee Protection Act.

There appears to be no mechanism through which failures by the CBSA in the performance of its function, within the context of the travel-chain, can be identified, communicated, or remedied.

Data Collection Obligations

We have not been able to identify any data collection obligations, nor any publicly available, real time performance data linked to travel disruptions, on the CBSA. The data reporting obligation on CBSA set out in the *Transportation Information Regulations* only addresses maritime vessels, the import and export of goods, and the accounting and payment of duties.

Service Standards Obligations

The Canada Border Services Agency has traveller service standards, but only as they relate to delays and wait times for their highway-based ports of entry.

▼ Border wait times: Highway traveller primary processing

Service description: The Canada Border Services Agency (CBSA) processes the entry into Canada of all travellers via the primary inspection line at its highway-based ports of entry. All travellers entering Canada are required by law to report to the CBSA for this primary processing, provide all relevant information and documents as required, report all goods, and answer truthfully any questions asked by a Border Services Officer.

Upon completion of primary processing, travellers will either be released to continue their travel or referred for Secondary Processing, should additional evaluation be required. For more information, please see Border wait times.

Service standard: Border wait times: Highway traveller: The estimated wait times for travellers reaching the primary inspection booth, the first point of contact with the CBSA when crossing the Canada/US land border.

September to June:

- 10 minutes on weekdays (Monday to Thursday)
- 20 minutes weekends (Friday, Saturday, Sunday) and holidays

July to August:

- 20 minutes (7 days a week)

Performance target: 95%

Performance result: The CBSA met the service standard 96.73% of the time.

NAV CANADA

NAV CANADA is responsible for providing air traffic control, flight information, weather briefings, and other related services to aircraft operating within Canadian airspace. These services have a direct impact on the travel-chain as they help to ensure safe and efficient air travel, including the departure, enroute, and arrival of flights at airports across the country. Additionally, NAV CANADA is responsible for managing and maintaining navigation aids and communication systems that are critical to the safe and reliable operation of the Canadian airspace system.

NAV CANADA is a privately run, not-for-profit corporation incorporated on May 26, 1995, under Part II of the Canada Corporations Act. NAV CANADA owns and operates Canada's civil air navigation system. It was established in accordance with the Civil Air Navigation Services Commercialization Act.

The formation of this company was prompted by various issues with Transport Canada's management of air traffic control and air navigation facilities. Although Transport Canada had a good safety record and operational staff, its infrastructure was outdated and required significant updates during a period of government austerity measures. This caused system delays for air carriers and costs that exceeded the airline ticket tax, which was intended to fund the system. The government's wage freezes also resulted in staff shortages among air traffic controllers, which were difficult to address within a government department.

In addition, the conflict of interest created by having Transport Canada as both the service provider and the regulator/inspector led to pressure from air carriers for a solution to the problem, which was negatively impacting the air industry's profitability.

Various solutions were considered, including the formation of a crown corporation, but privatization was ultimately chosen as the preferred approach.

NAV CANADA was established as a non-share-capital not-for-profit and is run by a board of directors who were initially appointed but are now elected by a predefined set of trade associations, trade unions, and government actors.

Oversight of NAV CANADA is under the responsibility of the Minister of Transport. Technical matters are principally regulated under the *Canadian Aviation Regulations*, Part VIII. Rate increases by NAV CANADA can be appealed to the Agency pursuant to Section 42 of the Civil Air Navigation Services Commercialization Act. Save and except for these controls, and the appointment process for NAV CANADA's Board of Directors, there are no other levers of control available to users of NAV CANADA's services.

The implementation of ground delay programs can be administered at any time, without warning or recourse.[29] Holds and arrival controls can be administered on an ad-hoc basis, again without any oversight that these measures are related to safety and are conducted in an unbiased and systematized way. Without a system in place with real-time checks and balances, and in an environment with no competitive forces in place, any failure by NAV CANADA in performing the work allocated to it in an impartial and efficient manner could result in delays and travel disruptions for passengers.

Data Collection Obligations

NAV CANADA is subject to data reporting obligations under the *Transportation Information Regulations*. However, none of the information is focused on the performance and delivery by NAV CANADA of its function within the travel chain. that must be provided to the Minister of Transport for each passenger screening.

We have not been able to identify any data collection obligations, nor any publicly available, real time performance data linked to travel disruptions, on NAV CANADA as the air navigation services provider.

Service Standards Obligations

No service standards with respect to customer service, delays, or operational performance were found.

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[29] Ground Delay Programs (GDPs) are one mechanism used to safely manage demand at an airport environment. There are many sources of delays that can affect air traffic, such as adverse weather, infrastructure maintenance, construction and staffing for most parties involved in the ecosystem. NAV CANADA is the body which typically communicates a GDP to various affected parties – regardless of the reason for delay.