

Air Travel Complaints Cost Recovery Fee: Implementing the Policy Objective

November 2024

**Submissions to the
Canadian Transportation Agency**

by Air Passenger Rights



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Introduction and Executive Summary

These are the submissions of Air Passenger Rights [APR] on the Canadian Transportation Agency's [CTA] [consultation](#) on the proposed air travel complaint cost recovery fee, and the associated [proposal](#).

In 2023, Parliament ordered the CTA to establish fees or charges payable by airlines to recover all or part of the costs the CTA incurs in dealing with air travel complaints brought against each airline [**Cost Recovery Fee**].¹ The Cost Recovery Fee is not payable, though, for complaints that are dismissed for: (1) being brought by a person not adversely affected; (2) being clear on the face of the complaint that the airline complied with its legal obligations; or (3) being vexatious or brought in bad faith.

The imposition of a Cost Recovery Fee is a crucial measure for curbing the soaring number of air travel complaints sparked by the airlines' own shabby corporate conduct, failure to meaningfully communicate with passengers to resolve their complaints, and failure to abide by the law. The Cost Recovery Fee is also an important economic measure to ensure that it is the airlines, and not the public, that bear the financial burden of resolving air travel complaints generated by the airlines' own conduct.

While we welcome the CTA's long overdue consultation on the Cost Recovery Fee and eagerly look forward to the CTA implementing Parliament's clear direction and will, we have some misgivings about the CTA's proposal and its methodology for determining the Cost Recovery Fee's amount. The CTA appears to have failed to conduct an impact analysis, and has overlooked the deleterious effects of its proposal.

First, the imposition of a Cost Recovery Fee payable uniformly for all complaints, even those that are ultimately dismissed in whole after adjudication, unreasonably penalizes well-behaved and compliant airlines, forces airlines' hands to pay claims with little or no merit below \$790, but does not effectively dissuade airlines from litigating even strong claims whose amount exceeds \$790. Airlines should only be required to pay a Cost Recovery Fee for complaints that are ultimately upheld at least in part.

Second, the imposition of a Cost Recovery Fee that is a mere 60% of the air travel complaints' processing costs means that taxpayers remain liable for the remaining 40% of these costs. There are no sound economic or policy reasons for taxpayers to bear even part of the costs of processing air travel complaints where the airline is found to have fallen short of its legal obligations. Complaints that are **upheld** at least in part should carry a Cost Recovery Fee equal to 100% of the average per-complaint processing costs.

Third, the CTA's estimate of closing 22,615 air travel complaints with a decision per year—used as the basis for establishing a \$790 Cost Recovery Fee—appears to be overly ambitious, and is unsupported by the CTA's publicly available data on complaint handling. In our view, a more realistic estimate of the CTA's capacity is closing **15,660** air travel complaints with a decision per year, giving rise to an average cost of **\$1,901.50** per closed air travel complaint.

¹ *Canada Transportation Act*, s. 85.16.

Summary of Recommendations and Impact Analysis

- R-1.** Air carriers should be liable to pay a Cost Recovery Fee only for those complaints against them that are ultimately upheld in part or in whole in adjudication, and not dismissed in their entirety.
- R-2.** Air carriers should pay a Cost Recovery Fee that equals to 100% of the average per-complaint processing costs for each complaint against them that is ultimately upheld in part or in whole in adjudication, and not dismissed in its entirety.
- R-3.** The Cost Recovery Fee's amount payable by an air carrier for each complaint against them that is partly or wholly upheld in adjudication should be fixed at **CAD\$1,901.50**.

Our proposed Cost Recovery Fee regime shifts the financial burden to litigious airlines that clog up and overload the air travel complaint adjudication system by unnecessarily disputing strong complaints.

A comparison between the Cost Recovery Fees the five airlines with the highest numbers of complaints would have had to pay between September 30, 2023 and June 30, 2024, based on the CTA's and APR's proposals, highlights that our proposal better promotes the objective of fostering compliance and amicable non-litigious consumer complaint resolution.

Airline	Complaints					Cost Recovery Fee	
	Total	Dismissed (whole)		Upheld		CTA's Proposal	APR's Proposal
		Count	Percent	Count	Percent		
Air Canada	3316	1904	57.42%	1412	42.58%	\$2,619,640	\$2,684,918
WestJet	1904	641	33.67%	1263	66.33%	\$1,504,160	\$2,401,595
Flair	750	218	29.07%	532	70.93%	\$592,500	\$1,011,598
Sunwing	392	247	63.01%	145	36.99%	\$309,680	\$275,718
Air Transat	167	115	68.86%	52	31.14%	\$131,930	\$98,878

Figure 1. Impact of Cost Recovery Fee Proposals (Data Range: Sep. 30, 2023 - Jun. 30, 2024)

About *Air Passenger Rights*

Air Passenger Rights [APR] is an independent nonprofit organization of volunteers, devoted to empowering travellers through education, advocacy, investigation, and litigation.

APR has a track record of successfully predicting shortcomings and loopholes in legislation relating to air passenger rights.

- In 2017, APR appeared before the House of Commons Standing Committee on Transport, Infrastructure and Communities [TRAN] and submitted [a brief](#), cautioning that the *Transportation Modernization Act* (Bill C-49) was inadequate.
- In 2018, APR appeared before the Standing Senate Committee on Transport and Communications and submitted [a brief](#), cautioning again that the *Transportation Modernization Act* was inadequate.
- In 2019, APR published a 52-page report entitled “[Deficiencies of the Proposed Air Passenger Protection Regulations](#)” about how airlines would exploit the *Air Passenger Protection Regulations*’s shortcomings and loopholes.
- In 2020, APR appeared before the TRAN and in 2021 submitted a brief entitled “[Withheld Passenger Refunds: A Failure by Design](#)” on the refunding of flights cancelled by airlines.
- In November 2022, APR appeared before the TRAN and in December 2022, mere days before the 2022 holiday season air travel meltdown, APR submitted a 29-page brief entitled “[From the Ground Up: Revamping Canada’s Air Passenger Protection Regime](#)” setting out detailed recommendations for legislative amendments, including higher administrative monetary penalties for airlines that violate passengers’ rights.
- In 2023, following the 2022 holiday season air travel meltdown, APR appeared before the TRAN again as part of the study of the *Air Passenger Protection Regulations*.

APR’s key predictions about the shortcomings and loopholes created by the *Transportation Modernization Act* and the *Air Passenger Protection Regulations* have been validated in the five years that have passed since the regulations came into force. APR’s success in predicting shortcomings and loopholes in consumer protection legislation in the air travel sector is grounded in three factors:

- **Experience based.** APR’s predictions and submissions are based on the expertise and experience accumulated through assisting passengers daily in enforcing their rights.
- **Independent.** APR takes no government or business funding.
- **No business interest.** APR has no business interest in the aviation sector.

APR's presence on social media includes the [Air Passenger Rights \(Canada\)](#) Facebook group with over 204,000 members, and the [@AirPassRightsCA](#) X/Twitter feed for over 20,500 followers.

APR was founded and is led by Dr. Gábor Lukács, a Canadian air passenger rights advocate, who volunteers his time and expertise for the benefit of the travelling public.

Gábor Lukács, PhD (President)

Dr. Lukács holds a PhD in mathematics from York University (2003), and taught financial mathematics at Dalhousie University.

Since 2008, Dr. Lukács has filed more than two dozen successful complaints with the Canadian Transportation Agency [CTA], challenging the terms, conditions, and practices of air carriers, resulting in orders directing them to amend their conditions of carriage and offer better protection to passengers. In 2013, the Consumers' Association of Canada awarded Dr. Lukács its Order of Merit for singlehandedly initiating legal action resulting in the revision of Air Canada's unfair practices regarding overbooking. In November 2023, the Public Interest Advocacy Centre (PIAC) awarded Dr. Lukács the Harry Gow Award for Transportation and Competition to Connect Communities.

Dr. Lukács's advocacy in the public interest and his expertise and experience in the area of passenger rights have been recognized by the transportation bar,² the academic community,³ and the judiciary.⁴ Dr. Lukács has appeared before courts across Canada, including the Federal Court of Appeal and the Supreme Court of Canada,⁵ in respect of air passenger rights. He successfully challenged the CTA's lack of transparency and the reasonableness of the Agency's decisions. In 2020, the Federal Court of Appeal allowed Dr. Lukács to intervene in the airlines' challenge to the *Air Passenger Protection Regulations*, noting that he "would defend the interests of airline passengers in a way that the parties cannot."⁶ In 2024, the Supreme Court of Canada allowed Dr. Lukács to intervene and present written and oral arguments in the airlines' challenge to the *Air Passenger Protection Regulations*, in which the high court most decisively sided with consumers.⁷

² Carlos Martins: Aviation Practice Area Review (September 2013), WHO'SWHOLEGAL.

³ Air Passenger Rights Advocate Dr. Gabor Lukacs lectures at the IASL, Institute for Air and Space Law, October 2018; and [Second Annual Business Ethics Conference: Ethics in the Aviation Industry](#), McGill University, November 2024.

⁴ [Lukács v. Canada, 2015 FCA 140 at para. 1](#); [Lukács v. Canada, 2015 FCA 269 at para. 43](#); and [Lukács v. Canada, 2016 FCA 174 at para. 6](#).

⁵ [Delta Air Lines Inc. v. Lukács, 2018 SCC 2](#).

⁶ Order of the Federal Court of Appeal (Near, J.A.), dated March 3, 2020 in File No. A-311-19; see also [International Air Transport Association v. Canadian Transportation Agency, 2022 FCA 211 at para. 8](#).

⁷ [International Air Transport Association v. Canada \(Transportation Agency\), 2024 SCC 30](#).

1. Complaint Processing Costs Calculation

The per-decision processing cost of eligible air travel complaints adjudicated in the CTA's new process is **\$1,901.50**, and not \$1,316 as the the [CTA's calculations](#) erroneously imply.

The source of this discrepancy is: (1) an overestimate of the number of air travel complaints the CTA is able to close with a decision in a year; and (2) the CTA's inexplicable choice to seek to recover from airlines only 60% of the total costs of complaint processing.

The figure of **\$29,777,523** per year as the total costs of complaint processing is undisputed.

The CTA's Calculation

The CTA's calculation for establishing a \$790 Cost Recovery Fee is premised on:

1. the CTA closing 22,615 complaints with a decision per year; and
2. the CTA seeking to recover from airlines only 60% of its total costs of complaint processing.

Based on these assumptions, the CTA calculated that the average per-complaint processing cost is

$$\frac{\$29,777,523}{22615} = \$1,316, \quad (1)$$

of which 60% is \$789.60, rounded to \$790.

The CTA's calculation is flawed for two reasons.

First, the CTA's estimate of its own performance of closing 22,615 complaints with a decision per year is based on the CTA's internal data on complaint processing during a short 77-day period. Due to the secrecy surrounding air travel complaint adjudication,⁸ it is not possible to validate the CTA's estimate, because regrettably, the CTA's minimal [public database](#) does not disclose the exact date of the decisions. More importantly, the CTA's estimate is refuted by the minimal [public data](#) for the 9-month period from September 30, 2023 to June 30, 2024 that the CTA has published.

Second, the CTA's choice to seek to recover only 60% of the total costs of air travel complaint processing is not supported by any explanation and is unjustified in light of Parliament's policy objective in directing the CTA to impose a Cost Recovery Fee.

⁸ Daly, Paul. *Judicial Oversight and Open Justice in Administrative Proceedings*, Administrative Law Matters (May 18, 2023).

APR's Calculation

The CTA's public "[Air travel complaint decisions and orders](#)" database lists a total of **9,487** entries with **7,830** distinct decision numbers for the **9-month period** from September 30, 2023 to June 30, 2024.

Of these 7,830 decisions, 6,480 dealt with a single issue, while 1,350 dealt with multiple issues in the same decision, resulting in multiple entries relating to the same decision in the CTA's public database.

Understandably, only a few decisions were likely rendered between September 30, 2023 and December 31, 2024, because the CTA's new air travel processing regime came into effect only at the end of September 2023. Thus, it would be a more accurate and generous estimate to attribute all **7,830** decisions listed in the CTA's public database to the **6-month** period from January 1, 2024 to June 30, 2024.

It follows that the CTA has the capacity to close with a decision $2 \times 7,830 = \mathbf{15,660}$ complaints in a **12-month** period, and the average per-complaint processing cost is

$$\frac{\$29,777,523}{15660} \approx \mathbf{\$1,901.50}. \quad (2)$$

There is no sound economic or policy reason for taxpayers to bear any portion of these costs with respect to complaints that are upheld in part or in whole, and not dismissed in their entirety after adjudication. Airlines are in a far better position than the passengers to calculate their risks and the odds of a passenger being vindicated at least in part. Due to this imbalance in power, information, and resources, airlines can take—and can reasonably be expected to take—measures to avoid unnecessary litigation of strong complaints. Airlines should bear the full costs of their failure to do so.

The CTA should recover from airlines 100% of the average per-complaint processing costs of **\$1,901.50** in each case where a complaint is upheld at least in part, and not dismissed in whole after adjudication.

2. The “Pay or Litigate” Game: Probabilistic Decision-Making

Complaint handling of large businesses is amenable to probabilistic methods, because the sheer volumes provide large samples and allow for using standard tools of probability theory.⁹

The objective of corporate complaint handling is not—as some might hope or expect—to be fair to each and every consumer, but rather to execute a strategy that minimizes the corporation’s overall costs associated with the complaints.¹⁰ Airlines that receive thousands of passenger complaints every year are no exception. Airlines have adopted and will adopt strategies for handling complaints that minimize the airlines’ overall costs.

This pragmatic approach does not evidence flawed moral character of corporate executives; rather, it is a consequence of corporations being single-purpose constructs: optimizing profits. To achieve objectives of altering corporate behaviour—such as introducing empathy and fairness to consumers—one must carefully analyze the factors that make undesirable corporate conduct the most profitable course of action, and then introduce financial disincentives that render undesirable behaviours less profitable than desirable ones.

In this part, we model an airline’s passenger complaint handling decision-making, and then use it to analyze the airline’s optimal strategy under the CTA’s and APR’s proposed Cost Recovery Fee schemes.

A. A Basic Mathematical Model

When an airline receives a passenger complaint with a persistent demand for compensation—one where the passenger would not accept a lesser payment nor give up—the airline has two choices: pay a fixed amount c_P sought by the passenger, or engage in litigation¹¹ and incur costs in the amount of \mathcal{C}_L (being the sum of the costs of litigation, the Cost Recovery Fee, and the amount awarded to the passenger).

The costs \mathcal{C}_L incurred as a result of choosing to litigate are not known in advance, because they depend on the litigation’s outcome. This is where probability theory enters the picture. When there is a large volume of *similar* complaints and demands, the average costs for the airline will be very close, with a high probability, to the expected value $E(\mathcal{C}_L)$, which can be calculated from the probability p of the passenger winning the litigation. We assume that, statistically speaking, the airline is able to accurately evaluate each complaint’s strength and can correctly determine p for its internal decision-making processes.

The airline’s optimal strategy is to pay compensation voluntarily if the amount c_P sought by the passenger is greater than or equal to the expected value $E(\mathcal{C}_L)$ of the costs of choosing to litigate, and to litigate if $E(\mathcal{C}_L)$ is less than the amount c_P the passenger seeks.

⁹ See, for example, the [Central Limit Theorem](#).

¹⁰ Losses may include both direct monetary losses and indirect losses caused by loss of consumer goodwill.

¹¹ “Litigation” is to be understood broadly and to include the CTA’s air travel complaint adjudication.

In what follows, we unpack what this strategy means for individual complaints and claims if the CTA's and APR's Cost Recovery Fee schemes are implemented. We make the following assumptions to simplify calculations:

1. If the airline chooses to litigate a passenger's complaint, then there are only two possible outcomes: (W) the passenger wins, and the airline pays the passenger the amount c_P , or (L) the passenger loses, and the airline has to pay nothing to the passenger. $P(W) = p$ and $P(L) = 1 - p$.

Rationale: This is the best one can do since, unfortunately, no public data is available on the amounts sought and awarded in the CTA's new air travel complaint adjudication mechanism.¹²

2. If the passenger wins, the airline pays a Cost Recovery Fee of r_W to the CTA on top of the sum c_P it pays the passenger. If the passenger loses, the airline pays a Cost Recovery Fee of r_L to the CTA.

Rationale: This provides a unified framework to analyze the CTA's and APR's proposals.

- The CTA proposes $r_W = r_L = 790$.
- APR proposes $r_W = 1901.50$ and $r_L = 0$.

3. The airline's own cost of litigation is zero.

Rationale: CTA complaints are typically handled by in-house paralegals and largely recycle the same materials with minor adjustments. If this cost is non-zero, then it could be mathematically expressed as increasing r_W and r_L by the same quantity. It does not qualitatively alter our findings.

The expected value of the airline's costs incurred as a result of choosing to litigate is:

$$\begin{aligned} E(\mathcal{C}_L) &= P(W)(c_P + r_W) + P(L)r_L \\ &= p(c_P + r_W) + (1 - p)r_L \\ &= pc_P + r_L + p(r_W - r_L). \end{aligned} \tag{3}$$

As discussed earlier, the airline's optimal strategy is to litigate a complaint if and only if $c_P > E(\mathcal{C}_L)$. In other words, the airline will pay the passenger voluntarily and without litigation if and only if

$$c_P \leq E(\mathcal{C}_L) = pc_P + r_L + p(r_W - r_L) \tag{4}$$

or, equivalently,

$$p \geq p^{crit} := \frac{c_P - r_L}{c_P + r_W - r_L}, \text{ and} \tag{5}$$

$$c_P \leq c_P^{crit} := \frac{r_L + p(r_W - r_L)}{1 - p}. \tag{6}$$

The airline will pay compensation c_P without litigation for complaints where the probability of the passenger winning is greater than or equal to the *critical probability* p^{crit} shown in (5), and will litigate otherwise. In other words, for a complaint where the probability of the passenger winning is p , the airline will be willing to pay compensation without litigation up to the *critical claim amount* c_P^{crit} shown in (6).

¹² Daly, Paul. *Judicial Oversight and Open Justice in Administrative Proceedings*, Administrative Law Matters (May 18, 2023).

B. The CTA's Proposed Cost Recovery Fee Regime

In the special case where $r_W = r_L = r$, the formulae for p^{crit} and c_P^{crit} become

$$p^{crit} = \frac{c_P - r}{c_P} = 1 - \frac{r}{c_P} \quad \text{and} \quad c_P^{crit} = \frac{r}{1 - p}. \quad (7)$$

For $c_P < r$, this produces a negative p^{crit} , which means that the airline must pay in response to every complaint that seeks less than amount r in compensation, regardless of the complaint's merit.

The CTA proposes $r_W = r_L = 790$. This means that

$$p^{crit} = \frac{c_P - 790}{c_P} = 1 - \frac{790}{c_P} \quad \text{and} \quad c_P^{crit} = \frac{790}{1 - p}. \quad (8)$$

By taking $p = 0$, one sees that it is less costly for the airline to indiscriminately pay compensation to every passenger who claims less than \$790 than to litigate such claims. Indeed, due to the Cost Recovery Fee, it would cost the airline at least \$790 to litigate, even if the passenger's complaint is ultimately dismissed, which is more than the amount at stake.

More generally, implementing the CTA's proposal would result in the following "Pay or Litigate" strategy as a function of the amount c_P sought by the passenger and the probability p of the passenger winning.

Amount (c_P)	Probability of the Passenger Winning (p)										
	12.5%	20%	25%	33.33%	40%	50%	60%	66.67%	75%	80%	87.5%
\$400	+	+	+	+	+	+	+	+	+	+	+
\$800	+	+	+	+	+	+	+	+	+	+	+
\$1,200	-	-	-	-	+	+	+	+	+	+	+
\$1,600	-	-	-	-	-	-	+	+	+	+	+
\$2,000	-	-	-	-	-	-	-	+	+	+	+
\$2,400	-	-	-	-	-	-	-	-	+	+	+
\$2,800	-	-	-	-	-	-	-	-	+	+	+
\$3,200	-	-	-	-	-	-	-	-	-	+	+
\$3,600	-	-	-	-	-	-	-	-	-	+	+
\$4,000	-	-	-	-	-	-	-	-	-	-	+
\$5,000	-	-	-	-	-	-	-	-	-	-	+

Figure 2. CTA's Cost Recovery Fee Proposal: Pay (+) or Litigate (-) Strategy

C. APR's Proposed Cost Recovery Fee Regime

In the special case where $r_L = 0$, the formulae for p^{crit} and c_P^{crit} become

$$p^{crit} = \frac{c_P}{c_P + r_W} \quad \text{and} \quad c_P^{crit} = \frac{r_W p}{1 - p}. \quad (9)$$

APR proposes $r_W = 1901.50$ and $r_L = 0$. This means that

$$p^{crit} = \frac{c_P}{c_P + 1901.5} \quad \text{and} \quad c_P^{crit} = \frac{1901.5p}{1 - p}. \quad (10)$$

For $p = 0$, one obtains $c_P^{crit} = 0$. This means that under our proposed regime, there would be no economic pressure on airlines to pay compensation for entirely meritless complaints that are bound to fail.

More generally, implementing APR's proposal would result in the following "Pay or Litigate" strategy as a function of the amount c_P sought by the passenger and the probability p of the passenger winning.

Amount (c_P)	Probability of the Passenger Winning (p)										
	12.5%	20%	25%	33.33%	40%	50%	60%	66.67%	75%	80%	87.5%
\$400	–	+	+	+	+	+	+	+	+	+	+
\$800	–	–	–	+	+	+	+	+	+	+	+
\$1,200	–	–	–	–	+	+	+	+	+	+	+
\$1,600	–	–	–	–	–	+	+	+	+	+	+
\$2,000	–	–	–	–	–	–	+	+	+	+	+
\$2,400	–	–	–	–	–	–	+	+	+	+	+
\$2,800	–	–	–	–	–	–	+	+	+	+	+
\$3,200	–	–	–	–	–	–	–	+	+	+	+
\$3,600	–	–	–	–	–	–	–	+	+	+	+
\$4,000	–	–	–	–	–	–	–	–	+	+	+
\$5,000	–	–	–	–	–	–	–	–	+	+	+

Figure 3. APR's Cost Recovery Fee Proposal: Pay (+) or Litigate (–) Strategy

APR's proposal also markedly differs from the CTA's in that our proposal disincentivizes airlines choosing to litigate strong complaints. Under our proposal, airlines would be facing financial pressure to compensate passengers seeking up to \$5,000 if the a probability of the passenger winning is 75% or higher. Under the CTA's proposal, it may be more profitable for the airline to litigate a \$5,000 claim even if the probability of the passenger winning is as high as 80%. We expand on this in the next part.

3. Impact Analysis

Parliament intended to achieve multiple intertwined policy objectives when it ordered the CTA to establish and impose a Cost Recovery Fee on airlines against whom air travel complaints are brought. *First*, the airlines and not taxpayers should bear the financial burden of adjudicating air travel complaints sparked by the airlines' own shabby corporate conduct and failure to fulfill their legal obligations to passengers. *Second*, and perhaps more importantly, the Legislature intended to encourage airlines to resolve complaints amicably and on their own, by voluntarily compensating passengers with strong complaints, without passengers having to resort to the CTA's complaint adjudication process to enforce their legal rights.

In our respectful view, APR's proposed Cost Recovery Fee regime promotes these policy objectives better than the CTA's proposal, and the CTA has overlooked the deleterious effects of its own proposal. We demonstrate this by comparing the impacts of the CTA's and APR's proposals on passengers and their individual complaints on the one hand, and airlines and their handling of volumes of passenger complaints on the other hand.

A. Impact on Passengers and their Individual Complaints

The CTA's proposal disproportionately helps passengers whose potentially weak complaint collectively does not seek more than \$790, but it does too little to incentivize airlines to resolve strong complaints, with a high probability of success in litigation, where the passengers may collectively be entitled to compensation in excess of \$790. APR's proposal does not suffer from this shortcoming, and incentivizes airlines—in a manner that is more proportionate to the complaint's strength—to pay passengers compensation instead of resorting to litigation.

In Part 2, we obtained formulae (5) and (6) for the critical probability p^{crit} associated with a claim of a given amount c_P , and a critical claim amount c_P^{critic} associated with a given probability p .

The critical probabilities corresponding to claims between \$400 and \$5,000 with increments of \$200 and the critical claim amounts corresponding to probabilities between 10.00% and 86.67% with increments of approximately 3.33%, calculated both for the CTA's and APR's proposals, are shown in Figure 4 below.

If a passenger claims an amount c_P in a complaint, then a rationally acting airline will pay the claim without litigation if and only if the probability of the passenger winning in litigation is greater than or equal to p^{crit} , where p^{crit} is the critical probability corresponding to c_P (see formula (5)). Similarly, if the probability of the passenger winning in litigation is p , then a rationally acting airline will pay without litigation a claim of up to c_P^{crit} , where c_P^{crit} is the critical claim amount corresponding to p (see formula (6)). This can be illustrated with some examples.

Claim Amount (c_P)	Critical Probability (p^{crit})	
	CTA's Proposal	APR's Proposal
\$400	0.00%	17.38%
\$600	0.00%	23.99%
\$800	1.25%	29.61%
\$1,000	21.00%	34.46%
\$1,200	34.17%	38.69%
\$1,400	43.57%	42.40%
\$1,600	50.63%	45.69%
\$1,800	56.11%	48.63%
\$2,000	60.50%	51.26%
\$2,200	64.09%	53.64%
\$2,400	67.08%	55.79%
\$2,600	69.62%	57.76%
\$2,800	71.79%	59.56%
\$3,000	73.67%	61.21%
\$3,200	75.31%	62.73%
\$3,400	76.76%	64.13%
\$3,600	78.06%	65.44%
\$3,800	79.21%	66.65%
\$4,000	80.25%	67.78%
\$4,200	81.19%	68.84%
\$4,400	82.05%	69.82%
\$4,600	82.83%	70.75%
\$4,800	83.54%	71.63%
\$5,000	84.20%	72.45%

Probab. (p)	Critical Claim Amount (c_P^{crit})	
	CTA's Proposal	APR's Proposal
10.00%	\$877.78	\$211.28
13.33%	\$911.50	\$292.45
16.67%	\$948.04	\$380.39
20.00%	\$987.50	\$475.38
23.33%	\$1,030.39	\$578.61
26.67%	\$1,077.32	\$691.57
30.00%	\$1,128.57	\$814.93
33.33%	\$1,184.94	\$950.61
36.67%	\$1,247.43	\$1,101.03
40.00%	\$1,316.67	\$1,267.67
43.33%	\$1,394.04	\$1,453.89
46.67%	\$1,481.34	\$1,664.04
50.00%	\$1,580.00	\$1,901.50
53.33%	\$1,692.74	\$2,172.85
56.67%	\$1,823.22	\$2,486.91
60.00%	\$1,975.00	\$2,852.25
63.33%	\$2,154.35	\$3,283.94
66.67%	\$2,370.24	\$3,803.57
70.00%	\$2,633.33	\$4,436.83
73.33%	\$2,962.13	\$5,228.23
76.67%	\$3,386.20	\$6,248.95
80.00%	\$3,950.00	\$7,606.00
83.33%	\$4,739.05	\$9,505.22
86.67%	\$5,926.48	\$12,363.32

Figure 4. CTA's vs. APR's Proposal: Critical Probability (p^{crit}) and Critical Claim Amount (c_P^{crit})

Example 1. The flight of a family of four (4) travelling from Victoria, BC to Moncton, NB was cancelled. While the airline—which happens to be a large carrier—provided alternate transportation, the passengers arrived in Moncton 11 hours later than scheduled. The family complains to the airline pursuant to s. 19(3) of the *APPR*, and seeks standardized compensation of \$1,000 per passenger pursuant to s. 19(1)(a)(iii). The passengers seek a total of \$4,000. The critical probability corresponding to a \$4,000 under the CTA’s proposed Cost Recovery Fee regime is 80.25%, while under APR’s proposed regime it is 67.78% (see Figure 4). This means that if the CTA’s proposal is implemented, then a rationally acting airline will pay the family’s \$4,000 claim without litigation if it estimates that the probability of the family winning in litigation is greater than or equal to 80.25%. Otherwise, the airline’s rational course of action is to not pay and litigate instead. Similarly, if APR’s proposal is implemented, then a rationally acting airline will pay the family’s \$4,000 claim without litigation if it estimates that the probability of the family winning in litigation is greater than or equal to 67.78%.¹³

Example 2. A passenger travelling alone on the same Victoria-Moncton itinerary as the family from Example 1, who is rebooked on the same alternate transportation as the family and who incurs the same 11-hour delay, may have a substantially different outcome when complaining to the airline and seeking standardized compensation of \$1,000 pursuant to s. 19(1)(a)(iii) of the *APPR*. Under the CTA’s proposed regime, the critical probability corresponding to a \$1,000 claim is 21.00%, while under APR’s proposed regime it is 34.46%. So, a rationally acting airline will pay this lone passenger’s \$1,000 claim: (i) under the CTA’s proposed regime, if the probability of the passenger winning in litigation is greater than or equal to 21.00%; and (ii) under APR’s proposed regime if the probability of the passenger winning in litigation is greater than or equal to 34.46%. Otherwise, the rational course of action for the airline is to litigate the passenger’s complaint.

The Cost Recovery Fee’s purpose is to foster compliance with the airlines’ legal obligations to passengers and not to force airlines to hand out free cash to passengers just to avoid litigation. Yet, the airline may voluntarily pay \$1,000 to the passenger from Example 2, while the family from Example 1 may have to resort to litigation to enforce their right to the same kind of compensation, albeit totalling \$4,000, even though the lone passenger and the family were affected by identical flight disruptions and circumstances.

It should not come as a surprise that the higher the amount, the higher the willingness is to litigate instead of paying the claim voluntarily; however, the degree at which an increase in the claim’s amount increases a rationally acting airline’s willingness to litigate has a profound impact on passengers and their rights. Examples 1 and 2 shed light on the two fundamental shortcomings of the CTA’s proposal: (1) a too high threshold for avoiding litigation for claims over \$1,400 even when faced with a strong complaint; and (2) a too low threshold for paying without litigation for claims below \$1,400 even if the passenger’s complaint may be of little merit.¹⁴

¹³ “Litigation” is understood broadly and includes the CTA’s air travel complaint adjudication.

¹⁴ This conclusion may be further supported by calculating the conditional expected value of settlements at the critical claim amount for strong complaints $E[c_P^{crit} | p \geq 0.5]$ and for weak complaints $E[c_P^{crit} | p \leq 0.5]$. In the absence of specific data, one may have to assume that complaints’ strengths are uniformly distributed on an interval, for example, as $\text{Unif}(0.1, 0.9)$.

The CTA’s proposal’s shortcomings are particularly apparent when considering the impact on strong complaints with a probability of 66.67% (1:2 odds) to succeed in litigation. Under the CTA’s proposal, a rationally acting airline would still choose to litigate such a complaint if the claim’s amount was more than \$2,370.24. In sharp contrast, under APR’s proposal, rationally acting airlines would resolve such complaints on their own and pay compensation voluntarily as long as the claim’s amount does not exceed \$3,803.57 (see Figure 4).

B. Impact on Airlines

The CTA’s proposal has deleterious effects on the airlines too. *First*, it creates an undue and unjust economic pressure to indiscriminately pay compensations up to \$790 regardless of the complaints’ merits. *Second*, it collectively saddles airlines with financial liability for costs generated by litigious and non-compliant airlines. Quite apart from any notion of justice or fairness, a regime that produces such effects is counterproductive.

i. Undue Pressure to Pay Claims of Little Merit Below \$790

If the CTA’s proposal were implemented, airlines would face undue pressure to pay claims below \$790 of little merit if the complaint is drafted sufficiently well to meet the low threshold of “eligible” within the meaning of [subsection 85.04\(2\)](#).

The CTA proposes to impose a \$790 Cost Recovery Fee on airlines for each and every “eligible” complaint against them that is concluded with a decision, regardless of the adjudication’s outcome. A complaint is “eligible” if it is not dismissed at an early stage under [subsection 85.04\(2\)](#) of the *Canada Transportation Act* for: (1) being brought by a person not adversely affected; (2) being clear on the face of the complaint that the airline complied with its legal obligations; or (3) being vexatious or brought in bad faith. While a high threshold for screening out complaints at a preliminary stage—and by extension a low threshold for an “eligible” complaint—is a good policy to ensure access to justice, it is not the correct threshold for indiscriminately imposing financial liability on airlines for the Cost Recovery Fee.

An airline that receives a complaint with a demand for \$400 in compensation from a passenger can choose to pay that amount voluntarily or litigate the complaint; however, even if the airline ultimately prevails in litigation (e.g., the CTA’s air travel complaint adjudication), the airline would still have to pay the CTA a \$790 Cost Recovery Fee. Avoiding a payment of \$400 to passengers at the cost of paying a \$790 Cost Recovery Fee means a net loss of \$390 for the airline. While an airline may occasionally choose to litigate such claims of little merit to make a point, no business can afford many Pyrrhic victories of this nature.

In short, under the CTA’s proposal, voluntarily paying claims below \$790 will be more economical for airlines than to litigate such complaints, even if the associated complaint is of doubtful merit. APR’s proposal does not suffer from this shortcoming (see Figure 4).

ii. Collective Punishment of Airlines for the Sins of Bad Actors

The CTA’s proposed Cost Recovery Fee regime imposes financial liability on airlines on the basis that an “eligible” complaint was brought against them, rather than on the basis of the complaint’s adjudication’s outcome. This is akin to a finding of guilt on the mere basis of unproven allegations set out in a charge. It also collectively punishes airlines, including well-behaved and compliant ones, for others’ shabby conduct. This shortcoming can be best illustrated by comparing two examples.

Example 1. Air NoCare is a litigious and non-compliant airline that has an unpublished internal policy of rejecting all passenger complaints and refusing to make any payment voluntarily. Air NoCare’s motto is: “Sue us, Sue.” Out of 500 “eligible” complaints that passengers filed with the CTA against Air NoCare, 475 were upheld in part or in whole, and 25 were dismissed in whole after adjudication. Under the CTA’s proposal, Air NoCare would have to pay the CTA $500 \times \$790 = \$395,000$, while under APR’s proposal, it would have to pay $475 \times \$1,901.50 \approx \$903,213$ in Cost Recovery Fees.

Example 2. Friendly Air is a good airline that voluntarily pays compensation owed to passengers in the vast majority of cases. Out of 500 “eligible” complaints that passengers filed with the CTA against Friendly Air, only 25 were upheld in part or in whole, and 475 were dismissed in whole after adjudication. Under the CTA’s proposal, Friendly Air would have to pay the CTA \$395,000 in Cost Recovery Fees—the same amount as Air NoCare, because the CTA proposes to establish the fee solely on the basis of the number of “eligible” complaints filed rather than the complaints’ outcomes. In sharp contrast, under APR’s proposal, Friendly Air would be paying the CTA only $25 \times \$1,901.50 \approx \$47,538$ in Cost Recovery Fees.

Air NoCare’s and Friendly Air’s liabilities under the CTA’s and APR’s proposed regimes are summarized in Figure 5 below.

Airline	Complaints					Cost Recovery Fee	
	Total	Dismissed (whole)		Upheld		CTA’s Proposal	APR’s Proposal
		Count	Percent	Count	Percent		
Air NoCare	500	25	5%	475	95%	\$395,000	\$903,213
Friendly Air	500	475	95%	25	5%	\$395,000	\$47,538

Figure 5. Impact of Cost Recovery Fee Proposals: Air NoCare vs. Friendly Air

It could be argued that Friendly Air’s communication with passengers should be improved given how many of its passengers have filed complaints that were ultimately found to have no merit; however, Friendly Air should not be penalized for being right, and it would be unjust to impose on it the same financial liability as Air NoCare, which was blatantly violating passengers’ rights.

The anomalies created by the CTA's proposal, exposed in the imaginary examples of Air NoCare and Friendly Air (Figure 5), can also be observed by using the CTA's [real-life data](#) for the 9-month period from September 30, 2023 to June 30, 2024.

Airline	Complaints					Cost Recovery Fee	
	Total	Dismissed (whole)		Upheld		CTA's Proposal	APR's Proposal
		Count	Percent	Count	Percent		
Air Canada	3316	1904	57.42%	1412	42.58%	\$2,619,640	\$2,684,918
WestJet	1904	641	33.67%	1263	66.33%	\$1,504,160	\$2,401,595
Flair	750	218	29.07%	532	70.93%	\$592,500	\$1,011,598
Sunwing	392	247	63.01%	145	36.99%	\$309,680	\$275,718
Air Transat	167	115	68.86%	52	31.14%	\$131,930	\$98,878
American	143	44	30.77%	99	69.23%	\$112,970	\$188,249
Porter Airlines	136	47	34.56%	89	65.44%	\$107,440	\$169,234
United	129	52	40.31%	77	59.69%	\$101,910	\$146,416
Air France	121	48	39.67%	73	60.33%	\$95,590	\$138,810
Lufthansa	74	40	54.05%	34	45.95%	\$58,460	\$64,651
Turkish Airlines	65	19	29.23%	46	70.77%	\$51,350	\$87,469
Delta	63	24	38.10%	39	61.90%	\$49,770	\$74,159
Qatar Airways	49	23	46.94%	26	53.06%	\$38,710	\$49,439
Aeromexico	48	11	22.92%	37	77.08%	\$37,920	\$70,356
Swoop	47	13	27.66%	34	72.34%	\$37,130	\$64,651
Lynx Air	41	6	14.63%	35	85.37%	\$32,390	\$66,553
British Airways	32	3	9.38%	29	90.63%	\$25,280	\$55,144
Egyptair	31	14	45.16%	17	54.84%	\$24,490	\$32,326

Figure 6. Impact of Cost Recovery Fee Proposals (Data Range: Sep. 30, 2023 - Jun. 30, 2024)

For example, under the CTA's proposal, Air Transat with 52 (31.14%) upheld complaints against it would have to pay more Cost Recovery Fees than American Airlines with 99 (69.23%) upheld complaints against it. Similarly, Lufthansa with 34 (45.95%) upheld complaints against it would have to pay more Cost Recovery Fees than Turkish Airlines with 46 (70.77%) upheld complaints against it.

Under APR's proposal, Sunwing and Air Transat—both with a low percentage of upheld complaints against them—would pay lower Cost Recovery Fees than under the CTA's proposal, while airlines with a high ratio of complaints upheld against them (e.g., British Airways, Aeromexico, Turkish Airlines, Flair, and WestJet) would pay significantly higher Cost Recovery Fees than under the CTA's proposal.

Conclusions

The imposition of a Cost Recovery Fee on airlines whose conduct sparks passenger complaints is undoubtedly an indispensable measure that must be urgently implemented to rein in shabby corporate conduct and curb the soaring number of air travel complaints that have overwhelmed and continue to overwhelm the CTA's air travel complaint adjudication system.

A Cost Recovery Fee regime—if correctly designed—can be an immensely powerful and effective tool for fostering airlines' compliance with the consumer protection schemes for protecting passengers' rights and incentivizing amicable non-litigious consumer complaint resolution. The CTA's proposed Cost Recovery Fee regime, however, unfortunately misses the mark and has deleterious effects that are counterproductive.

APR proposes a Cost Recovery Fee regime that corrects the CTA's proposal's shortcomings by imposing financial liability on airlines only for air travel complaints that are upheld at least in part in adjudication, and shifts the **full financial burden** of the costs of the air travel complaint processing system to those airlines whose shabby corporate conduct necessitates such a system. Under APR's proposal, an airline with a perfect complaint record of zero upheld complaints against it would not have to pay a cent in Cost Recovery Fees.

In short, APR's proposal better promotes the objective of fostering compliance and amicable non-litigious consumer complaint resolution.

We recommend that the CTA adopt APR's proposed Cost Recovery Fee regime set out page 2.