

Canadian  
Transportation  
Agency



Office  
des transports  
du Canada

## Air Travel Complaints Commissioner's Report July to December 2003



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Canada

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For more information about the Air Travel Complaints Commissioner and the Canadian Transportation Agency please call (819) 997-0344 or, toll free, 1-888-222-2592.

Correspondence may be addressed to:

Air Travel Complaints Commissioner  
Canadian Transportation Agency  
Ottawa, ON K1A 0N9

### **Legend for vignettes**



Roses = good way to conduct business



Thorns = bad way to conduct business

Disclaimer: Data in this report may differ from other reports. Variances result from the dynamic nature of the complaints database, which tracks complaints based on current status.

Office  
des transports  
du Canada



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Commissaire aux plaintes  
relatives au transport aérien

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Air Travel  
Complaints Commissioner

August 2004

The Honourable Jean-C. Lapierre, P.C., M.P.  
Minister of Transport  
Transport Canada Building - Place de Ville  
330 Sparks Street  
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 85.1 of the *Canada Transportation Act*, I have the honour of presenting to you the Air Travel Complaints Commissioner's Report for the period from July 1 to December 31, 2003.

Yours sincerely,

A handwritten signature in black ink that reads "Liette Lacroix Kenniff".

Liette Lacroix Kenniff  
Commissioner

Encl.

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Canada

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## Commissioner's message

In *A Tale of Two Cities*, Charles Dickens wrote: "It was the best of times, it was the worst of times." At the time that these words were written, humanity's conquest of the skies was nothing but a faint dream, yet what better words to describe the state of the world's airline industry in 2003?

On the "best of" side, air fares were at an all-time low as seat sales and new Web fares continued to proliferate. Passengers were faced with a seemingly, continuously increasing choice of air carriers as many smaller carriers expanded their operations to serve more markets. And 100 years after the Wright Brothers first took to the skies in their frail and unstable Wright Flyer, improvements in aircraft design and construction had made air travel one of the safest forms of mass transport.

On the "worst of" side, many major air carriers around the world, including Canada's biggest airline, Air Canada, found themselves facing considerable financial difficulties. Names like Swissair and Sabena had disappeared from the market, several large American carriers laboured under bankruptcy protection while, in Canada, we were all shocked when, on April 1, 2003, Air Canada applied for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act*. In the meantime, concerns about airline security in the wake of the terrible events of what is now almost universally known as "9-11", combined with the fallout from the Iraq War and the Afghanistan conflict, continued to dissuade many people from travelling by air.

It is difficult at this point in time to see how things are going to work out in the short or long term, but it does seem that the air transportation model has undergone a fundamental change and that, for the most part, low-cost no-frills carriers will be the wave of the future. Very few traditional full-service carriers are expected to survive in their current form.

The change in the airline paradigm has also lead to a change in customer expectations and this, in turn, seems to be one of the reasons that the number of complaints that I received in 2003 was lower than in previous years. Passengers who have little or no illusions about the level of service that they can expect from their carrier are less likely to complain when their expectations are not met.

That being said, the air travel industry continues to be a service-based industry and passengers continue to have reasonable expectations that they want to have fulfilled. They expect that:

- their flights will arrive and depart roughly on time;
- they will be transported to their chosen destination in relative comfort;
- the luggage they checked-in at departure will be returned to them at destination in approximately the same condition it was in when the bags were handed over to the airline;
- they will actually receive those items for which they were charged extra, such as specific seat reservations and up-graded cabin accommodations;
- they will be treated politely and professionally by airline staff, both on the ground and in the air; and
- when things go wrong, as they inevitably will from time-to-time, airline staff will keep them informed of what is going on and deal with any problems and any subsequent complaints promptly and appropriately.

In other words, even in an era of reduced airfares and service-levels, customer-centric service continues to be the name of the game for successful airlines.

While some carriers are very good at meeting these expectations, others are not. A quick scan of the complaint statistics in this seventh Air Travel Complaints Report will reveal that I received far fewer complaints about some carriers than one might expect based on their market share, while others garner more complaints than one would reasonably expect. While some carriers are improving in this respect, others seem to be heading in the opposite direction. It is interesting to note that, generally speaking, those carriers that are the most financially successful are also those about which I consistently receive the fewest complaints.

To me, the bottom line is clear: if you want to succeed in the airline industry, you must put your customers' interests first. And yet I continue to see complaint after complaint about carriers that:

- treat their schedules as mere guidelines, rather than commitments;
- continually try to avoid paying appropriate compensation for bags that were ruined or lost by their ground-handling staff or agents;

- refuse responsibility for valuable or fragile objects that they knowingly accept for transport, without first warning the passenger that such goods are being carried at the passenger's risk;
- fail to keep passengers informed about what is going on when flight delays stretch from minutes to hours and, in some cases, even to days;
- keep passengers penned up on-board their aircraft without food, drink or even fresh air during lengthy ground-holds;
- hold their customers financially responsible for problems in the ticket distribution chain, over which the customers have no control; and
- expect their customers to shoulder the risk associated with their financial uncertainties by insisting that tickets be purchased in advance while failing to provide any guarantee that these advance payments will be protected in the event the carrier fails.

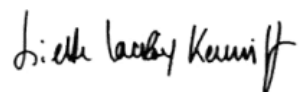
Nor are governments blameless in this regard. In Canada:

- advertising has been tolerated that fails to identify the true price that customers will actually have to pay to get on an airplane, making price comparisons extremely difficult and leading to "sticker shock" when the full price of the transaction is finally revealed;
- only three of the ten provinces and three territories have a program in place to protect consumers in the event that a travel agent or tour operator fails and, in two of these, the degree of protection afforded to the consumer will be reduced and the cost of providing even limited protection of advance payments will be transferred to the consumer;
- while carriers have been permitted to promote direct sales to improve their bottom lines, there has been no attempt, even in those provinces that have payment protection programs in place, to ensure that such sales receive the same degree of protection as those made through travel agents;
- most Canadian carriers operating within Canada do not offer any compensation for denied boarding due to oversales of tickets while those that do provide compensation have levels well below the international standard;



- our major carrier has decreased the compensation that it pays to passengers who are bumped off flights because the airline has sold too many tickets; and
- temporary funding for programs such as the Air Travel Complaints Program and other air traveller protection initiatives has been reduced and no source of on-going funding has been identified.

Much has been accomplished in the 100 years since that first flight at Kitty Hawk, North Carolina. Much still needs to be done to make air travel a hassle-free experience. I will continue to speak out in favour of passenger-oriented reforms and will continue to point out those areas within industry, and within the legislative and regulatory environment, where positive changes could contribute to an improvement in the protection, interim allowances and compensation offered to travellers.



Liette Lacroix Kenniff  
Canada's Air Travel Complaints Commissioner

## Introduction

### The Office of the Air Travel Complaints Commissioner

The Office of the Air Travel Complaints Commissioner was created on July 5, 2000. It acts as an impartial third party in the settlement of disputes between consumers and air carriers that operate to, from and within Canada.

The Commissioner's Office is part of the Canadian Transportation Agency, a quasi-judicial tribunal that regulates various modes of transportation under Government of Canada jurisdiction, including air, rail and marine, as well as accessibility to these services by people with disabilities. While the Agency has the powers and rights of a superior court and can issue binding decisions, the Commissioner does not have the authority to impose a settlement.

Under Section 85.1 of the *Canada Transportation Act*, the Commissioner's principal responsibilities are to review and attempt to resolve complaints from dissatisfied air travellers. Complaints received by the Commissioner are compiled and analysed in biannual reports. The reports include the number and nature of consumer complaints involving air travel, the manner in which the complaints were handled, and any systemic problems the Commissioner has identified within the air travel industry.

Air carriers operating within Canada are largely deregulated and, for the most part, are free to adopt whatever pricing structure and terms and conditions of carriage they see fit. However, their fares, rates, charges and terms and conditions of carriage must be clear, reasonable and not unduly discriminatory.

Carriers operating international services to and from Canada operate in a more restrictive environment, as they have to respect Canadian legislation, International Civil Aviation Organization conventions and a number of bilateral air service agreements. While international carriers enjoy some flexibility in determining their terms and conditions of carriage, these must be clear, just and reasonable.

An air carrier's tariff must set out not only its fares, rates and charges, but also its terms and conditions of carriage. Carriers must respect these at all times. If a carrier loses a passenger's baggage, for example, it must, at a minimum, compensate that passenger according to the rules governing lost baggage that are set out in the appropriate International Civil Aviation Organization convention. A carrier's tariffs must be made available to the public upon request.

A significant number of disputes investigated by the Commissioner stem from a misapplication or misunderstanding of a particular tariff provision, by a carrier's own front line employees. The majority of complaints received by the Commissioner deal with such issues as the quality of service provided by air carriers, baggage handling and flight disruptions.

Supported by staff from the Agency's Complaints Investigation Division, the Commissioner may seek assistance from other Agency-based personnel for legal advice or for guidance on specific issues, such as tariff and pricing matters.

Complaints that deal in whole or in part with issues that fall under the jurisdiction of other government departments or agencies, such as safety, transportation policy or anti-competitive behaviour, are forwarded to the appropriate authority. In cases of overlapping issues within one complaint, the Commissioner separates the part or parts that pertain to her mandate and passes the remaining issues to the relevant authority.

### **The complaint handling process**

The Commissioner's complaint handling process is structured to give air carriers the opportunity to resolve as many disputes as possible without outside intervention.

Accordingly, the Commissioner recommends that a dissatisfied customer first contact the air carrier with a written complaint. If a consumer sends a complaint directly to the Commissioner without first writing to the carrier, the complaint is forwarded to the carrier with a request that it deal with the complaint within a specified time limit and advise the Commissioner of the results of its efforts. These complaints are referred to as **Level I Complaints**. Level I Complaints require relatively little staff involvement.

If a carrier fails to respond to a complaint within the established deadline or if a complainant is not satisfied with the carrier's response, the complaint will be referred to senior Complaints Investigation staff who will attempt to negotiate a resolution to the complaint that is satisfactory to both the complainant and the air carrier. These complaints are referred to as **Level II Complaints**. As much as possible, the investigation of complaints is conducted in an informal, co-operative and non-confrontational manner. Where these efforts prove unsatisfactory, the Commissioner will review the file personally and may choose to intervene with the carrier if she believes that a complaint has not been dealt with appropriately. This approach has proven to be a very effective way to resolve many disputes.

In certain instances, the Commissioner may refer complaints to the Canadian Transportation Agency. The Agency has the authority to compel carriers to respect their terms and conditions of carriage as set out in their tariffs. It may also order a carrier to compensate a passenger for out-of-pocket expenses if these arose as a result of the carrier's failure to respect its tariff. However, the Agency cannot order any compensation for pain and suffering, stress, loss of enjoyment or loss of income. These are issues that can only be resolved by civil courts.

### **Contacting the Commissioner**

Complainants who have contacted the carrier first and are not satisfied with the carrier's reply are asked to submit a written complaint to the Commissioner by regular mail or facsimile, or by completing a complaint form on the Agency's Web site ([www.cta.gc.ca](http://www.cta.gc.ca)).

Anyone seeking information about the Commissioner's complaint process may call a toll free call centre (1-888-222-2592) that is staffed by bilingual agents. A total of 3,640 calls were received through the call centre between July 1, 2003, and December 31, 2003.

Information about the Air Travel Complaints Commissioner and the complaint handling process is also available on the Agency's Web site ([www.cta.gc.ca](http://www.cta.gc.ca)). The site provides access to helpful publications and links to the air travel industry, including telephone and fax numbers and addresses of customer service representatives of various Canadian carriers.



## Complaint analysis

In my previous report, covering the period from January 1 to June 30, 2003, I reported that there had been a decrease in the number of complaints that I received (615) compared to the number of complaints received in the previous six months (731). This downward trend continued into the second six months of the year, with a total of 443 complaints being received. Thus, for Calendar Year 2003, I received 1,058 complaints compared to 1,770 complaints in 2002.

The number of issues raised in these complaints continued to increase, to a total of 2,558 in 2003, with 1,230 separate issues in the second half, alone.

### Air Canada complaints

The reduction in number of complaints received was, again, mostly due to a decrease in the number of complaints about Air Canada following approval of its request to the Courts on April 1, 2003, for creditor protection under the *Companies' Creditors Arrangement Act*. Whereas I received 1,128 complaints about Air Canada in 2002, this number decreased to 486 in 2003, a reduction of approximately 56.9 per cent.

The impact of the Court-ordered protection is also reflected in the fact that, in the first three months of 2003, I received 204 complaints about Air Canada, an average of 68 per month, while in the remaining nine months of the year, subsequent to the Court Order, I received 282 Air Canada complaints, an average of 31.3 per month.

Complaints received about Air Canada*		
	2002	2003
January	174	71
February	140	76
March	115	57
April	121	42
May	106	38
June	76	26
July	62	30

August	72	34
September	70	31
October	69	27
November	66	23
December	57	31
<b>Total</b>	<b>1,128</b>	<b>486</b>

\*Throughout this report, unless otherwise stated, reference to Air Canada includes all of its affiliates, that is, Zip, Jazz, Jetz and Tango.

As I commented in my last report, it is impossible to identify with any certainty why fewer people are complaining about Air Canada. It is likely that this is the combined result of travellers feeling that there is no sense in complaining about a company that is under threat of bankruptcy and Court protection; passengers hesitating to complain out of a sense of genuine sympathy for Air Canada's plight; and, perhaps, an improvement in the way that Air Canada is dealing with its customers, both on-board their aircraft and when they file complaints.

### **HE WAS OUR AGENT, BUT IT'S YOUR PROBLEM**

On February 6, 2003, the complainant purchased four tickets from Yorkland Travel for round-trip travel with Air Canada between Toronto and London, departing on June 26, 2003, and returning August 29, 2003. She contacted Air Canada in June and was informed that, because Yorkland Travel had not deposited her payment and had subsequently declared bankruptcy, her tickets had no value and her reservations had been cancelled. 🌟

The complainant contacted the Travel Industry Council of Ontario, which suggested that she file a complaint with the Air Travel Complaints Commissioner. As a result of Complaints Investigation Division's intervention, Air Canada agreed to refund the unused tickets. On September 3, 2003, the complainant called to advise that she had received a cheque for \$4,629 from Air Canada and was very thankful for the Commissioner's Office's efforts on her behalf. 🌟

## Complaints about Canadian carriers

The number of complaints about other Canadian carriers also decreased, from 170 in the first six months of the year to 144 in the second six months. However, I received more complaints about other Canadian carriers in each of the six month periods in 2003 than I received between July and December 2002 when 123 such complaints were received.

<b>Air Canada complaints vs other Canadian carriers</b>			
	Air Canada	Other Canadian Carriers	Air Canada Complaints as % of Canadian Carriers Complaints
July - December 2003	176	144	55.0 %
January - June 2003	310	170	64.6 %
July - December 2002	389	123	76.0 %

I am very pleased to advise that I received fewer complaints about both Air Transat and Skyservice in the second half of 2003 than I did in the first half and that, in general, both of these carriers seem to be responding more positively to the complaints that they do receive.

The number of complaints that I received about Air Transat dropped from 64 in the first half of the year to 43 in the second half. However, in terms of the percentage of complaints received about Canadian carriers, Air Transat's share remained constant around 13.4 per cent.

The number of complaints that I received about Skyservice decreased from 58 to 25 and Skyservice's percentage of Canadian carrier complaints dropped from 12.1 per cent to 7.8 per cent.

Unfortunately, the number of complaints that I received about Jetsgo, while relatively small, has continued to increase both in numerical and percentage terms as the company's operations have expanded. During the first six months of 2003, I received 19 complaints about Jetsgo, which was 4 per cent of the complaints about Canadian carriers. In the second half of the year, I received 27 Jetsgo-related complaints, which was 8.4 per cent of the Canadian carriers complaints. I also have some concerns about the way in which Jetsgo deals with the complaints it receives. I am hoping to set-up a meeting shortly between Jetsgo officials and complaints staff to discuss these concerns.



I am also very pleased to be able to report that I received only one complaint about WestJet (down from six in the previous six months), four complaints about CanJet (an increase from one last time) and one about Zoom (down from five previously). Air Canada's discount arm, Zip, only generated one complaint to me and the number of complaints that I received about Air Canada Jazz decreased from eleven to six.

<b>Complaints about Canadian carriers</b>		
	<b>January - June 2003</b>	<b>July - December 2003</b>
Air Canada	310	176
Air Transat	64	43
Canadian Western Airlines	0	37
Jetsgo	19	27
Skyservice	58	25
Canjet	1	4
WestJet	6	1
Zoom	5	1
HMY	5	0
Other	12	6
<b>Total</b>	<b>480</b>	<b>320</b>

#### **NEITHER FISH NOR FOWL**

With the introduction of small commuter aircraft and regional jets on many routes, airlines have created a new category of baggage that is neither carry-on nor checked. Objects that are intended to be carried on are removed from passengers on the tarmac as they board and placed in "safe storage" on the plane. These are reclaimed by passengers as they disembark from the aircraft. While to many people this seems to be a form of baggage check, the airlines do not consider it as such and, generally, they do not apply the same rules concerning loss and damage as they do for luggage that is checked-in at the arrivals counter.

In this particular case, the complainant intended to take his laptop computer on the aircraft as carry-on luggage. However, when he tried to board his Bearskin Airlines flight from Hamilton to Thunder Bay, he was advised that the computer would have to be placed in a special baggage compartment in the nose of the aircraft. He tried to argue that the computer was a fragile item and he would prefer to keep it with him, but airline personnel insisted that the computer could not be carried in the passenger cabin and they assured him the computer would be perfectly safe in the special nose compartment. Well, it wasn't.

When he arrived home and opened up his computer, the complainant discovered that the screen had been cracked. He contacted the carrier and asked that the screen be replaced at Bearskin's expense. The carrier refused, stating that it had no liability for carry-on luggage and that, even if the computer had been checked, the carrier had no liability for fragile items. 🐞

The passenger was not satisfied and sought the assistance of the Air Travel Complaints Commissioner. An initial approach to the carrier by Complaint Investigations staff failed to change the carrier's decision. After studying the case, the Commissioner felt that, in removing the computer from the passenger's possession, the carrier had tacitly assumed responsibility for it. Therefore, in the Commissioner's opinion, Bearskin could not deny liability for damage that occurred while the computer was in its safekeeping. She requested staff to pursue the matter further with the carrier.

Complaint Investigations staff entered into a series of discussions with Bearskin representatives which culminated in the passenger being offered partial compensation (\$500) for the broken screen. He accepted the offer. 🐞

### **Canadian Western Airlines and advance payment protection**

One small British Columbia-based carrier, Canadian Western Airlines, was the source of 37 complaints in the second half of 2003. These complaints stemmed from the fact that Canadian Western ceased operations in November 2003 without prior warning, leaving a number of passengers holding worthless pre-paid tickets, many of which had been purchased directly from the carrier. In fact, some consumers had purchased books of tickets that were suddenly not worth the paper on which they were printed.

British Columbia is one of three provinces in Canada that have programs in place to protect air travellers in the event of a so-called "end-user failure" (Ontario and Quebec are the other provinces that have instituted such a program). However, in all cases, these provincial programs only cover persons who purchase their

tickets through a provincially-certified travel agency. Thus, those people who purchase directly from the carrier, a growing trend in today's travel market, do not have recourse to the provincial funds. Hence, when I referred these complaints to the BC Travel Registrar, it replied:

“Please be advised we cannot help consumers who purchased directly from Canadian Western Airlines. Our jurisdiction is the province of British Columbia and the enforcement of *Travel Agents Act* and *Travel Agents Act Regulations*. Consumers were referred to the office of the government department responsible for licensing and regulating the airline they dealt with, as our office could not assist.”

There is a federal program in place to protect air travellers' advance payments, but this program only applies to international charter operations. It does not apply to a situation such as Canadian Western's.

In my last report, I drew attention to the risk that the increase in direct sales of air travel by air carriers is creating for the travelling public. As the difficulties caused by the cessation of this one small carrier demonstrate, the impact of a carrier failure, even a small one, can be significant. Today, with a number of large carriers experiencing serious financial difficulties, I believe that this issue is more pressing than ever and that the travel industry, as a whole, needs to take steps to ensure that air travellers' pre-payments are adequately protected, regardless of where, how, or from whom they purchased their tickets.

### **Complaints about foreign carriers**

Contrary to the trend in complaints against Canadian carriers, the number of complaints against foreign air carriers increased slightly in the second half of the year. There were 97 such complaints in the first six months of the year, compared to 106 in the second six months.

Between January and June, the largest number of foreign carrier-complaints were about Air France (15), with United Airlines and British Airways in second and third place at six and five complaints respectively. In the second half of the year, British Airways moved into first place with 13 complaints while Air France dropped to second place with ten complaints.

Overall, between January 1 and December 31, 2003, I received 25 complaints about Air France, 18 complaints about British Airways, 11 about Lufthansa and ten concerning Kuwait Airlines. The remaining 139 complaints were spread out over approximately 50 carriers operating in almost every corner of the planet, most of which received only one or two complaints.

<b>Complaints about foreign carriers</b>		
	<b>January - June 2003</b>	<b>July - December 2003</b>
British Airways	5	13
Air France	15	10
Lufthansa	4	7
Kuwait Airlines	4	6
Grupo TACA	2	6
US Airways	1	5
American Airlines	0	5
Aeroflot Russian Airlines	2	4
Alitalia	3	4
Northwest Airlines	1	4
Cubana	2	3
Delta	4	3
United Airlines	6	2
Air Comet Plus	4	0
Other	44	34
<b>Total</b>	<b>97</b>	<b>106</b>

### **MILE-HIGH WATER TORTURE**

The complainant was travelling in Business Class on a Mexicana Airlines flight from Mexico City to Vancouver, with a stop in Monterrey. When he reboarded the aircraft in Monterrey, he noticed water dripping onto his seat from the aircraft's ceiling. Maintenance staff were called, but were unable to fix the problem. Unfortunately, the flight was full and the complainant was unable to change seats, nor was it feasible for him to take a later flight. Consequently, he sat under a constant drip of water all the way to Vancouver, not a pleasant experience.

Safely home and dried off, the complainant contacted Mexicana, explained what had happened, and requested compensation for his discomfort. The carrier

responded with an offer of a US\$100 travel voucher. 🌟

Dissatisfied, the complainant asked the Air Travel Complaints Commissioner to intervene on his behalf. As a result of the Commissioner's intervention, Mexicana recognised that its initial offer was inappropriate and provided the complainant with a voucher for US\$850. The complainant was very appreciative of the increased compensation. He also stated that he did not believe that this compensation would have resulted without the Commissioner's intervention. 🌟

But the numbers tell only part of the story. Dealing with carriers that are not based in Canada often involves working across a number of time zones and even, on occasion, the International Date Line. Communication can be difficult under the best of circumstances. To this can be added the stress of having to deal with a variety of languages and dialects, and with legal and cultural differences that can severely impede the resolution of a complaint. In many countries, carriers seem to have, at best, only a nodding acquaintance with their own terms and conditions of carriage as set out in their tariffs, and often seem incapable of understanding that they are expected to respect their side of the contract with the passenger.


Aggrieved Canadians seeking compensation from foreign carriers for legitimate claims often find themselves in an impossible situation. Their letters and claims may be completely ignored, or the answers they receive may have little or no relation to the nature of the problem they experienced. Compensation, if offered, may be substantially less than their legal entitlement.

There are numerous challenges involved in resolving such a complaint and, at times, the process can be quite lengthy and frustrating. But there is a great deal of satisfaction when we are able to achieve a reasonable resolution for a traveller. A number of such cases are highlighted in the vignettes that accompany this report.

### **WE'D REALLY LIKE TO HELP YOU, BUT...**

By registered mail, the complainant sent his family in Fiji four round-trip tickets for travel on Air Pacific from Fiji to Canada. The tickets were never received. When the complainant approached Air Pacific for a refund, he was told that he would have to deal with the travel agency that sold him the tickets. He tried to explain to the airline that this was impossible, since the agency in question had gone out of business, but to no avail. 🌟

In frustration, he turned to the Air Travel Complaints Commissioner for help. After researching Air Pacific's tariff, Complaint Investigations staff pointed out to the carrier that the complainant had fully complied with Air Pacific's rules regarding lost tickets; that Air Pacific was therefore required to provide the refund as requested; and that the carrier could not escape its responsibilities simply because the travel agent who sold the tickets was no longer in business.

After several lengthy discussions and considerable delay, Air Pacific agreed to process the refund. Air Pacific then issued a cheque for \$3,553 to the complainant, who expressed his gratitude for our help. 

### **Other interesting facts about the July-December 2003 period**

- 74.7 per cent of all complaints received concerned seven carriers: Air Canada and its affiliates, Air Transat, Canadian Western Airlines, Jetsgo, Skyservice, British Airways and Air France;
- 176 complaints about Canadian carriers were directed at Air Canada and its affiliates (55.0 per cent) compared to 310 complaints (64.6 per cent) in my previous report;
- 43 complaints about Canadian carriers concerned Air Transat (13.4 per cent), compared to 64 complaints (13.3 per cent) in my previous report;
- 27 complaints about Canadian carriers concerned Jetsgo (8.4 per cent), compared to 19 complaints (4.0 per cent ) in my previous report;
- 25 complaints about Canadian carriers concerned Skyservice (7.8 per cent), compared to 58 complaints (12.1 per cent) in my previous report;
- 13 complaints about foreign carriers concerned British Airways (12.3 per cent), compared to five complaints (5.2 per cent) in my previous report;
- 10 complaints about foreign carriers concerned Air France (9.4 per cent), compared to 15 complaints (15.5 per cent) in my previous report.

### **What people are complaining about**

The 443 complaints received during this reporting period raised 1,230 issues, more issues per complaint, on average, than were raised in both of the previous reporting periods (1,328 issues in 615 complaints between January and June of 2003 and 1,257 issues in 734 complaints between July and December of 2002).

Complaints about the quality of the service received continue to predominate and, in percentage terms, increased during the reporting period. These were followed, at some distance, by complaints about flight disruptions, ticketing and baggage.

- Quality of service concerns accounted for 41.9 per cent of the issues raised, compared to 35.7 per cent in my last report;
- 14.4 per cent of the issues raised concerned flight disruptions. This category constituted 18.9 per cent of the issues in my last report;
- the percentage of ticketing issues decreased slightly from 13.0 per cent to 12.2 per cent, thereby continuing an encouraging trend;
- baggage issues also decreased somewhat, 11.8 per cent compared to 13.3 per cent in my last report;
- concerns about reservations remained constant at 5.0 per cent; and
- “refusal to transport” issues increased slightly from 2.6 per cent to 4.2 per cent, as did “denied boarding”, which rose from 2.1 per cent to 3.0 per cent.

### **THE BEST LAID PLANS...**


The complainant, a recent immigrant to Canada, took great pains planning his daughter’s trip back to Romania on Czech Airlines. As the daughter was only 6 ½ years old and would be travelling alone, he was extra-careful to ensure that she had all required travel documents, including a valid Romanian passport and a valid Canadian Permanent Resident Card, which she would need to re-enter Canada. Both documents had a validity period well beyond her intended travel dates. He also paid extra for his daughter to be supervised by a flight attendant on both flights. However, even careful planning did not result in a trouble-free trip.

Although the little girl travelled from Montréal to Bucharest via Prague without difficulty, she had problems returning home to Canada. On the day of her scheduled return, her grandparents accompanied her to Bucharest airport. They were in the process of filling out an “unaccompanied minor” form to ensure that she would receive assistance on her flight from Bucharest to Montréal when, to their great surprise, they were advised by Czech Airlines staff that their granddaughter would not be able to travel as planned since she did not have a “Record of Landing” form, needed to re-enter Canada. 🐞

The grandparents contacted the Canadian Embassy and determined that the form had been replaced by the Canadian Permanent Resident Card, which the

girl had in her possession. When this fact was brought to their attention, Czech Airlines staff allowed the granddaughter to return to Canada a few days later.

The girl's father felt that his daughter had been traumatized by this incident, which he considered "an abuse...and breach of a traveller's rights". Czech Airlines' position was that "there was no act...(of) discrimination and...abuse", as its staff was not "fully informed about the new procedures", and was concerned that the passenger might encounter difficulties because her return trip involved a connecting flight via Prague, rather than being direct to Canada.

Following the intervention of Complaint Investigations staff, a Canadian-based representative of Czech Airlines met with the girl's father and offered him, his wife and daughter three round-trip tickets from Montréal to Bucharest. He accepted the offer. The complainant subsequently wrote to the Commissioner stating: "I want to thank you for your help with this. I am sure that without you I could not do anything." 

<b>Issues - all carriers</b>		
	<b>January - June 2003</b>	<b>July - December 2003</b>
Quality of service	474 - 35.7 %	515 - 41.9 %
Flight disruptions	251 - 18.9 %	177 - 14.4 %
Ticketing	172 - 13.0 %	150 - 12.2 %
Baggage	176 - 13.3 %	145 - 11.8 %
Reservations	66 - 5.0 %	61 - 5.0 %
Refusal to transport	34 - 2.6 %	52 - 4.2 %
Denied boarding	28 - 2.1 %	37 - 3.0 %
Safety	51 - 3.8 %	35 - 2.8 %
Frequent Flyer Program	39 - 2.9 %	28 - 2.3 %
Unaccompanied minors	3 - 0.2 %	9 - 0.7 %
Fares	22 - 1.7 %	7 - 0.6 %
Other	12 - 0.9%	14 - 1.1 %

To a large extent, the issues raised concerning large Canadian carriers mirror the above. However, there are some variations when looked at on a carrier-by-carrier basis.



<b>Issues - Air Canada July - December 2003</b>		
Quality of service	214	44.7 %
Flight disruptions	70	14.6 %
Baggage	62	12.9 %
Ticketing	42	8.8 %
Frequent Flyer Program	24	5.0 %
Reservations	21	4.4 %
Denied boarding	20	4.2 %
Refusal to transport	14	2.9 %
Other	12	2.5 %
<b>Total</b>	<b>479</b>	

<b>Issues - Air Transat July - December 2003</b>		
Quality of service	68	48.2 %
Flight disruptions	24	17.0 %
Reservations	12	8.5 %
Baggage	9	6.4 %
Safety	9	6.4 %
Ticketing	8	5.7 %
Refusal to transport	5	3.5 %
Denied boarding	3	2.1 %
Other	3	2.1 %
<b>Total</b>	<b>141</b>	

## **WE GOOFED, YOU PAY**

The complainant and her companion planned to travel from Toronto to Costa Rica on Air Transat for a vacation. However, when they arrived at the airport check-in counter, the companion was advised that he was inadmissible to Costa Rica because his Canadian passport would expire in less than six months. The carrier made this determination based on information contained in an automated information system maintained by the International Air Transport Association (IATA), which advises carriers on the admission requirements of most countries. Air Transat also advised that the decision could be reversed upon presentation of a valid Canadian birth certificate.

The travellers promptly called the companion's mother and asked her to bring his birth certificate to the airport. This she did, arriving five minutes after the aircraft had departed. While the carrier had been prepared to transport the complainant, she understandably chose to remain behind with her friend, assuming that, once everything was straightened out, they would be able to continue their trip together.

A phone call by the travellers to the Costa Rican Embassy in Ottawa quickly determined that Costa Rica does not impose a six-month validity period for Canadian passports. Furthermore, the passengers were advised that, for Canadian citizens, a valid Canadian driver's licence is sufficient for admission to the country.

Understandably upset, the travellers returned to the carrier, which admitted they had made an error and agreed to provide the friend with alternate travel on another airline, at no additional cost. However, since the complainant had not been refused carriage and, since she was travelling on a non-refundable ticket, the carrier refused to offer her the same arrangement. To salvage their vacation, she had to purchase a new ticket at a cost of \$682. 🙄

But the nightmare was not over yet... When the couple finally got to Costa Rica, they had to pay US\$31 for transportation from the airport to the hotel where, they discovered, the tour representative had not been advised of their delayed arrival and they had been listed as "no-shows", therefore their hotel room was no longer available. By the time everything was straightened out, they had lost two days of their vacation.

Upon their return to Canada, the complainant asked Air Transat for compensation since they had incurred additional costs as a result of their airline's error. The request was denied and they asked the Air Travel Complaints Commissioner for help. A lengthy investigation followed, during which the Commissioner pointed out to Air Transat that, while it was fully entitled to make use of IATA's automated information system when determining the admissibility of persons to various countries, it could not hold passengers responsible for errors in the database.

More than a year later, Air Transat, while accepting no responsibility for the error, continuing to refuse compensation in cash, offered the complainant a \$700 travel voucher which was accepted. The Commissioner asked the carrier to advise IATA of the error in its database. 🇨🇦

<b>Issues - Jetsgo July - December 2003</b>		
Quality of service	42	45.7 %
Flight disruptions	10	10.9 %
Safety	9	9.8 %
Baggage	8	8.7 %
Ticketing	7	7.6 %
Refusal to transport	5	5.4 %
Unaccompanied minors	5	5.4 %
Reservations	3	3.3 %
Other	3	3.3 %
<b>Total</b>	<b>92</b>	

<b>Issues - Skyservice July - December 2003</b>		
Quality of service	34	47.2 %
Flight disruptions	19	26.4 %
Baggage	11	15.3 %
Ticketing	4	5.6 %
Reservations	2	2.8 %
Other	2	2.8 %
<b>Total</b>	<b>72</b>	

To provide a better understanding of what air travellers are complaining about, the following charts break down each of the complaint issues into sub-elements.

<b>Quality of service complaints - all carriers July - December 2003</b>		
Lack of communication	123	23.9 %
Handling of complaint by the airline	119	23.1 %
Attitude	106	20.6 %
Line-ups/Waiting	63	12.2 %
Telephone delays	41	8.0 %
Meals	21	4.1 %
Equipment	19	3.7 %
Other	23	4.5 %
<b>Total</b>	<b>515</b>	

<b>Flight disruptions complaints - all carriers July - December 2003</b>		
Flight delays	78	44.1 %
Flight cancellations	53	29.9 %
Changes to flight schedules	41	23.2 %
Other	5	2.8 %
<b>Total</b>	<b>177</b>	

<b>Ticketing complaints - all carriers July - December 2003</b>		
Refunds	95	63.3 %
Charges (fees/penalties)	23	15.3 %
Restrictions	12	8.0 %
Other	20	13.3 %
<b>Total</b>	<b>150</b>	

## **PAY TWICE, TRAVEL ONCE**

While the Air Travel Complaints Commissioner receives many complaints involving lost tickets, the following complaint highlights the kind of added difficulties that can be encountered by passengers who lose tickets issued by foreign carriers.

The complainant, an elderly lady, purchased an Air India ticket for round-trip travel from Vancouver to Delhi, with connections in London (Heathrow). The flights, to and from Heathrow, were to be on Air Canada, with Air India operating the flights between England and India.

The outbound trip went without incident. However, on her return trip, the complainant lost her ticket at the airport in Heathrow prior to checking in for her Air Canada flight. Unsure where to turn for assistance and, knowing that she was supposed to return to Canada on an Air Canada flight, she asked Air Canada staff for help. Since the missing ticket was on Air India ticket stock, Air Canada staff correctly advised her to return to the Air India counter for assistance. However, the complainant was not in good health and did not feel sufficiently well to make the long walk back to the Air India counter. Instead she purchased a new, one-way ticket from Air Canada at a cost of £558 or \$1,259.

Upon her return to Canada, the complainant sought a refund from both Air Canada and Air India for the cost of her second ticket. Receiving no response from either carrier, she sought the assistance of the Air Travel Complaints Commissioner. Complaint Investigations staff confirmed that the original ticket had neither been used nor cashed-in. They contacted Air India to request a refund of the complainant's replacement ticket. The carrier refused any compensation. 🙄

Following lengthy negotiations during which the complaints staff pointed out to Air India that, pursuant to International Air Transport Association standards, most carriers refund replacement tickets, the carrier reluctantly agreed to provide a partial refund. The Commissioner judged this offer to be unacceptable and personally intervened with Air India. The final result was a full refund to the passenger of the cost of her replacement ticket. 🙄

<b>Baggage complaints - all carriers July - December 2003</b>		
Delayed baggage	61	42.1 %
Damaged baggage	24	16.6 %
Lost baggage	18	12.4 %
Pilferage	11	7.6 %
Excess weight	11	7.6 %
Other	20	13.8 %
<b>Total</b>	<b>145</b>	

<b>Reservations complaints - all carriers July - December 2003</b>		
Failure to provide pre-confirmed seats	19	31.1 %
Cancellation of reservation(s)	15	24.6 %
Seat availability	13	21.3 %
Other	14	23.0 %
<b>Total</b>	<b>61</b>	

### **SHE ALMOST MISSED THE BOAT**

After carefully reviewing arrival and departure times to ensure that she would be able to connect to her cruise ship in Vancouver, the complainant purchased a non-refundable ticket from Air Transat to get from Toronto to Vancouver. When she called the carrier two weeks prior to departure, no mention was made of a possible schedule change. The morning of her departure, she called Air Transat again to reconfirm her flight departure. This time, she was advised that the flight time had changed; worse, the revised arrival time in Vancouver would not allow her enough time to make the connection to her cruise ship.

To make the connection, she was obliged to purchase a last-minute, one-way ticket on another carrier. When she complained to Air Transat, the carrier told her that, in accordance with its tariff, they do not guarantee their schedule and are not liable for any expenses that result from a schedule change. 🐞

The complainant asked the Air Travel Complaints Commissioner to intervene on her behalf. Complaint Investigations staff were unsuccessful in convincing the carrier that a partial refund was in order. The Commissioner subsequently met with senior officials of Air Transat and asked that, because of the special circumstances involved, the carrier rethink its decision. Air Transat subsequently offered the complainant a \$311 travel voucher, equal to the value of the unused portion of her ticket. In accepting this offer, the complainant told the Commissioner's office: "I truly believe that without your assistance on this matter, justice would not have been served...". 🙏

### What they wanted

As in previous reports, complainants were looking for a variety of resolutions to their complaints. Many wanted a refund, either in whole or in part, of the cost of their airline tickets, while others sought damages for pain, suffering and aggravation. Others were looking for an acknowledgement of the validity of their complaint and were more than happy to accept a voucher for future travel, or compensation for actual out-of-pocket expenses. Others were simply looking for an explanation and an apology for the inconvenience they experienced. Of course, some complainants were looking for more than one remedy.

During the period under review:

- 28 per cent of the complainants were seeking additional compensation from their carrier, down from 34.3 per cent in my previous report;
- 24 per cent were seeking a refund of the money they paid to the carrier, up from 19.3 per cent in my previous report; and
- 12.2 per cent were seeking an explanation for the problems they encountered. This is down significantly from 20.6 per cent in the first half of 2003.

<b>Remedies sought by complainants July - December 2003</b>		
Compensation	198	28.0 %
Refund	170	24.0 %
Apology	108	15.3 %
Explanation	86	12.2 %

Points/Vouchers	68	9.6 %
Air carrier policy change	62	8.8 %
Regulatory change	15	2.1 %
<b>Total</b>	<b>707</b>	

### Results for Canadians

The Commissioner's Office closed 508 complaint files during the second half of 2003. Of these:

- 156 were Level I complaints;
- 279 were Level II complaints; and
- 73 were referred to other jurisdictions, such as the Canadian Transportation Agency, Transport Canada and the Competition Bureau.

<b>Complaint types</b>
<b>Level I:</b> Dissatisfied customer complains directly to the Commissioner without writing to the carrier first.
<b>Level II:</b> Dissatisfied customer complains to the Commissioner after a carrier fails to respond to a complaint or if the customer is not satisfied with the response received from the carrier.

An additional 107 Level I files moved to Level II because the complainants were not satisfied with the results obtained at the first level.

For 2003 as a whole, the results were:

The total number of files closed was 1,226, of which:

- 414 were Level I complaints;
- 617 were Level II complaints; and
- 195 were referred to other jurisdictions such as the Canadian Transportation Agency, Transport Canada and the Competition Bureau.

An additional 218 Level I files moved to Level II because the complainants were not satisfied with the results obtained at the first level.



## Satisfaction level

Of the 680 Level I complaints that were brought to the carriers' attention for the first time, 57.9 per cent were resolved to the complainant's full satisfaction with no further assistance from me or my staff.

However, in 437 cases, the complainants had not been able to satisfactorily resolve their complaint on their own. In many cases, they had made repeated attempts to resolve the issue and had exhausted all possible avenues of appeal within the airline. It is in these exceptional cases that my intervention can often make a real difference.

Between January 1 and June 30 of 2003, 150 of the 337 Level II complaints that were closed were judged by the complainants to have been resolved to their complete satisfaction. In another 48 cases, the final outcome was judged to be partially satisfactory. This resulted in a success ratio of 58.8 per cent.

Between July 1 and December 31 of 2003, my Office did even better, as 147 of 278 closed Level II complaints were resolved to the complete satisfaction of the complainant. Another 35 resolutions were judged to be partially satisfactory. This produced an overall satisfaction level of 65.5 per cent.

For the year as a whole, the satisfaction level for Level II complaints was 61.8 per cent, as judged by the complainants. Or, to put it another way, in almost three out of every five cases, we were able to effect a better solution for the complainants than they had been able to obtain on their own, despite the fact that the carriers had previously refused additional compensation.

That is not to say that all complainants received exactly the settlement they wanted. Many did not. In some cases, this was because complainants' expectations were too high. For example, airlines do not routinely refund the full cost of a ticket when the travel took place as planned, even if there were difficulties encountered en route.

In other cases, our investigations determined that the airlines had lived up to their full responsibilities under their tariffs and were unwilling to go any further. For example, international carriers will not usually exceed the US\$20 per kilo liability limit for lost luggage set out in the *Warsaw Convention*, regardless of the replacement value of the lost goods; and carriers universally exclude themselves from liability for consequential damages, such as ruined vacations and missed business deals. Under such circumstances, I am unable to require them to provide better compensation, regardless of the merit of the claim.

<b>Complaints by province, territory or other July to December 2003</b>	
Alberta	44
British Columbia	81
Manitoba	6
New Brunswick	1
Newfoundland & Labrador	6
Nunavut	1
Nova Scotia	7
Ontario	197
Prince Edward Island	2
Quebec	39
Saskatchewan	6
United States	22
International	21
Unknown	10
<b>Total</b>	<b>443</b>



## **Air Canada and the *Companies' Creditors Arrangement Act***

On April 1, 2003, Canada's largest airline, Air Canada, was granted protection from its creditors under the *Companies' Creditors Arrangement Act*.

At that time, Mr. Justice James Farley of the Ontario Superior Court issued an Order which stated in part:

"This Court orders that until and including May 1, 2003, or such later date as the Court may order (the "Stay Period"), (a) no suit, action, enforcement process, extra-judicial proceeding or other proceeding (including a proceeding in any court, statutory or otherwise)...against or in respect of an Applicant or any present or future property, rights, assets or undertaking of an Applicant...shall be commenced and any and all Proceedings against or in respect of an Applicant or the Applicants' property already commenced be and are hereby stayed and suspended...."

This Order has subsequently been extended several times. It effectively removes Air Canada from regulatory and legislative oversight until such time as the company restructures and emerges from creditor protection.

With Air Canada's concurrence, I continue to refer Level II complaints to the airline, but I am unable to intervene directly with Air Canada on these cases unless it voluntarily agrees to my intervention. To date, no such agreement has been forthcoming.

Between April 1, and December 31, 2003, I referred 183 Level II complaint files to Air Canada under the "Stay Process".

An analysis of the responses received from the carrier as a result of the referral of these 183 complaints reveals that, in 38 instances, Air Canada increased the level of compensation offered to complainants. In 96 instances, Air Canada's position remained unchanged and, in 49 instances, my office was still awaiting a reply from Air Canada to the complaints.

At the end of December 2003, these 183 complaints had been actioned as follows:

- there were 24 Air Canada complaints being held in abeyance. These were files that had been referred to Air Canada but both the complainant and myself remained dissatisfied with the resolution offered to date; they are being held for further investigation once Air Canada emerges from the *Companies' Creditors Arrangement Act* protection;

- 102 files were still active and pending review by my office; and
- 57 files were closed.

Of the 57 complaint files closed:

- 5 complainants told us they were pleased with the settlement received;
- 6 complainants remained dissatisfied. However, I was of the view that we had gone as far as was reasonable with their complaints and that continuing to pursue the matter would serve no useful purpose; and
- we assumed satisfaction in 46 cases after advising the passengers that unless we heard from them within 30 days, we would assume that they were satisfied and close their files.

I will continue to monitor the situation with Air Canada closely. When the carrier emerges from protection under the *Companies' Creditors Arrangement Act*, I intend to pursue the pending cases, although my ability to do so could be affected by the terms of emergence determined by the court. At that time, I will also renew my normal investigatory practices vis-a-vis Air Canada complaints.

## **Recommendations**

### **1. Airlines should compensate passengers adequately when they are “bumped” off flights because of oversales**

To ensure maximum use of the space on board their aircraft, airlines routinely practice what is called over-selling. They do this to offset the high number of “no-show” passengers who change their travel plans without advising the airline. When an airline confirms more reservations than there are seats on an aircraft, some passengers may be “bumped” off. This is referred to as being “denied boarding”.

In the United States and the European Community, regulators have established that, in such cases, airlines must follow certain procedures to ensure the passengers are carried to their final destinations and receive specified compensation.

In the deregulated environment in Canada, airlines are not legally bound to offer compensation to passengers who are denied boarding because of oversales. It is up to the airlines to establish their own policies and include these in their own tariffs. As a result, there is no standard practice: some airlines pay as much as \$300 while others pay nothing at all.

I feel that airlines in Canada should be obliged to offer reasonable compensation to passengers who are denied boarding on their confirmed flight because the airline has oversold the flight.

### **2. Credit for unused transportation should go to the purchaser of the ticket**

Many airline tickets nowadays are not refundable; however, in most cases, the airline will offer a credit or travel voucher that allows the ticket holder to apply the amount towards the purchase of another ticket at a later date. The credit is usually in the form of a voucher issued in the name of the passenger, regardless of the fact the ticket may have been purchased by someone other than the passenger.

My office gets complaints from parents who receive vouchers in their young children’s names. Since there is no likelihood that the child will use the voucher within the prescribed period (usually one year), the parent who purchased the ticket will, in fact, lose the value of the voucher.

We also receive complaints from companies who paid for employees travelling on company business and, when the business trip was cancelled, the employer could not use the credit for other company business trips as the voucher bears the name of a specific traveller and cannot be changed or ceded.

It is a known fact that a large portion of these travel vouchers, are forgotten in some bottom drawer and will never be used. This explains why some airlines insist on giving travel vouchers that have a limited shelf life, are very difficult to use, and can only be used towards one single purchase. Should the new ticket cost less than the value of the voucher, the airline will not refund the difference. This is a winning situation for the airline but not for the consumer.

### **THANKS, BUT NO THANKS**

A non-profit organization bought a non-refundable ticket from Skyservice to permit a "street youth" to return home to Vancouver from Toronto. However, Skyservice changed the departure time of the flight, which created a problem since the passenger would still be in detention at the time the flight was now scheduled to leave. The organization cancelled the reservation and requested a refund. The carrier denied the request on the basis that the ticket was non-refundable. 🙄

At this point, the organization referred the matter to the Air Travel Complaints Commissioner. The Commissioner knows that tickets on low-cost carriers are generally sold as "non-refundable". However, she believes that when a carrier makes a material change in the contract of carriage which results in a passenger being unable to travel, there should be some recognition on the part of the carrier that it has not lived up to its side of the bargain. Accordingly, she asked Skyservice to reconsider its decision because of the special circumstances in this case. After some discussion, the carrier agreed to a partial restitution, but only in the form of a travel voucher for future travel that would be issued in the name of the passenger, rather than in the name of the organization that had purchased the ticket. 🙄

Not surprisingly, the organization found this offer quite unacceptable. The Commissioner also believes that credits and refunds of tickets should, under most circumstances, be made to the ticket purchaser and not to the person whose name appears on the ticket. Accordingly, she pursued this matter personally with the carrier's management. Following her intervention, Skyservice agreed to refund part of the ticket to the purchaser and subsequently issued a cheque for \$150 to the non-profit organization. 🙄