Failure to launch: One-person-one-fare airline policy and the drawbacks to the disabled-by-obesity legal argument

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Failure to Launch: One-Person-One-Fare Airline Policy and the Drawbacks to the Disabled-By-Obesity Legal Argument

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Abstract

Since January 2009, the Canadian Transportation Agency has required domestic airlines to uphold a one-person-one-fare policy (1P1F), according to which passengers requiring additional seating due to disability—including persons found to be functionally disabled by obesity—are entitled to it without extra cost. In this article, we show that the jurisprudence that upholds 1P1F by design makes possible domestic airline policy and practice that impose undue obstacles for, and offend the dignity of, fat persons. Specifically, because fat flyers must prove their condition is disabling, the medical documentation they must submit discursively pathologizes their bodies. Further, the process travelers must undergo to complete and submit documentation in order to qualify for the 1P1F accommodation perpetuates, even exacerbates, their vulnerability to discriminatory treatment. We conclude by showing that policies and processes developed to comply with Canada's 1P1F standard do pathologizing and stigmatizing work because airlines have an economic interest in holding to the disabled-by-obesity model rather than adjusting the normative geographies they produce (and profit from) on flights.

Keywords

One-Person-One-Fare, Disability, Air Travel, Canada

*I have a hyperawareness of my body at all times. Other people don't have to think about...their space and how much or little they're taking up, and I'm always trying not to burden someone else with my body.*¹

Fat activist and artist Stacy Bias, in collaboration with fat studies scholar Bethany Evans, launched the open access animated documentary *Flying While Fat* in December 2016. The video showcased live recordings from in-depth interviews, wherein fat-identified participants related their experiences of air travel. They described encounters with hostile passengers assigned seats beside them: how some yelled at them or flight attendants, refused to sit or demanded to be moved, or slammed down armrests on their bodies. When reflecting on this hostility, the people interviewed considered the conditions of airline travel that engender an entitlement to space, one noting, “the space itself is so commodified;” another saying, “everyone is fully aware of how much money they spent for those cubic inches.”² The interior specifications of aircrafts are not designed to provide adequate comfortable space per person, and fat persons feel this reality when they cram themselves into their seats, or encounter vitriol and violence for taking up space.

Canadian regulatory bodies developed mechanisms to respond or adjust to these spatial conditions. Since January 2009, the Canadian Transportation Agency (CTA) has required domestic airlines to uphold a one-person-one-fare policy (1P1F), according to which passengers requiring additional seating due to disability—either for their attendant, or for themselves, “including those determined to be functionally disabled by obesity”—are entitled to it without extra cost.³ The implementation of this policy coincided with jurisprudence wherein Federal Court (FC) found that Linda McKay-Panos was disabled due to obesity and should not have to face undue obstacles by being forced to pay more than non-disabled persons pay in order to fly.⁴

¹ Stacy Bias and Bethany Evans, “Flying While Fat”, *Youtube* (December 2016) online: <https://www.youtube.com/watch?v=Eoiml0Co50Y>.

² *Ibid.*

³ Canadian Transportation Agency, “Highlights of one-person-one-fare policy decision”, CTA (12 May 2014) online: <https://otc-cta.gc.ca/eng/content/highlights-one-person-one-fare-policy-decision>. Note: obesity is the language used in law.

⁴ *McKay-Panos v Air Canada and The Canadian Transportation Agency*, (2006) FCA 8 [McKay-Panos].

The 1P1F standard marks an improvement for fat persons flying across Canada, but there are adverse implications to fatness manifesting in law in association with disability, particularly given that the *McKay-Panos* decision found that not all fat persons could claim to be disabled. In this article, we show that the jurisprudence that upholds 1P1F by design makes possible domestic airline policy and practice that impose undue obstacles for, and offend the dignity of, fat persons. Specifically, because fat flyers must prove their condition is disabling, the medical documentation they must submit discursively pathologizes their bodies. Further, the process travelers must undergo to complete and submit documentation in order to qualify for the 1P1F accommodation perpetuates, even exacerbates, their vulnerability to discriminatory treatment. We conclude by showing that policies and processes developed to comply with Canada's 1P1F standard do pathologizing and stigmatizing work because airlines have an economic interest in holding to the disabled-by-obesity model rather than adjusting the normative geographies they produce (and profit from) on flights.

Jurisprudence on “Disabled by Obesity”

Canada's one-person-one-fare policy is located in a Canadian Transportation Agency (the Agency) decision. As a quasi-judicial body, the Agency has regulatory, investigatory, and judicial powers granted under its enabling statute, the *Canada Transportation Act* (CTA).⁵ Duties as listed under the CTA, specifically section 172(2), include determining whether there is any “undue obstacle to the mobility of persons with disabilities” and offering remedy by way of monetary awards and/or performance orders.⁶

How Agency procedures play out for fat passengers on domestic airlines is illustrated in the *McKay-Panos* lawsuit. Linda McKay-Panos was described in her suit as “morbidly obese”—a condition attributed to Stein-Leventhal syndrome.⁷ In June 1997, she

⁵ *Canada Transportation Act*, SC 1996, c 10.

⁶ *Ibid* at s 172(2). See also Avery Williams, “Obesity, Canada's One Passenger Fare Rule and the Potential Effects on the U.S. Commercial Airline Industry” (2009) 74 *Journal of Air Law and Commerce* 663 [Williams].

⁷ *McKay-Panos*, *supra* note 4 at para 3.

contacted Air Canada to book an August return flight from Calgary to Ottawa, with a layover in Toronto. She identified her weight and requested two economy seats or one business class seat in case a single economy seat would not accommodate her size.⁸ She was informed there was no need to purchase two seats, and her request was “met with several off-hand remarks and laughter.”⁹ She described the Calgary to Toronto flight as follows: “she could barely force herself into her seat. The passenger beside her could not access his tray because her hips spread onto his armrest. The flight attendants bumped into her with their serving carts.”¹⁰ A flight attendant gave her a vacant business class seat on her flight from Toronto to Ottawa, a gesture McKay-Panos identifies as “the only act of human dignity that she experienced during her trip.”¹¹ Two days prior to her return flight out of Ottawa, she called Air Canada to request assistance. She was informed that her flights home were overbooked, but she could purchase a business class seat for the Toronto to Calgary segment for \$972. She would not be credited for the economy seat she had already purchased. She purchased the ticket, and upon her return home, she filed a complaint for the cost and for discourteous treatment, on the grounds that the airline had failed in their duty to accommodate her under s. 172(2) of the CTA.¹²

McKay-Panos’s complaint raised complications around whether obesity constitutes a disability according to the language of the CTA. The Agency’s three-member panel had been holding preliminary hearings on this jurisdictional matter, leading to “the Calgary decision.”¹³ On the advice of experts, the panel adopted the World Health Organization’s model of disability titled ICF, for “Internal Classification of Functioning.”¹⁴ According to the ICF model: “some obese persons had impairments and experienced activity limitations and participation restrictions; as such, they were disabled.”¹⁵ This

⁸ *Ibid.*

⁹ *Ibid* at para 5.

¹⁰ *Ibid* at para 6.

¹¹ *Ibid* at para 7.

¹² *Ibid.*

¹³ *Ibid* at para 15.

¹⁴ *Ibid* at para 16.

¹⁵ Emily Luther, “Justice for All Shapes and Sizes: Combatting Weight Discrimination in Canada” (2010) 48.1 Alberta Law Review 167 at 176 [Luther].

definition meant that “obesity, *per se*, was not a disability for the purposes of the CTA.”¹⁶ Whether obesity constituted a disability would need to be determined on a case-by-case basis. In *McKay-Panos*, the same panel responsible for the Calgary decision dismissed her complaint on the grounds that she had inappropriately applied the ICF model to establish her obesity as a disability. The three-step analysis for determining whether s. 172(2) was satisfied required that a complainant show that 1) a person is disabled, 2) this person encountered an obstacle, and 3) the obstacle was undue.¹⁷ In a split decision, the panel determined that McKay-Panos claimed to be disabled by the obstacle itself—her seating. Because obesity *per se* is not a disability, her disability must be established before she can claim she encountered an obstacle. According to Avery Williams’s critique of these back-to-back decisions: “The Calgary decision used sweeping language; created a general, open-ended test for obesity-disability; and elevated transportation access to a basic human right. Contrast that with the limiting language, backpedaling, and reversion to a technicality in the subsequent decision.”¹⁸

In McKay-Panos’s appeal, Federal Court set aside the original decision and referred the issue back to the Agency to re-assess.¹⁹ As noted in the FC decision, “the majority [of the Agency panel] refused to take into account the limitation the appellant identified: the seat.”²⁰ The FC acknowledged that McKay-Panos had explained that the requirement of occupying a single economy seat imposed an activity limitation and “as a result, she suffered what she described as terrible pain.”²¹ The Agency was found correct in asserting that “the determination of whether a person is disabled must be based on the CTA,” but erred “when it held that the CTA directs that the obstacle (i.e. the seat) cannot be considered in making this determination.”²² Having the complaint referred back to the Agency to re-litigate according to these parameters was promising for McKay-Panos

¹⁶ *Ibid* at 176.

¹⁷ Williams, *supra* note 6.

¹⁸ *Ibid* at 670.

¹⁹ *McKay-Panos*, *supra* note 4.

²⁰ *Ibid* at para 34.

²¹ *Ibid* at para 35.

²² *Ibid*.

herself, but the FC upheld the Calgary decision's premise that obesity *per se* should not qualify for accommodation support.

While the *McKay-Panos* proceedings were underway, the Agency circulated a key Memorandum of Fact and Law that expanded the application of s. 172(2)—that CTA provision invoked in *McKay-Panos*.²³ The Memorandum was due to Eric Norman and Joanne Neubauer (not fat but physically disabled) working with the Council of Canadians with Disabilities to file a complaint with the Agency against three Canadian airlines: Air Canada, WestJet, and Air Canada Jazz. The class alleged that airline pricing policy transgressed s. 172(2) of the CTA by charging disabled persons fares for second seats. The policy constituted an undue obstacle to the mobility of disabled persons. The complaint resulted in the 2008 Agency ruling in accordance with s. 172(2) of the CTA that “pricing policies for domestic flights, which impose one fare per seat, constitute an ‘undue obstacle’ to the mobility of persons with disabilities in the federal transportation network.”²⁴ The corrective Memorandum ordered the three airlines to modify their policies for domestic flights in accordance with a one-person-one-fare standard, effective January 2009.²⁵ According to the 1P1F rule, domestic airlines cannot charge passengers for a second seat when those passengers are disabled and require a second seat for accommodation purposes.²⁶

While the 1P1F rule was designed to apply to disability broadly, to include for instance physically disabled persons traveling with attendant support, “obese” travelers qualified for 1P1F as long as they could prove their obesity was disabling. The new standard did not directly derive from *McKay-Panos*’s complaint, or more generally from a complaint involving fat travelers, and so it did not directly address what it means to be disabled by obesity.²⁷ How the Memorandum applies to fat airline passengers is contingent on the Calgary decision limiting who qualifies as disabled by obesity, and its refinement in

²³ Luther, *supra* note 15 at 178.

²⁴ *WestJet v Chabot*, (2016) QCCA 584 at para. 6.

²⁵ No. 6-AT-A-2008.

²⁶ Jurisprudence followed from the Agency’s decision. Air Canada and Jazz Air filed a leave to appeal from the Agency’s decision, unsuccessfully (*Air Canada, Jazz Air LP & WestJet v Canada (CTA)*, (2008) FCA 168). Nicole Chabot organized a class seeking compensation for having to pay for a second seat under WestJet’s original pricing policy (*WestJet v Chabot*, (2016) QCCA 584).

²⁷ Williams, *supra* note 6.

McKay-Panos.²⁸ In effect, the 1P1F rule combined with the call to assess accommodation requests on a case-by-case basis have resulted in the institutionalization of complicated assessment regimes that re-inscribe discrimination.

Medical Documentation and Discursive Pathology

In order to qualify for a second seat without cost on Canadian domestic flights, travelers prove their obesity is disabling via documentation that the airline provides or a process that the airline has established. The procedures for requesting accommodation are outlined in domestic tariffs—terms and conditions that all domestic air carriers are obligated by law to make public. We reviewed the domestic tariffs for Canadian air carriers that operate scheduled passenger travel, excluding those that explicitly operate light aircraft (29 seats or fewer).²⁹ Several regional airlines do not explicitly reference obesity in their tariffs.³⁰ They include sections on accommodating disability (typically referencing medical clearance and advance notice), and the CTA has interpreted disability to include obesity (on a case-by-case basis), so it would stand to reason that obesity can be read into these sections. But in the absence of explicit reference to obesity, these airlines have no established framework to apply for extra seating, or documentation to secure extra seating. Several tariffs (including those issued by Canada's top two airlines, Air Canada and WestJet) explicitly reference 1P1F, or

²⁸ The Memorandum applies to domestic flights, particularly impacting Canada's largest domestic passenger airlines Air Canada and WestJet. International flights do not fall within the Memorandum's purview; nor do charter carriers, but the Agency has expressed the hope that if major airlines implement 1P1F the standard may spread across Canada's airline industry—see Associated Press, "One-person, one-fare on Canadian airlines", *NBC News* (10 Jan 2008) online:

<http://www.nbcnews.com/id/22599803/ns/travel-news/t/one-person-one-fare-canadian-airlines/#.W8zq0fiReUk>. The Memorandum, specifically its application outside domestic flights, has been put to the test in *Delta Air Lines Inc. v Lukacs*, (2018) SCC 2. Dr. Gabor Lukacs filed a complaint with the Agency claiming that Delta Air Lines' pricing policy discriminated against obese persons, thus violating the CTA. The Agency dismissed the complaint on the grounds that Lukacs himself was not fat nor was the person he represented: a passenger who complained to Delta on behalf of a fat passenger he flew alongside. The Supreme Court of Canada directed the Agency to reassess the complaint, including Lukacs's standing.

²⁹ Light aircraft include seaplanes, helicopters, medivacs, charters, and cargo carriers. Domestic tariffs treat seating for 29 vs 30 passengers as a dividing line when stipulating terms and conditions for aircrafts.

³⁰ Specifically: Air Inuit, Air North Yukon, Flair Airlines, Northstar Air, Pacific Coastal Airlines, Perimeter Aviation, Transwest Air, Wasaya Airlines, and WestWing Aviation. Porter Airlines also lacks explicit reference to obesity in their domestic tariffs, but its accommodation application process uses a medical form that references 1P1F.

indicate that persons requiring a second seat as an accommodation are entitled to that seating free of charge, though the regional airlines that use this language in their tariffs provide a service number to make arrangements rather than an application form.³¹ In what follows, we review the paperwork that the major and some regional airlines use to implement 1P1F. We consider the implications to their discursive framings of disabled-by-obesity, particularly the yielding of authority to a medical practitioner, the language used to describe the fat flyer, and the processes and units of measurement by which size is medicalized.

The data collected for our analysis entails medical documentation provided by Air Canada, WestJet, and select independent regional airlines. Air Canada is Canada's national, flag-carrying airline founded in 1937, with subsidiaries Air Canada Express (a regional airline founded in 2011 after Air Canada Jazz was retired) and Air Canada Rouge (a budget airline founded in 2012). Air Canada provides a *Fitness for Air Travel* form that includes *Section 3 – Extra Seating by Reason of Obesity*.³² WestJet Airlines is Canada's second-largest Canadian airline, founded in 1996. Its subsidiaries include WestJet Encore, which has operated regional flights on small-range aircrafts since 2013; WestJet Link, which has operated feeder flights in British Columbia and Alberta since 2017; and Swoop, which has operated low-cost flights since 2018.³³ WestJet provides a medical form without a title, marked as version 3.³⁴

Regional passenger airlines independent of Air Canada and WestJet do not all provide medical documentation templates to complete or indication of accommodation

³¹ Air Canada (Section 4a ii), Air Creebec (Rule 71), and Canadian North (Rule 21) explicitly identify that they provide extra seating as an accommodation at no cost. Calm Air (Rule 17), Provincial Airlines (Rule 25), and WestJet (Rule 71) call this type of accommodation a One Person One Fare program.

³² Form available at "Advance Notice and Medical Approval", *Air Canada* (September 2017) online: <https://www.aircanada.com/ca/en/aco/home/plan/medical-mobility/advance-notice-and-medical-approval.html> ["Advance Notice", *Air Canada*].

³³ WestJet Link is the result of an agreement with Pacific Coastal Airlines, a smaller Canadian airline that operates scheduled, charter, and cargo flights in British Columbia and Alberta. While the Pacific Coastal Airline tariffs do not refer to obesity in their section on accommodating disability, and their website does not offer a medical form to complete in order to qualify for a second no-cost seat, potential passengers book WestJet Link flights through WestJet. They would thus have access to the WestJet medical form. Swoop provides its own medical form on their website; it is identical in all but font colour to the WestJet medical form.

³⁴ Form available at "Seating Accommodation", *WestJet* (no date) online: <https://www.westjet.com/en-ca/travel-info/special-needs/seating> ["Seating Accommodation", *WestJet*].

procedures on their websites. Our data pool includes the airlines that provide forms, but that list is limited and comes with caveats. Canadian North, founded in 1998 with headquarters at the Edmonton Airport, operates flights to northern territories. The airline provides a faxable form titled *Incapacitated Passenger's Handling Advice*.³⁵ Porter Airlines, founded in 2006 with headquarters at Billy Bishop Toronto City Airport, offers a form titled *Request for Additional Seating for Self for Reasons of Disability (Obesity)* that explicitly references 1P1F.³⁶ Running budget flights since 2005 with operating bases at two Toronto airports, Sunwing Airlines offers a *Special Services Request Form* that includes a section for obese passengers, though this form does not comply with the 1P1F standard.³⁷

Excluding Sunwing (which can be completed entirely by travelers), airlines' medical forms include portions to be completed by travelers, and portions to be completed by medical practitioners; and medical forms are reviewed by the airlines' resident medical departments before extra seating is approved.³⁸ The portion of the Air Canada form related to obesity (Section 3) must be completed by the flyer's attending physician in the case of a first assessment, but renewals can be completed by occupational therapists, physiotherapists, or nurse practitioners.³⁹ Beyond Air Canada's exception for renewals, airlines otherwise require that medical forms be completed by attending physicians who can provide their contact information and license numbers. Canadian North requires a signed declaration that the passenger authorizes their physician to deliver the form with up-to-date information, and WestJet and Porter require that the passenger consent and agree to their physician providing and discussing the medical information requested. WestJet extends this consent to authorizing the airline medical department's access to discussing "information relevant to [the applicant's] fitness to fly" with other medical

³⁵ Form available at "Special Needs", *Canadian North* (31 July 2009) online:

<https://www.canadiannorth.com/info/special-needs> ["Special Needs", *Canadian North*].

³⁶ Form available at "Disability Assistance", *Porter* (January 2018) online: <https://www.flyporter.com/en-ca/travel-information/disability-assistance> ["Disability Assistance", *Porter*].

³⁷ Form available at "Special Assistance", *Sunwing* (2019) online: <https://www.sunwing.ca/pages/en/sunwing-airlines/special-assistance>.

³⁸ The Sunwing form asks for passengers to select the box "do you require the use of an additional seat?" and follows the question with the parenthetical "(Additional cost)," which indicates that the accommodation of extra seating is only supplied at the expense of the passenger.

³⁹ "Advance Notice", *Air Canada*, *supra* note 33.

professionals or support organizations as identified by the attending physician.⁴⁰ These forms thus locate authority for determining whether the traveler is obese and whether their obesity is disabling entirely with medical practitioners. The discussions that passenger declarations authorize between attending physicians and airline medical departments diminish travelers' agency by circumventing their participation in decision-making processes related to their applications.

How the applicant is characterized fluctuates per form, and per page. On the forms supplied by Air Canada, Canadian North, and Porter Airlines, the term *passenger* is used in the sections that the flyer themselves complete, and the term *patient* is used in the sections that the medical practitioner completes. WestJet uses the term *patient* throughout its form, with the exception of the *Guest information section*—"to be completed by guest/patient."⁴¹ This linguistic shift ostensibly reflects the shifts in form addressees, but also does discursive work, for *patient* reconstitutes the fat subject who may only be brought in contact with medical authorities for the purpose of flying, rather than to treat a medical need. That is, a passenger requiring an accommodation becomes a patient through the completion of these forms. Related, *obesity*—a term contested in critical obesity and fat studies scholarship for its medical and derogatory connotations—is consistently used across documentation, which signals the commitment airlines are making to medicalizing the condition they are accommodating.⁴² The forms' language is in line with the legal terminology *disabled-by-obesity*, that standard that must be met in order to qualify for accommodation support; but *disabled-by-obesity* only needs to mean that a person's size exceeds an aircraft's seat width, insofar as the seat constitutes an undue obstacle.

The medicalization of size is further reinforced in forms' units of measurement and instructions to measure. The Air Canada form asks for the applicant's weight and height, confirmation of Body Mass Index (a calculation based on weight and height),

⁴⁰ "Seating Accommodation", *WestJet*, *supra* note 34 at 2.

⁴¹ *Ibid* at 1.

⁴² Jenny Ellison, Deborah McPhail & Wendy Mitchinson, "Introduction: Obesity in Canada" in Jenny Ellison, Deborah McPhail & Wendy Mitchinson, eds, *Obesity in Canada: Critical Perspectives* (Toronto: UT Press, 2016) 3; Anna Kirkland, *Fat Rights: Dilemmas of Difference and Personhood* (New York: NYU Press, 2018); Abigail C. Saguy, *What's Wrong with Fat?* (Cambridge: Oxford University Press, 2014).

and surface measurement.⁴³ A person's surface measurement, the form instructs, "should be calculated by measuring the distance between the extreme widest projection points of the patient when seated."⁴⁴ The patient sits on a papered-over examination table and the medical practitioner marks two points on the paper by "rest[ing] a ruler or straightedge" on each side of the patient's posterior. The distance between the two markings—Point A to Point B—constitutes the surface measurement. Canadian North also asks for a BMI and provides comparable instructions on finding surface measurement.⁴⁵ While BMI may determine whether a person is medically classified as obese, the measure is irrelevant to seat size.⁴⁶ Surface measurement appears to be the measure most closely related to seat width, though measurement method is strikingly degrading. WestJet asks for "the patient's circumference (taken while standing)," including height, weight, "waist at umbilicus," and "maximum girth of hips above gluteal fold."⁴⁷ These requirements are especially arbitrary, obscure, and potentially humiliating given physicians must obtain them.

The Submission Process and Stigmatization

The submission process itself is fraught in how it downloads responsibility for managing the process onto individual flyers who must act as their own advocates in securing accommodations; and how it creates procedural and financial roadblocks that likely have the effect of deterring fat travelers from completing applications. To investigate submission processes implemented by four Canadian airlines subject to the 1P1F ruling, we reviewed online information about 1P1F accommodations provided to travelers, then generated a list of outstanding questions. We sought answers to our queries by contacting medical, special service, or customer service representatives of the airlines we targeted via telephone and email contact information provided online. Posing as a fat flyer seeking clarity about the 1P1F application and adjudication

⁴³ "Advance Notice", *Air Canada*, *supra* note 33.

⁴⁴ *Ibid* at 5.

⁴⁵ "Special Needs", *Canadian North*, *supra* note 36.

⁴⁶ We might also note that the accuracy of BMI as a medical classification has been disputed. See Paul Ernsberger, "BMI, Body Build, Body Fatness, and Health Risks" (2012) 1.1 *Fat Studies* 6; Frank Nuttall, "Body Mass Index: Obesity, BMI, and Health: A Critical Review" (2015) 50.3 *Nutrition Today* 117.

⁴⁷ "Seating Accommodation", *WestJet*, *supra* note 34 at 9.

process, each of the authors of this article contacted at least one airline representative in the relevant accommodations/ support/assistance department between November 29 and December 7, 2018 (Anon 1 contacted Air Canada, Anon 2, WestJet and Swoop, and Anon 3, Porter Airlines). We followed similar scripts: we introduced ourselves, explained that we needed to book travel for work, and identified that we wanted to apply for a second seat as we had a BMI of around 40 and had recently learned that we might qualify for a second seat without cost if we did not fit into standard economy seat sizes. We took detailed notes (or archived emails) of the representative's or department's responses to our queries.⁴⁸

Though the specific processes of each airline varied, we found that all obfuscate the steps that fat flyers must take to be considered for additional seating due to “disabling obesity,” impose bureaucratic hurdles and financial obstacles on flyers who must navigate a maze of sometimes erroneous online and telephone information sources to decipher the process, and offer confusing sets of instructions that flyers must follow precisely to ensure their accommodation request is reviewed by airline medical personnel. Applicants must subject themselves to this humiliating and pathologizing process with considerable outlay of their own time and money, and with no guarantees that they will secure a second no-cost seat.

A majority of representatives of the airlines contacted were tentative and unsure about their company's 1P1F accommodations policy and procedures, saying many times over that they “never had to handle a request like this” (Porter) or that they “never helped with a matter like this before” (Air Canada). This response alone suggests that most fat flyers in Canada either 1) do not know about the rule; or 2) may feel too humiliated by the process to subject themselves to it. Perhaps the most egregious experience we had

⁴⁸ Though not comprehensive, we believe our research in this section provides a snapshot of how airlines handle 1P1F. Our list of four contacts includes Canada's two largest airlines (Air Canada and WestJet), and two regional airlines: Porter explicitly references 1P1F in its medical form; and Swoop is a WestJet property, which raised questions for us around whether WestJet imposes a systematized implementation strategy of 1P1F across its properties. That is, while Air Canada properties direct travelers to a standard *Fitness for Air Travel* form and provide a centralized submission process, and other WestJet properties with the word *WestJet* in their names take the same approach, Swoop offers travelers an adapted version of WestJet's submission form and instructs that travelers submit forms and inquiries to Swoop-specific contact information.

was with low-cost Swoop, which after placing Anon 2 on hold for almost 60 minutes, transferred her to a medical support representative who explained that Swoop's 1P1F policy only allowed people to "book and pay for two seats"—placing Swoop's policy, or at least this representative's interpretation of it, at odds with the actual 1P1F standard. According to the agent, Swoop's policy is really one person two fares, and only so long as a customer's application for extra seating was approved. Without completing and submitting the medical form and following up with Swoop for booking assistance, the agent explained, customers were not guaranteed side-by-side seats.

Also significant is that in all of these cases, passengers must purchase a plane ticket prior to submitting their medical form requesting extra seating, even though submitting this form does not guarantee that the airline will approve their request. Using disclaimers posted online and on the medical forms, airlines advise that passengers are responsible for any added costs associated with filling out the forms, which in Canada are called third party medical forms—and are not covered by national health insurance. Canadian federal and provincial medical associations provide a range of costs to patients filling out third party medical forms; using these as guides, we estimate that a traveler would have to pay anywhere between \$25 and \$40 CAD to have their physician complete a fit for air travel form.⁴⁹ In probing airline representatives, we learned that no

⁴⁹ We estimate costs based on the Canadian Medical Association's policy on third party forms, as well as guidelines issued to doctors by provincial medical associations and governments: "e-Panel Survey Summary: Third-Party Forms", *Canadian Medical Association* (2017) online: <https://www.cma.ca/e-panel-survey-summary-third-party-forms>; "Billing & Fees", *College of Physicians & Surgeons of Alberta* (no date) online: <http://www.cpsa.ca/physicians/billings-fees>; "Billing Guides", *Doctors Nova Scotia* (no date) online: <https://doctorsns.com/contract-and-support/billing/guides>; "Charges for Uninsured Services (NOT COVERED BY OHIP)", *Ontario Medical Association* (no date) online: <http://polyclinic.ca/2/wp-content/uploads/2015/04/Uninsured-Charges-Apr-2015.pdf>; "Common Fees at a Doctor's Office", *New Brunswick Medical Society* (2019) online: <https://www.nbms.nb.ca/patient-information/common-fees-at-a-doctor-s-office>; "Dawson Road Family Medical Clinic", *College of Physicians and Surgeons PEI* (no date) online: http://www.dawsonroadfamilymedicalclinic.com/THIRD_PARTY_SERVICES_.pdf; "Master Agreement between The Medical Society of Prince Edward Island and The Government of Prince Edward Island and Health PEI", *Medical Society of PEI* (1 April 2015) online: http://www.gov.pe.ca/photos/original/hpei_master_agr.pdf; "Physicians' Guide to Non-Insured Services", *Newfoundland and Labrador Medical Association* (2018) online: <http://www.nlmn.ca/FileManager/Publications/Guides/nlma-physicians-guide-to-non-insured-service-june-2018.pdf>; "SMA Fee Guide (Uninsured Services)", *Saskatchewan Medical Association* (1 October 2018) online: [http://www.sma.sk.ca/kaizen/content/files/_SMA%20Fee%20Guide%20October%201%2c%202018%20\(c%20omplete%20guide%2c%20all%20sections\)\(1\).pdf](http://www.sma.sk.ca/kaizen/content/files/_SMA%20Fee%20Guide%20October%201%2c%202018%20(c%20omplete%20guide%2c%20all%20sections)(1).pdf); "Uninsured Services & Pricing", *MCI The Doctor's Office* (no date) online: <https://mcithedoctorsoffice.ca/policies/uninsured-services-pricing>.

airline would reimburse travelers for this out-of-pocket expense even if an application for extra seating was denied. Representatives also admitted that if an application was not approved and a traveler did not (or perhaps could not) fly, then that traveler would incur all additional cancellation fees. The Swoop representative also advised that it was essential that physicians checked off “NA” for *not applicable* in all the sections of their form, even those sections that did not apply to the traveler, otherwise the form might be considered incomplete and might not be processed.

All the airlines we contacted further advised us to submit our forms as far in advance of travel as possible to ensure that the paperwork would be processed in time for our departure date. Despite the form instructing physicians to submit applicant medical forms 48 hours before the flight, the Air Canada agent stressed and repeated that applicants should submit their medical forms at least 48-72 hours in advance of travel or as soon as possible beforehand. In contrast, Porter required applicants to submit their form at least 48 hours before their scheduled flight; WestJet requested a minimum of five business days to process applications; and Swoop required the paperwork to be submitted at least 15 days in advance of flying. After a form was submitted and approved, the Porter agent admitted that it would stay on file under a passenger’s name for three months only, so if that passenger travelled as little as four months later they would have to go through the whole process again. The Swoop agent advised that their form was good for up to one year. The Air Canada form is subject for renewal in two years (or shorter if the traveler’s health status changes in that timeframe). WestJet might grant approval for up to three years; the agent qualified, though, that approval could be given for a year or less depending on a traveler’s specific health condition.

As a result of this research, we found that there seems to be no way of anticipating how fat one must be in order to get approval for additional seating—in other words, no way of figuring out specific airline criteria for granting or withholding extra seat space. For example, the Porter representative indicated that no guidelines have been given to Porter agents to advise passengers about the metrics that Porter uses to determine which bodies are considered small enough to fit in its economy-sized seats and which are categorized as big enough to require accommodation. In an email exchange with

WestJet's "Meddesk" on their "fit to fly" evaluation criteria, a company representative wrote that, "[t]he criteria used to determine [if a passenger qualifies for extra seating] is based on measurements that are inputted into a mathematical algorithm to determine whether one seat or two is required." However, no information was forthcoming about the kinds of "measurements" inputted or the "mathematical algorithm" used to determine the seating a traveler might require. By obfuscating how they decide who qualifies for extra space under the 1P1F standard, companies can change the dimensions (width, depth, pitch) of economy-sized seats at will to maximize profits; implement pathologizing, extractive (in terms of both time and money), and confusing procedures that deter customers from applying for extra space; for those fat travelers who do manage to apply for accommodation, decline applications by employing opaque formulas that constrain fat people to squeeze their bodies into economy-sized seats, and endure vitriol and violence from neighboring travelers; and finally, make it difficult, if not impossible, for travelers to appeal decisions. Mystification of the metrics used to determine whether or not a flyer qualifies for extra space leaves us to draw one conclusion about airline implementation of the 1P1F policy: that fat people need not apply.

Conclusion: Economic Incentive and Normative Space

The paperwork and processes for implementing 1P1F—for their inconvenience, humiliation, and social violence—function to deter passengers from making accommodation claims. The notion that fat passengers have been rendered functionally disabled by obesity is a limited framework for understanding why a passenger may require an extra seat to fly safely. While the language of disability opens up a protocol for accommodating non-normative bodies and travel needs, the functional need of a so-called obese body is to sit in a seat that fits. Airlines do not demonstrate that their assessments take into consideration the passenger's ability or accommodation needs to board or exit the aircraft, use the washroom facilities, consume any food or beverages on board, or use assistive devices. The only function passengers are noted as disabled from doing is sitting in their assigned seat when there is another passenger seated next to them.

So the accommodation is limited in scope when tied solely to seat width, and seat width itself remains unregulated, which means airlines are incentivized to prioritize their economic interests over passengers' accommodation needs. There are seats in nearly every airplane that are larger and more flexibly designed: those found in areas of the aircraft labeled business, elite, executive, plus, premium, premium economy, and signature, among other names. There is a direct correlation between the seat size and the cost of a ticket in commercial air travel.⁵⁰ The most expensive seats in an airplane are also the largest. Airlines thus have an economic incentive to sell wide seats for higher prices rather than reserve them for large bodies. Airlines are doubly incentivized to purchase and have designed aircraft that carry as many passengers as possible, thereby putting downward pressure on seat sizes across the sector. For these reasons, the average width for higher priced seats on Canadian domestic flights is 20.6 inches, with the widest seat—on an Air Canada plane—measuring 24 inches.⁵¹ By contrast, the standard seat width in economy cabins is 17 inches; and in the absence of seat regulation, that standard reflects a contraction of seat width from a previous 18 inch minimum, to fit more seats per row.⁵²

The frameworks for securing extra seating as an accommodation thus err in only paying heed to seat width considering how varied seat width can be: a flyer can be functionally limited on one aircraft but not another, or in economy but not business class. Whether a passenger is disabled by obesity fluctuates wildly contingent on context and economic privilege. We are left to conclude that the 1P1F policy fails fat travelers by resting on a

⁵⁰ In our review of aircraft interior specifications, we found that higher priced cabins in some aircraft (called “premium” cabins in Air Canada Rouge, Porter, and Swoop aircraft, and “plus” cabins in WestJet Encore aircraft) provide greater seat pitch for extra legroom, but not greater seat width compared to economy cabin seats. Otherwise, the key feature that distinguishes economy from higher priced cabins across Canadian airlines is seat width.

⁵¹ Air Canada makes the interior specifications for their fleet, including seat width, publicly available. Other airlines are not forthcoming around seat width in their interior specs, so we consulted with a crowd-sourced guide Seat Guru, which identifies seat widths for the fleets of large airlines. While determining the seat widths of regional airline fleets proved to be a more difficult feat via these methods, we did find that regional and major airlines purchased aircraft from the same manufacturers, and typically hold aircraft models in common.

⁵² Scott Deveau, “The Great Seat Squeeze: How airlines are trying to pack more people on a plane without anybody knowing”, *Financial Post* (23 March 2013) online: <https://business.financialpost.com/transportation/the-great-seat-squeeze-how-to-pack-more-people-on-a-plane-without-anybody-knowing>.

disabled-by-obesity determination, because the problem is not the flyer's body when unregulated aircraft conditions contract and expand for economic gain rather than for need.