

INQUIRY OFFICER'S REPORT

INVESTIGATION OF AIR TRANSAT FLIGHT NOS. 157 AND 507 DELAYED ON THE TARMAC AT OTTAWA'S MACDONALD-CARTIER INTERNATIONAL AIRPORT ON JULY 31, 2017

**Case No. 17-03788
August 25, 2017**

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APPOINTMENT OF INQUIRY OFFICER AND SCOPE OF THE INVESTIGATION

On August 9, 2017, the Canadian Transportation Agency (the Agency) decided to hold a public hearing in order to obtain a better understanding of the actions of the air carrier Air Transat A.T. Inc. carrying on business as Air Transat (Air Transat) and of what Air Transat calls a confluence of factors beyond its control, which it asserts caused the events in question. The hearing is scheduled for August 30 and 31, 2017 in Ottawa, Ontario.

To prepare the ground for an efficient public hearing, the Agency appoints Jean-Michel Gagnon, an employee of the Agency and a designated enforcement officer based in Montréal, as the Inquiry Officer, pursuant to subsection 38(1) of the *Canada Transportation Act*, S.C., 1996, c.10, as amended (CTA), to conduct a preliminary investigation.

As stated in Letter Decision No. LET-A-49-2017, the Agency is limiting the scope of the public hearing and its preliminary investigation to the circumstances surrounding the tarmac delays of Air Transat Flights Nos. 157 and 507 on July 31, 2017, while specifying that it will focus on the following two main questions during the hearing:

1. Did Air Transat properly apply its Tariff during these incidents, pursuant to subsection 110(4) of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR)?
2. Are Air Transat's applicable Tariff provisions reasonable, pursuant to subsection 111(1) of the ATR?

The mandate assigned to the Inquiry Officer is therefore specifically related to the limited scope of the public hearing. To carry out the mandate, the Inquiry Officer is responsible for conducting interviews, collect written statements from individuals and organizations directly involved with or affected by the incidents, and obtaining information or documents relevant to the investigation.

To that end, the individuals or organizations directly concerned with or affected by the incidents may, on their own initiative, communicate with the Inquiry Officer so that the latter may collect their statements. Otherwise, the Inquiry Officer may exercise all of the powers described in section 39 of the CTA.

The Inquiry Officer hereby submits a report to the Agency including the factual evidence gathered related to the circumstances surrounding the tarmac delays of Air Transat Flights Nos. 157 and 507 at the MacDonald-Cartier International Airport in Ottawa on July 31, 2017.

INTRODUCTION

Events of July 31, 2017

In the late afternoon on July 31, 2017, 20 commercial flights were diverted to the MacDonald-Cartier International Airport in Ottawa (CYOW) following temporary shutdowns of ground operations at the Montréal Pierre Elliott Trudeau International Airport (CYUL) and at the Toronto Pearson International Airport (CYYZ) due to adverse weather conditions. These simultaneous shutdowns, which were both unusual and unexpected, occurred during a peak period at CYOW, where a number of regular flights were in movement.

This situation affected the service provided by a number of airlines, including Emirates, Koninklijke Luchtvaart Maatschappij, N.V. (K.L.M. Royal Dutch Airlines), Société Air France carrying on business as Air France, Air Canada also carrying on business as Air Canada rouge and as Air Canada Cargo (Air Canada), Air Transat and WestJet. All of these flights were delayed on the tarmac for periods ranging between approximately 1 hour and 5 hours and 51 minutes. Of the 20 flights diverted, four were flights operated by Air Transat, i.e. Flight Nos. TSC711, TSC157, TSC445 and TSC507.

Air Transat Flight Nos. TSC157 and TSC507 at issue here, were delayed an estimated 5 hours and 51 minutes and 4 hours and 47 minutes, respectively. These flights attracted media attention after passengers notified the media or called 911 emergency services, complaining primarily of heat inside the aircraft cabins and their inability to disembark the aircraft.

At 9:00 p.m., the aircraft's auxiliary power unit on Flight No. TSC157 ran out of fuel, cutting off the power supply to various aircraft systems and therefore shutting down forced air ventilation and significantly reducing the light level in the cabin, which was lit only by battery-powered emergency lights. This problem was resolved approximately 10 minutes later, when the aircraft was hooked up to a mobile power unit that was provided.

At 9:23 p.m., the emergency response teams (police and first responders) were deployed within the aircraft of Flight No. TS157 in response to a specific call received at the 911 emergency service centre. No medical emergency was found and no passengers were evacuated. The emergency response teams distributed bottles of cold water and, together with the Flight Captain and the crew members, coordinated the opening of the aircraft doors to increase ventilation within the aircraft. Lastly, an inspection was carried out in the cargo hold by a superintendent of the Canada Border Services Agency (CBSA) to verify the well-being of a dog travelling in a cage in the rear cargo hold, and give it water.

The aircraft for Flight No. TSC507 did not run out of fuel, and similar events did not occur.

Air Transat Flight Nos. TSC507 and TSC157 left CYOW at 10:07 p.m. and 10:59 p.m., respectively, and transported all of their passengers to their initial final destination, CYUL.

Agency's direction to show cause

Given the seriousness of the situation, the Agency, on its own initiative, decided to initiate an investigation of the circumstances surrounding the delay of these two Air Transat flights.

In its Letter Decision No. LET-A-47-2017, dated August 2, 2017, the Agency was of the preliminary opinion that Air Transat had contravened subsection 110(4) of the ATR by not properly applying the terms and conditions set out in its international tariff. The Agency provided Air Transat with the opportunity to show cause why it should not finalize its preliminary finding, and to provide explanations for these incidents.

Air Transat's response

In its letter, dated August 4, 2017, Air Transat was of the opinion that it has met the requirements related to the tariff provision in question. Air Transat was also of the opinion that a confluence of factors beyond its control has directly resulted in its inability to reduce to a minimum the effects of the diversions and delays due to weather conditions of the concerned flights, and to safely disembark the passengers in order to provide them with a minimum level of comfort. Air Transat concluded that in its opinion, the Agency had no grounds to determine that they had not properly applied the terms and conditions set out in its international tariff.

INVESTIGATION

Chronology

The investigation was conducted in three phases.

Phase 1, from August 9 to 11, 2017 consisted of receiving calls and e-mails from the public and identifying individuals or organizations directly concerned with or affected by the incidents. All of the passengers affected by the incident agreed to submit their written testimonies by e-mail no later than August 18, 2017. A total of 29 testimonies from passengers were collected.

During this period, the Inquiry Officer also contacted the CYOW Airport Authority and Air Transat to schedule interviews during the week of August 14, 2017.

Phase 2, from August 14 to 22, 2017, included the collection of testimonies, statements and information necessary for understanding the events and preparing an efficient public hearing by the Inquiry Officer.

During this period, 19 individuals were met with and interviewed and 8 statements were collected.

Phase 3, from August 22 to 25, 2017, consisted of an analysis all of the documents received and production of this report.

Testimonies of individuals or organizations directly concerned with or affected by the incidents

Passengers directly involved

29 testimonies of passengers directly involved were collected. Nineteen testimonies were from passengers on Flight No. TSC157 (Appendix 1) and ten were from passengers on Flight No. TSC507 (Appendix 2).

Some of the testimonies were provided on behalf of two or more individuals, usually members of the same family. It should be noted that in preparing for a public hearing where some passengers could be called to testify, the Inquiry Officer considered the signatory to be acting solely on his or her own behalf, and therefore did not record the other passenger members cited in these testimonies.

CYOW

On August 15, 2017, the Inquiry Officer met with seven representatives of the CYOW Airport Authority, who gave testimony relative to their understanding and knowledge of the events based on their respective assigned tasks. A PowerPoint presentation was given and video footage showing the aircraft for Flight Nos. TSC157 and TSC507 on the tarmac during the events was also viewed. An outdoor tour of the restricted area was conducted. Documents, including a copy of the PowerPoint presentation and copies of the said video footage were collected. At the end of the meeting and at the request of the Inquiry Officer, it was agreed that the CYOW Airport Authority would submit a written version of the information presented.

On August 18, 2017, Mr. Mark Laroche, President and Chief Executive Officer of CYOW, submitted a statement of facts by e-mail (Appendix 3), as agreed. The Inquiry Officer confirms that the content of this statement of facts is consistent with the information presented during the meeting.

CBSA

On August 15, 2017, the Inquiry Officer met with Mr. André Chartrand, the CBSA superintendent on duty at CYOW, who stated verbally that CBSA had the capability to manage the deplaning of one of the aircraft diverted on the evening of July 31, 2017, if necessary. On August 22, 2017, Mr. Chris Kealey, Manager of Communications at CBSA, submitted a written statement to that effect by e-mail (Appendix 4).

Bradley Air Services Limited also carrying on business as, among others, First Air (First Air)

On August 16, 2017, the Inquiry Officer met with two representatives of First Air, who provided ground services during the events. It was not possible during the interview to obtain all of the information wanted as an employee who witnessed the events was on leave outside of the country. At the end of this meeting and at the request of the Inquiry Officer, it was agreed that First Air would submit a written version of the information presented, along with the missing information from the employee on leave.

On August 21, 2017, Ms. Danita Harper, Administrative Assistant at First Air, submitted a statement of facts (Appendix 5) by e-mail, as agreed. The Inquiry Officer confirms that the content of this statement of facts includes the information submitted during the meeting, as well as the additional information that were not discussed during the meeting.

Air Transat

On August 16, 17 and 18, 2017, the Inquiry Officer met with five Air Transat representatives and conducted five separate interviews. Some of the reference documents were both submitted and collected. It was agreed at the time that the content of each interview would be recorded and later a written version would be provided.

On August 21, 2017, Mr. Jean-Emmanuel Beaubrun, Senior Legal Advisor at Air Transat, submitted five written statements (Appendix 6) by e-mail, as agreed. The Inquiry Officer confirms that the content of these written statements is consistent with what was said during the discussions and with the information submitted during these meetings.

Aircraft Service International Group (ASIG)

On August 18, 2017, the Inquiry Officer met with four representatives of ASIG, which was the supplier of the fuel during the events. At the end of this meeting and at the request of the Inquiry Officer, a written statement was collected from Mike Jopling, Station Manager, Fuel Operations (Appendix 7).

Summary of the facts

The facts submitted to the Agency's review panel are contained in the testimonies, briefs, statements and other documents included in the appendices. The following key facts constitute a brief summary. For the sake of efficiency, they have been divided into two categories:

1. the facts on which there is agreement, which are corroborated or not contradicted in the appended documents, and
2. the facts on which there is no agreement, which are either contradicted or about which there is uncertainty.

Overall circumstances

Facts on which there is agreement:

- On July 31, 2017, 20 commercial flights were diverted to CYOW during a peak period.
- The CYOW Airport Authority, by virtue of its role and responsibilities, oversaw the positioning of each aircraft at the airport for an eventual refuelling.
- The unplanned presence of an Airbus A380 aircraft slowed down the operations associated with positioning each aircraft.
- Seven aircraft, including those for Flight Nos. TSC157 and TSC507, were initially positioned in an area south of the terminal building, on Taxiway C and Runway 07/25.
- In order to obtain ground services, such as aircraft marshalling up to the boarding gates, refuelling, de-icing, the provision of mobile boarding stairs or the provision of mechanical equipment, such as mobile generators, the Flight Captain of an aircraft must contact ground control to obtain ground services from a supplier.
- The CYOW Airport Authority does not provide such ground services.
- The suppliers of ground services are private for-profit companies that operate under contracts with the airlines or on a direct retail basis.
- For its needs at CYOW, Air Transat has a contractual relationship with First Air.
- First Air has an operating licence issued by the CYOW Airport Authority.
- The licences issued by the CYOW Airport Authority do not include service standards or quality of service clauses.
- Service standards, particularly the number of ground employees required to manage an aircraft, depending on its type, are included in the service contract in effect between Air Transat and First Air.
- It is not permitted to deplane passengers onto a runway or taxiway, unless it is an emergency evacuation.
- Runways, taxiways, tarmacs and the de-icing area are located in restricted areas.
- Passengers are cannot move about freely in a restricted area.
- The CYOW Airport Authority did not receive a boarding gate access request from First Air for one of the diverted flights, including Flight Nos. TSC507 and TSC157.

- There is no “sterile zone” in the terminal at CYOW able to accommodate between 259 and 340 passengers;
- The CYOW Airport Authority was nonetheless capable of managing the deplaning of one or more aircraft at one gate, if necessary.
- The deplaning of passengers at a gate implies a full clearance through customs (passengers and luggage). The CBSA was able to manage one or more deplanings, if necessary.
- Flight Nos. TSC157 and TSC507 were international flights not cleared through customs.
- It is not permitted to bring food or refreshments to an international flight that has not been cleared through customs without CBSA approval.
- The intervention of emergency first response teams following the call to 911 contributed to the delayed departure of Flight Nos. TSC507 and TSC157.
- It is not permitted to refuel a grounded aircraft on a runway.
- It is permitted, with Airport Authority approval, to refuel a grounded aircraft on a taxiway.
- At least one Air Canada aircraft was refuelled on Taxiway C.
- The ASIG had seven of its nine refueling trucks operating on the evening of July 31, 2017. The two other refueling trucks were undergoing repairs and maintenance.
- As a general rule, refuelling priority is given to aircraft in routine situations (non-diverted flights).
- Refuelling requests are forwarded from the Flight Captain of the aircraft to a First Air employee, and then from the First Air employer to the ASIG dispatcher. Information concerning delays, if any, is forwarded in the opposite direction.
- The outside ambient temperature at CYOW that evening was 28°C.
- The ground delays of Flight Nos. TSC157 and TSC507 were longer than expected.
- The CYOW Airport Authority became involved with the ASIG consortium in the overall aircraft refuelling sequence and gave priority to Flight No. KLM671.

Facts on which there is no agreement:

- One or more boarding gates were free as of approximately 6:00 p.m.
Information from the CYOW Airport Authority. It is uncorroborated from other people directly affected by the incident, i.e. First Air and/or the two Flight Captains.
- The CYOW Airport Authority was able to manage one or more deplanings onto the tarmac, if necessary, using two buses to take passengers to the air terminal building to clear customs.
Information from the CYOW Airport Authority. It is uncorroborated from other people directly affected by the incident, i.e. First Air and/or the two Flight Captains.
- Regardless of the scenario, a deplaning would inevitably have caused longer delays for the return flight to CYUL than what passengers experienced.
The CYOW Airport Authority and the two Flight Captains affirm this statement, but some passengers seem to refute it.
- First Air had access to two mobile boarding stairs on the evening of the events. These boarding stairs were rented to Swissport, another supplier of ground services.
Conflicting and uncorroborated information from First Air and the CYOW Airport Authority.
- The order of refuelling of the four Air Transat aircraft was established by the Air Transat System Operation Control Centre (SOCC) (Montreal) together with First Air.
Uncorroborated information from the pilots.
- The concept of deplaning varies from one interviewee to the next. For some, it means the deplaning of passengers from the aircraft in the area where the aircraft is, and for others, it means the deplaning of passengers into the terminal building.
The different testimonials received, including those from the two Flight Captains, the two Flight Directors and passengers, highlight this distinction.

Flight No. TSC157

Facts on which there is agreement:

- Flight No. TSC157 was carried out using an Airbus A330-200-type aircraft with C-GTIS registration, operated by Air Transat, and had 340 passengers on board as well as 11 crew members.
- While on route to CYOW, the Flight Captain announced a "fuel emergency."
- Upon the aircraft's arrival at CYOW, the Flight Captain estimated that there was approximately enough fuel in the tank to allow the aircraft to fly for 35 minutes.

- The Flight No. TSC157 aircraft was initially parked in the area south of the terminal, on Runway 07/25.
- Shortly after the aircraft's arrival at CYOW, the Flight Captain contacted First Air to obtain fuel.
- The Flight Captain's intention was to refuel the aircraft and take off again promptly.
- During the entire time that the aircraft was at CYOW, the Flight Captain, together with the Flight Captains of the other three Air Transat aircraft, maintained continual pressure on First Air to obtain fuel.
- Approximately two hours after the aircraft's arrival at CYOW, the Flight Captain received instructions from Air Traffic Control to move to an area northwest of the terminal, i.e. to an area located north of the de-icing area and adjacent to Hangar No. 14.
- The Flight Captain was unfamiliar with Rule No. 5(2)(d) of Air Transat's international tariff. *(It should be noted that during the interview, Rule No. 5(2)(d) was read and not Section 21(3)(c), as stated in the statement).*
- After waiting for 90 minutes, and up until the time of departure, the Flight Captain neither considered nor gave passengers an opportunity to disembark the aircraft.
- It was only later, when nearly 16 hours of work time (crew time) had elapsed that the Flight Captain considered the option of allowing the passengers to deplane, and this option was considered within the context of the Flight Captain no longer being permitted to pilot the aircraft after 17 hours.
- The Flight Captain never asked First Air for access to a boarding gate.
- A hot meal (calzones) and beverages were provided for the passengers approximately 1 hour and 30 minutes prior to landing at CYOW.
- While the aircraft was on the ground, water was served at least once.
- One of the cabin's two air-conditioning units was not functioning when the aircraft left Brussels.
- Once the aircraft had been moved to the area adjacent to Hangar No. 14, the Flight Captain and the Flight Director discussed the possibility of opening the aircraft doors. It was determined that the risk of injury was too great.
- The Flight Captain asked First Air to provide stairs for the aircraft.

- At about 9:00 p.m., the auxiliary power unit shut down because of a shortage of fuel, and this caused the forced air ventilation to shut down and the cabin to become dark (emergency lights only). This situation lasted for approximately 10 minutes.
- At that point, the fuel indicator indicated 70 kg of fuel remaining. The Flight Captain calculated that this was equivalent to approximately 20 minutes of flying time.
- The doors were opened when the police and emergency response teams arrived, and in collaboration with them.
- The shortage of fuel caused complex problems that delayed the refuelling process as well as the restarting of the engines.
- Air Transat Flight No. TSC157 was delayed by approximately 5 hours and 51 minutes.

Facts on which there is no agreement:

- The Flight Captain was informed several times that the refuelling would be completed within 30 minutes.
The Flight Captain affirmed this statement, but First Air and ASIG seem to refute it.
- While the aircraft was waiting on Runway 07/25, the Flight Captain deduced that his aircraft was third in line in the refuelling sequence and announced this to the passengers.
The information regarding the existence of a refuelling sequence and/or the position of Flight No. TSC157 in this sequence is uncorroborated.
- The Flight Captain then announced that the refuelling would take 30 minutes.
Uncorroborated information from certain passengers.
- The ASIG dispatcher did not provide any information as to how long the delay would be.
Uncorroborated information from the ASIG manager.
- The Flight Captain submitted a request to First Air and to the Air Transat dispatcher in Montreal to have his aircraft refuelled first, and insisted that it be refuelled first.
Uncorroborated information from the Flight Captain.
- Once the aircraft had moved to the area adjacent to Hangar No. 14, the CYOW Airport Authority employee offered the First Air employee access to a boarding gate for one of the Air Transat aircraft.
Uncorroborated information from the CYOW Airport Authority.
- The First Air employee refused the offer.
Uncorroborated information from the CYOW Airport Authority.

- When a refuelling truck became available, it went to refuel the aircraft of grounded Flight No. TSC711 located opposite the aircraft of Flight No. TSC157.
Uncorroborated information from the Flight Captain.
- In the area adjacent to Hangar No. 14, water was served a second time in the aircraft.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- All of the passengers were served water when it was served one or more times.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- All snacks, candy and other foods on board the aircraft were distributed until supplies ran out.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- Some of the passengers asked to be allowed to disembark the aircraft.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- The heat in the aircraft cabin had no effects on passengers nor did they appear to panic.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- First Air had enough ground crew to handle the situation in accordance with the service standards set out in the contracts, particularly those set out in Appendix A of the Ramp Handling contract.
The different testimonials received, including those from First Air, the Flight Captain and the CYOW Airport Authority, highlight that there is no agreement regarding this fact.
- It was hot inside the aircraft and overall conditions in the cabin deteriorated after the aircraft moved to the area located north of the de-icing area and adjacent to Hangar No.14.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.

Flight No. TSC507

Facts on which there is agreement:

- Flight No. TSC507 was carried out using an Airbus A310-300-type aircraft with C-GPAT registration, operated by Air Transat, and had 259 passengers on board as well as 9 crew members.

- Upon its arrival at CYOW, the aircraft of Flight No. TSC507 was initially parked in an area south of the terminal on Taxiway C.
- Shortly after the aircraft's arrival at CYOW, the Flight Captain contacted First Air to obtain fuel.
- The Flight Captain's intention was to refuel the aircraft and take off again promptly.
- During the entire time that the aircraft was at CYOW, the Flight Captain, together with the Flight Captains of the other three Air Transat aircraft, maintained continual pressure on First Air to obtain fuel.
- Approximately 1 hour and 30 minutes after the aircraft's arrival at CYOW, the Flight Captain received instructions to move to an area northwest of the terminal, i.e. an area located north of the de-icing area and adjacent to Hangar No. 14.
- The Flight Captain was familiar with Rule No. 5(2)(d) of Air Transat's international tariff. *(It should be noted that during the interview, Rule No. 5(2)(d) was read and not section 21(3)(c), as stated in the statement.)*
- The Flight Captain interpreted the 90-minute delay set out in Rule No. 5(2)(d) as being a wait time provided by the service provider and not as an accumulated time delay. The Flight Captain believes that he was only informed of delays varying between 30 and 45 minutes.
- After waiting for 90 minutes, and up until the time of departure, the Flight Captain neither considered giving nor gave to passengers an opportunity to disembark the aircraft.
- The Flight Captain never asked First Air for access to a boarding gate.
- A hot meal (calzones) and beverages were provided for the passengers approximately 1 hour and 30 minutes prior to landing at CYOW.
- While the aircraft was on the ground, water was served at least once.
- Air Transat Flight No. TSC507 was delayed by approximately 4 hours and 47 minutes

Facts on which there is no agreement:

- The Flight Captain was informed several times that the refuelling would be completed within 30 minutes.
The Flight Captain affirmed this statement, but First Air and ASIG seem to refute it.
- While the aircraft was waiting on Taxiway C, the Flight Captain deduced that the aircraft was sixth in line in the refuelling sequence and announced this to the passengers.

The information regarding the existence of a refuelling sequence and/or the position of Flight No. TSC557 in this sequence is uncorroborated.

- The Flight Captain then announced that the refuelling would take between 1 hour and 30 minutes and 2 hours, or between 30 and 45 minutes, depending on the version of events received.
The length of the delay differs between the Flight Captain's version and the passengers' versions.
- The ASIG dispatcher did not provide any information as to how long the delay would be.
Uncorroborated information from the ASIG manager.
- It has not been established that all of the passengers were served water when water was served one or more times.
Some of the passengers seem to refute the statement.
- All snacks, candy and other foods were distributed until supplies on board the aircraft ran out.
Non-specific information provided by the Flight Director
- Some of the passengers asked to be allowed to leave the aircraft.
Non-specific information from some of the passengers.
- First Air had enough ground crew to handle the situation in accordance with the service standards set out in the contracts, particularly those set out in Appendix A of the Ramp Handling contract.
The different testimonials received, including those from First Air, the Flight Captain and the CYOW Airport Authority, highlight that there is no agreement regarding this fact.
- It was hot inside the aircraft and the overall conditions in the cabin deteriorated after the aircraft moved to the area located north of the de-icing area and adjacent to Hangar No.14.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.
- There were people affected by the heat in the cabin of the aircraft.
The different testimonials received, including those from the Flight Captain, the Flight Director and certain passengers, reflect discrepancies in this regard.

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Monitoring and Compliance Directorate

List of Appendices

1. Testimonies of Flight No. TSC507 passengers
2. Testimonies of Flight No. TSC157 passengers
3. Response, documents and information provided by the CYOW Airport Authority
4. Written statement of Mr. Chris Kealey of the CBSA
5. Statements, documents and information provided by First Air
6. Statements, documents and information provided by Air Transat
7. Written statement of Mr. Mike Jopling of the ASIG