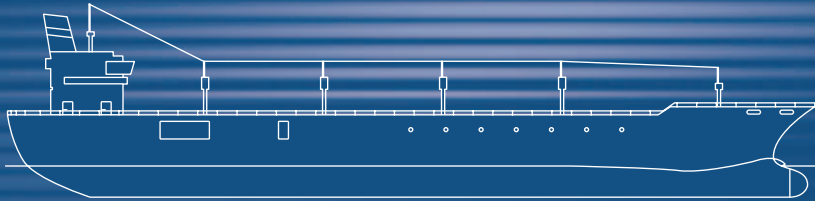
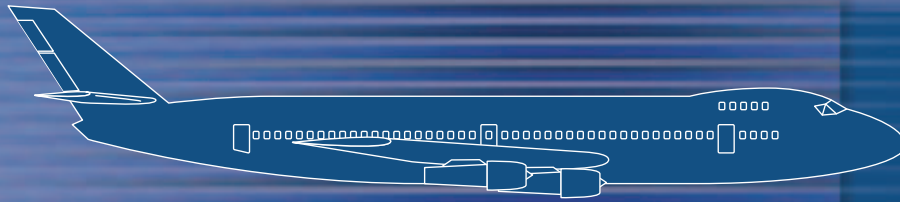
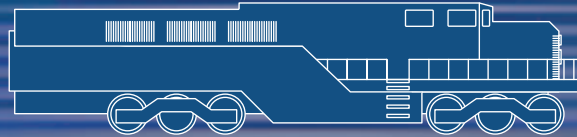


CANADIAN  
TRANSPORTATION  
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May 2002

The Honourable David M. Collenette, P.C., M.P.  
Minister of Transport  
Transport Canada Building  
Place de Ville  
330 Sparks Street  
Ottawa, Ontario  
K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour of presenting to you the annual report of the Agency for the year 2001, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

The second and third reports of the Air Travel Complaints Commissioner, which have already been tabled in the House of Commons, are also part of the Agency's 2001 annual report. As a convenience to readers, certain parts of these reports are specifically mentioned within this document.

Yours sincerely,

A handwritten signature in blue ink that reads 'Marian L. Robson'.

Marian L. Robson  
Chairman

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For more information about the Canadian Transportation Agency  
please call: (819) 997-0344 or toll free (1-888-222-2582; TTY 1-800-669-5575)

Correspondence may be addressed to:

Canadian Transportation Agency

Jules Léger Building

15 Eddy Street

Hull, Quebec K1A 0N9



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## CHAIRMAN'S MESSAGE

**THIS** report outlines the Canadian Transportation Agency's major achievements and initiatives in 2001 and looks at what's ahead in terms of anticipated trends. As required by the *Canada Transportation Act*, the report also assesses the operation of the Act during 2001 and recommends potential revisions.

While the Canadian transportation industry is constantly evolving and adapting, 2001 saw even more upheaval than usual. However, both users and providers can be confident that the Agency will continue to work with them to ensure that rail, marine and air travel are run efficiently and responsively.

With these goals in mind, the Agency introduced many initiatives in 2001 and built on the success of programs such as its mediation service, which offers an alternative to legal action in disputes related to transportation. The Agency supported the important work of the Air Travel Complaints Commissioner and continued its efforts to ensure that all forms of transportation in Canada are accessible to people with disabilities.

The Agency continues to provide fair, flexible and effective adjudication and other services to transportation carriers, other client groups and the Canadian public. These services are enhanced through the availability of Agency information and processes on-line.

The Agency will remain open to the views of persons with an interest in the transportation industry. From my experience in communicating the work of the Agency and listening to those who comment on it, I am confident that the Agency will continue to play an essential role in ensuring efficient, accessible transportation in 2002 and beyond.



Marian L. Robson

## EXECUTIVE SUMMARY

**FROM** the kayaks and travois of Canada's First Nations, to the immigrants' transport ships and Red River carts, to today's airliners, trains and ships, transportation has been crucial to the very existence of a country defined by its vastness. Since the earliest days of our history, Canadians have understood that if their country was to thrive, it must have reliable ways for people and goods to travel its length and breadth. In the modern world, that imperative remains integral to Canada's continuing growth and prosperity.

Travellers of all kinds deserve fair treatment. Carriers and shippers deserve even-handed regulation. Canadians as a whole deserve an efficient transportation network. These concerns are the responsibility of the Canadian Transportation Agency, an independent, quasi-judicial administrative tribunal that decides on a wide range of matters affecting Canadian air, rail and marine transportation.

The *Canada Transportation Act* requires the Agency to report annually on its activities. Chapter 1 outlines the Agency's activities in 2001, which include its continuing responsibilities as well as initiatives such as:

- drafting amendments to Part VII of the *Air Transportation Regulations – Terms and Conditions of Carriage of Persons with Disabilities* to extend coverage to aircraft with 20–29 passenger seats;
- distributing guidelines for accommodating passengers with disabilities on aircraft with 19 seats or fewer;
- drafting a new Code of Practice on Removing Communication Barriers for Travellers with Disabilities, to set criteria for improving communications with those with sensory and cognitive disabilities travelling by air, rail or ferry;
- publishing and launching the final report of the Air Travel Accessibility Survey, which will be used to set goals and priorities for further improving accessibility to air transportation in Canada;
- creating and distributing the *Reservation Checklist – Air Travel* to travel agents to help them in assisting clients with disabilities;

- facilitating the return flights of passengers left stranded by the Canada 3000 bankruptcy;
- approving draft revised filing guidelines pursuant to amendments to the *Shipping Conferences Exemption Act* and distributing them to the shipping conferences for comment; and
- providing technical advice to Transport Canada with respect to the recommendations of the *Canada Transportation Act* Review Panel report, *Vision and Balance*, following a year-long review of the operation of the Act.

Chapter 2 of this report lists issues the Agency encountered in 2001 – issues raised by those affected by the Act's provisions – along with suggestions for action, where advisable.

Findings cover potential changes to areas such as:

- certificates of fitness for rail providers;
- railway line construction;
- transfer and discontinuance of railway lines;
- a dispute resolution mechanism for issues related to noise, vibration and pollution caused by rail lines;
- notice of discontinuance and reduction of service by air carriers;
- unreasonable fares or rates; and
- an extension to the 120-day statutory deadline for the Agency to issue a decision on an application.

Chapter 3 summarizes what's ahead for 2002, including:

- introduction of mediation as an option to deal with complaints that concern accessible transportation for Canadians with disabilities;
- publication of the Code of Practice on Removing Communication Barriers for Travellers with Disabilities, intended to assist those with sensory and cognitive impairments;
- further investigation of the accessibility of Renaissance rail cars purchased by VIA Rail;
- a study of air fares in at least one selected region of Canada and publication of results;

- preparation of amendments to the *Air Transportation Regulations* regarding international passenger charter air services and international all-cargo charter air services;
- consultation on proposed amendments to railway legislation; and
- initiation of discussions with industry representatives regarding certain kinds of coasting trade applications, as well as beginning work to automate processing of coasting trade applications.

Chapter 4 outlines the Agency's mandate, mission, values, organizational structure and the complaints process. It describes the work of the Agency and its main components – Air and Accessible Transportation; Rail and Marine Transportation; Legal Services and Secretariat; and Corporate Management. It also provides a list of the Agency's Members.

Chapter 5 describes the results of various court cases decided or pending in 2001 in which the Agency had an interest. It provides summaries of cases heard by the Federal Court of Appeal and the Federal Court – Trial Division along with petitions to the Governor in Council.

The final chapter provides statistics on a wide range of matters under the Agency's jurisdiction, including statistics on Agency activities, complaint levels, air carriers and federal rail line transfers. It lists statutes and regulations relevant to the Agency's mandate.





## CHAPTER 1

# The Year in Review

**I**N 2001 the Canadian Transportation Agency completed its fifth full year as a transportation regulator. Its educational and consultative functions complement its core work as an administrative tribunal: by working closely with the people who provide and use transportation in this country, the Agency can more effectively administer the *Canada Transportation Act* (Act).

The Agency continues its efforts to use mediation services to make it simpler for parties to resolve disputes outside the regulatory process. The Office of the Air Travel Complaints Commissioner provides another avenue for handling complaints in the rapidly changing Canadian aviation industry.

The Agency's activities fall into four broad categories: accessibility to transportation services for persons with disabilities; air transportation, involving both passengers and cargo; marine transportation (primarily concerning the transportation of freight) and pilotage matters; and rail transportation (mainly concerning freight transportation). During 2001, the Agency issued 1,286 decisions and orders as follows: 13 decisions and orders concerned accessibility to all modes of transport, 1,016 pertained to air transportation, 170 to rail transportation, and 87 to marine transportation. This chapter outlines the Agency's activities in these four categories in 2001.

Finally, it is impossible to look back on 2001 without mentioning the tragic events of September 11. Although the initial impact of the tragedy on the Agency's day-to-day activities was relatively minor, there is no doubt that it will greatly influence transportation policy in the United States, Canada and other countries in the years to come. As a result, it may be some time before the Agency knows how the fallout from September 11 will ultimately affect its work.

## RAIL TRANSPORTATION

### RAIL INFRASTRUCTURE

Railway infrastructure includes a railway's right-of-way, trackage, supporting facilities, protective devices and other physical aspects of a railway's operation. The Agency is involved with such infrastructure from the moment someone wishes to construct it or operate over it until it is eventually decommissioned.

### CERTIFICATES OF FITNESS AND CONSTRUCTION APPROVAL

The Agency issues certificates of fitness when it is satisfied that a company proposing to construct or operate a railway has

adequate liability insurance. The Agency may also vary existing certificates to reflect changes in railway operations, or suspend or cancel a certificate.

In 2001, in addition to monitoring existing certificates, the Agency varied the certificates of the Capital Railway, the Algoma Central Railway and the Hudson Bay Railway to reflect changes in railway operations. The Agency also suspended the certificate of the Waterloo-St. Jacobs Railway since operation of the passenger train had ceased. Two other applications for variance of certificates from the Ferroequus Railway and the Hudson Bay Railway were dismissed since they were contingent upon those two companies' applications for running rights, which were denied by the Agency. The Agency also considered an application for a certificate of fitness from the Agence métropolitaine de transport for its commuter rail service, which operates primarily over the trackage of CN and CP in the Montreal area. This application was denied on the basis that the railway that was the subject of the application was not within the legislative authority of Parliament and therefore was not eligible to receive a certificate of fitness. This decision has been appealed to the Federal Court of Canada. A complete list of railways that have received federal certificates of fitness can be found in Chapter 6 and on the Agency's Web site at [www.cta.gc.ca](http://www.cta.gc.ca)

Subject to certain exclusions, the Agency must also approve the location of any new railway line, including main lines, branch lines, sidings, spurs, yard tracks or other auxiliary trackage. During 2001, the Agency received the project description for the relocation of part of the CP Coutts Subdivision near Milk River, Alberta, and has provided procedural information to numerous interested parties concerning a proposed CN Intermodal Terminal near Milton, Ontario. Other applications to construct railway lines across the lines of other railways remain on hold pending negotiations between the parties.

## INFRASTRUCTURE ISSUES

The Agency resolves infrastructure disputes among federally regulated railways and other parties who may interact with those railways. Such parties include municipalities, road authorities, utility companies, private landowners and nearby residents.

In 2001, the Agency, through its decisions and orders, reached decisions with respect to 51 disputes concerning road crossings of railways, two disputes concerning utility crossings of railways, and eight disputes concerning private crossings of railways. In addition, the Agency received 96 agreements filed by parties who had conducted their own successful negotiations related to railway crossings. The Agency also issued four decisions related to apportioning costs among railways and other parties for railway protective devices, such as crossing signals or fencing along right-of-ways. The Agency's jurisdiction to apportion costs in a fencing dispute near Montreal, Quebec has been challenged in the Federal Court of Appeal.

The Agency also resolved one complaint concerning railway invoices that a municipality received for work that railway companies had performed related to railway crossings and protective devices.

The Agency continues to consult with railways, municipal associations and Transport Canada to update the content, format and level of rates in a new *Guide for Railway Charges for Construction and Maintenance of Road Crossings*, formerly known as Schedule "A" Directives. Parties associated with such work can use this guide to help resolve disputes. Consultations have also been initiated to produce a similar guide that will set out rates more appropriate to short-line railways. The Federal Court of Appeal has ruled that the Agency lacks the jurisdiction under existing legislation to formally resolve disputes not related to safety that arise from railway operations, primarily disputes associated with noise, pollution or vibration. As no other body has such jurisdiction, the government is considering the effect of the ruling. In the meantime, the Agency continues to assist parties to resolve these disputes, either through facilitation or through mediation; 13 such cases were addressed in one form or the other throughout the year.

When the Agency receives an infrastructure application related to railway construction, it must assess the potential environmental impacts of the proposal under the *Canadian Environmental Assessment Act*. In 2001, the Agency made seven environmental screening decisions. In each case, it allowed the projects to proceed, once it was assured that the applicants' compliance with measures the Agency deemed appropriate would mitigate any significant adverse environmental impacts. The Agency is also actively involved in the review of the *Canadian Environmental Assessment Act* as it relates to amended and soon-to-be amended transportation legislation.

During the year, the Agency also completed 61 reviews of existing orders or decisions, primarily related to road crossings, where relevant facts or circumstances had changed. In most cases, legal responsibility for roads and road crossings had been transferred from provincial governments to municipal governments, so the parties under the orders or decisions had to be changed.

Finally, under an agreement with the Province of Ontario, the Agency applies federal railway crossing laws to railways under Ontario provincial jurisdiction, when required. In 2001, the Agency issued two orders affecting Ontario provincial short-line railways. The Agency can enter into similar agreements with other provinces.

### TRANSFER AND DISCONTINUANCE

Railways may rationalize their lines (including spurs) without regulatory approval if they follow a process prescribed in the Act. In 2001, the Agency received one notice that a railway had discontinued a railway line totalling 15.4 kilometres using this process. In addition, the Agency is aware of four transfers of railway lines to federal or provincial entities totalling 106.2 kilometres of track.

Under the Act, railways need not follow the prescribed process when rationalizing auxiliary trackage such as sidings, spurs and yard tracks. The Agency made two determinations as to whether specific pieces of track, totalling 2.2 kilometres,

fit into this category. Also, the Agency was made aware of four other discontinuances of auxiliary trackage totalling 32.1 kilometres. These remained under consideration at year-end.

The Agency may also be asked to determine whether a railway company has complied with the transfer and discontinuance process set out in the Act. In this regard, the Agency was required to issue only one decision, which confirmed that CN had properly followed the process for the discontinuance of the Barrhead Subdivision in Alberta.

### RAIL SERVICE AND RATE COMPLAINTS

In most commercial situations, shippers and carriers negotiate freight rates and levels of service themselves. If negotiations break down, a number of alternatives are available to shippers. The Agency helps resolve disputes between shippers and rail carriers. The Agency deals with issues related to:

- interswitching;
- competitive line rates;
- single line rates;
- joint rates;
- running rights;
- joint track usage; and
- level of service.

The Agency also administers the final offer arbitration process.

### INTERSWITCHING

In accordance with subsection 128(1) of the Act, the Agency has made *Regulations Respecting the Interswitching of Rail Traffic*. These regulations prescribe the rates for interswitching rail traffic in four different zones within 30 kilometres of an interchange. Shippers may request its traffic be interswitched with another railway carrier if that carrier is within the interswitching limits, normally 30 kilometres.

In determining an interswitching rate, the Agency considers the average variable costs of all movements of traffic subject to the rate. The Agency annually reviews CN's and CP's interswitching operations to determine whether changes in the interswitching rates are required.

### RUNNING RIGHTS

In recent years, regulated access to the line of one railway by another through granting of running rights has been the focus of much attention from shippers who, in many cases, see it as a means of increasing competition. In 2001, the Agency dealt with two applications for running rights.

In February, the Agency received two running rights applications. The first, from Ferroequus Railway Company Limited, sought running rights on approximately 2,000 kilometres of CN lines from North Battleford, Saskatchewan to Prince Rupert, B.C. The second, from the Hudson Bay Railway Company, a subsidiary of OmniTRAX Canada, sought running rights on a network of approximately 3,500 kilometres of CN branch lines and mainlines in Saskatchewan and Manitoba. Both applicants have certificates of fitness as federally regulated railways and both sought the right to solicit traffic on the CN lines over which they proposed to operate.

The issue of whether traffic solicitation rights are contemplated under the *Canada Transportation Act* was a matter of considerable debate in these proceedings. In this regard, the Agency determined that the Act as now constructed does not empower the Agency to grant running rights for the express purpose of soliciting as well as carrying the freight of shippers located on the host railway's line. As a result, in May, the Agency dismissed the applications.

In October, Ferroequus Railway Company Limited made a second running rights application. The application seeks running rights over CN lines from interchanges with CPR at Camrose and Lloydminster, Alberta to Prince Rupert, B.C. The application was still under consideration at year end.

Amendments to the Act in 2000 allow running rights to be granted as a remedy to a breach of a railway's level-of-service obligations, in respect of a grain-dependent branch line. In level-of-service complaints (described below) respecting service on a grain-dependent branch line, the shipper involved (Naber Seed and Grain Company Ltd.) has indicated that the preferred remedy to a breach of the railway's level-of-service obligation would be for the Agency to grant running rights to a second carrier.

### LEVEL OF SERVICE

In May, the Agency ruled on a level-of-service complaint filed by Naber Seed and Grain Co. Ltd. that CN had breached its obligation to provide adequate rail service to Naber's facilities at Melfort and Star City, Saskatchewan and Kathryn, Alberta for 12 weeks in the fall of 2000. The Agency determined that CN had not provided Naber with a reasonable allocation of cars to meet its needs. CN was directed to negotiate a service arrangement and communications procedures with Naber. The two parties were unable to do so. Naber subsequently filed an additional complaint that CN had breached its level-of-service obligation for a further 20 weeks from November 2000 through April 2001. Naber requested, as relief for both complaints, that the Hudson Bay Railway Company be granted running rights to serve its Melfort and Star City facilities, in accordance with recent amendments to the *Canada Transportation Act*. The Agency announced that it would hold a hearing into the second complaint and the remedy sought in both complaints early in 2002.

Throughout 2001, grain farmers expressed concerns to the Agency about railway companies' abandonment of sidings and the related impact on grain farmers' access to producer car sites. In October 2000, in response to these concerns, the Agency asked CN and CP to maintain current lists of producer car loading sites and interchange points. Both railways informed the Agency that they have published complete lists, which are also available on their Web sites. This action notably reduced formal and informal complaints the Agency received with respect to siding abandonments in 2001.

## FINAL OFFER ARBITRATION

Amendments to the *Canada Transportation Act* in 2000 improved the final offer arbitration (FOA) process by making it more expedient. Parties now have access to an arbitrator, or a three-person panel, who can make decisions using a summary 30-day process if the Agency determines that a shipper's final offer involves freight charges of less than \$750,000. If freight charges exceed \$750,000, the arbitrator has 60 days to render a decision, unless the parties agree otherwise.

During 2001, the Agency received three submissions requesting FOA. None of the submissions were treated under the 30-day summary process. Similarly, no submission sought a three-person panel. Thus, these options have not yet been used.

The legislation allows parties to a FOA to maintain their confidentiality; as a result, the Agency can only discuss cases in general terms. Of the three requests for FOA, two were subsequently referred to an arbitrator. In both cases, the parties reached an agreement and the FOA submission was withdrawn before the arbitrator ruled on the matter. In the third submission, before it was referred to an arbitrator, the parties advised the Agency that they had reached a settlement and the FOA submission was withdrawn.

## WESTERN GRAIN REVENUE CAPS AND REVENUE

In accordance with sections 150 and 151 of the *Canada Transportation Act*, the Agency must determine the maximum revenue entitlement (or revenue cap) and actual revenue for a prescribed railway company (currently CN and CP), for the movement of western grain for each crop year beginning with crop year 2000–01. The determinations must be made by December 31 following the crop year, which ends on July 31. If the railway company revenue exceeds its revenue cap, it must pay out the excess amount in addition to a penalty specified in regulations.

In Decision No. 669-R-2001, the Agency found that CN and CP revenues for the movement of western grain did not exceed their revenue caps for crop year 2000–01. CN's grain

revenue of \$391.7 million was \$3.1 million below its revenue cap of \$394.8 million, while CP's western grain revenue of \$363.3 million was \$2.7 million below its revenue cap of \$366.0 million.

In the course of establishing what constitutes grain revenue, the Agency consulted with parties in the grain handling and transportation industry. In Decision No. 114-R-2001, the Agency clarified what does – and does not – constitute western grain revenue, and what does – and does not – qualify as a reduction to western grain revenue. Later, in Decision No. 664-R-2001, the Agency addressed the issue of CP's new demurrage rules and decided that the increased amounts resulting from the new rules would be deemed to be revenue under the revenue cap regime. This determination is presently under appeal at the Federal Court of Appeal. The Agency's determination of CN's and CP's revenue cap statistics included a thorough examination, verification and audit of detailed railway submissions of grain traffic and revenue information.

## COST OF CAPITAL

The cost of capital is the return on investment that investors require when providing funds for capital investments. The Act and applicable regulations recognize it as an established economic cost of railway operations. The cost of capital includes the costs of financing the acquisition of capital assets – namely, interest on debt and return on equity. The cost of debt is equal to the interest on related bonds. Measuring the cost of equity, or the return that shareholders expect, involves analysing financial models and assessing risk.

The Agency annually approves cost-of-capital rates that it uses to develop the volume-related composite price index, which is used to determine the railway revenue cap for the movement of western grain. Distinct cost-of-capital rates for CN and CP were approved by the Agency in early 2001. The Agency also calculates cost-of-capital rates for the development of interswitching costs and rates, and for other regulatory purposes.

Under the Act, all rates established by the Agency must be commercially fair and reasonable. Additionally, the Agency may be required, on a case-by-case basis, to determine variable costs of traffic associated with a rate or service complaint.

### NET SALVAGE VALUE DETERMINATIONS

Section 143 of the Act requires railway companies to advertise the availability of railway lines for continued railway operation before discontinuing operation of lines. If the railway does not transfer the line after advertising it, the railway must offer to transfer all of its interests in the line to the federal, provincial, municipal or district government for no more than the net salvage value of the line. In accepting such an offer, governments may use the line for any purpose.

When a government accepts a railway company's offer to transfer a line, the parties have 90 days after the acceptance to agree on the line's net salvage value. If they cannot agree on this value, either party may ask the Agency to determine the net salvage value.

Changes to the transfer and discontinuance provisions of the Act included expanding access to net salvage value determinations to parties involved in commercial negotiations for the continued operation of a railway line. The Agency did not receive any such applications in 2001.

### REGULATORY RAILWAY COSTING

The Agency collects railway financial and operating data and reviews railway costs, which it uses in its regulatory costing model to cost Class I freight operations. It updates the costs annually, based on input from CN and CP. The current costs that the Agency is updating are for the year 2000.

The Agency currently uses its costing model when adjudicating rail service and rate disputes, setting interswitching rates, reviewing Schedule A overhead costs, and carrying out other rate regulatory activities. It also provides regulatory costing analysis and research in support of possible policy changes by Transport Canada.

### HISTORICAL PRICE INDICES

The Agency develops price indices for CN and CP to determine the level of changes in prices of railway inputs. The Agency uses these as part of the process for establishing the maximum revenue cap for CN and CP for the movement of western grain. It also uses the indices to estimate costs of current or future railway operations.

### COMMUNICATING WITH CANADIANS: RAIL

The Agency continued communicating with members of the rail transportation community on numerous occasions in 2001. Throughout the year, Agency Members and staff made presentations and speeches, consulted with industry representatives and responded to information requests on a variety of rail matters including certificates of fitness (licences), railway level-of-service obligations, final offer arbitration, competitive access, infrastructure matters, transfer and discontinuance, the regulatory regime for western grain movements, railway costing and the new mediation services as well as the legislative review of the Act. These contacts were made not only with the public but with a variety of organizations such as railways, railway associations, municipal associations and shipper and producer associations as well as international delegations from China and South Africa. Such organizations included the following:

#### Railways

- Canadian National Railway Company
- Canadian Pacific Railway Company
- Hudson Bay Railway Company (OmniTRAX Canada)
- Rail America
- Chemin de fer de la Matapédia et du Golfe
- Huron Central Railway
- BC Rail
- Capital Railway
- Ferroequus Railway Company Limited

## Railway Associations

- Railway Association of Canada
- Association of Regional Railways of Canada
- Transport sur Rail au Québec

## Shipper/Producer Organizations

- Pulse Crop Shippers
- Wild Rose Agricultural Producers Association
- Western Canadian Wheat Growers Association
- Keystone Agricultural Producers Association
- Canadian Special Crops Association
- Canadian Fertilizer Institute
- Council of Forest Industries
- Producer Car Seminar

## Municipal Associations

- Fédération québécoise des municipalités
- Organization of Small Urban Municipalities of Ontario
- Rural Ontario Municipalities Association & Ontario Good Roads Association
- Association of Municipalities of Ontario
- Saskatchewan Association of Rural Municipalities
- Canadian Association of Municipal Administrators
- Federation of Canadian Municipalities
- Alberta Urban Municipalities Association
- Union of British Columbia Municipalities

## Other Transportation Organizations

- Northwest Corridor Development Corporation
- Port of Prince Rupert
- Ontario Rail Safety Congress
- Railway Safety Federal/Provincial Committee
- Canadian Transportation Research Forum
- Westac's Innovative Strategies Conference
- National Industrial Transportation League
- Canadian Institute of Traffic & Transportation
- Chartered Institute of Logistics & Transport
- Globalization Rail Industry Conference

## MARINE TRANSPORTATION

### *PILOTAGE ACT*

Under the *Pilotage Act*, pilotage authorities establish tariffs for pilotage charges. Any interested person who believes that the proposed tariff is prejudicial to the public interest may file an objection with the Agency. The Agency has to investigate and make a recommendation to the authority, and the authority governs itself accordingly. The Agency must make its decision within 120 days unless the parties agree to an extension.

On March 2, 2001, following an investigation and public hearing, the Agency recommended that the September 16, 2000 tariff proposal of the Laurentian Pilotage Authority be implemented since it was not prejudicial to the public interest. On April 25, 2001, following an investigation and public hearing, the Agency recommended that the December 30, 2000 tariff proposal of the Pacific Pilotage Authority be implemented with modifications since it, too, was not prejudicial to the public interest. The Great Lakes Pilotage Authority published proposed tariff increases in the *Canada Gazette*, Part I on December 22, 2001 and, as of December 31, 2001, no objections had been filed against the proposed tariff.

### *COASTING TRADE ACT*

Under the *Coasting Trade Act*, the Minister of Revenue cannot issue a coasting trade licence authorizing a foreign vessel to conduct commercial activities in Canadian waters unless the Agency has determined that no suitable Canadian vessel is available for the activity proposed in an application. If the proposed activity involves carrying passengers, the Agency must also determine whether an identical or similar marine service is offered using one or more Canadian vessels.

During 2001, the Agency received 100 coasting trade applications and approved 90 applications for the use of foreign vessels in Canadian waters.



### SHIPPING CONFERENCES EXEMPTION ACT

The Agency administers the *Shipping Conferences Exemption Act* (SCEA), which exempts shipping conferences from the *Competition Act* and allows them to set common tariffs and conditions of carriage, if they comply with filing requirements.

On November 1, 2001, Bill C-14, an Act respecting shipping and navigation to amend the 1987 SCEA and other Acts, received Royal Assent. The amendments to SCEA came into effect 90 days after Assent. This Act removed the requirement for shipping conferences to file tariffs with the Agency; the conferences must now make tariffs available to the public electronically. Shipping conferences may also file documents electronically with the Agency.

In December 2001, the Agency approved draft revised filing guidelines pursuant to SCEA and distributed them to the shipping conferences for comment. The previous filing guidelines issued in 1987 were no longer appropriate following amendments to the SCEA. The Agency will issue revised filing guidelines in January 2002 following receipt of comments from shipping conferences.

### CANADA MARINE ACT

Under the *Canada Marine Act*, the Agency has the mandate to investigate complaints that fees set by port authorities and the St. Lawrence Seaway Management Corporation are unjustly discriminatory. The Agency has a related mandate to investigate complaints that fees set by the Seaway International Bridge Corporation and the Canada Bridge Corporation are unjustly discriminatory. The Agency did not receive any complaints regarding ports, the seaway or bridges during 2001.

## **ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

Eliminating undue obstacles to the mobility of travellers with disabilities in the federal transportation network is a core element of the Agency's mandate. It continued to be one of the Agency's busiest areas of activity in 2001.

Members and staff strive to keep informed about accessibility-related matters in Canada. For example, at an Agency meeting, representatives of Marine Atlantic presented the accessibility features of the ferry operator's newest vessel, the *Leif Ericson*; on another occasion, representatives of Industry Canada described a new Accessible Procurement Toolkit for making goods and services more accessible.

The Agency continued to maintain a high level of training for its members and employees. This year, members and staff visited the Ottawa Rehabilitation Centre for a day-long Disability Awareness Training program, conducted by trainers with disabilities.

The Agency seeks to remove undue obstacles in two ways: on a systemic basis by developing codes of practice and regulations, and by resolving individual accessibility-related complaints and ordering corrective measures if required.

The Agency administers regulations and codes of practice that balance the needs of persons with disabilities with the capability of the industry to deliver accessible transportation services. The Agency also consults with its Accessibility Advisory Committee, which consists of representatives of and for the community of persons with disabilities, the transportation industry and other interested parties. Following a recent meeting, the Agency received a letter from the representative of Canadian Pensioners Concerned Incorporated, which stated:

"May I say that I enjoyed the meeting, it was informative and stimulating in an atmosphere that was caring without being over anxious. I think that most people fail to realize that Accessible Transportation issues assume greater importance in our lives as we age and will certainly affect a very large proportion of the population in a few years' time."

## REGULATIONS

The Agency administers two sets of regulations related to persons with disabilities: the *Personnel Training for the Assistance of Persons with Disabilities Regulations*, and Part VII of the *Air Transportation Regulations – Terms and Conditions of Carriage of Persons with Disabilities*. It has drafted amendments to Part VII of the *Air Transportation Regulations* to extend coverage to include aircraft with 20 to 29 passenger seats from aircraft with 30 passenger seats or more. The proposed modifications, and a report explaining the reasons for the change, were distributed to more than 4,000 interested parties and to aircraft operators for their review and comment. At year end, the Agency was analysing the comments received in preparation for submission of the final text to the Department of Justice for review.

In addition, to provide guidance to operators of aircraft with under 20 seats who will not be covered by the regulations, the Agency has prepared guidelines for the carriage of passengers with disabilities on very small aircraft. These guidelines will be distributed to carriers in 2002.

## CODES OF PRACTICE

The Agency has developed three codes of practice (air, rail and ferry) for federally regulated public transportation systems in Canada. It is in the process of drafting a fourth: the Code of Practice on Removing Communications Barriers for Travellers with Disabilities is a complex set of criteria for improving communications for travellers with disabilities. It will apply to air, rail and ferry service providers and terminals. During 2001, the proposed code was reviewed by the Agency's Accessibility Advisory Committee, as well as by a special working group consisting of representatives of organizations of and for persons with sensory disabilities. At year end, the Agency was preparing to send the final draft to interested parties for public consultation. The new code will be published in 2002.

## BOARDING DEVICES

The Agency continued joint research with the Transportation Development Centre of Transport Canada on boarding devices used by Canadian airport authorities and air carriers. In October 2001, a report was prepared that evaluated various boarding devices, based on criteria developed by persons with mobility impairments. Analysis of the report has indicated the need for additional research in this area. The Agency will continue to examine the issue during 2002. This research will be used to determine whether standards are needed for the provision of boarding devices in Canada.

## AIR TRAVEL ACCESSIBILITY SURVEY

The final report on the Air Travel Accessibility Survey, which was conducted in the summer of 2000, was published and publicly launched at the Inclusion By Design: Planning the Barrier-Free World Congress in Montreal in June 2001 and was also distributed broadly to interested parties. The Agency will use the survey's statistics to set goals and priorities for further improving accessibility to air transportation in Canada. The report also helps service providers identify and respond to the needs of travellers with disabilities, as well as providing travellers with disabilities with an overview of the services and facilities that are available to them so that they may communicate their needs to carriers and reduce the risk that they may encounter obstacles in the future.

## MONITORING

The Accessible Transportation Directorate monitors, measures and evaluates the industry's compliance with Agency regulations and codes of practice related to persons with disabilities. Monitoring activities include: conducting surveys; reviewing transportation service providers' training records; inspecting sites; and investigating complaints. The Agency's monitoring activities will take on added importance, given that all provisions of codes of practice published to date came into effect as of January 1, 2002. In 2001, the Agency developed a new compliance monitoring methodology to ensure consistency in collecting and reporting information. Moreover, the Agency has

redesigned the monitoring questionnaires sent to carriers to improve comprehensiveness and clarity. The new questionnaires were distributed to carriers at year end.

Following the findings of the monitoring report issued in 2000 on the Code of Practice: Aircraft Accessibility for Persons with Disabilities (Air Code of Practice), the Chairman of the Agency contacted all air carriers covered by the code. The Chairman expressed concerns about delays and insufficient progress in meeting the requirements and requested information plans to implement the remaining criteria of the code. Positive responses from air carriers provided the Agency with schedules for implementation of equipment changes to meet outstanding criteria identified in the last monitoring survey.

With a view to promoting the acquisition by Canadian carriers of new aircraft which conform to the Air Code of Practice, the Chairman also sent a letter to the Presidents and CEOs of major aircraft manufacturers reminding them of the code and clarifying the provisions for accessibility with which Canadian carriers should comply. One response to this letter received from the president of a major aircraft manufacturer stated, "The Code of Practice is certainly a valuable document to bring additional motivation to our design engineers, in order to comply with the passengers with disabilities' needs."

The Agency has also started to use its field enforcement officers to confirm information submitted by carriers in monitoring surveys. This was a very successful exercise that will be continued in other monitoring surveys.

Since all provisions of the Code of Practice: Rail Accessibility for Persons with Disabilities (Rail Code of Practice) came into effect April 1, 2001, a monitoring questionnaire was distributed to all rail carriers covered by the code in the fall of 2001. At year end, the Agency was reviewing the information submitted by these carriers and had begun analysing the data. A report on the Rail Code of Practice monitoring survey will be prepared in 2002.

On January 1, 2002, all provisions of the Code of Practice: Ferry Accessibility for Persons with Disabilities (Ferry Code of Practice) came into effect, along with the Air Code of Practice's washroom requirements. In December 2001, monitoring questionnaires were sent out to all ferry operators and air carriers covered by the codes, and responses will be analysed and reported in the coming year.

## COMMUNICATING WITH CANADIANS: PERSONS WITH DISABILITIES

The Agency encourages discussion among organizations representing persons with disabilities, government departments and transportation industry representatives. For instance, the Agency's newsletter, *Moving Ahead*, highlights advances in accessible transportation. This newsletter is widely read and generates considerable dialogue. A reader wrote, "I very much enjoy receiving *Moving Ahead* and have just reviewed the Spring 2001 issue which reminded me of experiences in the past year which I feel compelled to pass on to you." On another occasion, a senior Agency enforcement investigator wrote, "I visited Saint John Airport yesterday to do a facilities inspection and thought you would like to know that the newsletter you folks send out is being well received and is helpful. The Airport Manager mentioned receiving one that referred to a complaint regarding insufficient signage and TTYs [telecommunication devices for the deaf]. He said that when they checked at their own facility they realized that they too were similarly deficient. This matter has since been rectified, thanks to the heads up they got from the Newsletter."

The Agency also provides information about specific travel services through articles and advertisements in publications for persons with disabilities. In addition, the Agency participates in domestic and international events organized by persons with disabilities and the industry to promote accessible transportation initiatives.

In 2001, the Agency continued to actively promote accessible transportation at several major international gatherings. Three Agency papers were presented at Transed 2001: Toward Safety, Independence and Security in Warsaw, Poland, July 2-5,

2001. Agency representatives also delivered three presentations at the Inclusion By Design World Congress in Montreal, June 1–5, 2001. The successful world congress, organized by the Canadian Council on Rehabilitation and Work, brought delegates to Montreal from around the world to examine best practices in universal design. The demand for the Agency's booklet called *Taking Charge of the Air Travel Experience: A Guide for Persons with Disabilities* (Air Travel Guide), published in 1998, continues to grow. The booklet provides useful information on accessible features and services available to people with disabilities who are travelling by air, and offers tips to help plan air travel. To date, the Agency has distributed more than 45,000 copies of the guide.

### RESERVATION CHECKLIST

The Agency has built on the great success of its Air Travel Guide by preparing a checklist to help transportation service providers meet the needs of persons with disabilities who are travelling by air. The checklist is designed to help travel agents make travel arrangements for their customers. It lists the services air carriers should provide, such as helping passengers with disabilities get to the boarding gate, providing specific seating to accommodate a disability, and transporting mobility aids free of charge.

The document also details some 60 services or accommodations for disabilities identified under 20 themes, all of which fit on two pages. The checklist includes space to indicate the date the request for services was made to the booking agent, the date the booking agent notified the carrier of the request, and the date the carrier confirmed with the booking agent that the services would be provided to the traveller with a disability.

The checklist is intended to be a companion document to the Air Travel Guide for both the industry and travellers with disabilities. The Agency released the checklist at the Inclusion By Design World Congress in Montreal in June 2001.

In the summer of 2001, the *Reservation Checklist – Air Travel* was distributed to all Canadian travel agencies and offered to airlines operating in Canada for use by their reservation staff.

Following distribution of the checklist, several travel agents called wanting additional information. The feedback was very positive; many callers thanked the Agency for developing such a useful tool. For example, one agent from Kingston, Ontario called just to say how impressed she was with the checklist, that it is an “excellent idea” and her reaction was “positive all the way.” She added that the checklist is a great tool for her consultants to have. Another travel agent who had received the checklist called to advise that more work needs to be done to increase the industry's awareness of issues concerning accessibility across Canada, because everybody “is confused.” For example, she stated that on one occasion, airline staff told her that it is the responsibility of persons in wheelchairs to assemble and disassemble their own wheelchair. Agency staff provided clarification of specific services that carriers are required to offer to customers with disabilities, as well as Agency brochures which outline the services carriers are required to give customers with disabilities. She thanked the Agency for clarifying the issue and said she is looking forward to receiving the information and finally knowing what she can ask for and expect.

Consumers may also find this tool helpful to communicate their needs to travel agents or reservation staff. Copies of the checklist are available on the Agency's Web site ([www.cta.gc.ca](http://www.cta.gc.ca)) or by calling 1-800-883-1813.

## ACCESSIBLE TRANSPORTATION PORTAL

Transport Canada, in conjunction with the Canadian Transportation Agency, the Canadian Tourism Commission and Human Resources Development Canada, is currently working to establish a Web site that offers information on accessible transportation services.

The long-term goal of this portal is to provide persons with disabilities and senior citizens with the following:

- all information or programs relating to accessible transportation;
- interactive services, such as on-line questions and answers;
- a travel guide for persons with disabilities and senior citizens;
- a search engine whereby users can search for various services and programs, even if the name of the program is unknown; and
- other services, such as e-mail, telephone assistance and newsgroups on accessible transportation.

## REAL TIME TRAVEL ASSISTANCE

The Internet and toll-free numbers foster dialogue with Canadians in need of Agency services. On a regular basis, the Accessible Transportation Directorate receives requests for help from Canadians with disabilities who are encountering difficulties making travel arrangements. These requests before the problem occurs provide the directorate with a proactive opportunity to assist both the industry and the travelling public and can prevent future complaints. Assistance can range from providing people with the right contacts, or explaining regulations and codes of practice, to informal mediation. For example, the Agency received a request for help from a woman who was having trouble identifying and obtaining accessible ground transportation services between the Greater Toronto Airport Authority and a small Ontario community, as well as between both the Victoria and Vancouver airports and ferry connections to

islands off the B.C. coast. To assist this traveller, the Accessible Transportation Directorate carried out considerable research and contacted numerous airport services to start the service dialogue for the customer, who wrote the Agency's Manager, Monitoring and Liaison:

"I thank you so much for your help with this. You have done such a great deal to help me and moved boulders that no one else was willing to do."

On another occasion, the Manager of Complaints for Accessible Transportation responded to a request from a traveller who uses a guide dog. She was told by an airline that she could not make a travel reservation until she faxed two photographs of herself: one with her guide dog and one without her guide dog. After the Agency contacted the carrier, this demand for information was rescinded. Furthermore, the company indicated it would review the type of information its call centre personnel should relay to the public about the carriage of service animals.

The inquiries received this year included a broad range of issues, such as help with extra charges for the carriage of batteries on aircraft and information on reciprocal arrangements for use of parking permits for persons with disabilities between Canada and Spain.

## ACCESSIBILITY COMPLAINTS RESOLVED IN 2001

Under the *Canada Transportation Act*, the Agency can investigate complaints filed by, or on behalf of, persons with disabilities to determine whether they face undue obstacles while travelling. Should the Agency find this to be the case, it can order corrective measures and/or compensation for expenses incurred which are directly attributable to the obstacle.

During the year 2001, 59 new complaints were received. During the same time period, the Agency held an oral hearing and issued a decision on whether obesity is a disability for the purpose of the accessibility provisions of the *Canada Transportation Act*. Twelve cases were resolved, 16 substantial letter decisions were issued and 11 cases were withdrawn.

## EXAMPLES OF ISSUES THAT HAVE TRIGGERED COMPLAINTS

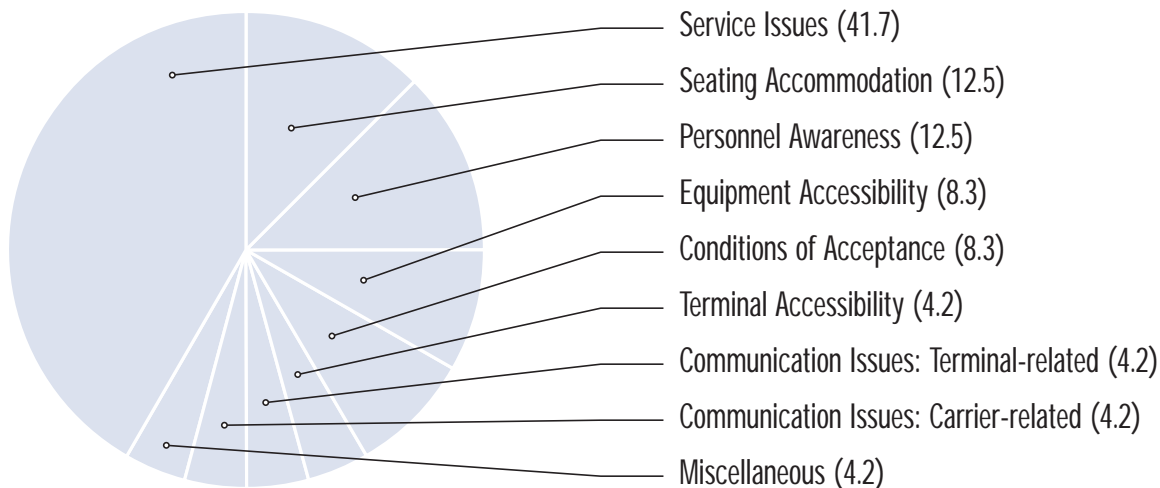
Seating issues continued to be a significant aspect of many complaints the Agency reviewed and investigated. One such complaint involved the charging of a fee for seat selection. In this case, the Agency found that the advance seat selection fee imposed on the applicant by Skyservice for a seat he needed due to his disability constituted an undue obstacle to his mobility. The Agency ordered Skyservice to amend its policy on advance seat selection in its service manual to clearly state that, once advised of a person's disability, the advance seat selection fee is automatically waived by its Advance Seating Group. Skyservice was also required to provide a copy of its amended policy to the Agency, and to issue a bulletin to its service personnel summarizing the incident and emphasizing the importance of adhering to this amended policy.

The Agency received a complaint about the level of assistance provided by WestJet during boarding when a person with a disability travelled between Edmonton and Kelowna. The Agency found that this level of assistance constituted an undue obstacle to his mobility. WestJet was required to provide a copy of its training program for customer and flight attendants for the assistance of travellers with disabilities and the training records of the customer service agent(s) who

assisted the applicant. WestJet also had to submit proposed amendments to its training program for flight attendants to expand on the services they might be called upon to provide to persons with disabilities during the boarding process.

Another complaint concerned difficulties encountered by an air passenger who travelled with a stretcher. Air Canada ramp and in-flight personnel did not remove the stretcher from its frame, they did not provide the ambulance attendants with the appropriate assistance to ensure that the applicant would be boarded onto the aircraft in accordance with the carrier's policy, and they did not offer the stretcher's side extensions to the applicant. The Agency determined that these occurrences constituted undue obstacles to this traveller's mobility. The Agency directed Air Canada to provide a copy of training records for both the ramp personnel and the in-flight crew who were involved with the applicant's boarding, along with an excerpt of its latest training manual for ramp operations and in-flight employees relating to the carriage of passengers on stretchers. The carrier was instructed to amend its In-Flight Publication 356 to include particular instructions for DC-9 aircraft, as well as information on removing a stretcher from its frame to offer the passenger added comfort, and to provide the Agency with a copy of the amended publication. Finally, Air Canada was ordered to issue a bulletin to its ramp and in-flight personnel

Accessibility Complaints Resolved in 2001 (%)



summarizing the incident and reminding them of the importance of adhering to the carrier's policy, and to provide the Agency with a copy of the bulletin.

Another person who uses a wheelchair filed a complaint about Air Transat's failure to provide assistance to him on his arrival in Montreal, the damage caused to his wheelchair, and the carrier's failure to provide a temporary replacement wheelchair. The Agency determined that these occurrences constituted undue obstacles to his mobility. Air Transat was required to issue a bulletin to employees who handle mobility aids, reminding them of the importance of ensuring that all components of mobility aids arrive at the destination at the same time. The carrier was also instructed to issue specific guidelines to remind airport employees to adhere to Air Transat's policy, which requires that a replacement aid be provided in case of damaged or lost aids. Air Transat had to establish a list of companies that repair and provide replacement aids and distribute it to employees, as well as submit a report outlining corrective measures to take to prevent problems similar to those experienced by the applicant. Finally, Air Transat was instructed to reimburse the passenger for expenses incurred for the repair of his wheelchair and the additional transportation costs incurred for the return trip to France.

#### QUESTION OF WHETHER OBESITY IS A DISABILITY FOR THE PURPOSES OF PART V OF THE *CANADA TRANSPORTATION ACT*

The Agency received a complaint from a person who is obese regarding the seating arrangements provided to her and the air carrier's policy of charging 1.5 fares to passengers who require two seats to accommodate their obesity.

Following its preliminary review of the complaint, the Agency found that any decision in this matter could have a significant impact on the federally regulated transportation network. As a result, the Agency consulted more widely with industry, interested persons and organizations, including those representing persons with disabilities. In May 1998, the Agency appointed an inquiry officer to provide an analysis of several issues, including whether obesity should be considered a disability for the purposes of the Act.

The inquiry officer issued an interim report in April 1999. The Agency determined that the report was inconclusive as to whether obesity should be considered a disability and therefore decided not to adopt its recommendations and conclusions.

The Agency decided to proceed with the complaint and, in October 2000, the complainant and the air carrier were invited to submit their pleadings on whether obesity is a disability for the purposes of the accessibility provisions of Part V of the Act.

In February 2001, following receipt of the parties' pleadings, the Agency decided that expert evidence was required to make a determination on the jurisdictional question. The Agency also decided that it would hold an oral hearing to gather further information from the parties, and to have expert evidence on the issue heard and tested. Since no advocacy group had emerged to present expert evidence in support of the position that obesity is a disability, the Agency decided to appoint an independent person to act as an *amicus curiae* to do so. The *amicus curiae* was appointed in April 2001.

The oral hearing into the matter was held in Calgary from September 24 to October 3, 2001. The Agency heard expert witnesses presented by the *amicus curiae* and the carrier. Counsel for the applicant also made representations.

On December 12, 2001, the Agency concluded in Decision No. 646-AT-A-2001 that, based on the submissions of the parties and the evidence heard and tested during the oral hearing, obesity, *per se*, is not a disability for the purposes of Part V of the *Canada Transportation Act*. The Agency further concluded that the evidence suggests that there may be individuals in the population of persons who are obese, who have a disability for the purposes of Part V of the Act which can be attributed to their obesity. As such, the Agency decided that it will continue to examine, on a case-by-case basis, whether a person who is obese is in fact a person with a disability for the purposes of the accessible transportation provisions of the Act.

## APPLICATION BY THE COUNCIL OF CANADIANS WITH DISABILITIES INVOLVING VIA RAIL CANADA INC.

Another case that received much media attention during 2001 is the application of the Council of Canadians with Disabilities (CCD) involving VIA Rail Canada Inc. (VIA), concerning the level of accessibility of rolling stock purchased by VIA, filed in December 2000. In its application, CCD submits that various features of the rail cars constitute undue obstacles to the mobility of persons with disabilities.

A number of procedural matters had to be resolved before the accessibility of the rail cars could be addressed. For instance, the Agency determined that it does not have to wait for the cars to be put into service or for a person with a disability to actually travel on the rail cars before hearing a complaint regarding the level of accessibility; rather, a determination can be based on design features and evidence of accessibility requirements. The Agency is of the opinion that the Act clearly contemplates the Agency making a determination in advance of rail equipment being put into service. In that respect, VIA filed a motion for leave to appeal the Agency's decision on jurisdiction. The Federal Court of Appeal denied the application for leave to appeal.

Another issue that needed to be addressed was whether the Agency retains jurisdiction to deal with CCD's application after the statutory deadline. VIA filed a motion for leave to appeal. The application for leave to appeal was denied by the Federal Court of Appeal.

In the fall of 2001, a meeting was held with the parties and a viewing of the cars in question took place. If the Agency finds that some of the features in the final design of the rail car that would be put into service constitute undue obstacles, it can, pursuant to the *Canada Transportation Act*, require corrective measures regarding the design, construction and modification of that equipment.

At year end the Agency continued with its investigation.

## AIR TRANSPORTATION

The Agency is the licensing authority for publicly available air services. As well, it is the Canadian aeronautical authority for economic issues, participating in negotiations with other countries and administering international agreements. Prior to recent legislative changes, its main areas of responsibility related to air transportation were licensing, financial evaluation, international agreements, tariffs, enforcement and the protection of Canadian consumers.

The new legislation gave the Agency additional responsibilities related to prices on routes where there is only one carrier and certain additional powers to deal with tariff complaints.

### AIR TRAVEL COMPLAINTS COMMISSIONER

In accordance with the legislation, the Minister appointed Mr. Bruce Hood the first Air Travel Complaints Commissioner on August 1, 2000. As a result, the Agency's role in consumer issues, particularly for the resolution of air travel complaints, increased dramatically.

The main duties of the Commissioner are as follows:

- to review and attempt to resolve every written air travel complaint that has not already been resolved by an air carrier to the satisfaction of the air travel consumer, when no other remedy exists;
- to request documentation relevant to a complaint;
- to mediate or arrange for mediation of air travel complaints when appropriate and to provide a report to the complainant and the air carrier outlining their positions and any settlement reached; and
- to provide a report at least twice yearly to the Governor in Council, through the Minister of Transport, outlining the number and nature of the complaints received, the manner in which the Commissioner dealt with them, the carriers involved and any systemic problems detected.



The Commissioner focuses on complaints related to air transportation. While the range of complaints varies widely, most disputes concern the quality of service provided by a carrier, baggage handling and flight schedules. The Commissioner also deals with complaints concerning domestic pricing on competitive routes and the discontinuance of or reduction in service to a community served by several scheduled carriers.

To help Canadians understand the Agency's new responsibilities, the Commissioner and staff attended meetings with travel agents and air carriers, spoke before representatives of municipalities and participated in trade shows. An Air Travel Complaints section has been added to the Web site ([www.cta.gc.ca](http://www.cta.gc.ca)) and a toll-free telephone information line (888-222-2592, TTY 800-669-5575) has been established.

In 2001, two reports were written and subsequently tabled in the House of Commons. The Air Travel Complaints Commissioner's Reports to the Minister of Transport are available directly from the Agency or via the Agency's Web site. The Commissioner's reports are considered part of the Agency's annual report.

During 2001, the Agency received 2,747 complaints from air travellers. These ranged from complaints about the quality of meals, long line-ups, lost luggage and flight delays to requests from persons accused of unruly behaviour asking for a review of the penalty subsequently imposed by the carrier. Most of these complaints were handled through the Commissioner's informal complaint resolution process. For a full description of this process, see *The Air Travel Complaints Commissioner Report*. Most of the complaints also contained elements that fell within the Agency's jurisdiction. The issue was usually whether a carrier had respected its own rules, as set out in its published tariff under terms and conditions of carriage. The Agency makes every effort to resolve these complaints informally, but this is not always possible. In such cases, the complaint is referred to a panel of Agency Members for a formal decision.

## AIR CARRIER LICENSING

A person proposing to offer a publicly available air service to transport passengers or cargo must apply to the Agency to become a licensed air carrier. The Agency licenses Canadian applicants to operate air services within Canada, and licenses Canadian and foreign applicants to operate scheduled and non-scheduled international air services to and from Canada.

To obtain a licence, the applicant must have adequate insurance and must hold a Canadian aviation document issued by Transport Canada. Additionally, if an applicant proposes to operate domestic air services, it must prove that it is Canadian-owned and -controlled. Also, if a Canadian applicant proposes to use medium-sized or large aircraft, it must meet certain prescribed financial requirements.

Air services proposed by a new entrant cannot be sold or offered for sale in Canada before the Agency licenses the applicant.

If the Agency determines that a licensee ceases to meet the requirements to hold its licence, it must suspend or cancel the licence. The Agency may also suspend or cancel a licence upon request by the licensee (air carriers conducting seasonal operations to hunting and fishing lodges most often make such requests).

*Statistical information concerning licensing matters can be found in Chapter 6.*

## DISCONTINUANCE OF OR REDUCTION IN DOMESTIC AIR SERVICES

An air carrier planning to discontinue or reduce a domestic air service must meet certain notice requirements. Notice is required in three situations: (i) when the discontinuance would result in only one or no air carrier serving a point; (ii) when an air carrier proposes to reduce the frequency of an air service to less than one flight per week, so that only one or no air carrier would serve that point at least once per week; and (iii) when the discontinuance of a year-round, non-stop scheduled air service between two points in Canada would significantly reduce seating capacity on the affected route.

When required to provide notice of a proposed discontinuance of or reduction in a domestic air service, the air carrier must give 120 days' notice to the Agency, the Minister of Transport, the minister responsible for transportation in the province or territory affected by the proposal, and the affected communities, unless the air service has been operating for less than a year. In the latter case, the notice period is 30 days. An air carrier may ask the Agency to reduce the notice period. Additionally, the air carrier must give elected officials of affected communities an opportunity to discuss the impact of the proposed discontinuance of or reduction in air service.

If, after receiving a written complaint, the Agency determines that a licensee did not give proper notice of a discontinuance of or reduction in a domestic air service, the Agency may order that licensee to reinstate the air service for up to 60 days. A licensee who has given proper notice cannot be prevented from discontinuing or reducing its air service.

In 2001, the Agency and its staff addressed 29 matters related to the notice requirements of section 64 of the Act, which governs the discontinuance of or reduction in air services. Of these, 21 involved complaints about the discontinuance of or reduction in domestic air services. In addressing these cases, the Agency determined whether the notice requirements of section 64 of the Act applied and, if so, whether the air carriers concerned had complied with them.

With respect to the 21 complaints, in 19 cases it was determined that section 64 of the Act did not apply and these cases were either dismissed or referred to the Air Travel Complaints Commissioner. Two complaints were withdrawn.

The other matters involved requests from licensees for an exemption from giving notice or for a reduction in the notice period. In five cases, the Agency ordered that some form of notification was to be provided prior to the discontinuance of service. In the other three cases, the Agency granted an exemption from the notice requirement.

## INTERNATIONAL CHARTERS

An international charter air service is a non-scheduled international service operated under a contractual arrangement between an air carrier and a charterer. Carriers holding a licence for a non-scheduled international service must get an Agency program permit or an authorization to operate Canadian-originating charter flights to any foreign country. The permit and authorization processes ensure that air carriers operating international charter flights comply with the *Air Transportation Regulations*. As part of this compliance, for certain types of charter flights, carriers must obtain financial guarantees to protect advance payments from charterers. This requirement is one of the Agency's measures to protect consumers.

Sometimes, carriers are asked to provide a flight at a time outside the Agency's normal hours of operation and they require the Agency's authorization before the flight can depart. The Agency operates a telephone service for such emergency situations occurring outside its normal business hours. In 2001, the Agency dealt with 312 such situations; 115 of them required approval by Agency members. (See Chapter 6: Annual Statistics, Charters Division, 2000 vs. 2001.)

At present, the Agency is amending the *Air Transportation Regulations* to reflect two new charter policies: the International Passenger Charter Air Services Policy and the International All-Cargo Charter Air Services Policy. In the interim, the Agency has granted 45 general exemptions from provisions of the *Air Transportation Regulations* that currently conflict with the two policies.

The objectives of the new International Passenger Charter Air Services Policy are to enhance options for Canadian travellers in international markets; to avoid all unnecessary economic regulatory constraints; to support the ongoing development of Canada's charter industry; and to maintain the integrity of Canada's policy for scheduled international air services and of bilateral air agreements for scheduled international air services to which Canada is a party. The Minister of Transport asked the Agency to consider this policy when assessing applications for international passenger charter services.

The International All-Cargo Charter Air Services Policy gives shippers a greater range of service options by allowing more than one charterer to charter an aircraft, and by allowing freight forwarders and consolidators to charter aircraft from licensed carriers and then resell the space to shippers. This policy also allows the Agency to grant special authority to foreign air carriers for Canadian- and foreign-originating entity cargo charter flights to or from a third country, referred to in the policy as fifth-freedom all-cargo charters. During 2001, the Agency dealt with 99 applications for Canadian-originating fifth-freedom all-cargo charters and 80 applications for foreign-originating fifth-freedom all-cargo charters.

In November 2001, Canada 3000 Airlines Limited, a major Canadian charter airline, declared bankruptcy. This event disrupted the travel plans of thousands of people wishing to enjoy vacations or visit friends or relatives. Moreover, many travellers were already at their destinations and were left stranded. Fortunately, other airlines were able to quickly fill the void by accommodating Canada 3000 passengers, thereby minimizing inconvenience. The Agency was able to help by expeditiously issuing, on an urgent basis, charter permits to other carriers to operate the former Canada 3000 flights.

*Statistical information concerning international charters can be found in Chapter 6.*

## AGREEMENTS

Scheduled international air services between countries are generally governed by bilateral air transport agreements and other arrangements between countries. Bilateral agreements and arrangements formalize the rights permitting international airlines to carry passengers and cargo traffic to and from Canada for the benefit of the public. Although bilateral air transport agreements and arrangements generally cover scheduled international air services, some contain provisions related to non-scheduled (charter) air services.

As Canada's aeronautical authority, the Agency participates in bilateral negotiations led by the country's Chief Air Negotiator. Canada's negotiation team includes officials from the Agency,

Transport Canada and the Department of Foreign Affairs and International Trade. Discussions at negotiations cover such important matters as cities that can be served, capacity that may be offered and regulation of prices offered to the public. At negotiations, the Agency contributes expertise related to implementation of air agreements, operation of air services, charter matters and airline commercial agreements (matters such as code sharing), as well as intelligence it has gathered from contacts with foreign aeronautical authorities. Successful negotiations result in agreements or arrangements that the Agency implements and administers.

Canada currently has 73 bilateral air agreements and arrangements. In 2001, Agency staff participated in 15 negotiations with 13 countries and territories: Israel (twice by correspondence), Chile, Hong Kong (twice, including once by video conference), Portugal, Morocco (by correspondence), Spain, Iceland, Japan, Poland, France, the United Kingdom, Uzbekistan and Aruba. Canada was successful in negotiating enhanced air service access for Canadian air carriers to Chile, Spain, Poland and Aruba, allowing in exchange improved access by foreign air carriers to the Canadian market. In some cases these enhancements involved access to more cities, liberalized capacity entitlements and tariff regimes and/or inclusion of code-sharing rights. The recent introduction by Air Canada and LanChile of Canada-Chile services by means of code sharing with United States air carriers and the inauguration by LOT Polish Airlines of scheduled services to Toronto are examples of the tangible benefits of these negotiations. Canada also maintained Canadian air carrier participation in the Israeli market by renewing temporary arrangements with Israel and allowed Icelandair the opportunity to increase its services to and from Canada by negotiating a new memorandum of understanding. Negotiations with Morocco to liberalize the tariff regime are ongoing.

The Agency also processed 72 applications related to bilateral air agreements and arrangements, and commercial arrangements between air carriers.

If the rights to operate proposed services are provided for in bilateral air agreements or arrangements, the Agency ensures that regulatory requirements are satisfied before approving the application. The Agency can limit the period of time for these approvals and include conditions, even where the rights to operate proposed services are provided for in bilateral agreements and arrangements.

The Agency may grant, on a temporary basis only, applications for extra-bilateral authorities where rights to operate the proposed services are not provided for in a bilateral agreement or arrangement. Agency consideration of these applications requires interdepartmental consultation and, in many cases, consultation with Canadian interests that may potentially be affected, particularly airlines and airports. Even though the rights to operate proposed services are not always in place, there may be no foreign relations or policy reasons to deny the extra-bilateral services. These services may be beneficial to the travelling public and to air carriers. Extra-bilateral requests in 2001 involved such matters as providing services by a code-sharing arrangement, providing fifth-freedom services and serving cities not provided for in an agreement or arrangement. During 2001, the Agency approved 13 applications and denied two applications to provide extra-bilateral air services.

Several extra-bilateral requests processed in 2001 are of note. Although Canada does not have an air agreement or arrangement with Luxembourg, the Agency licensed Luxembourg air carrier Cargolux Airlines International, S.A. to operate, until March 2002, one scheduled international all-cargo flight per week between Calgary and Luxembourg on a Luxembourg-Prestwick-Seattle-Calgary-Prestwick routing and to carry local traffic between Seattle and Calgary and between Calgary and Prestwick (i.e., exercise fifth-freedom traffic rights between these points). The Agency granted extra-bilateral authorities to permit Korean Air (in cooperation with Air Canada) to continue to operate all-cargo flights via Anchorage, Alaska and to exercise fifth-freedom traffic rights between Anchorage and Toronto. The Agency denied an

application to permit Aeroflot Russian Airlines to exercise fifth-freedom traffic rights between Toronto and Chicago on an extra-bilateral basis because such rights were specifically denied by Canada at negotiations with Russia. The Agency also denied an application by Costa Rican air carrier LACSA to operate three flights between Cuba and Canada. The Agency indicated in the decision that there was insufficient reason to authorize the proposed flights, which are not permitted in the Canada-Costa Rica air agreement.

### CANADIAN OWNERSHIP AND CONTROL

In 2001, the Agency completed 82 reviews to verify that Canadian applicants proposing to operate or operating domestic or international air services met Canadian ownership requirements, as defined in the Act. Of the 82 reviews, 10 involved major investigations because the companies had complex ownership structures, or the companies had minority shareholders or business associates who were not Canadian and who might have exercised control over the applicant. The Agency denied two applications because the applicants failed to prove that they were Canadian.

### FINANCIAL FITNESS

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet certain financial requirements stipulated in the Act and in the *Air Transportation Regulations*. To meet the financial requirements, applicants must satisfy the Agency that they have enough liquid funds to cover all start-up costs, and all operating and overhead costs, for a 90-day period. These requirements are designed to ensure that applicants are financially fit when they start operations and have a reasonable chance of success. The requirements also help minimize disruptions in service and protect consumers. In 2001, the Agency did not review any such application.

## NAV CANADA CHARGES

The Agency is also the appeal tribunal for NAV CANADA charges.

On October 15, 2001, NAV CANADA filed a notice of revised service charges for air navigation services with the Agency, under section 36 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, c. 20. The revised charges took effect on January 1, 2002. NAV CANADA cancelled a temporary reduction in its service charges, largely due to a potential revenue loss resulting from major cutbacks in capacity announced by the air carriers following the terrorist attacks in the United States on September 11, 2001. Although parties could appeal these charges to the Agency for a period of 30 days, the Agency received no appeals.

## DOMESTIC PRICING

Under the *Canada Transportation Act*, the Agency has jurisdiction over domestic pricing on routes with no, or limited, competition. Under section 66 of the Act, the Agency may take action if it finds – either on complaint or through its own monitoring – that an air carrier, including its affiliates, is the only provider of a domestic service between two points within Canada and that a fare or rate or an increase in a fare or rate is unreasonable or that the range of fares offered is inadequate when compared to the fares offered on similar competitive routes within Canada. The Agency's recourse may include:

- disallowing the fare, rate or increase;
- ordering the carrier to reduce the fare, rate or increase after considering any representations made by the carrier;
- ordering the carrier to refund people who were overcharged, if practicable; or
- ordering the carrier to publish and apply one or more additional fares the Agency considers reasonable if the range of fares offered is found to be inadequate.

When the Act was amended on July 5, 2000, an initial wave of complaints was filed with the Agency; however, the number of complaints filed with the Agency has declined signifi-

cantly, from 33 in the first six months, to 8 over the next twelve months. During the year 2001, four complaints were withdrawn by complainants. The Agency concluded investigations of 13 complaints by year end. It dismissed 8 complaints since they did not come within the scope of the provisions of the Act in force at the time of purchase or offer. Three of these cases concerned fares purchased prior to the enactment of the new legislation; the fares which were the subject of these complaints were not the “basic fare,” as defined by the then-existing legislation. The remaining five concluded cases concerned routes that the Agency determined to be competitive. The Agency also rendered five decisions concerning the pricing on five non-competitive routes. In three of the cases, the Agency found that the fare or rate in question was not unreasonable. In the other two cases, the Agency found that the fares in question were unreasonable, and in one of the cases, the Agency also considered the range of fares offered inadequate. However, subsequent changes in the pricing structure in the relevant markets made it unnecessary to issue a direction to the carrier at that time.

During the year 2001, the Agency continued monitoring the prices offered by carriers on routes within Canada which have no, or limited, competition to determine whether they were broadly comparable in level and range to those on similar competitive domestic routes. Although this program has identified some possible anomalies in carrier pricing practices, the Agency's investigations did not result in any findings as a result of which it may take remedial action against a carrier.

To carry out its new responsibilities under the revised Act, the Agency established the Pricing Investigations Division within the Tariffs, Complaints and Enforcement Directorate. The division deals with pricing complaints and monitors prices.

## TARIFFS

Tariffs set out an air carrier's terms and conditions of carriage and its fares, rates and charges. All air carriers operating to, from or within Canada must publish a tariff for their air service and make it available to the public on request. Air carriers

operating international air services to and from Canada must also file their tariffs with the Agency. However, by bilateral agreement, carriers operating air services between Canada and the United States (transborder air services) and between Canada and Germany do not need to file their fares, rates or charges with the Agency, although they must make them available to the Agency on request. Carriers do not need to file tariffs for their domestic air services with the Agency, but they must make them available to any person upon request. Carriers are required to apply the provisions of their tariffs. Provisions of the July 5, 2000 amendments to the Act allow the Agency to require a carrier to compensate passengers adversely affected for any expenses they incurred as a result of the carrier's failure to adhere to provisions set out in its tariffs.

The Agency reviews international tariffs when they are filed or revised to verify that they are consistent with Canadian law, government policy and applicable bilateral agreements. In 2001, Agency staff reviewed 16,130 electronic and 474 paper tariff submissions.

Normally, carriers file new or amended tariffs on the period of notice specified in the applicable air transport agreement, usually 30 or 45 days. However, the Agency also allows carriers to apply for special permission to help the industry respond to competition or other time-critical situations. If granted, the "special permission" allows a carrier to implement a new or amended tariff immediately.

In 2001, the Agency processed 8,533 special permission applications. It also addressed 107 complaints from carriers about the pricing practices of other carriers. Most of these complaints concerned efforts by fifth- and sixth-freedom carriers to exert price leadership on third- and fourth-freedom routes. In most instances, Agency staff were able to successfully mediate the complaint and resolve the issue informally. However, in six instances the Agency was required to intervene formally and issue formal decisions in industry-related matters.

The most significant industry complaint requiring a formal decision involved the Canadian Standard Travel Agent Registry

vs several International Air Transport Association member carriers (Decision No. 242-A-2001) concerning the application of surcharges to fares. While generally dismissing the complaint, the Agency nonetheless expressed its concern over the proliferation of surcharges, stating that:

air carriers should ensure that consumers are well informed of all prices associated with air transportation and that, where practicable, carriers should make every effort to incorporate miscellaneous charges into fare levels and to avoid surcharges.

The Tariffs Division also deals with consumer complaints about pricing on international and transborder routes. It investigates allegations that terms and conditions of international carriage are not clear or are unjust or unreasonable, and that terms and conditions of domestic carriage are not clear, or are unreasonable or unduly discriminatory. Once staff members have finished their investigation, these types of complaints are referred to panels of Agency members for formal decisions.

The Agency received 77 consumer complaints in 2001. The Agency is empowered to consider complaints about carriers' terms and conditions of domestic carriage. The Agency, since its inception, has had similar jurisdiction over international travel. The complaints related to such issues as limits of liability for lost or damaged articles in baggage; terms of eligibility for discounted bereavement fares; and carriers' prohibitions against back-to-back ticketing. There were also complaints about air carrier pricing on international routes.

In one decision, the Agency upheld the air carrier's right to pay the same amount for denied boarding compensation irrespective of the fare paid. In the Agency's opinion, the fare paid by a passenger is in no way connected to any burden or disadvantage that may be imposed on that passenger as a result of being denied boarding.

During 2001, the Agency issued seven decisions addressing the matter of unruly passengers, also referred to as air rage cases. Three of these decisions involved the carriers' permanent refusal to transport the consumers. In these cases, the Agency was of the opinion that the terms and conditions of carriage in the carriers' tariffs did not clearly outline the carriers' policy with respect to sanctions that may be imposed other than simple refusal to transport or removal from the aircraft. The Agency therefore directed these carriers to amend their tariffs to fully state the extent of the sanctions that could be imposed upon unruly passengers, as well as the relationship between different levels of unruly behaviour and the range of sanctions.

In another decision involving a one-time removal, the Agency found that the carrier had applied terms and conditions of carriage not set out in its tariffs, and therefore ordered the carrier to take remedial action. The remaining decisions involved simple refusal or removal. In these, the Agency found that the carriers involved had acted in accordance with their respective tariffs and therefore dismissed these complaints.

In 2001, the Agency received 16,604 individual tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs; approximately 97 percent of these submissions arrived electronically. Accepting tariff submissions from air carriers electronically increases the Agency's productivity and gives airlines flexibility; it also contributes to the Government On-Line initiative.

## ENFORCEMENT

The Agency's Enforcement Program encourages voluntary compliance with the Act, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations* (the *Personnel Training Regulations*). The program consists of two main elements: a periodic inspection program and a targeted investigation program. Agency offices are located in Moncton, Montreal, Toronto, Winnipeg, Edmonton and Vancouver.

In 2001, the Enforcement Division completed 263 on-site inspections of Canadian-based air carriers and 23 passenger terminal operators. It also completed 31 investigations of carriers or individuals suspected of operating illegal air services in Canada, identifying a number of infractions.

## ADMINISTRATIVE MONETARY PENALTIES PROGRAM

The Administrative Monetary Penalties (AMPs) program is one of several ways the Agency can enforce the law; other options include formal reprimands, cease-and-desist orders, licence suspensions or cancellations, and prosecutions. In other words, AMPs provide an alternative between administrative sanctions and prosecutions as a means to encourage voluntary compliance with the law.

Since a formal warning is normally the first step in the AMPs process for all but the most serious contraventions, carriers have ample opportunity to take corrective action before a monetary penalty is assessed.

During 2001, as a result of targeted investigations, designated enforcement officers issued five warnings, none of which were appealed to the Agency, and four Notices of Violation (NoVs). Two NoVs have been finalized and two were scheduled to be heard by the Civil Aviation Tribunal early in 2002. In addition, 92 informal warnings were issued to carriers as a result of the Periodic Carrier Inspection Program and nine informal warnings were issued following inspections under the Periodic Facilities Inspection Program.

## MEDIATION

2001 was the first full year in which the Agency operated its Mediation Pilot Project, which was designed to give parties an additional tool to resolve disputes and complement the Agency's traditional hearing process. In previous annual reports, the Agency committed itself to assisting parties to resolve disputes in a way that is simpler, more responsive and less litigious than existing systems.

In certain cases, mediation is more appropriate than traditional procedures, because it is often simpler and faster. Mediation also helps to improve the lines of communication between parties, especially between those who have an ongoing relationship. In addition to these benefits, parties usually have high levels of commitment to a mediated agreement, since they are jointly involved in crafting a solution that meets their specific needs.

The Agency continued training Members and staff in mediation techniques and processes. Currently, the Agency has 20 mediators on its roster who have completed an intensive training program tailored to the Agency's specific requirements.

To better inform the various parties, the Agency continued to distribute its brochure *Resolving Disputes Through Mediation*. An electronic version is posted on the Agency's Web site, along with relevant forms and information. In addition to producing the brochure, the Agency held information sessions with provincial governments, municipalities, shippers, railway companies, marine organizations and other interested parties, and presented information on the pilot project at various meetings.

Several requests for mediation have been brought before the Agency and indications are that parties that have used the Agency's mediation service have found it beneficial. Furthermore, parties said they would use this process again in the future, if the need arose.

Given the positive results of the pilot project to date in the Rail and Marine Branch, the Agency began to explore the use of mediation in other areas of the Agency's jurisdiction, namely in the Accessible Transportation Directorate. In order to develop a mediation process that meets the needs of persons with disabilities, the Agency consulted with the Agency's Accessibility Advisory Committee as well as various tribunals and organizations in both Canada and the United States that conduct mediation of similar issues or with similar client groups. These included the Canadian Human Rights Commission, the Ontario Human Rights Commission and the United States Department of Justice. Based on its consultations, the Agency developed

a framework specifically designed for a mediation pilot project in the Accessible Transportation Directorate. Mediation is now an additional option for persons with disabilities in the resolution of their complaints.

## ***CANADA TRANSPORTATION ACT REVIEW***

In June 2001, the *Canada Transportation Act* Review Panel published its report entitled *Vision and Balance*, following a year-long review of the operation of the Act. The panel's mandate was to assess whether the Act (and other transportation legislation) provided Canadians with an efficient, effective, flexible and affordable transportation system, and to recommend any necessary or desirable amendments to the Act.

The Agency has contributed to this review in various ways. First, each year since 1996, the Agency's annual report has included a section assessing the operation of the Act. Agency members and staff also met with the Review Panel on two occasions to discuss difficulties the Agency encountered in the administration of the Act. The Agency provided subject matter documentation and staff expertise to the Review Panel upon request.

During the year, Agency staff continued to meet with Transport Canada officials as they considered, not only the recommendations of *Vision and Balance*, but also the proposals set out in the Minister of Transport's *Creating a Transportation Blueprint for the Next Decade and Beyond: Defining the Challenges*. Discussions focused on the means of implementing the recommendations of the Review Panel; competitive connection rates; net salvage value determinations; preservation of urban corridors; commuter rail contracts; short-line leases; public interest; railway construction; the use of mediation to resolve disputes; grain transportation; interswitching; and level of service.



**CHAPTER 2**

# Assessment of the Operation of the Act

**EACH** year since 1996, the operation of the Act has been assessed by the Agency and a summary of the issues encountered in administering the Act included in the Agency's annual reports. Some of the issues raised were considered in two previous amendments to the Act, namely bills C-34 (which focused on rail transportation) and C-26 (which dealt with transportation by air). From July 2000 to June 2001, the Act was the subject of a comprehensive review by a panel appointed by the Minister of Transport. The panel published its findings in a report entitled *Vision and Balance*. The Minister will consider the panel report along with all other relevant information such as the Agency's annual reports as he considers amendments to the Act.

This chapter provides a summary of various issues raised by shippers, railways, municipalities, landowners and others directly or potentially affected by the operation of the rail provisions of the Act as well as carriers, travellers and others affected by the air provisions.

## **RAIL TRANSPORTATION**

In 2001, a new issue raised by concerned municipalities was the application of the \$10,000 per mile compensation required to be paid by CN or CP for the discontinuance of a grain-dependent branch line. Some questioned why grain-dependent branch lines discontinued prior to April 1, 2000, were not also eligible for the compensation, while others questioned how to initiate the compensation process for grain-dependent branch lines that had no operations yet had not been discontinued pursuant to Division V, Part III of the Act. Still others questioned the lack of application of the legislated discontinuance process for grain-dependent branch lines in certain situations. Specifically, concern had been raised with respect to branch lines which had been recently transferred by lease agreement to another railway for continued operations, but had subsequently reverted to the original railway after the termination of the lease or were in the process of discontinuance by the new owner.

The following issues had been raised by the Agency in earlier Annual Reports.

## FINAL OFFER ARBITRATION

During an arbitration proceeding, the Agency may be asked to determine whether or not the dispute is actually eligible for final offer arbitration in terms of either jurisdiction or procedure. As a result, parties may incur unnecessary expenses should a ruling denying eligibility be rendered after the commencement of an arbitration.

## CERTIFICATES OF FITNESS

There are substantial differences between the rights and obligations of shippers and railways under federal jurisdiction as opposed to provincial jurisdiction. The Act provides little guidance or restrictions on structuring an organization to either embrace or avoid federal jurisdiction nor does it provide for the review of a transfer of a rail line from a main-line carrier to a short-line carrier.

Therefore, there are no means to ensure that a new short line is operating under the proper jurisdiction, that shippers and consumers have all the rights accruing to them or that adequate liability insurance protects shippers and consumers. This can also lead to concerns over the application of the proper railway safety and accident investigation regimes.

## RAILWAY LINE CONSTRUCTION

The Agency has the authority to consider the reasonableness of the location of a new rail line but does not have the authority to consider the actual need for the new rail line. Therefore, the availability of viable alternatives to physical construction such as interswitching or running rights may not be considered under this Act.

Other than for railway lines, construction approval does not include railway facilities such as stations, wharves, and depots. The environmental impact of such projects may therefore not be assessed.

No construction approval of a railway line is required if the construction is within the existing right-of-way or within 100 metres of the centre line of an existing railway line for a distance of no more than 3 kilometres. Major railway projects,

such as intermodal terminals, may have environmental or other implications, but are exempt from any regulatory review when they are constructed within those limits.

## TRANSFER AND DISCONTINUANCE OF RAILWAY LINES

The following issues have been identified with respect to Division V, Part III of the Act:

- the lack of requirement for a notice of impending transfer, which would allow parties like affected shippers located on a line to prepare for the effects of changes in railway operations;
- the possibility that there may be no continuation of rights for shippers and governments once a railway leaves federal jurisdiction;
- the lack of requirement for evidence of transfer to ensure that railway lines transferred without advertisement will continue to operate;
- the short time frames within which governments must decide whether to buy a railway offered for transfer;
- the requirement that a government must accept a railway's offer to transfer a railway line before the government can ask the Agency to determine the price or net salvage value (ss. 145(5) only);
- the lack of any standard for negotiations between railways and governments discussing net salvage value and other aspects of a transfer (s. 145 only); and
- the lack of certainty about the cessation of railway obligations under the Act in cases where a railway and a government continue to negotiate the details of the transfer long after reaching the agreement to transfer the railway line.

Furthermore, there is no provision for regulatory oversight of transfer agreements, so it may be difficult for parties to:

- ensure that a transfer was made for continued operations;
- ascertain the jurisdiction under which the new short line should operate;

- in the case of leases, determine whether the terms of the lease constitute a valid transfer as contemplated by the Act or who – the lessee or the lessor – is the proper operating authority on that line;
- determine the regulatory consequences of the termination of a lease by either party including the eligibility of former grain-dependent branch lines for compensation for discontinuance;
- determine the future jurisdiction of a line and any other consequences of a lease expiring.

The Act does not address the rights or obligations of either a railway company or a government should the transfer of a railway line between them be unable to be completed in accordance with their agreement.

The 12-month period, during which a line must remain in a railway company's three-year plan before steps can be taken to discontinue it, can be terminated immediately by a government or community-based group expressing interest in that line. This has the effect of reducing the 12-month period for all parties, including those who may need the extra time to evaluate their options.

Within the net salvage value process under section 145, the Agency does not have the authority, as it does under the net salvage value process of section 143, to reduce the net salvage value of a railway line by the cost of replacing any infrastructure it believes the railway has removed to reduce traffic. A municipality negotiating for the net salvage value of a line to be discontinued may not have the same benefit available to it as a municipality negotiating for continued operations although the railways actions were the same.

### NOISE, VIBRATION AND POLLUTION

Under existing federal transportation legislation, as clarified by a decision of the Federal Court of Appeal, the only dispute resolution mechanism available to parties affected by noise, vibration and pollution caused by day-to-day railway operations is the civil courts. The Agency anticipates that this issue will be considered during the course of the ongoing legislative review.

## AIR TRANSPORTATION

### NOTICE OF DISCONTINUANCE AND REDUCTION OF SERVICES (SECTION 64)

The requirement for an air carrier to notify affected communities that it proposes to reduce or discontinue air services to a Canadian point applies to all domestic air services, regardless of the nature of the service. For example, seasonal and lodge operators, as well as certain charter operators who operate to a point temporarily, are subject to the notice requirement. Although the Agency may exempt air carriers from compliance with the provisions, it may be desirable to exclude some operations such as seasonal or temporary operations from notice requirements.

### UNREASONABLE FARES OR RATES (SECTION 66)

Certain ambiguities in the wording of section 66 have led to varying interpretations of this section of the Act. It would assist both the industry and the Agency to clarify the intent of the legislation, for example, the definition of the term "point", and the type of data to be used in analysing fares or cargo rates.

Should the Agency's own motion authority under subsection 66(6) terminate on July 4, 2002, subsection 7 should also be amended. This would ensure that the Agency's current authority to require that carriers keep it informed of amendments to their tariffs on specified routes continue beyond July 4, 2002.

## ADMINISTRATION

### TIME FOR MAKING DECISIONS

While appropriate in the majority of cases, the 120-day statutory deadline can be problematic in cases involving incomplete applications, procedural or preliminary legal issues or systemic problems. The Agency has requested the authority to extend, on its own initiative, the 120-day limit in cases where not doing so would cause serious prejudice to one or more parties.

## CHAPTER 3

# What's Ahead

**THE** forecasting of events or trends is always difficult. At best, all that can be done is to make predictions based on the best and most current information available to us. What lies ahead for the Agency will be determined, in part, by some of the new developments that have been undertaken within the organization and which will be developed further during 2002 and beyond. As well, the Agency will continue to influence – and be influenced by – transportation policies established by the Government of Canada.

## RAIL TRANSPORTATION

In 2002, it is anticipated that the Minister of Transport will present his proposals for amendments to railway legislation. These proposals will be developed from, among other things, the review of *Vision and Balance*, the report of the *Canada Transportation Act* Review Panel and from his own *Transportation Blueprint for the Next Decade and Beyond*. It is anticipated that some of these proposals will require further consultation and that many of them may have a direct bear-

ing on the future mandate and processes of the Agency. The Agency will continue to provide expert advice on these proposals and other transportation issues upon request.

With respect to major railway case work, the Agency will consider two applications for running rights in 2002. In recent years, regulated access to the line of one railway by another through running rights has been the focus of much attention for many shippers, who see these as a means of increasing competition. The Act allows the Agency to grant running rights and the Agency issued rulings in 2001 that clarified the circumstances where such rights can be granted. The Agency determined that the Act, as now constructed, does not empower the Agency to grant running rights for the express purpose of soliciting traffic along a host's railway line. As well, amendments to the Act in 2000 allow running rights to be granted as a remedy to a breach of a railway's level of service obligations, if a grain-dependent branch line is involved.

The first of these applications, requested by the Ferroequus Railway Company Limited (FE), would permit it to receive grain at CN-CP interchanges at Camrose, Alberta and carry it over CN lines to Prince Rupert, British Columbia. This proposal would have the grain shipped by the Canadian Wheat Board from

origins on CP lines. FE has submitted that because its proposed operation would receive traffic originating on CP lines, the application conforms with the Agency's 2001 rulings on the scope of the Act's running rights provision.

The second application, made under the level-of-service provisions of the Act, is a request for the right for the Hudson Bay Railway Company, a railway company operating in Saskatchewan and Manitoba, to provide service to two grain handling facilities operated by Naber Seed and Grain Co. Ltd. and located on CN lines. The Agency scheduled a hearing in early 2002 to hear evidence on whether a breach of the service provisions has occurred and, if so, whether running rights are an appropriate remedy in the matter.

The Agency also has three statutory requirements under the Western grain revenue cap regime to administer. First, by April 30, 2002, the Agency must establish the railway volume-related composite price index for the upcoming 2002–2003 crop year which begins on August 1, 2002. This index, along with actual traffic information, is required to determine railway-specific revenue caps. Second, by December 31, 2002, the Agency must determine the actual revenue cap for each of CN and CP for crop year 2001–2002 and third, whether each railway's revenue for the movement of Western grain exceeded their respective revenue caps for crop year 2001–2002.

Throughout the year, the Agency will continue to consult with CN, CP, the Railway Association of Canada, the Federation of Canadian Municipalities and Transport Canada as it updates and improves its *Guide for Railway Charges for Construction and Maintenance of Railway Crossings* which is used by CN and CP when charging municipalities for work they perform at railway crossings. There will also be consultations with short-line railways and provincial governments on the establishment of a similar document for use by short-line railways.

With respect to the licensing of railways, the Agency anticipates a number of applications for new or amended certificates of fitness as the railway industry continues to restructure itself as a result of consolidations, mergers, expansions or new corporate structures. The Agency expects that jurisdictional questions will be addressed during the processing of these files.

During the year, an appeal was filed with the Federal Court of Appeal of the Agency's decision to deny the request of Montreal's Agence métropolitaine de transport for a certificate of fitness to operate its commuter service over the lines of CN and CP. The Agency had ruled that the commuter service operation was not a railway under the jurisdiction of the Parliament of Canada. The outcome of that appeal could have significant consequences for commuter rail operators across the country.

The Agency also expects to be involved in significant environmental assessments as it considers major railway construction proposals in Alberta and southern Ontario. In addition, the Agency will continue to use facilitation and mediation to assist parties in resolving complaints about noise, smoke, vibration and other concerns stemming from day-to-day railway operations while the government examines its options for establishing a legislative remedy for the resolution of such complaints.

## MARINE TRANSPORTATION

In 2002, the Agency will conduct a number of activities related to the *Coasting Trade Act*. Under this Act, the Agency is responsible for processing applications for the use of foreign vessels in Canadian waters, depending on whether Canadian owners and operators have suitable vessels available for the activity. The purpose of the legislation is to protect the interests of Canadian operators while at the same time allowing activities to be carried out in an efficient manner.

The Agency will hold discussions with industry representatives regarding coasting trade applications where the time frames for the usage of foreign vessels are unclear. Such situations occur when a company knows there will be a need for a vessel within a period of time but cannot specify exact dates. Applications are often submitted for an uncertain number of voyages over a long period of time. These applications are of concern to Canadian operators, who could respond if actual dates were known.

Preliminary work will also begin to automate coasting trade applications. Identified as a Government On-Line initiative, this project has been selected by the Agency as a candidate for service improvement in accordance with Treasury Board policy.

## ACCESSIBLE TRANSPORTATION

One of the Agency's priorities is to continue to enhance transportation services that are accessible to all, including those with disabilities. New initiatives to deal with complaints from persons with disabilities include the use of mediation and a modified form of hearing to supplement the Agency's usual process for addressing complaints.

Failure to meet the needs of travellers with disabilities creates serious barriers to their mobility. The Air Travel Accessibility Survey Report, *Taking Charge of the Air Travel Experience*, published in May 2001, has shown that airport operators and air carriers need to better inform persons with disabilities through improved public address announcements, signs and monitors in airports; accessible public phones in terminals; and increased information about accessible equipment, accommodations and services. In 2002, the Agency will publish a new Code of Practice on Removing Barriers to Communication for Travellers with Disabilities (the Communications Code). The Communications Code is designed to assist persons with sensory and cognitive disabilities. It attempts to make transportation services more accessible through cooperative efforts as an alternative to issuing regulations.

Compliance will be monitored by means of a questionnaire distributed to all air carriers and terminal operators covered by the Code, enabling the Agency to measure progress in providing accessible communications, facilities and services.

Changes to Part VII of the *Air Transportation Regulations* have been proposed to help meet the needs of passengers with disabilities travelling on small aircraft with 20 to 29 passenger seats. In 2001, the proposals were distributed to more than 3,000 interested parties, including air carriers, organizations of and for persons with disabilities, and concerned individuals. In

2002, the Agency will complete its analysis of the responses and begin the process to enact changes. Guidelines on how to accommodate passengers with disabilities will also be distributed to carriers operating aircraft with 19 seats or less. Also in the coming year, the Agency will continue to work jointly with the Transportation Development Centre to assess the need for standards for accessible boarding devices for small aircraft.

Monitoring compliance with the Agency's codes of practice will take on added importance in 2002, when all of the codes published to date will come fully into effect. Following analysis of the survey data from passenger rail carriers, the Agency will prepare a report on Rail Code compliance in 2002 and distribute it to the Accessibility Advisory Committee and carriers. The Agency will conduct similar surveys for the Air Code and the Ferry Code and report on compliance with the accessibility criteria in these codes. Field enforcement officers will continue to verify the data received in all survey questionnaires.

## MAJOR CASES

**The Agency will continue its investigation of a complaint by the Council of Canadians with Disabilities (CCD) regarding barriers to accessibility posed by Renaissance model railway cars purchased by VIA Rail Canada. The first Renaissance cars are expected to come into service in the spring of 2002. The Agency has set time frames for the filing of further submissions by CCD and VIA and has asked the parties to present final oral arguments at a hearing in Toronto in the spring of 2002. The Agency will then determine whether the cars present undue obstacles to the mobility of persons with disabilities and issue its decision.**

**The Agency has received three applications from persons who are obese arguing that the decision by air carriers to charge more than one fare for the two seats they require is an undue obstacle to their mobility. One of the issues raised by these applications is whether obesity is a disability for the purposes of Part V of the *Canada Transportation Act*. Following a public hearing**

**in 2001, the Agency rendered its decision that obesity *per se* does not constitute a disability for the purposes of the Act. Nevertheless, the Agency recognized that there may be individuals in the population of persons who are obese who have a disability which can be attributed to their obesity. Thus, on a case-by-case basis, the Agency will decide whether or not applicants are in fact persons with a disability. Once that determination has been made, the Agency will then proceed to examine the merits of the applications.**

## **AIR TRANSPORTATION**

The Agency anticipates a continuing high level of activity in terms of consumer, tariff and pricing complaints. In 2002, it will issue a number of decisions involving domestic pricing under subsection 66(1) of the Act; tariff provisions for domestic carriage under subsection 67.2(1) of the Act; and tariffs for international carriage under section 111 of the *Air Transportation Regulations*. Some tariff complaints involve significant matters affecting air travellers – for example, whether the current maximum amount of compensation paid for lost or damaged baggage is reasonable, and issues related to compensation for denied boarding resulting from carrier overbooking.

The Agency also intends to study air fares in a selected region of Canada. The results will be released in mid-year. If the own-motion provisions of the Act are extended, then another region of Canada will be selected for study in the fall.

The Agency's Air Travel Complaints Commissioner will issue two reports in 2002. The first one, to be tabled in the House of Commons in mid-April 2002, will report on the period from July 1 to December 31, 2001. The second report will cover the period from January 1 to June 30, 2002, and will likely be tabled when the House returns from its summer recess.

The Agency is preparing amendments to the *Air Transportation Regulations* to reflect the April 4, 2000, policy on international charter passenger air services and the May 29, 1998, policy on international charter all-cargo air services. Other amendments concerning such matters as tariffs and liability insurance are also being prepared. Pre-consultations on the proposed amendments began in December 2000. Based on the comments received, Agency staff have made further modifications to the proposed amendments. These are being reviewed by the Department of Justice prior to being pre-published in Part I of the *Canada Gazette*, which will provide an opportunity for further comments before the amendments come into effect. Until the proposed amendments are promulgated, the Agency will continue to exempt air carriers from compliance with provisions of the existing regulations that conflict with the new charter policies.

The proposed amendments to the *Air Transportation Regulations* reduce the number of international charter types from ten to four: passenger resaleable charters, passenger non-resaleable charters, all-cargo charters and foreign-originating charters. The provisions for transborder charters are incorporated into those for international charters so that similar rules apply to both. The amendments also allow foreign carriers to operate charters under the same conditions as Canadian carriers, provided that the foreign carrier's country treats Canadian carriers in a similar manner.

## **MEDIATION**

Over the past year, the Agency has been testing the use of mediation as an alternative method of dispute resolution with help from the federal Department of Justice. The Agency is committed to promoting mediation as an alternative to adjudication in dealing with disputes, complaints and other applications that come before it.

Following extensive consultations with the Accessibility Advisory Committee and other interested parties, the Agency has decided to expand its Mediation Pilot Project to include accessible transportation. In the year 2002, mediation services

will be offered to persons with disabilities and service providers responding to these complaints. The Agency will also continue to meet with representatives of the rail and marine industries across Canada to discuss how mediation services could be applied in these sectors.

The Mediation Pilot Project will end on June 30, 2002.

## **AGENCY MANAGEMENT**

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In 2002, the Agency will continue to implement government-wide initiatives described in *Results for Canadians*, tabled by the President of the Treasury Board in March 2000. The Agency will pay particular attention to two initiatives: Modern Comptrollership and Government On-Line.

Modern Comptrollership is one of the key priorities set out by the Government of Canada to modernize management practices for the 21st century. Traditionally, comptrollership has focussed on recording and reporting financial transactions and on making sure that transactions are authorized. Modern comptrollership emphasizes integrating financial information with performance measurement, vigorous stewardship of resources, risk management and open reporting of results. Efforts are aimed at enabling more appropriate choices, thereby leading to better service and better public policy – working smarter for better results.

By the end of 2002, the Agency will have assessed its situation, identified areas for improvement and prepared an action plan.

Government On-Line is another key priority of the federal government. Its goal is to use information technology to provide citizen-centred, integrated services to Canadians, anytime, anywhere and in the official language of their choice. In 2002, the Agency intends to implement a number of initiatives to improve its use of information technology to increase Canadians' access to its services. The Agency will also adjust its communications practices to address requirements of the new Communications Policy of the Government of Canada.



## CHAPTER 4

# Organization

**I**n our rapidly changing world, the most successful organizations are the ones best able to adapt to meet the evolving needs of those they serve. Nowhere is this more true than in the transportation sector, where emerging technologies, fluctuating customer demands and changing corporate priorities require regulating bodies, themselves, to adapt in response.

The Canadian Transportation Agency strives to be flexible, responsive, open and efficient as it carries out its mandate under the *Canada Transportation Act* and other federal laws. Whether making travel easier for persons with disabilities, ensuring fair rates for transporting Western grain, providing information to travel agents or monitoring legal compliance with federal statutes, the Agency is constantly working to regulate the Canadian transportation industry for the benefit of all.

An independent, quasi-judicial administrative tribunal, the Agency makes decisions on a wide range of economic matters affecting federally regulated transportation in Canada. The Agency exercises its powers through its Members – the Chairman, who also acts as Chief Executive Officer; a Vice-Chairman; up to five other full-time Members appointed by the Governor in Council; and up to three part-time Members appointed by the Minister of Transport.

## MANDATE

Among its varied responsibilities, the Agency has a mandate to:

- license air and rail carriers;
- approve proposed construction of railways; and
- protect the interests of Canadian marine vessel operators when authorizing foreign vessels to operate in Canadian waters.

It resolves complaints concerning rail rates, service and other matters within its jurisdiction and has the authority to remove undue obstacles to persons with disabilities who travel on the federally regulated air, rail and marine network. In addition, the Agency participates in international bilateral negotiations and administers bilateral agreements as the Canadian aeronautical authority.

Education and consultation are integral to the Agency's effectiveness in carrying out its mandate. The Agency works closely with those who use and provide transportation services in Canada. It helps travellers, shippers, carriers, municipalities and others to fully understand not only their rights and obligations under the Act, but also the Agency's role and

responsibilities. The Agency consults as widely as possible on regulatory changes that will affect the transportation industry. By remaining open and hearing all affected parties, the Agency ensures that its decisions and orders are both responsive and responsible.

Although many disputes can be resolved only through its legal process, the Agency encourages parties to settle their differences informally using mediation. The Agency's mediation service helps transportation users and providers resolve matters quickly and efficiently through mutually agreed settlements.

## COMPLAINTS PROCESS

Once a complaint is filed with the Agency, a process to deal with it quickly, effectively and fairly begins. A panel of at least two Members considers the complaint; once all parties have filed their pleadings, Agency staff supply any research or analysis required by Members who then consider the matter from legal, economic, operational and environmental perspectives (as the case may be), and issue a decision.

This process must take no longer than 120 days, unless the parties agree to an extension. Anyone may request copies of decisions and orders, or of rules and regulations governing federally regulated air, rail and marine transportation in Canada. Most decisions and orders are also available on the Agency's Web site at [www.cta.gc.ca](http://www.cta.gc.ca).

## STRUCTURE

The Agency's organizational structure comprises the Chairman's Office and four branches that support and advise Agency Members: Air and Accessible Transportation; Rail and Marine Transportation; Legal Services and Secretariat; and Corporate Management.

Staff in the Chairman's Office provide day-to-day support to Members and the Air Travel Complaints Commissioner. The Office also houses the Communications Directorate, which works to ensure that Canadians understand their rights and obligations as well as the Agency's role under the *Canada Transportation Act* and related legislation and regulations.

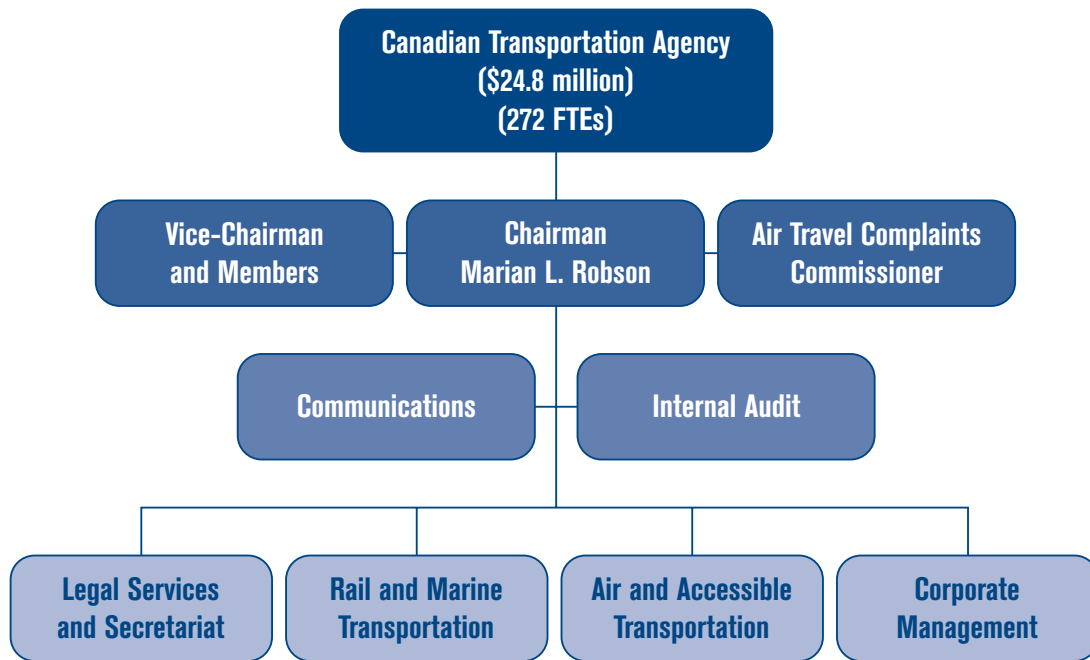
The Air and Accessible Transportation Branch implements Agency decisions by issuing licences to Canadian and foreign air carriers, enforcing licensing requirements and issuing charter permits. It also helps negotiate and implement international air agreements, and it administers international air tariffs. It supports the Agency's efforts to ensure that air transportation is accessible to persons with disabilities and helps to resolve accessibility complaints. Through the office of the Air Travel Complaints Commissioner, this branch handles consumer complaints related to many aspects of air travel, from pricing to quality of service to baggage handling.

The Rail and Marine Branch handles complaints about rates and service in the rail and marine industries, as well as disputes between railways and other parties over railway infrastructure. It issues certificates of fitness for the proposed construction and operation of railways. It administers the railway revenue cap regime for the transportation of Western grain and also audits railway accounting and statistics-generating systems, as required, to support the Agency's work in determining railway interswitching rates and the railway revenue caps for the transportation of grain, and in developing costing standards and regulations.

The Legal Services and Secretariat Branch issues the Agency's decisions and orders. It also provides legal advice within the Agency and represents the Agency before the courts. Branch staff also help conduct Agency meetings and hearings, and help develop and apply Agency procedures and regulations.

The Corporate Management Branch provides corporate services related to human resources, planning, finance, informatics, the library and records.

The Agency employs approximately 272 people and is based in Gatineau, Quebec.



## MISSION

The Agency's mission is to administer transportation legislation and government policies to help achieve an efficient and accessible transportation system by education, consultation and essential regulation.

## VALUES

The Agency is committed to the following core values, which constitute its code of conduct in achieving its mission.

- **Quality service:** a belief in delivering high-quality services. The Agency strives to provide the highest level of expertise and to reach decisions through an impartial, transparent and fair process.
- **Open communications:** a belief in timely communications. The Agency encourages a free exchange of ideas and promotes open and constructive contacts with those it serves.
- **Respect for others:** a belief in treating people fairly. The Agency promotes a cooperative and rewarding environment that fosters personal growth.
- **Personal development:** a commitment to continuous learning. The Agency encourages creativity and innovation. The Agency promotes training to maintain and improve expertise and quality of work.

**Marian L. Robson**, Chairman

Ottawa, Ontario  
Former port executive, railway manager and National  
Transportation Agency Member  
*Appointed July 1, 1996*

**Gilles Dufault**, Vice-Chairman

Verdun, Quebec  
Former VIA Rail executive and business strategy consultant  
*Appointed January 19, 1998 as a Member; appointed Vice-  
Chairman in August 2000*

**Mary-Jane Bennett**, Member

Winnipeg, Manitoba  
Lawyer, and active member of various boards  
and committees  
*Appointed January 19, 1998*

**Richard Cashin**, Member

St. John's, Newfoundland  
Lawyer, and past President and founder, Newfoundland  
Fishermen's Union  
*Appointed July 1, 1996*

**Guy Delisle**, Member

Calgary, Alberta  
Lawyer, and former Senior Legal Counsel and Temporary  
Member of the National Energy Board  
*Appointed January 8, 2002*

**Keith Penner**, Member

Ottawa, Ontario  
Former Member of Parliament from Northern Ontario  
and National Transportation Agency Member  
*Appointed July 1, 1996*

**George Proud**, Member

Ottawa, Ontario  
Former Member of Parliament for Hillsborough and for-  
mer Member of the Legislative Assembly of Prince  
Edward Island  
*Appointed January 8, 2001*

**Michael A. Sutton**, Member

Willowdale, Ontario  
Former Chair, City of Toronto Planning Board, and  
telecommunications executive  
*Appointed December 22, 1997*

**Bruce Hood**, Air Travel Complaints Commissioner and  
Member

Bronte, Ontario  
Former travel agency owner/operator and National  
Hockey League referee  
*Appointed August 1, 2000*

## CHAPTER 5

# Cases before the Supreme Court of Canada, the Federal Court of Canada and Petitions to the Governor in Council

## SUPREME COURT OF CANADA

### CASES DECIDED IN 2001

***The Corporation of the City of Windsor v. Canadian Pacific Railway Company and Shergar Developments Inc.***

Supreme Court of Canada

Court File No.: 28272

Application for leave to appeal the judgement of the Federal Court of Appeal dated September 26, 2000 which dismissed the appeal by the City of Windsor of Agency Decision LET-R-201-1998 dated July 16, 1998, and Agency Decision No. 564-R-1998 dated November 23, 1998, regarding the Agency's authority to enforce orders against a railway company after the railway company has abandoned the railway line.

On June 21, 2001, the application for leave to appeal to the Supreme Court of Canada was dismissed.

## FEDERAL COURT OF APPEAL

### CASES DECIDED IN 2001

***Via Rail Canada Inc. v. Canadian Transportation Agency and Council of Canadians with Disabilities***

Federal Court of Appeal

Court File No.: 01-A-13

Application for leave to appeal Agency Decisions LET-AT-R-80-2001, LET-AT-R-81-2001 and LET-AT-R-82-2001, all dated February 22, 2001, regarding an application by the Council of Canadians with Disabilities for a final order pursuant to section 172 of the *Canada Transportation Act* and an interim order pursuant to subsections 27(1) and 28(2) of the *Canada Transportation Act* directing that VIA Rail not enter into any agreement to purchase inaccessible rolling stock from Alstom Transport Limited and further for an award of costs to permit its representatives to conduct a proper inspection of the cars.

By Order of the Federal Court of Appeal dated May 1, 2001, the motion for leave to appeal and the motion for an oral hearing were denied.

***Westshore Terminals Limited v. Vancouver Port Authority***

Federal Court of Appeal

Court File No.: A-505-00

Application for judicial review of Agency Decision No. 487-W-2000 dated July 20, 2000, in the matter of an application by Westshore Terminals Limited pursuant to section 52 of the *Canada Marine Act* for a determination by the Agency that there is unjust discrimination in fees fixed by the Vancouver Port Authority under subsection 49(1) of the *Canada Marine Act*.

By Order of the Federal Court of Appeal dated June 11, 2001, the judicial review proceedings were dismissed on consent of the parties.

***Via Rail Canada Inc. v. Canadian Transportation Agency and Council of Canadians with Disabilities***

Federal Court of Appeal

Court File No.: 01-A-16

Application for leave to appeal Agency Decisions LET-AT-R-176-2001 and Order No. 2001-AT-R-122 dated April 3, 2001, and Order No. T-580-01 of the Federal Court – Trial Division. The Agency decision determined that the Agency has jurisdiction to continue to consider, after the statutory deadline has expired, an application by the Council of Canadians with Disabilities for a final order pursuant to section 172 of the *Canada Transportation Act* and an interim order pursuant to subsections 27(1) and 28(2) of the *Canada Transportation Act* directing that VIA Rail not enter into any agreement to purchase inaccessible rolling stock from Alstom Transport and ordered the production of documents by VIA Rail.

By Order of the Federal Court of Appeal dated June 8, 2001, leave to appeal was dismissed.

***Canadian National Railway Company v. Gordon Moffatt, Her Majesty in Right of the Province of Newfoundland and Labrador and the Canadian Transportation Agency***

Federal Court of Appeal

Court File No.: A-385-98

Appeal of Agency Letter-Decision No. LET-R-337-1007 dated December 17, 1997, in the matter of a request from Mr. Gordon Moffatt for the submission of a matter for final offer arbitration, pursuant to Part IV of the *Canada Transportation Act*.

The court upheld the Agency's decision that an intermodal rate offered by CN from Toronto or Montreal to Newfoundland was eligible for final offer arbitration under the *Canada Transportation Act*. Negotiations between the shipper and the railway company had been based upon a through rate where the railway company would subcontract to other carriers those portions of the through movement it would not provide. The court found that there was nothing in the law that would limit access to final offer arbitration to the rail-only portion of through movements.

The appeal was dismissed by the Federal Court of Appeal on September 24, 2001.

***Canadian National Railway Company v. Gordon Moffatt, the Government of Newfoundland and Labrador, Oceanex 1997 Inc., the Atlantic Provinces Trucking Association, Canadian Pacific Railway, Alliance of Shippers and Manufacturers Newfoundland***

Federal Court of Appeal

Court File No.: A-613-99

Appeal of Agency Decision No. 300-R-1999 dated June 2, 1999, relating to an objection by the Canadian National Railway Company to a submission by Mr. Gordon Moffatt pursuant to Part IV of the *Canada Transportation Act*.

The court ruled that under the final offer arbitration provisions of the *Canada Transportation Act* the Agency lacked the legal authority to examine and determine jurisdictional issues such as whether Term 32(2) of *Terms of Union of Newfoundland with Canada* (1949) had any impact upon railway rates quoted

to Newfoundland. The court also ruled that Term 32(2) had no practical effect in the present day given CN's privatization, the elimination of laws of economic regulation in the Canadian railway industry and the closing-down of a railway in the province of Newfoundland.

The appeal was allowed by the Federal Court of Appeal on October 31, 2001.

#### CASES DISCONTINUED IN 2001

##### ***Algoma Central Railway Inc. v. CTA and Steve Robinson***

Federal Court of Appeal

Court File No.: A-517-00

Appeal of Agency Decision No. 233-R-2000 and Order No. 2000-R-102 both dated March 31, 2000, relating to a complaint filed by Steve Robinson of the City of Sault Ste. Marie pursuant to section 95 of the *Canada Transportation Act* concerning noise emanating from Algoma Central Railway's track 594.

On April 25, 2001, the appellant filed a Notice of Abandonment with the Federal Court of Appeal.

##### ***Canadian Shipowners Association, Chamber of Maritime Commerce, Cargill Limited, the Canadian Wheat Board and Les Silos Port-Cartier v. Laurentian Pilotage Authority, the Corporation of Lower St. Lawrence River Pilots and the Corporation of Mid-St. Lawrence River Pilots, Inc.***

Federal Court of Appeal

Court File No.: 01-A-15

Application for leave to appeal Agency Decision No. 94-W-2001 dated March 2, 2001, which recommended that the tariff proposal published by the Laurentian Pilotage Authority on September 16, 2000, be implemented.

On April 17, 2001, the Applicant filed a Notice of Abandonment with the Federal Court of Appeal.

#### CASES PENDING IN 2001

##### ***Rural Municipality of Bayne No. 371 et al. v. CTA, Canadian National Railway Company and Canadian Pacific Railway Company***

Federal Court of Appeal

Court File No.: A-743-00

Appeal of Agency Decision No. 445-R-2000 dated June 30, 2000, relating to a determination by the Agency regarding the impact of municipal reclamation by-laws on the net salvage value of Canadian National Railway Company lands and other assets or interests in its Cudworth subdivision in the province of Saskatchewan.

##### ***Canadian Pacific Railway v. Canadian Transportation Agency***

Federal Court of Appeal

Court File No. A-193-02 (formerly 01-A-4)

Appeal of Agency Decision No. 664-R-2001 dated December 21, 2001, in which the Agency concluded that it had jurisdiction to review the reasonableness of demurrage rules established by a federal railway company.

##### ***Westshore Terminals Limited v. Vancouver Port Authority***

Federal Court of Appeal

Court File No.: A-625-00

Appeal of Agency Decision No. 487-W-2000 dated July 20, 2000, in the matter of an application by Westshore Terminals Limited pursuant to section 52 of the *Canada Marine Act* for a determination by the Agency that there is unjust discrimination in fees fixed by the Vancouver Port Authority under subsection 49(1) of the *Canada Marine Act*.

***Réal Fafard and Jacques Borduas v. Canadian National Railway Company, Ville de Saint-Basile-le-Grand and Transport Canada***

Federal Court of Appeal

Court File No.: A-374-01

Appeal of Agency Decision No. 18-R-2001 dated January 12, 2001, relating to an application by Réal Fafard and Jacques Borduas pursuant to section 103 of the *Canada Transportation Act* to construct and maintain a private level crossing across the Canadian National Railway Company right-of-way at mileage 58.84 of the St-Hyacinthe subdivision, in the town of Saint-Basile-le-Grand, in the province of Quebec.

***Air Canada v. Dan Motisca and Canadian Transportation Agency***

Federal Court of Appeal

Court File No.: 01-A-14

Application for leave to appeal Agency Decision No. 99-P-A-2001 dated March 7, 2001, regarding a complaint by Mr. Dan Motisca concerning the fares offered by Air Canada on the Vancouver-Prince Rupert route.

***TyCom (U.S.) Inc. v. Secunda Marine Services Limited and Atlantic Towing Limited***

Federal Court of Appeal

Court File No.: A-314-01

Judicial Review of Agency Decision No. 184-W-2001 dated April 12, 2001, which determined that, pursuant to subsection 8(1) of the *Coasting Trade Act*, there are suitable Canadian vessels available to provide the proposed service or perform the activities described in TyCom's application for a coasting trade licence.

***TyCom (U.S.) Inc. v. Secunda Marine Services Limited and Atlantic Towing Limited***

Federal Court of Appeal

Court File No.: A-267-01

Appeal of Agency Decision No. 184-W-2001 dated April 12, 2001, which determined that, pursuant to subsection 8(1) of the *Coasting Trade Act*, there are suitable Canadian vessels available to provide the proposed service or perform the activities described in TyCom's application for a coasting trade licence.

***Agence métropolitaine de transport and Metropolitan Railways Inc. v. Canadian Transportation Agency et al.***

Federal Court of Appeal

Court File No.: A-508-01

Appeal of Agency Decision No. 273-2001 dated May 24, 2001, relating to an application, filed jointly by the Agence métropolitaine de transport and Metropolitan Railways Inc. pursuant to section 91 of the *Canada Transportation Act* for a certificate of fitness to operate a commuter train service on the right-of-ways owned by the Canadian National Railway Company and the St. Lawrence & Hudson Railway Company Limited in the metropolitan region of Montreal, in the province of Quebec.

***Ville de Montréal v. Canadian Pacific Railway Company***

Federal Court of Appeal

Court File No.: A-608-01

Application for judicial review of Agency Decision No. 499-R-2001 dated September 21, 2001, relating to an application by Canadian Pacific Railway Company pursuant to section 16 of the *Railway Safety Act* for a determination of the apportionment of costs for the construction and future maintenance of a fence along the railway track at mileage 9.4 Lachute subdivision and Zotique-Racicot Park, Bordeaux sector of the city of Montreal, in the province of Quebec.



## FEDERAL COURT – TRIAL DIVISION

### CASES DISCONTINUED IN 2001

#### ***Canadian Pacific Railway Company v. West Coast Express Limited and David Roberts***

Federal Court – Trial Division

Court File No.: T-1997-00

Application for an order pursuant to section 18.1 (3) of the *Federal Court Act* prohibiting or restraining the respondent David Roberts, an arbitrator appointed pursuant to section 162 of the *Canada Transportation Act*, from proceeding with an arbitration between Canadian Pacific Railway Company and West Coast Express Limited pursuant to a referral by the Canadian Transportation Agency dated October 27, 2000.

The application was discontinued on April 2, 2001.

#### ***Via Rail Canada Inc. v. Council of Canadians with Disabilities***

Federal Court – Trial Division

Court File No.: T-580-01

Application for a stay of proceedings relating to Agency Decision No. LET-AT-R-176-2001 and Order No. 2001-AT-R-122 dated April 3, 2001, and Order No. T-580-01 of the Federal Court – Trial Division. The Agency decision determined that the Agency has jurisdiction to continue to consider an application by the Council of Canadians with Disabilities for a final order pursuant to section 172 of the *Canada Transportation Act* and an interim order pursuant to subsections 27(1) and 28(2) of the *Canada Transportation Act* directing that VIA Rail not enter into any agreement to purchase inaccessible rolling stock from Alstom Transport after the statutory deadline has expired and ordered the production of documents by VIA Rail.

On July 14, 2001, the applicant withdrew its application to the Court for a stay of proceedings.

### CASES PENDING IN 2001

#### ***Westshore Terminals Ltd. v. Attorney General of Canada et al.***

Federal Court – Trial Division

Court File No.: T-1103-00

Application for judicial review of Order-in-Council P.C. 2000-889 dated June 9, 2000, which decision of the Governor in Council rescinded two decisions of the Canadian Transportation Agency, namely Decisions 73-W-2000 dated February 4, 2000 and LET-W-98-2000 dated April 7, 2000.

## PETITIONS TO THE GOVERNOR IN COUNCIL

### CASES PENDING

#### ***Canadian National Railway Company v. Canadian Transportation Agency***

Petition to the Governor in Council relating to Agency Decision No. 593-R-1998 issued in connection with an application by the Canadian National Railway Company pursuant to section 16 of the *Railway Safety Act* for a determination by the Canadian Transportation Agency of the apportionment of costs for the installation of an automatic warning system at the road crossing of SR663 and mileage 179.49 Watrous subdivision, in the Rural Municipality of Corman Park No. 344, in the province of Saskatchewan.

#### ***Village of Stenen v. Canadian Transportation Agency***

Petition to the Governor in Council relating to Agency Decision No. 103-R-2000 dated February 15, 2000 in relation to a level-of-service complaint against Canadian National Railway Company at the Village of Stenen, Saskatchewan.

## CHAPTER 6

# Other Information

**THIS** Chapter provides the following: statistics for some of the Agency's activities, a list of legislation the Agency has responsibility for, the Codes of Practice and federal railway companies that the Agency has issued certificates of fitness to.

## STATISTICS

### Air Carriers, by Nationality

	Carriers holding Agency licences, as of December 31, 2000	Carriers holding Agency licences, as of December 31, 2001
Canadian	884	878
United States	763	745
Other Foreign	108	108

### Licence Authorities Held, by Nationality

	Canadian					United States	Other	Total
	Aircraft type							
Services	Small	Medium	Large	All cargo	Total			
Domestic	856	20	11	32	919	–	–	919
Non-scheduled international	420	18	10	24	472	737	87	1296
Scheduled international	14	26	75	5	120	46	59	225
Total December 31, 2001*	1290	64	96	61	1511	783	146	2440

\* For comparison, the total in December 31, 2000 was 2,480.

**Air Licensing Activities**

	Completed in 2000	Completed in 2001
Applications for		
New licences	189	147
Amendment of licences	170	143
Suspensions*	178	206
Cancellations	92	74
Reinstatements	53	74
Exemptions/rulings	112	154
Other Foreign	3	2
Agency-initiated		
Suspensions*	128	211
Cancellations	91	110
Reinstatements	27	61
<b>Total</b>	<b>1043</b>	<b>1182</b>

\*The increase in the number of these cases over 2000 relates in part to air carriers not renewing insurance due to cost increases following the events of September 11, 2001.

**Annual Statistics, Charters Division, 2000 vs. 2001**

<b>Charter permits issued</b>	<b>2000</b>	<b>2001</b>
Passengers non-resaleable (includes entity passenger and transborder passenger non-resaleable charters)	253	341
Cargo non-resaleable (includes entity cargo/livestock and transborder goods charters)	331	237
Passengers resaleable, which includes the following:		
• common purpose charters		
• combination of advance booking charters and inclusive tours charters		
• inclusive tours charters		
• advance booking charters		
• transborder passenger charters*	1101	768
<b>Additional statistics</b>		
Exemptions granted to the <i>Charter Regulations</i>	928	706
Amendments to approved charter programs	390	296

\* The decrease in the number of these cases over 2000 may have resulted in part from the cessation of Canada 3000 services, and the reduction in demand as a result of the events of September 11, 2001.

### Accessible Transportation Information Statistics, 2001

Each day, the Agency provides practical advice on accessible transportation to both the public and industry in response to telephone and Internet inquiries, written requests for information, and invitations to participate in conferences and trade shows. These are the figures for 2001.

<i>Air Travel Guides</i> distributed	5,422
Accessibility brochures	8,440
Newsletters	4,403
Reservation checklists	6,681
General inquiries and accessibility-related calls received over the Internet or on the toll-free lines	2,151
Consultation documents	4,027
Public presentations given	11
Exhibits (accessibility) displays made available	5
Advertisements placed	16

### All Carriers, Complaints and Breakdown of Issues: January 1, 2001 to December 31, 2001

	Jan. 1–June 30	July 1–Dec. 31	Total	Percent
Quality of Service	1,933	669	2,602	41%
Schedule	848	388	1,236	20%
Baggage	428	174	602	10%
Frequent Flyer Program	238	63	301	5%
Ticket	255	169	424	7%
Reservations	257	74	331	5%
Denied Boarding	177	70	247	4%
Fares	79	44	123	2%
Safety	204	71	275	4%
Cargo	19	8	27	<1%
Charges	21	18	39	<1%
Unruly Passenger	25	12	37	<1%
Unaccompanied Minors	11	14	25	<1%
Allergies	3	7	10	<1%
Unreasonable/Discrimination	0	1	1	<1%
Smoking	1	0	1	<1%
Unknown	1	1	2	<1%
<b>Total</b>	<b>4,500</b>	<b>1,783</b>	<b>6,283</b>	<b>100%</b>

*N.B.: The above data is extracted from the Third Report of the Air Travel Complaints Commissioner, which provides more detailed information on this issue. The Report may be obtained in hard copy from the Agency or electronically via the organization's Web site at [www.cta.gc.ca](http://www.cta.gc.ca)*

## RAIL COMPLAINTS

Comparison of Dispute Resolution and Competitive Access Applications Received

### *National Transportation Act, 1987 – January 1, 1988 to June 30, 1996*

Provisions	Number of cases	Decided	Pending	Withdrawn or settled
Competitive line rate	6*	5	–	1
Extended interswitching	10	3	–	7
Interswitching rates	7	7	–	–
Level of service	19	13	–	6
Final offer arbitration	9	2	–	7
Public interest	12	9	–	3
Running rights***	4	–	–	2

### *Canada Transportation Act – July 1, 1996 to December 31, 2001*

Provisions	Number of cases	Decided	Pending	Withdrawn or settled
Competitive line rate	–	–	–	–
Extended interswitching	–	–	–	–
Interswitching rates	–	–	–	–
Level of service	23	16	3	4
Final offer arbitration	17	6	–	11
Public interest**	N/A	N/A	N/A	N/A
Running rights	3	2	1	–

\* Of the six applications, four were brought by one shipper.

\*\* Was not continued in the Canada Transportation Act.

\*\*\* Two applications were denied as they were related to provincially regulated railways.

## FEDERAL RAIL LINES TRANSFERRED TO OTHER OPERATORS

### From Canadian National Railway Company – January 1, 2001 to December 31, 2001

Company Assuming Operations	Subdivision	From Mile	To Mile	Prov.	Total Miles	Total Kms	Effective Date
Carlton Trail Railway Co.	Tisdale	136.2	157.6	SK	21.4	34.4	02/28/01
Hudson Bay Railway Co.	Arborfield	0.0	19.4	SK	19.4	31.2	04/30/01

### From Canadian Pacific Railway Company – January 1, 2001 to December 31, 2001

Company Assuming Operations	Subdivision	From Mile	To Mile	Prov.	Total Miles	Total Kms	Effective Date
Cardston County	Cardston	19.0	42.3	AB	23.3	37.5	01/31/01
Canadian National Rly. Co.	Stevensville Spur	0.0	1.9	ON	1.9	3.1	12/19/01

## FEDERAL RAIL LINES DISCONTINUED

### By Canadian National Railway Company – January 1, 2001 to December 31, 2001

Subdivision/Spur	Headblock	From Mile	To Mile	Total Miles	Total Kms	Prov.	Effective Date
Levis/MJ92 Track (formerly m. 110 to m. 111.35 of the Montmagny Sub.)	8.4	0.0	1.4	1.4	2.3	PQ	03/1/01
Caso/Leamington	–	0.0	13.8	13.8	22.2	ON	06/28/01

### By Canadian Pacific Railway Company – January 1, 2001 to December 31, 2001

Subdivision/Spur	Headblock	From Mile	To Mile	Total Miles	Total Kms	Prov.	Effective Date
Hamilton/Dunnville Spur	13.5	0.0	9.6	9.6	15.4	ON	07/16/01
Niagara Industrial Lead	–	0.0	2.12	2.12	3.4	ON	12/12/01
Montrose Spur (formerly Hamilton Sub.)	–	0.15	2.79	2.64	4.2	ON	12/12/01

### Application for a Track Determination Pursuant to Subsection 140(2) of the *Canada Transportation Act* – January 1, 2001 to December 31, 2001

Applicant	Subdivision/Spur	Headblock	From Mile	To Mile	Total Miles	Total Kms	Prov.	Effective Date
CPR	Hamilton Belt Line	–	3.02	3.5	0.48	0.77	ON	02/28/01
CPR	Hamilton Belt Line/ Westinghouse	1.20	0.0	0.9	0.9	3.40	ON	03/06/01

## STATUTES AND REGULATIONS

### THE AGENCY HAS PRIMARY RESPONSIBILITY FOR THE FOLLOWING LEGISLATION:

*Canada Transportation Act* S.C. 1996, c. 10

### THE AGENCY SHARES RESPONSIBILITY TO PARLIAMENT FOR THE FOLLOWING LEGISLATION:

*Access to Information Act* R.S.C. 1985, c. A-1  
*Canada Marine Act* S.C. 1998, c. 10  
*Canadian Environmental Assessment Act* S.C. 1992, c. 37  
*Civil Air Navigation Services Commercialization Act* S.C. 1996, c. 20  
*Coasting Trade Act* S.C. 1992, c. 31  
*Energy Supplies Emergency Act* R.S.C. 1985, c. E-9  
*Financial Administration Act* R.S.C. 1985, c. F-11  
*Pilotage Act* R.S.C. 1985, c. P-14  
*Privacy Act* R.S.C. 1985, c. P-21  
*Railway Relocation and Crossing Act* R.S.C. 1985, c. R-4  
*Railway Safety Act* R.S.C. 1985, c. 32 (4th Supp.)  
*St. Lawrence Seaway Authority Act* R.S.C. 1985, c. S-2  
*Shipping Conferences Exemption Act* R.S.C. 1985, c. 17 1987 (3rd Supp.)

### THE AGENCY HAS SOLE RESPONSIBILITY FOR THE FOLLOWING REGULATIONS, RULES AND OTHER STATUTORY INSTRUMENTS:

*Air Transportation Regulations (SOR/88-58)*  
*Canadian Transportation Agency Designated Provisions Regulations (SOR/99-244)*  
*National Transportation Agency General Rules (SOR/88-23)*  
*Personnel Training for the Assistance of Persons with Disabilities Regulations (SOR/94-42)*  
*Railway Costing Regulations (SOR/80-310)*  
*Railway Interswitching Regulations (SOR/88-41)*  
*Railway Third Party Liability Insurance Coverage Regulations (SOR/96-337)*  
*Railway Traffic and Passenger Tariffs Regulations (SOR/96-338)*  
*Railway Traffic Liability Regulations (SOR/91-488)*  
*Uniform Classification of Accounts and Related Railway Records Designated Provisions Regulations*

### THE AGENCY SHARES RESPONSIBILITY TO PARLIAMENT FOR THE FOLLOWING REGULATIONS:

*Carriers and Transportation and Grain Handling Undertakings Information Regulations (SOR/96-334)*  
*Jacques-Cartier and Champlain Bridges Inc. Regulations (SOR/98-568)*  
*Seaway International Bridge Corporation Ltd. Regulations (SOR/98-569)*

THE AGENCY, IN CONSULTATION WITH TRANSPORT CANADA, IS CONSIDERING REVOKING THE FOLLOWING ENGINEERING REGULATIONS:

- Details of Maps, Plans, Profiles, Drawings, Specifications and Books of Reference (General Order E-1) (SOR/80-482)*
- Height of Wires of Telegraph and Telephone Lines Regulations (General Order E-18) (C.R.C., c. 1182)*
- Joint Use of Poles Regulations (General Order E-12) (C.R.C., c. 1185)*
- Pipe Crossings Under Railways Regulations (General Order E-10) (C.R.C., c. 1187)*
- Railway Grade Separations Regulations (General Order E-5) (C.R.C., c. 1191)*
- Railway-Highway Crossing at Grade Regulations (General Order E-4) (SOR/80-748)*
- Wire Crossings and Proximities Regulations (General Order E-11) (C.R.C., c. 1195)*

## CODES OF PRACTICE

THE AGENCY DEVELOPS REGULATIONS AND CODES OF PRACTICE BY WEIGHING BOTH THE NEEDS OF PERSONS WITH DISABILITIES FOR ACCESSIBLE TRANSPORTATION SERVICES AND THE ABILITY OF INDUSTRY TO DELIVER ACCESSIBLE SERVICES. SO FAR, IT HAS DEVELOPED THE FOLLOWING CODES:

- Code of Practice for Ferry Accessibility for Persons with Disabilities: This code addresses the physical accessibility of marine transportation equipment used by persons with disabilities.
- Code of Practice for Aircraft Accessibility for Persons with Disabilities: This code addresses the physical accessibility of air transportation equipment used by persons with disabilities.
- Code of Practice for Passenger Rail Car Accessibility and Terms and Conditions of Carriage by Rail of Persons with Disabilities: This code addresses the way railways provide services and the rail transportation equipment used by persons with disabilities.

## CANADA'S FEDERAL RAILWAY COMPANIES AS OF DECEMBER 31, 2001

- Algoma Central Railway Inc.
- Arnaud Railway Company
- Bangor and Aroostook Railroad Company (Van Buren Bridge Company)
- Burlington Northern and Santa Fe Railway Company, The (Burlington Northern (Manitoba) Ltd. and Burlington Northern and Santa Fe Manitoba, Inc.)
- Canadian American Railroad Company
- Canadian National Railway Company
- Canadian Pacific Railway Company
- Cape Breton Development Corporation doing business as Devco Railway
- Capital Railway
- Chemin de fer de la Matapédia et du Golfe Inc.
- CSX Transportation Inc. (Lake Erie and Detroit River Railway Company Limited)
- Eastern Maine Railway Company
- Essex Terminal Railway Company
- Ferroequus Railway Company Limited
- Goderich-Exeter Railway Company Limited



Hudson Bay Railway Company  
International Bridge and Terminal Company, The  
Kelowna Pacific Railway Ltd.  
Maine Central Railroad Company and Springfield Terminal Railway Company  
Minnesota, Dakota & Western Railway Company  
National Railroad Passenger Corporation (Amtrak)  
Nipissing Central Railway Company  
Norfolk Southern Railway Company  
Okanagan Valley Railway Company  
Ottawa Central Railway Inc.  
Pacific and Arctic Railway and Navigation Company/British Columbia Yukon Railway Company/British Yukon Railway Company Limited carrying on business as or proposing to carry on business as White Pass & Yukon Route  
Quebec North Shore & Labrador Railway Company  
RailLink Canada Ltd.  
St. Lawrence & Atlantic Railroad (Québec) Inc.  
Sault Ste. Marie Bridge Company  
Toronto Terminals Railway Company Limited, The  
Union Pacific Railroad Company  
Waterloo-St. Jacobs Railway Company Limited (Certificate of fitness suspended)  
VIA Rail Canada Inc.  
Wabush Lake Railway Company, Limited

**APPENDIX**

# Agency Accessibility Advisory Committee

The Agency's Accessibility Advisory Committee helps the Agency develop regulations, codes of practice and industry guidelines on accessibility. In addition to meeting annually with the Committee, the Agency consults it regularly for all of its regulatory projects.

Representatives from the community of persons with disabilities and from the transportation industry, along with other interested parties, sit on this committee.

## REPRESENTATIVES FROM THE COMMUNITY OF PERSONS WITH DISABILITIES

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Canadian Association for Community Living – C. Laurin-Bowie

Canadian Association of the Deaf – K. R. Nichols

Canadian Association of Independent Living Centres – T. Walters

Canadian Council of the Blind – H. Schnellert

Canadian Hard of Hearing Association – C. Cantlie

Canadian Hearing Society – M. Doolittle-Romas

Canadian National Institute for the Blind – F. Cutler & J. McDonald

Canadian National Society of the Deaf/Blind – Penny Leclair

Canadian Paraplegic Association – S. Little

Canadian Pensioners Concerned Incorporated – B. Black

Confédération des organismes provinciaux de personnes handicapées au Québec (COPHAN) – R. Desjardins

Council of Canadians with Disabilities – P. Danforth  
Centre québécois de la déficience auditive – Y. Mantha  
Guide Dog Users of Canada – D. Yale  
Institut Nazareth et Louis-Braille – P. Ferland  
Kéroul – G. Déry  
Learning Disabilities Association of Canada – B. McBride  
National Federation of the Blind: Advocates for Equality – M. Yale

#### REPRESENTATIVES FROM THE TRANSPORTATION INDUSTRY

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Air Canada – B. Racine  
Association québécoise des transporteurs aériens inc. – B. Jenner  
Air Transport Association of Canada – W. Everson  
Railway Association of Canada – W.A. Rowat  
Canadian Airports Council – N. Raynor  
Marine Atlantic – W. Harbin  
VIA Rail Canada Inc. – J. Lemire

#### OTHER INTERESTED PARTIES

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Canadian Human Rights Commission – K. Izzard  
Government of Newfoundland and Labrador – S. Appleby  
Government of Alberta – P. Dawes  
Human Resources Development Canada – Francine Ouellet  
Transport Canada  
Cabin Safety Standards – C. Cudahy  
Transportation Development Centre – B. Smith  
Accessible Programs – B. Brown  
Policy Integration and Corporate Issues – C. Sauvé  
Regulatory Standards – M. Khouzam