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CTA ANNUAL REPORT 1996

CANADIAN TRANSPORTATION AGENCY

FIRST ANNUAL REPORT 1996

SETTING A NEW COURSE

Canadian Transportation Agency

Office des transports du Canada

Canada

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CANADIAN TRANSPORTATION AGENCY

First Annual Report

July 1 to December 31, 1996

Chairman
Canadian Transportation
Agency

Président
Office des transports
du Canada

May 1997

The Honourable David Anderson, P.C., M.P.
Minister of Transport
House of Commons
Ottawa, Ontario

My Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour of presenting the First Annual Report of the Canadian Transportation Agency, for the reporting period extending from July 1 to December 31, 1996.

Yours sincerely,

Marian L. Robson

Marian L. Robson

Canada

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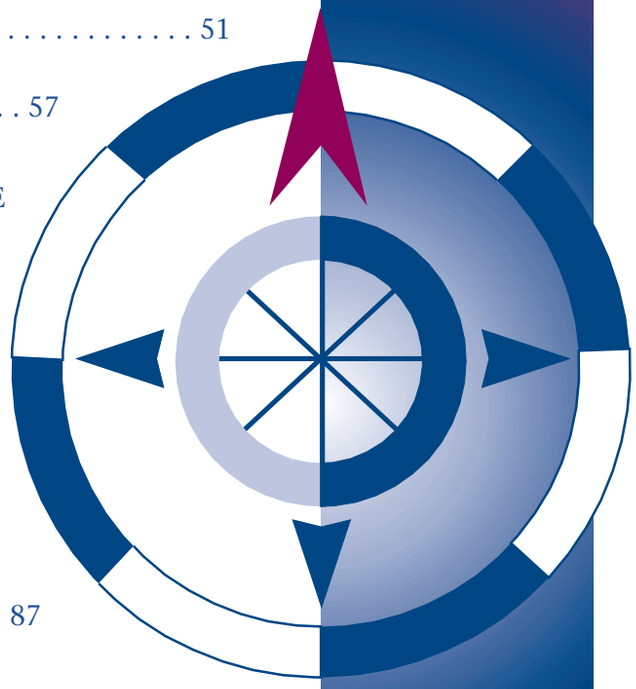
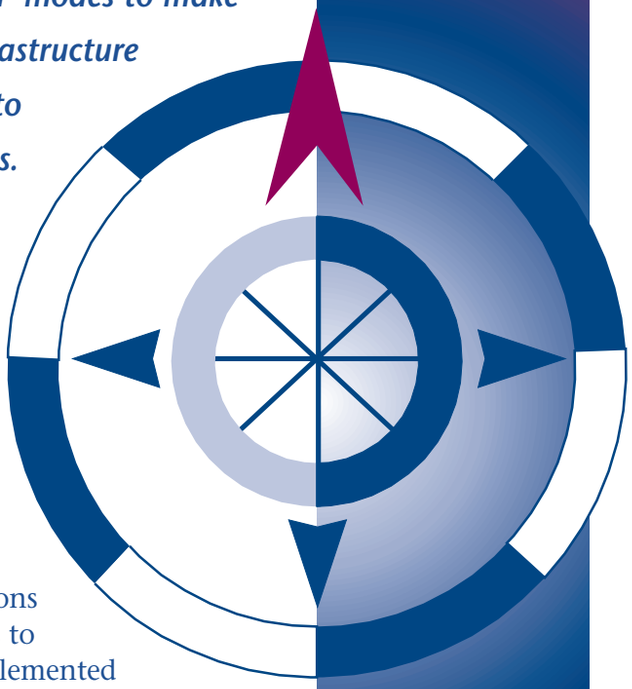


Preface

Canada's transportation industry is changing rapidly. In the rail industry, deregulation and rail plant rationalization have dramatically altered the landscape: railways are trying to shed their money-losing lines, communities are fighting to preserve local service and shortline railways are growing. In the air sector, volumes are increasing and new international alliances are emerging. In the marine mode, new structures for managing ports and international competition are evolving. And finally, new technologies are gradually allowing service providers in all modes to make their vehicles and infrastructure even more accessible to persons with disabilities.

The Agency's first responsibility is to ensure that Parliament's stated transportation policies are implemented fairly.



In response, the mechanisms for regulating the transportation industry are changing too. The *Canada Transportation Act* came into force on July 1, 1996, creating the Canadian Transportation Agency (hereinafter, the Agency). By eliminating unnecessary regulation, the Act builds on past efforts to encourage the transportation industry to become more market driven. As a result, the Agency must set a new, flexible, forward-looking course so that it can adapt to its new mandate and carry out its duties effectively.

The Agency is a quasi-judicial tribunal that makes its decisions independently of outside interference. Its first responsibility is to ensure that Parliament's stated transportation policies are implemented fairly. To operate effectively in a more deregulated environment, the Agency must apply all of its acquired experience, adapting its skills where necessary.

Expanded communication with participants in the Canadian transportation system is a priority.

Under the *Canada Transportation Act*, the Agency continues to serve many functions previously served by the National Transportation Agency. It continues to play an essential role in implementing the federal government's policy on "rail renewal"; to act as an economic regulator in the air mode; to administer legislation governing certain marine matters; and to ensure that all persons travelling on the federally regulated transportation network can do so without undue obstacles. The Agency will continue to resolve disputes under the new regime.

Expanded communication with participants in the Canadian transportation system is a priority. Members, senior managers and staff have met with various interested parties across the country to inform them of the Agency's role as an economic regulator and decision-maker. Through these consultations, the Agency has become aware of many transportation industry concerns, including matters relating to the new legislation.

As the Minister of Transport has stated, transportation is a strategic asset that can drive Canada's economy. Canada's transportation industries are rapidly evolving. The Agency will continue to play its part in maintaining an economic, efficient and accessible Canadian transportation system, and looks forward to the challenges ahead.

M.L.R.

Introduction

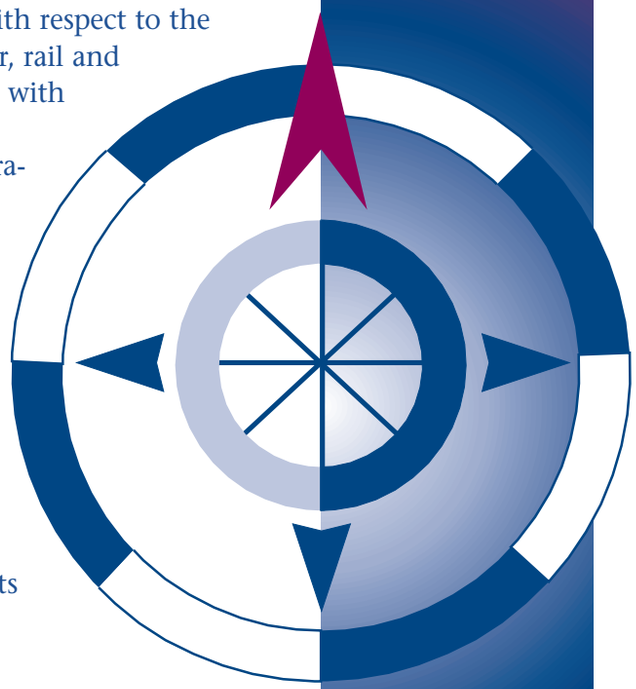
The Agency was created on July 1, 1996, under the provisions of the* Canada Transportation Act *(hereinafter, the Act), as the successor to the National Transportation Agency of Canada (hereinafter, the NTA).

The new Agency continues as a quasi-judicial tribunal. As such, it remains responsible for administering laws that govern the economic regulation of various modes of transportation under federal jurisdiction.

As required by section 42 of the Act, this report describes the activities of the Agency during its first six months of operation. The reporting period for this First Annual Report covers operations from July 1 to December 31, 1996.

In describing the Agency's activities, the report briefly lists applications to the Agency and the findings on them. The report also includes an assessment of the operation of the Act and any difficulties observed in administering it.

The first three chapters deal with the Agency's activities with respect to the modes of transport over which it has statutory jurisdiction: air, rail and marine. Chapter Four covers the Agency's mandate in dealing with accessible transportation matters. Chapter Five provides, as required by subsection 42(2) of the Act, an assessment of operations and difficulties observed in administering the new legislation. Agency cases before the Federal Court of Appeal are summarized in Appendix A.



The New Tribunal

The Agency is an independent statutory body that reports to Parliament through the Minister of Transport. To allow the Agency to carry out its duties effectively as a quasi-judicial tribunal, Parliament has given it all the powers of a superior court in Canada with respect to matters within its jurisdiction, such as the ability to compel the examination of witnesses and to produce documents.

The Act prescribes that the Agency shall consist of not more than seven Members appointed by the Governor in Council, as well as any part-time Members appointed by the Minister. During the period covered by this report, the Agency consisted of the Chairperson as Chief Executive Officer, the Vice-Chairperson and two permanent Members. Members, as the legal embodiment of the Agency, make

decisions on a wide range of matters affecting the economics of federal transportation modes. Their mandate is that of economic regulators and decision-makers; they can issue authorities to carriers who wish to enter the rail or air modes, and resolve disputes over various transportation rate and service matters; they can also order the removal of undue obstacles to the mobility of persons with disabilities in the federally regulated transportation network.

Legislative and Regulatory Framework

Until the mid-1960s, the government closely controlled transportation rates, as well as the quantity and quality of transportation services. The 1961 Royal Commission on Transportation, also known as the MacPherson Commission, examined the extent of this control and industry structure, conduct and performance. This Commission's findings ultimately led to the passage of the *National Transportation Act* in 1967.

This legislation set out for the first time a statement of national transportation policy, with competition between the various modes of transport being one of the cornerstones. Until then, intermodal competition had largely been absent. A single regulatory body, the Canadian Transport Commission, was set up to replace a number of modal-specific regulatory boards.

Following the passage of the 1967 legislation, Canadian transportation markets continued to change. The rapidity and extent of these changes, combined with significant deregulation initiatives affecting transportation in the United States, Canada's major trading partner, led to a second major review of Canada's transportation legislation. This review began in 1985 with the issuance of a policy paper, "Freedom to Move." It led to substantial changes in the legislation culminating in the *National Transportation Act, 1987* (hereinafter, the *NTA, 1987*), the *Motor Vehicle Transport Act, 1987* and the *Shipping Conferences Exemption Act, 1987* (hereinafter, the *SCEA, 1987*).

The *NTA, 1987* adopted certain portions of the policy statement contained in the former legislation dealing with intermodal competition. However, it also emphasized competition within each mode—frequently termed intramodal competition. The legislation significantly deregulated entry into, exit from and service levels in the air mode, which previously had been subject to extensive regulatory overview. It also gave the Agency regulatory powers with respect to accessible transportation matters.

By 1995, transportation markets in Canada had again changed substantially from those in place in 1987. Again, the government felt change was necessary. Its review led to the replacement of the previous legislation with the *Canada Transportation Act*, enacted in 1996.

By 1995, transportation markets in Canada had again changed substantially from those in place in 1987.

The national transportation policy remained largely intact in the new law, providing a clear statement to the effect that:

> ... a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities ... that makes the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travellers, including

> persons with disabilities, and to maintain the economic well-being and growth of Canada and its regions ...

The major changes brought about by the new law include: streamlining the processes for abandoning or transferring rail lines; removing regulation governing railway operations and corporate governance; eliminating the requirement for the Agency to review proposed mergers and acquisitions of Canadian transportation undertakings; eliminating the payment of subsidies to railways for continuing uneconomic railway freight and passenger services; creating a single regulatory regime in the domestic air sector by reducing regulation of northern air services; and eliminating market-entry licensing for barge supply operators in northern Canada.

The 1995 federal budget also eliminated two of the NTA's significant areas of involvement. It repealed the transportation subsidy scheme created under the *Western Grain Transportation Act* (hereinafter, the *WGTA*), as well as those created under the *Atlantic Region Freight Assistance Act* and the *Maritime Freight Rates Act*. The NTA had administered all of these subsidy programs.

The Agency is examining international charter provisions in the *Air Transportation Regulations* (hereinafter, the *ATR*) as part of the government's review of existing regulations to ensure that the use of the government's regulatory powers results in the greatest possible prosperity for Canadians.

The Agency intends to streamline the *ATR* to reduce the regulatory burden. The Agency intends to simplify and consolidate the *ATR* and, where appropriate, to make the regulations on international charters more consistent with Canada-U.S. charter provisions. With respect to tariffs, the Agency intends to address changing industry practices.

The accessibility provisions under the *NTA, 1987* were retained under the Act. The Agency retained the power to ensure that all modes of transportation under federal jurisdiction do not pose undue obstacles to the mobility of persons with disabilities. As such, the Agency resolves complaints filed by persons with disabilities, and develops regulations and codes of practice.

Air Provisions

Part II of the new Act sets out the requirements governing the provision of both domestic and international air services. Under the new legislation, the largely deregulated regime previously applicable in southern Canada has been extended into northern Canada. As a result, the reverse onus test previously applicable for entry into the northern market and the restrictions on southern Canada carriers operating in the North have been abolished. Domestically licensed carriers are now free to operate anywhere in Canada.

The new Act also introduced two new consumer protection provisions. There is a new financial fitness test for all new Canadian applicants seeking to operate medium and large aircraft in either domestic or international services. This test also applies to existing operators of small aircraft seeking to upgrade their service to medium or large aircraft, and to medium and large passenger aircraft licensees whose licences have been suspended for 60 days or longer. The test is designed to ensure that all such operators have sufficient funds on hand to cover both their start-up costs and the costs of doing business during the first 90 days of operation.

Section 59 of the Act establishes a prohibition on the sale or offer for sale of unlicensed air services. This prohibition is designed to protect consumers from the loss of monies paid to persons seeking to set up new air services who are subsequently unable to do so.

The *ATR* were revised and promulgated when the legislation was passed. These revisions made the *ATR* consistent with the new form and substance of the Act. The revised *ATR* introduced, for example, regulatory approaches to inter-airline arrangements involving code share, block space and contracting of aircraft and crew, and incorporated new aircraft groupings and licence categories. A list of some of these and other major Agency regulatory initiatives is presented in Appendix B. Transborder charter regulations were also introduced as a result of a liberalized Canada–United States bilateral air transport agreement.

The Agency has been busy issuing new replacement licences, preparing guides on new filing requirements for charter permits, and updating and distributing publications to reflect new legislative provisions.

The Agency has been busy issuing new replacement licences, preparing guides on new filing requirements for charter permits, and updating and distributing publications to reflect new legislative provisions. All licences issued under the previous legislation are in the process of being reissued in accordance with the new provisions.

The Agency's activities with respect to the air mode are discussed in greater detail in Chapter One.

Rail Provisions

The changes introduced by the Act with respect to the economic regulation of federal transportation markets are also evident in the rail sector, where regulation has been reduced significantly.

While the Agency's jurisdiction in this mode under the Act has decreased relative to that under the *NTA, 1987*, its mandate remains unchanged in other respects under other laws. For example, under the *Railway Safety Act* (hereinafter, the *RSA*), the Agency continues to resolve disputes when a railway and a municipality disagree over the apportionment of the costs of installing or maintaining safety-related rail improvements.

The *NTA, 1987* introduced certain competitive access provisions designed to grant rail shippers access to competing railways (intramodal competition). These provisions included, for example, competitive line rates and extended interswitching rates. These two provisions were carried into the new legislation.

In a new provision, the Act now requires shippers who file an application for relief with the Agency to demonstrate that they would suffer "substantial commercial harm" if the Agency did not grant the relief sought.

When the *WGTA* was repealed, certain western grain transportation matters were incorporated into the new Act. The Act provides a simpler process for the Agency to determine railway freight rates for regulated grain movements. Additionally, the Minister of Transport will review the efficiency of the grain handling and transportation system by the end of 1999. The review will determine, in part, whether repealing the current rate regulation provisions affecting western grain would significantly harm shippers.

The legislation creates a streamlined conveyance and discontinuance process that railways must follow before abandoning the operation of railway lines. This new process is more commercially oriented because it encourages railways to transfer lines to new short-line operators, rather than discontinuing service. The new process requires no government approvals or orders authorizing discontinuance.

With respect to the construction and operation of federal railways, the Act has eased the entry process for potential railway companies. Under the Act, persons wishing to construct or operate a railway must have a certificate of fitness which the Agency will issue if it is satisfied that there is adequate liability insurance, but railways no longer need to demonstrate public convenience or necessity.

The Act also revised and incorporated many of the infrastructure provisions of the *Railway Act*. The legislation encourages railways and parties that interact with them, such as road authorities and utility companies, to negotiate. It also preserves recourse to the Agency for resolving disputes, in the event that negotiations are unsuccessful. When approving railway line construction, the Agency must consider railway requirements, the interests of localities and environmental protection issues.

A new section of the Act allows the Minister of Transport to enter into agreements with the provincial Ministers of Transportation in order to give the Agency the authority to administer legislative provisions respecting railway crossings.

The legislation creates a streamlined conveyance and discontinuance process that railways must follow before abandoning the operation of railway lines.

The final offer arbitration process under the *NTA, 1987* continues under the new Act. It has been extended to include the arbitration of disputes relating to rates or to any of the conditions associated with a railway company's provision of services to a commuter rail authority designated by a provincial government or to a railway company engaged in passenger rail service.

The Agency's activities with respect to the rail mode are described in more detail in Chapter Two.

Marine Provisions

Regulation has also been reduced in the marine mode. While the Agency's jurisdiction under the Act in this mode has decreased, its mandate remains unchanged in different respects under other laws.

Under the *Coasting Trade Act*, the Agency continues to make recommendations on the availability of suitable Canadian vessels to perform certain coasting trade activities that are the subject of a foreign entry request. Under the *SCEA, 1987*, the Agency acts as a repository for shipping conference agreements and tariffs, and adjudicates claims that conference agreements or practices reduce competition and negatively affect transportation services or costs.

Under the *Pilotage Act*, the Agency continues to make decisions about pilotage tariffs when persons object to the proposed rates published by a pilotage authority. Under the *St. Lawrence Seaway Authority Act*, the Agency continues to resolve disputes related to claims that certain Seaway rates are discriminatory.

The final offer arbitration process under the *NTA, 1987* continues under the new Act. It has been extended to include the arbitration of disputes relating to the water movement of goods required for northern marine resupply services within the Mackenzie River watershed and the eastern Arctic.

The Agency's activities with respect to the marine mode are described in more detail in Chapter Three.

Transition to the New Agency

The change from the National Transportation Agency to the Canadian Transportation Agency was more than a change of name. While driven by legislative reform, the change was also initiated by a government-wide review of federal programs. As well, a decision to terminate transportation subsidy programs was announced in the February 1995 federal budget. What made these changes somewhat exceptional in the case of the Agency was the magnitude of their impact.

A transition team was created to make the change from the NTA to the new Agency as smooth as possible for both interested parties and employees.

The transition was multi-faceted. The Agency's mandate had changed dramatically: the new responsibilities had to be explained to interested parties and employees; the structure of the Agency was delayered and modified in other ways; regional offices had to be closed; internal processes were streamlined; and the organization had to be downsized by approximately 50 per cent, while retaining required expertise.

A transition team was created to make the change from the NTA to the new Agency as smooth as possible for both interested parties and employees.

On the communication front, the strategy was twofold: internally, the goal was to reduce the workforce transparently, fairly and equitably; externally, the aim was to inform interested parties of the Agency's new mandate and responsibilities. On this latter point, the Agency produced and distributed brochures, and Agency Members and staff made numerous oral presentations at conferences and meetings across the country.

The closure of the NTA's Moncton office presented a particular challenge, as this office administered the Atlantic region transportation subsidy program. Employees in Moncton had the demanding task of closing the books on the subsidy program, while their jobs were being terminated.

Employees affected by the NTA's downsizing received guidance and support to help them make personal decisions and to cope with the changes. Employees continuing their employment with the Agency attended training and information sessions to learn about the new responsibilities, processes and structure.

During the transition period, the Agency also undertook a new far-reaching strategic planning process. This procedure, which involved close and continuing consultation with all Agency employees and Members, is paving the way for the new organization. The goal is to foster initiative and a team-building approach in the carrying out of all Agency functions.

The complexity and stress of the transition was exacerbated by the short time period within which the changeover had to be completed.

Organizational Structure

Members of the Agency are appointed by the Governor in Council for a term of not more than five years. Agency staff, numbering approximately 250, help Members carry out their duties. The following Members were in place from July 1 to December 31, 1996.

Marian L. Robson, Chairman

Mrs. Marian Robson of Vancouver was appointed Chairman of the Canadian Transportation Agency on July 1, 1996. She had since March 27, 1995 been a Member of the Agency's predecessor, the National Transportation Agency. A native of Saskatchewan, Mrs. Robson has had 25 years' transportation experience in the public and private sectors; with the federal government, national and provincial railways, and the Canadian port system, and as an independent transportation consultant. Prior to her appointment as a Member of the National Transportation Agency, Mrs. Robson was a Vice-President with Hill and Knowlton, an international public relations firm.

Before joining Hill and Knowlton, Mrs. Robson was Director of the Vancouver-based Cascadia Institute, a public policy group specializing in tourism, transportation and trade projects in western Canada and the U.S. Pacific Northwest.

In the early 1980s, Mrs. Robson held several executive positions with the Canadian port system, first as a full-time member of the four-member National Harbours Board, which was responsible for the administration of 15 Canadian ports. In 1983, she became a director of the Canada Ports Corporation and Chairman of the newly established Vancouver Port Corporation.

As Special Assistant to the Honourable Otto Lang in the 1970s, Mrs. Robson focused on western agricultural issues and all modes of transportation. Through the Minister's responsibility for the Canadian Wheat Board, she was involved in several initiatives in grain handling and transportation, working with government officials, railways, grain companies and producer groups in the development and implementation of these programs. At Transport Canada, she was the Minister's liaison with the transportation industry and its major customers.

Mrs. Robson received her Bachelor of Arts degree in English from the University of Saskatchewan in 1964 and completed postgraduate studies in political science at the University of British Columbia and the University of Saskatchewan from 1965 to 1967.

Jean Patenaude, Vice-Chairman

Mr. Jean Patenaude, from l'Île-des Sœurs, Quebec, was appointed Vice-Chairman of the Canadian Transportation Agency on July 1, 1996. He received his Bachelor of Law degree from the University of Ottawa and was admitted to the Bar of the Province of Quebec in 1976. He brings to the Agency 20 years of experience in the field of transportation and in the practice of law. Up until his appointment, he worked as a policy adviser for Transport Canada; he had previously been an adviser for the Review Commission on the *Railway Safety Act*.

From 1982 to 1993, Mr. Patenaude worked as general counsel for VIA Rail Canada Inc. As general counsel, he was responsible for providing legal services and for the risk management programs of the corporation. In consultation with human resources services, he implemented preventive programs and

adapted work programs for the reintegration of injured workers into the workplace.

From 1976 to 1982, Mr. Patenaude worked as counsel to the Canadian Transport Commission. He participated in the planning of the Canadian western rail network, and put forth recommendations on the transportation of dangerous goods by rail.

Richard Cashin,
Member

Mr. Richard Cashin was born in St. John's, Newfoundland. He received a Bachelor of Arts degree from St. Francis Xavier University and a Bachelor of Law degree from Dalhousie University. Mr. Cashin was invested as an Officer of the Order of Canada in April 1990. He received an honourary Doctor of Law degree from Memorial University of Newfoundland in May 1991. On July 1, 1992, he was appointed as a member of the Queen's Privy Council for Canada.

From 1962 until 1968, Mr. Cashin was a member of Parliament for St. John's West. During his last two years as a MP, he served as Parliamentary Secretary to the Minister of Fisheries. From 1968 to 1971, Mr. Cashin worked as a lawyer with the firm of Cashin and Pike. In 1971, he became President of the Fishermen, Food and Allied Workers union based in St. John's, where he remained until June 1993.

Throughout his career, Mr. Cashin has been appointed to numerous task forces. From 1977 to 1979, he was the Atlantic Commissioner for the Task Force on Canadian Unity. He was twice appointed Commissioner for the International Commission for the Northwest Atlantic Fisheries, first from 1980 to 1984 and again from 1990 to 1993. During 1990 and 1991, he sat as a commissioner on the Citizen's Forum on Canada's Future. In March 1992, he was appointed Chairman of the Task Force on Incomes and Adjustment in the Atlantic Fishery. He is also a member of the Advisory Board of the Royal Society of Canada.

Mr. Cashin was also a member of several boards of directors, among them the North-South Institute; the Canadian Saltfish Corporation; the Institute for Research on Public Policy; Petro-Canada; the Institute of Public Affairs, Dalhousie University; and the Export Trade Development Board.

Mr. Cashin was appointed a member of the Canadian Transportation Agency on July 1, 1996, a position he had held previously with the Agency's predecessor, the National Transportation Agency.

Keith Penner,
Member

Born in Saskatchewan and raised in Alberta, Mr. Keith Penner brings to the Canadian Transportation Agency his knowledge and experience of the Canadian North. As a northern Ontario member of Parliament from 1968 to 1988, Mr. Penner served as Parliamentary Assistant to the Minister of Science and Technology and to the Minister of Indian Affairs and Northern Development. As well, for many years, he was Chairman of the Standing Committee on Indian Affairs and Northern Development.

Mr. Penner holds a Bachelor of Arts degree (honours history) and a Master's degree in Education (administration). As an undergraduate, he studied at the University of Alberta; his post-graduate work was done at the University of Toronto and the University of Ottawa. He also

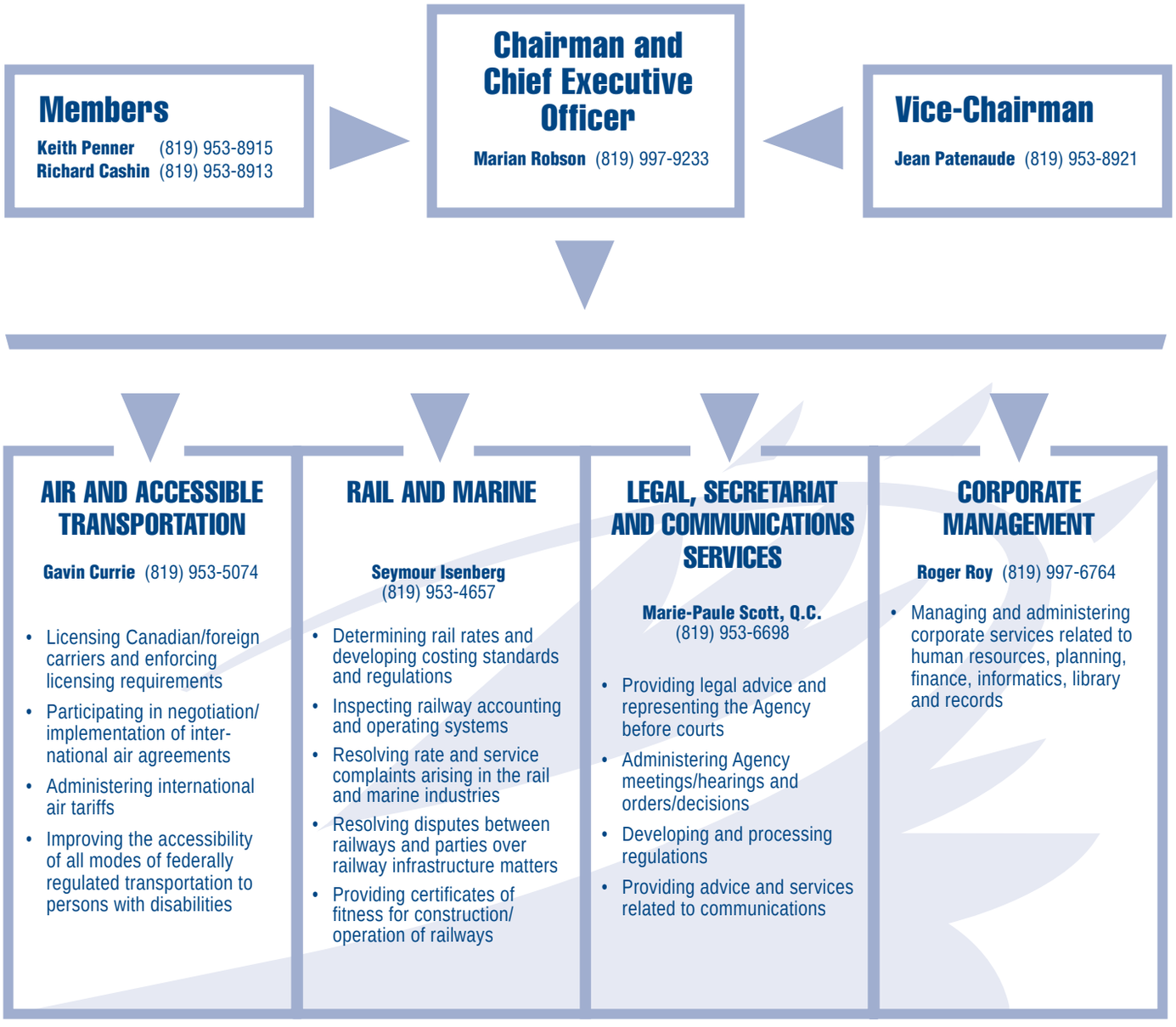
pursued post-degree studies at Queen's University and McMaster University.

During the academic year 1987-88, he was a visiting fellow in the School of Political Science at Queen's University. Currently, he is a member of the Chartered Institute of Transportation (North America).

On July 1, 1996, Mr. Penner was appointed a Member of the Canadian Transportation Agency. He had previously been a Member of the National Transportation Agency.

The following organizational charts outline the structure of the Agency's administrative and program branches.

Organizational Chart



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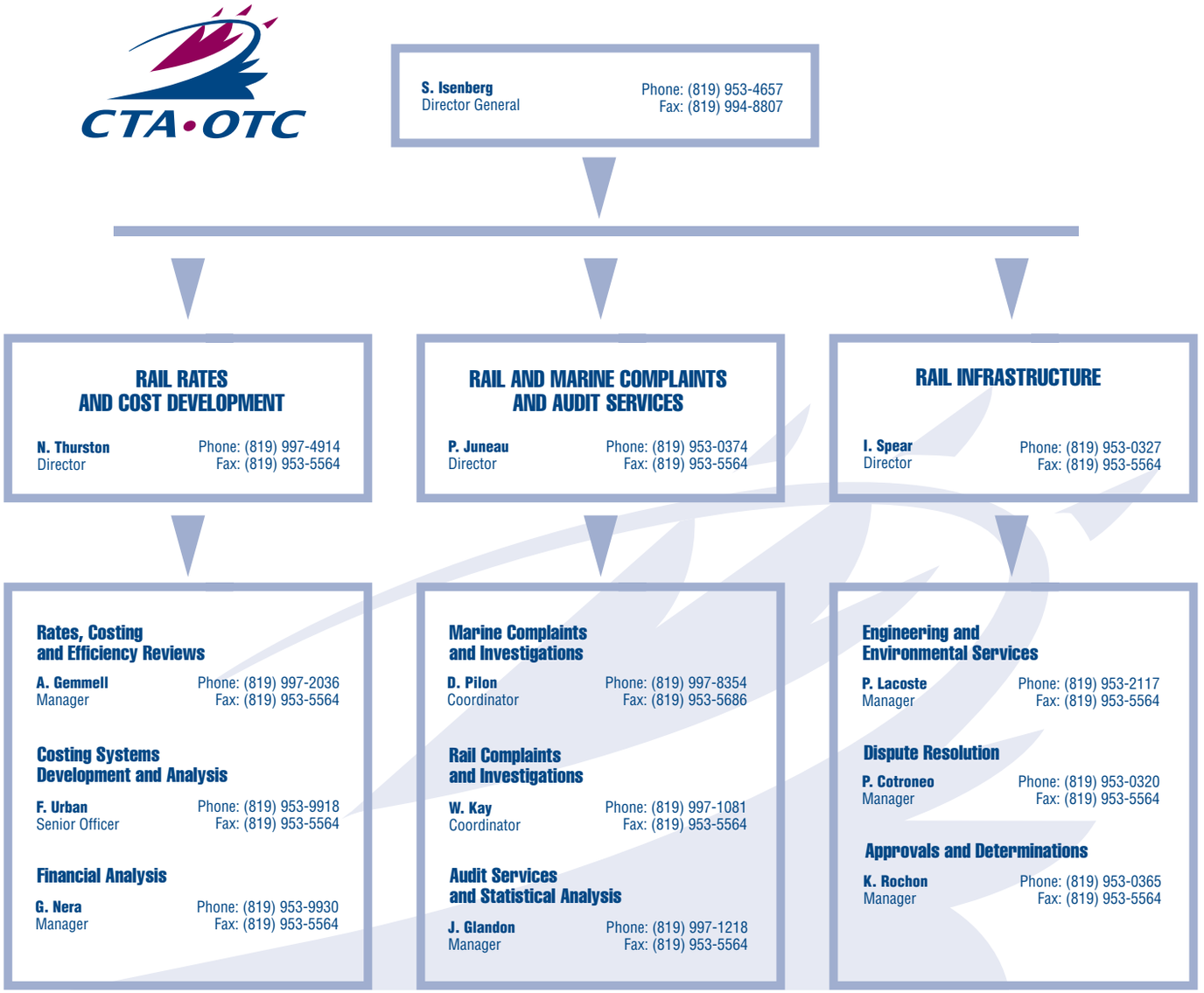
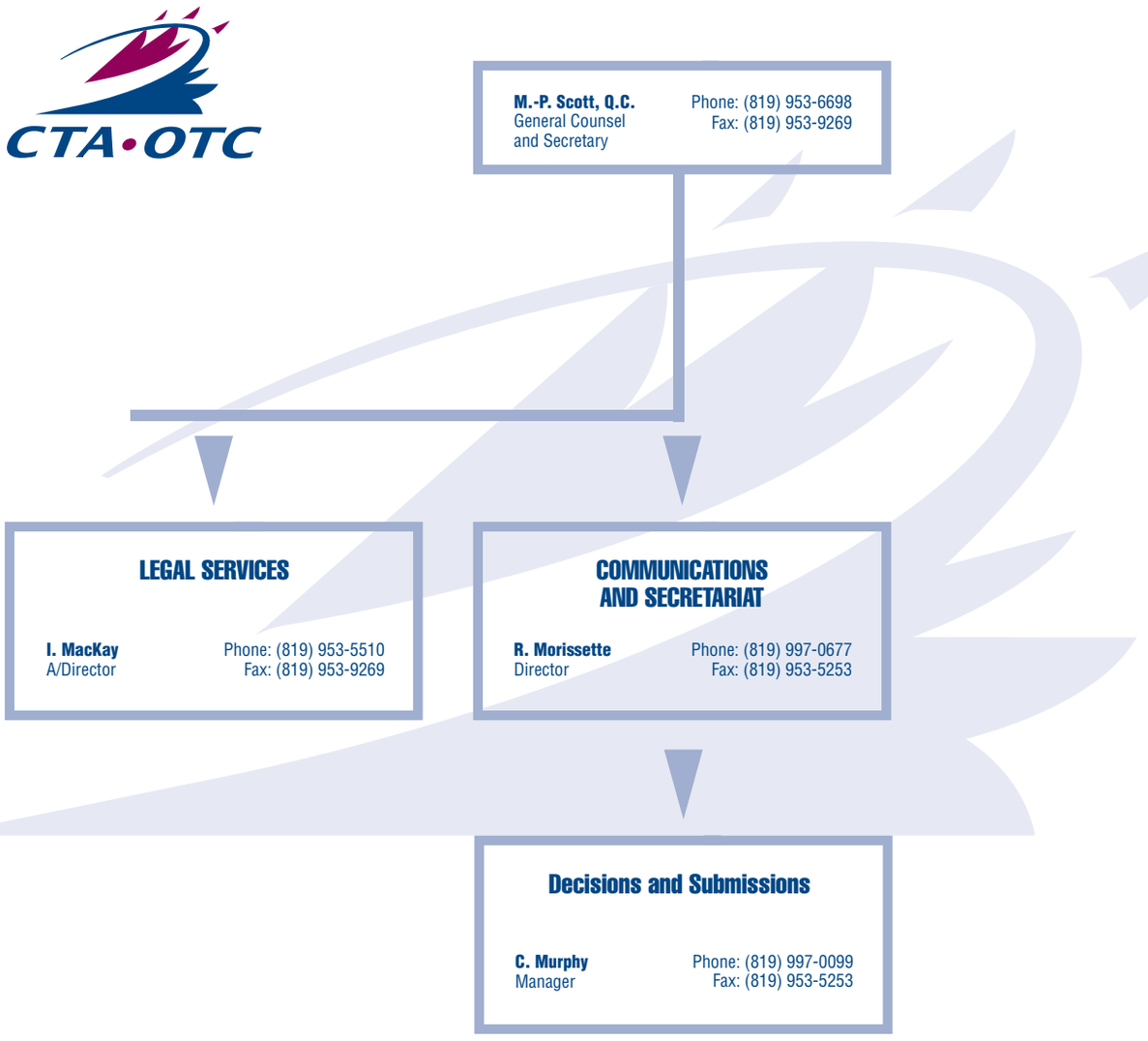
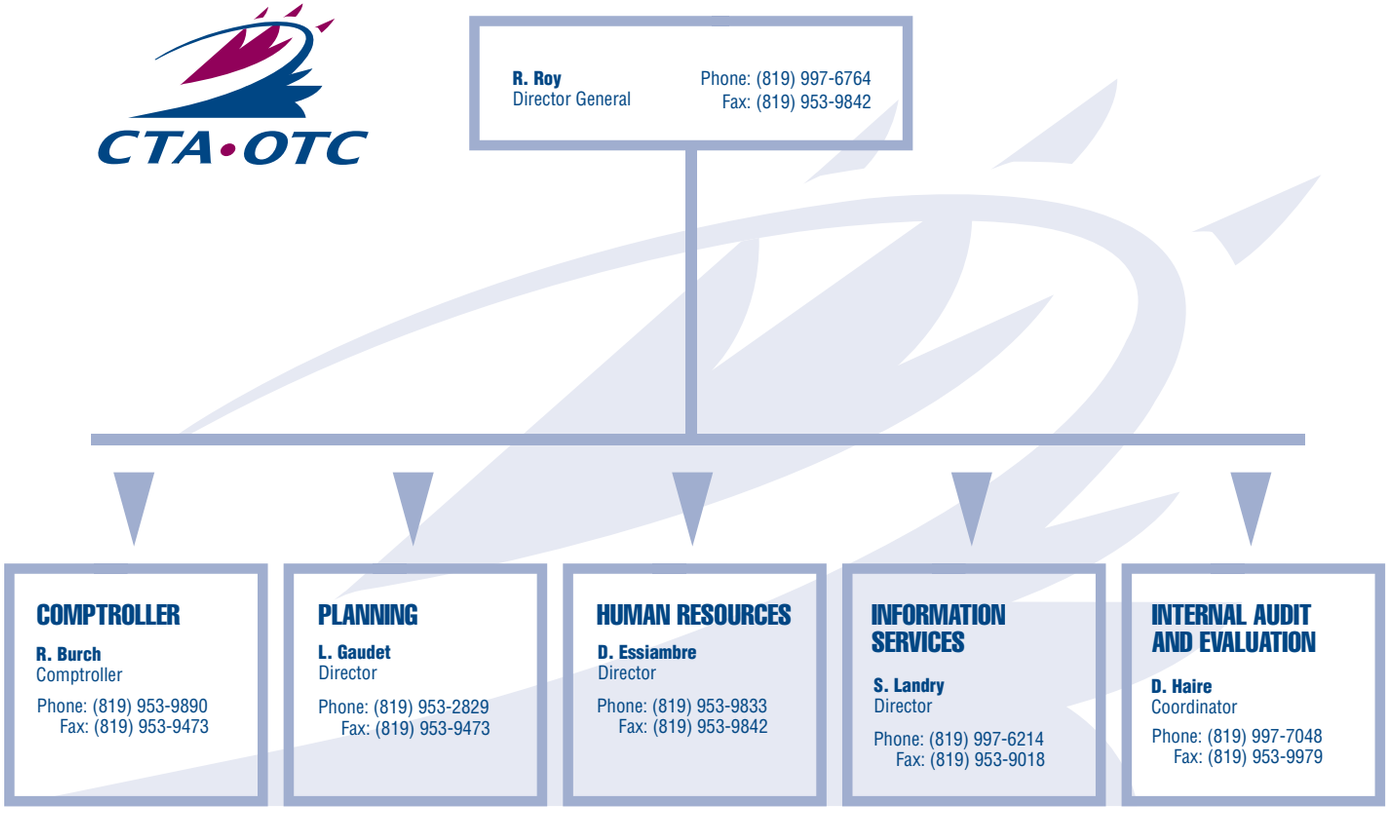
Rail and Marine Transportation Branch



Legal, Secretariat and Communications Services Branch



Corporate Management Branch



CHAPTER ONE: AIR

- Entry into Air Service Markets
- The Agency as Aeronautical Authority
- Tariffs
- Enforcement

Air

The Agency protects the interests of consumers, shippers and carriers by ensuring that air carriers operating to, from and within Canada meet certain minimum economic requirements. To this end, it administers an air carrier licensing system, international air agreements and international air tariffs. Moreover, the Agency, through an active enforcement program, monitors and enforces compliance with the Act and related regulations.

ENTRY INTO AIR SERVICE MARKETS

Passage of the Act brought about significant changes in air transportation. One of the Agency's objectives within this new legislative framework is to administer and maintain the integrity of the air licensing system in Canada.

AIR CARRIER LICENSING SYSTEM

The Agency licenses domestic and international air transportation by Canadian and foreign air carriers. This involves issuing licences to Canadian applicants for domestic services, as well as to Canadian and foreign applicants for international air services to and from Canada.

The Agency must ensure that all Canadian applicants, whether applying to operate a domestic air service or a **scheduled** or **non-scheduled** international air service, meet three basic requirements: they must be adequately insured, hold a Canadian aviation document from Transport Canada, and satisfy Canadian ownership and control requirements.

Furthermore, Canadian air carriers proposing to operate a domestic, non-scheduled international or scheduled international air service with medium or large aircraft must demonstrate to the Agency that they meet certain prescribed financial requirements. These requirements also apply to carriers applying for the reinstatement of a licence that has been suspended for more than 60 days.

Canadian applicants for scheduled international air services must be designated by the Minister of Transport as eligible to hold a scheduled international licence. Foreign applicants for scheduled international licences must be designated by a foreign government and hold a document issued by the foreign government that is equivalent to a scheduled international licence. Other requirements for scheduled air service applicants may be specified in bilateral air agreements to which Canada is a party (see the section entitled "The Agency as Aeronautical Authority" in this chapter). The Agency must ensure that foreign licence applicants wishing to operate non-scheduled international air services also hold an equivalent licence from their country of origin, as well as a Canadian aviation document from Transport Canada.

Scheduled air service: an air service operated according to a published timetable or with such a regular frequency that it constitutes an easily recognizable systematic series of flights.

Non-scheduled air service: any air service other than a scheduled air service, including but not limited to charter operations.

Before issuing a licence, the Agency must be satisfied that, in the 12 months prior to licence issuance, the applicant has not sold or offered for sale an air service for which a licence is now being requested (see the section entitled "Consumer Protection" in this chapter).

As well as issuing licences to carriers who have demonstrated that they meet the above-mentioned requirements, the Agency is also responsible for the following licensing functions: ensuring ongoing compliance with legislation, regulations and international agreements; suspending or cancelling licences if legislative or regulatory requirements are not met; taking action on complaints; and responding to requests for interpretations of and exemptions from certain provisions of the Act and related regulations.

During the reporting period, the Agency issued 1,354 licences to Canadian and foreign air carriers to replace 1,969 of the 4,060 NTA licences. This reduction in the number of licences, although partly due to the fact that some carriers ceased to operate certain services or completely terminated their operations, is mainly the result of the new classification of air services. For instance, an air carrier would have formerly required one licence to operate a domestic service in southern Canada and one or more licences to operate in the North, but now needs only one licence for all of Canada.

During the reporting period, the Agency received 158 applications for new domestic, scheduled international or non-scheduled international air services. Further to these applications, it issued 76 licences, denied 2 applications and processed the remainder after January 1, 1997. Of the licences issued, 35 were issued to Canadian carriers as a result of applications for new services received between July 1 and December 31, 1996. These can be broken down as follows: 18 domestic, 3 scheduled international, and 14 non-scheduled international licences. The Agency issued 41 licences to foreign carriers: 8 scheduled international licences and 33 non-scheduled international licences.

Approximately 1,900 Canadian and foreign carriers held licences as of December 31, 1996. Of these, there were 1,020 Canadian air carriers holding licences for domestic and international services, and 882 foreign air carriers holding licences for international services.

Between July 1 and December 31, 1996, the Agency dealt with 36 Canadian ownership cases, only one of which was denied. It conducted and

approved one financial fitness test under the new legislative provisions.

The Agency monitors licensees with respect to the ongoing requirements to hold a valid Canadian aviation document and prescribed liability insurance coverage. During the same reporting period, it undertook 1,816 insurance compliance follow-up actions, mainly to ensure that air carriers filed appropriate and accurate documentation.

Charter Permit System

Once an air carrier obtains a licence for a non-scheduled international service, and before operating a Canadian-originating charter, it must obtain an Agency permit to operate an individual charter flight or series of charter flights. (This requirement does not apply to charter flights to the United States, to which more liberal requirements apply, as explained in the next paragraph.) This permit process ensures that air carriers operating international charter flights adequately protect advance payments received from charterers by means of financial guarantees. Such guarantees must be issued by a Canadian financial institution and provide that all advance payments are fully protected from the time the air carrier receives them until the international charter flights have been made. The Agency also verifies that carriers do business only with charterers that are provincially registered, where applicable, and that charterers adequately protect advance payments received from travel agents, before it issues a charter permit for certain charter flights.

In its July 1996 amendment to the *ATR*, the Agency included provisions specifically affecting transborder charter services. These provisions liberalized the regulation of these services, consistent with the Act and the terms of the February 1995 bilateral Air Transport Agreement between the Government of Canada and the Government of the United States of America (commonly referred to as the "Open Skies" agreement). For instance, many detailed restrictions have been removed and carriers are no longer required to obtain prior approval from the Agency to operate Canadian-originating Transborder Passenger Non-Resalable Charters and Transborder Goods Charters. This has greatly reduced the paperwork burden on air carriers. With respect to advance payment protection for Canadian-originating Transborder Passenger Charters, carriers must demonstrate to the Agency that they have sufficient protection for Canadian-originating passenger charter flights to the United States; however, in some circumstances, the Agency may grant one-year authorizations rather than individual permits for each charter flight or charter series. Since the amended *ATR* were implemented, Canadian and American charter carriers have taken advantage of the new regime.

During the reporting period, the Agency received 760 applications for permission to operate Canadian-originating charters and issued an equal number of permits. Carriers do not need permits to operate foreign-originating charters; however, they must give the Agency notice thereof. The Agency received 324 such notices during the same period.

Agency staff have also prepared new and amended guides on the various charter types to help carriers file charter applications. Since charter carriers operating Transborder Passenger Charters can now apply for an authorization in lieu of individual program permits, the Agency also prepared a guide setting out the information and documentation required for the issuance of such an authorization.

The Agency operates a telephone service 24 hours a day, seven days a week for emergency charter situations occurring outside normal business hours. Between July 1 and December 31, 1996, the Agency dealt with 88 such situations.

Exemption Power

The Agency may exempt a person from the application of the air transportation provisions set out in the Act or the *ATR* when it is of the opinion that the person has substantially complied with the provision or has taken an action that is as effective as actual compliance with the provision. It may also grant such an exemption if it believes that compliance with the provision is unnecessary, undesirable or impractical, and it may attach specific conditions to the exemption. This exemption power gives the Agency the flexibility to deal with various issues facing a very dynamic and constantly evolving industry. There are many situations where the use of this power is beneficial. They range from the simple, such as filing an application for a charter permit outside the minimum regulatory time frame, or allowing the outgoing and return legs of a charter flight to be operated by different carriers, to the more complex, such as operating a specific flight without holding a required licence. During the reporting period, the Agency approved 244 exemption applications and denied one.

For example, in October 1996, the Agency considered a request by a Canadian licensee for exemptions, as well as a charter permit, for the operation of an around-the-world charter flight. The Agency granted exemptions from several provisions of the *ATR* and issued a charter permit in order to allow the flight to take place.

Suspension or Cancellation of Licences

Where the Agency determines that an air carrier ceases to meet one of the three basic licensing requirements (being Canadian, holding a Canadian aviation document and having prescribed liability insurance coverage), it **must** suspend or cancel licences. This mandatory suspension or cancellation power is supplemented by a discretionary power. In cases where a licence applicant has contravened or does not meet the requirements of any regulation or order made under Part II of the Act or any provision of Part II, other than the three basic market-entry requirements, the Agency **may** suspend or cancel a licence. In the reporting period, the Agency issued orders that suspended or cancelled the licences of 252 air carriers. Out of this number, 106 carriers asked the Agency to take the action. The reasons for such requests varied; for instance, a carrier may have made such a request because it wanted to suspend its operations voluntarily because of their seasonal nature or because it was in the process of reorganizing its operations. In the reporting period, the Agency issued 33 orders to lift suspensions and accordingly reinstate licences.

Requests for Agency Rulings on Interpretation of the Act and ATR

The Agency receives requests to interpret the Act and the *ATR*. For instance, a ruling may be requested to determine whether a particular type of proposed operation is a publicly available air service, which would therefore require a licence. A party may also request a ruling on an operating agreement between air carriers. During the reporting period, the Agency received and processed seven requests.

Summary of Transitional Licensing Matters

Passage of the Act significantly changed government regulation of the air industry. The legislative and regulatory changes affecting the provision of domestic air services in Canada are highlighted below.

- There is now one domestic licensing regime for the whole country, as the former licensing system for northern Canada has been eliminated. There is no longer a reverse onus entry test and northern air carriers are no longer required to give public notice to allow objection to proposed new air services. From an economic regulatory perspective, any air carrier holding a domestic licence may now operate, when it chooses to do so, and as often as it wishes, between any points in Canada.

- New financial requirements have been imposed on new Canadian applicants proposing to operate medium or large passenger aircraft for the first time. These requirements also apply to Canadian holders of medium or large passenger aircraft licences who want to reinstate licences that have been suspended for 60 days or longer.

- An air carrier must hold an Agency licence before it can sell, or offer to sell, the air service for which the licence is required.

- The Agency no longer has jurisdiction over proposed mergers and acquisitions of Canadian air carriers.

- There is no longer a public interest test for applicants for an international non-scheduled licence.

- The notice period for discontinued or reduced domestic service to a point has been reduced from 120 days to 60 days, and only applies to situations where the withdrawal of service would result in either no licensee serving the point, or the point being served by only one licensee offering one flight per week.

- Classifications of aircraft operated by a Canadian air carrier, either domestically or internationally, have been reduced from eight to four. The new classifications are: small aircraft, medium aircraft, large aircraft and all-cargo aircraft.

- There are now only three types of air carrier licences: domestic, scheduled international and non-scheduled international. Licences issued to Canadian air carriers are also issued according to the class of aircraft operated by the carrier; for example, scheduled international, small aircraft. There is no similar classification of licences for non-Canadian air carriers.

Consumer Protection

Under the *NTA, 1987*, Canadian applicants to the NTA for licences to operate domestic air services or scheduled or non-scheduled international air services had to meet three specific market-entry requirements (i.e. they had to be Canadian, hold a Canadian aviation document and have prescribed liability insurance coverage). Under the new legislation, Canadian applicants must meet certain prescribed financial requirements and all applicants are prohibited from offering or selling transportation before obtaining a licence.

The financial fitness requirements apply to all Canadian applicants for new licences and reinstatements (following suspensions of 60 days or more) of domestic or international licences authorizing the operation of medium or large passenger aircraft. The financial requirements provide that applicants have acquired or must be able to demonstrate that they are clearly able to acquire a certain amount of funds to finance proposed operations. The amount of funds required is determined based on the start-up costs to be incurred and 90 days of operating and overhead costs for proposed air services. At least 50 per cent of the funds must have been acquired by way of capital injected by investors (i.e. by shareholders in the case of a corporation), which cannot be redeemed for a period of at least one year. The applicant must be able to obtain the remainder of the funds by way of a line of credit or similar financial instrument.

These provisions help to ensure that applicants have a reasonable chance of operating a successful air service, thereby keeping disruptions of such services to a minimum. The Agency further protects consumers by ensuring that advance payments made to charterers and to charter carriers are fully protected from the time they are received. This is described more fully in the section entitled "Charter Permit System."

The consumer protection provisions help to ensure that applicants have a reasonable chance of operating a successful air service, thereby keeping disruptions of such services to a minimum.

The Agency thus protects consumer interests by ensuring that Canadian applicants are financially fit; that all applicants and licensees have adequate liability insurance and have been recognized by Transport Canada as having a safe operation; that air transportation is sold or offered for sale only after an air carrier is licensed to provide transportation; and that charter passengers are refunded their money or provided with alternate transportation if a carrier or charterer is unable to fulfill its obligations.

Support for Canadian Air Carriers

The Agency protects the interests of Canadian air carriers in a number of ways. In the domestic market, the Agency ensures that carriers satisfy Canadian ownership and control requirements. In the Canadian international charter market, subject to the usual regulatory requirements, Canadian air carriers have unconstrained access to the Canadian-origin charter market. However, consistent with Canada's 1978 International Air Charter Policy, the number of Canadian-originating passengers that a foreign carrier can carry and the number of Canadian-origin cargo flights that it can offer is limited to a proportion of passengers carried and cargo flights operated from the foreign carrier's home country to Canada. In its role as Canadian aeronautical authority, the Agency also serves the interests of scheduled international Canadian air carriers by helping to ensure that they derive maximum benefits from negotiated bilateral air agreements. This is discussed further in "The Agency as Aeronautical Authority."

THE AGENCY AS AERONAUTICAL AUTHORITY

The Agency plays an important role in administering international air agreements. As aeronautical authority and as the federal agency responsible for economic regulation of transportation services, the Agency implements bilateral air agreements and ensures that the terms of the agreements are respected. Agency staff also work as a team with other government departments to negotiate the agreements, provide regulatory expertise and help to ensure that the agreements can be practically implemented. During the reporting period, the Agency addressed 57 applications relating to bilateral agreements and cooperative arrangements between air carriers.

BILATERAL AIR AGREEMENTS

Scheduled international air services are governed largely by a framework of country-specific bilateral air agreements that supplement the 1944 Convention on International Civil Aviation (Chicago Convention). In addition to specifying route rights, these bilateral agreements also address such matters as aviation security, tariffs, application of national laws, dispute settlement, the use of specified airports, the applicability of customs duties to airline equipment, taxation and ground handling arrangements.

Section 77 of the Act specifies that the Agency, when named as aeronautical authority for Canada, or when directed to do so by the Minister, shall perform the duties of an aeronautical authority. In this capacity the Agency is responsible for implementing and monitoring compliance with the various bilateral air agreements.

While the negotiation of bilateral air agreements is the responsibility of Canada's Chief Air Negotiator, Agency staff also participate in these negotiations. The negotiating team normally consists of representatives from Foreign Affairs and International Trade Canada, Transport Canada and the Agency. The Agency representative's role is to provide advice regarding the interpretation of proposed texts; to suggest draft wording to the Chief Air Negotiator and the negotiating team; and to help develop mandate papers for upcoming negotiations. In the course of negotiations, Agency staff focus particularly on the provisions related to the Agency's economic regulatory role. This includes such matters as the authorization of air services, capacity limits and tariffs; the filing of route schedules; changes of aircraft; code share and block space provisions; and the rules governing the operation of charter flights. The Agency also maintains an automated information retrieval system, which incorporates the texts of all of Canada's bilateral air agreements.

During the reporting period, Agency staff participated in negotiations with ten countries. Negotiations with eight of these countries—Argentina, Costa Rica, El Salvador, Germany, Guatemala, India, Nicaragua and the Philippines—resulted in new or amended agreements, which provide new service opportunities for Canadian carriers. In the other two instances—Bahrain and Belgium—the negotiations were inconclusive and will be resumed at later dates.

CHARTER AIR SERVICES

Bilateral air agreements usually do not deal with charter (non-scheduled) international air services in detail. Article 5 of the Chicago Convention provides that each country has the right to accept, refuse or impose conditions on charters into or from its territory. While the Minister of Transport is responsible for the development and enunciation of government policy, including policy on charter air services, the Agency is responsible for ensuring that in respect of charter flights the provisions of the Act and the *ATR* are respected.

The *ATR* provide for detailed regulation of charters originating in Canada and the recognition of the rules of the country of origin for charters that originate in other countries. The Agency corresponds with foreign authorities to support Canadian-origin charter programs and Canadian business interests. This includes seeking arrangements with foreign aeronautical authorities to establish greater acceptance of the principle of applying and recognizing country of origin rules for charter operations. For example, during the reporting period, the Agency undertook lengthy and complex consultations with authorities in Guyana, who were seeking to implement bonding requirements that would have seriously jeopardized the access of Canadian charter carriers to this market. The successful conclusion of these consultations not only resulted in this initiative being withdrawn, but also improved Canadian charter carriers' access to Guyana.

Cooperative Arrangements between Airlines

Canadian and foreign airlines are increasingly providing scheduled international air services by entering into arrangements for **code share** and **block space** on flights operated by other airlines in markets that cannot sustain own-aircraft services. These new and expanding air service alliances sometimes necessitate negotiations to obtain code share rights from bilateral partners. Some bilateral air agreements or arrangements specifically require that the Canadian and foreign carrier involved establish and maintain a commercial agreement, and that aeronautical authorities approve these commercial agreements. Moreover, when a person provides all or part of an aircraft, with flight crew, to a licensee, that action is subject to provisions included in the July 1996 amendment to the *ATR*. These provisions address such matters of interest to air service consumers as liability insurance and adequate public disclosure of such arrangements. The *ATR*, therefore, require that the participants in such arrangements maintain passenger and third party liability insurance and hold appropriate licence and operating certificates. With respect to public disclosure, the *ATR* specify the notification that is to be given to travellers advising them that an air service is being operated using aircraft and crew provided by another person. Many of these arrangements require Agency approval, in part so that the Agency can be assured that consumer interests are addressed.

Block space: an inter-airline arrangement whereby an air carrier acquires a specific number of passenger seats and/or specified cargo capacity on aircraft operated by another air carrier. These arrangements usually include code share.

Code share: an inter-airline arrangement whereby an air carrier sells transportation under its own airline designator code and flight number on flights operated by another air carrier.

During the reporting period, the Agency addressed a variety of new and revised alliance, code share and block space arrangements involving scheduled international air services. These included arrangements between:

- Canadian Airlines International and Philippine Airlines for services between Canada and the Philippines;
- Air Canada and Lufthansa for services between Canada and Germany, which allowed Air Canada to sell transportation under its own code on the flights of Lufthansa and its affiliates on connecting services within Germany, and allowed Lufthansa to sell transportation under its own code on flights of Air Canada and certain Air Canada affiliates on certain connecting services within Canada;

- Air Canada and Lufthansa for Air Canada's services between Canada and Greece using Lufthansa's aircraft on the Frankfurt-Athens flight segment;
- Air Canada and British Midland for Air Canada's services between Canada and Belgium using British Midland's aircraft on the London-Brussels flight segment; and
- Canadian Airlines International and British Airways for Calgary-London and Vancouver-London services, and included for British Airways the ability to sell transportation under its own code on flights operated by Canadian Airlines International and certain affiliates on specified connecting services within Canada.

The Agency also addressed several cooperative arrangement applications involving domestic services and international charter services during the reporting period. Of the 56 applications relating to the bilateral agreements function that the Agency handled during the reporting period, 17 involved code share or block space arrangements, and 17 involved cases where a licensee contracted an entire aircraft and crew from another person. The remaining applications involved matters relating to the administration of bilateral agreements or requests for extra-bilateral authorities.

TARIFFS

The Agency's role in the administration of domestic and international airline tariffs is quite different.

Tariff: an air carrier's fares, rates, charges, and terms and conditions of carriage applicable to the provision of an air service and other incidental services.

Carriers do not file domestic tariffs with the Agency, although the legislation does require them to make tariffs available for inspection upon request. The Agency's enforcement staff review tariffs for consistency with the legislation as part of its Periodic Inspection Program (see also the "Enforcement" section of this chapter). In addition, upon complaint, the Agency may review a carrier's basic fare (i.e. the lowest, unrestricted fare sold to adult passengers for one-way travel) in monopoly situations. If the Agency determines that a basic fare is unreasonable, it may disallow the fare and, where practicable, order a refund.

With respect to international air transportation, the Agency reviews tariffs of Canadian and foreign air carriers to ensure that proposed fares, rates, service schedules, and terms and conditions of transportation are consistent with Canadian regulations and the relevant bilateral agreements. As part of this review, the Agency also processes requested exemptions from the filing time requirements to allow carriers to introduce more market-responsive tariffs or innovative fares as quickly as possible.

International air tariffs must be filed with the Agency by all carriers operating international air services to and from Canada. For most carriers, these filings must include their terms and conditions of carriage, and the fares, rates and charges applicable on all routes. However, under the terms of Canada's bilateral agreements with the United States and with Germany, only the terms and conditions of carriage need be filed. Fares, rates and charges applicable to transportation in these markets are now exempted from the filing requirement.

Agency staff review all filings to ensure that they are consistent with Canadian legislation and with the provisions of the applicable bilateral agreements. Filings that do not conform to these requirements may be rejected or disapproved.

During the reporting period, the Agency received a total of 4,763 tariff filings. Most of those filings did not require any Agency intervention. In approximately one per cent of the cases, the carrier corrected technical deficiencies, following staff intervention. The Agency was required to intervene in 12 instances to prevent a filed tariff from coming into force. Most of these filings are submitted to the Agency electronically, which makes it easier to review and accept them.

Special Permission Applications (hereinafter, SPAs) are requests by air carriers that tariffs or revisions take effect on one day's notice. These tariffs and revisions are crucial to the maintenance of a competitive and dynamic market. SPAs are used to quickly correct fares improperly quoted in computer reservation systems; file matching fares in response to a seat sale or other pricing initiative of a competing carrier; or respond to actions beyond the carrier's control, such as a sudden fuel price increase. During the reporting period, the Agency received and processed 2,655 SPAs.

Limitations of Liability for International Air Transportation

During the reporting period, the Agency considered and accepted an agreement among several international air carriers to waive the limits of liability applicable under the Warsaw Convention for death of or personal injury to passengers travelling on international air services. As a result, air carriers with filed tariffs reflecting this agreement may now be required to pay the full amount of compensatory damages under such circumstances. Under the Warsaw Convention, liability is limited unless it is proven that the carrier is guilty of "willful misconduct," an extreme form of negligence.

Unfair Pricing and Promotional Practices

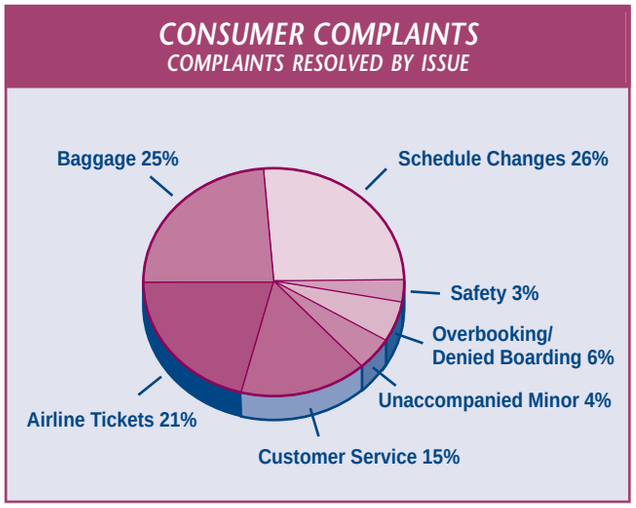
The Agency investigates complaints and allegations of unfair or improper pricing and promotional practices. In the reporting period, the Agency received a total of 17 industry complaints. Some of the complaints were resolved through informal discussion with Agency staff and others were resolved by Agency rulings. A number of complaints were filed during the reporting period as a result of the Canada–United States, Canada–Switzerland and Canada–Germany air transport agreements. The complaints involved foreign carriers charging lower fares than Canadian carriers for carriage between Canada and third countries via the foreign carriers' respective home countries.

Consumer Complaints

Agency staff respond to complaints from travellers who encounter problems when travelling by air.

During the reporting period, the Agency carried over 40 complaints from the NTA, received 54 new ones and resolved 73. The remaining 21 complaints were carried over to 1997.

The following chart breaks down the issues raised in the complaints. Almost 75 per cent of the complaints submitted related to three issues: schedule changes that involved flight delays or cancellations as a result of bad weather conditions or aircraft mechanical problems; the level of compensation offered by carriers for lost, delayed or damaged baggage; and refund of airline tickets. People also complained about customer service issues such as information received from a carrier's agent, or the terms and conditions of carriage related to travel. The balance of the complaints related to issues such as boarding and overbooking.



JUST A CALL AWAY 1-800-883-1813

During the reporting period, the Agency received 481 telephone calls on the 1-800 line relating to consumer concerns. Of these calls, 123 were made by consumers with a complaint about a problem they encountered while travelling or with specific questions about travelling. Other callers asked for general information about travel, for information on the status of their file or for the *Fly Smart* brochure. *Fly Smart*, a consumer guide to air travel produced by the Agency, contains general travel information. It is available upon request.

ENFORCEMENT

Through an active enforcement program involving periodic compliance inspections and the investigation of alleged illegal activities, the Agency requires that carriers comply with the Act and related regulations and that carriers and terminal operators subject to the *Personnel Training for the Assistance of Persons with Disabilities Regulations* have the required training programs in place. During the reporting period, the Agency has also been developing regulations with respect to a system of monetary penalties for contraventions of the Act and related regulations authorized by the Act.

The enforcement provisions of the Act set out the measures that the Agency may take against a person who contravenes any provision of the Act or related regulations. The Agency may choose to proceed by way of summary conviction, in which case charges will be laid and the normal judicial process will be followed. Alternatively, the Act allows the Agency to establish an administrative monetary penalty system, under which it may levy fines. Such a system will help the Agency enforce the Act and related regulations more efficiently and effectively. Furthermore, since it is the Civil Aviation Tribunal that may be required to determine whether a violation occurred, rather than the courts, this system will also reduce costs for persons alleged to have contravened the Act or related regulations, and will help relieve some of the backlog in the courts. Regardless of which alternative the Agency chooses, the maximum penalty payable is $5,000 for an individual and $25,000 for a corporation.

The Agency is in the process of drafting regulations with respect to administrative monetary penalties. During the reporting period, the Agency reviewed the provisions of the Act and related regulations to determine which ones should be included in the schedule of "designated provisions," which will form part of the proposed regulations. The new regulations are targeted to come into force in mid-1998.

The Act provides for the designation of persons as enforcement officers. Once the new designated provisions regulations come into force, an enforcement officer who believes that a person has contravened a designated provision will have the power to issue a notice of violation naming that person, identifying the violation, and setting out the penalty and the particulars concerning payment time and conditions. Alternatively, a contravention may be proceeded with as an offence and referred to the Royal Canadian Mounted Police (hereinafter, the RCMP) for criminal prosecution. Contraventions may be proceeded with as either violations or offences, but not both.

The Agency's Enforcement Program

To encourage compliance with the Act, the *ATR* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations* (see Chapter Four), the Agency administers a two-part Inspection and Investigation (hereinafter, I & I) Program. The program is carried out by six enforcement officers located in Moncton, Montreal, Mississauga, Winnipeg, Edmonton and Vancouver, supported by a small headquarters staff.

The program has two elements: periodic inspections and targeted investigations.

The **Periodic Inspections** element is a risk-based inspection program consisting of both carrier and facility inspections.

Periodic carrier inspections ensure that one of the Agency's enforcement officers periodically reviews the operation of all Canadian-based air carriers licensed by the Agency. These inspections also include a verification of compliance with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. The frequency of inspection is determined by the number of carriers to be inspected, the risk factor assigned to each carrier and the resources available.

Periodic facilities inspections ensure that an enforcement officer regularly verifies air terminals falling within the purview of the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. This verification, as well as the verification of air carriers, ensures that appropriate training programs are in place for all employees and contractors providing transportation-related services who may interact with the public or make decisions in respect of the carriage of persons with disabilities. Such programs ensure that these workers are properly trained to meet the needs of travellers with disabilities.

Between July 1 and December 31, 1996, the Agency completed 159 periodic inspections, and identified infractions in 105 of these inspections.

The **Targeted Investigations** element focuses on companies or individuals suspected of operating illegal air services in Canada, regardless of their country of origin. Enforcement officers work closely with the RCMP (pursuant to a Memorandum of Understanding) and Transport Canada on investigations. A close working relationship also exists with Revenue Canada, Customs Border Services Branch, on matters involving transborder and international movement of aircraft.

In the case of an unlicensed carrier operating a publicly available air service, or a licensed carrier not respecting the terms of its licence, the public is being placed at risk since there is a very high probability that the carrier's insurance, if it exists at all, would not be valid or adequate in the event of an accident. In addition, many unlicensed carriers do not meet commercial safety standards. Such illegal activities also place licensed carriers, who are operating within the confines of the law, at an economic disadvantage to their illegal competitor.

Where an enforcement officer finds that a person has contravened a provision of the Act, a regulation or an order, the officer may seek compliance through administrative sanctions, including staff-level warnings, Agency warnings, cease and desist orders, and licence suspensions or cancellations. Enforcement officers may refer serious cases for prosecution.

Between July 1 and December 31, 1996, the Agency completed 11 targeted investigations, and identified infractions in 7 instances. In the 5 cases that went to trial, 4 resulted in convictions. In the other case, the accused was acquitted.

CHAPTER TWO: RAIL

- Transportation of Western Grain
- Dispute Resolution and Competitive Access
- Rail Costing and Audit-Related Matters
- Rail Infrastructure
- Rail Rationalization and Subsidy Settlement

Rail

While federal railway transportation policies have changed resulting in the elimination of the Agency's traditional responsibilities in the administration of subsidies and railway market exit approvals, the Agency continues to perform an important role where normal business relationships fail between railways and their clients, and where essential regulation is required to ensure an efficient and effective rail transportation system.

Major responsibilities of the Agency from a rail perspective include: the provision of a fair regime for the settlement of transportation disputes between rail industry participants, through the administration of competitive access and dispute resolving mechanisms under the Act; the determination of the maximum annual rate scale for western grain movements; and the administration of provisions affecting rail line construction approval, railway company certificates of fitness, and other railway infrastructure matters where municipalities and railways interface.

In addition to the internal reorganization to accommodate the new provisions of the Act, senior rail managers undertook a series of activities to advise interested parties of the changes in rail regulation and Agency procedures brought about by the introduction of the Act, and of the way those changes may affect them.

In order to prepare for and assist in the extensive consultation, a substantial volume of material was produced to help interested parties understand the new provisions of the Act. A detailed brochure entitled *The* Canada Transportation Act *and the Rail and Marine Branch* was produced. It outlines all of the Agency's rail and marine activities (see Chapter Three for information on marine-related activities) with respect to the Act and other enabling legislation, the rights parties may have under the revised legislation, and ways that the Agency can help when required. A separate pamphlet outlining the competitive access and dispute resolution provisions of the Act was distributed, and other guides to help parties understand the infrastructure provisions of the Act and the *RSA* were drafted.

During the first six months after the Act was proclaimed, the Agency consulted extensively with railway companies, shippers and shipper associations, port authorities, terminal operators, municipalities, utility companies and government officials. The meetings took place in major centres of every province from British Columbia to New Brunswick, and covered a wide variety of transportation issues. The discussions centered on the legislative provisions related to rail freight provision, such as competitive access, level of service, final offer arbitration, and tariff and interswitching regulations; infrastructure provisions, including certificates of fitness and mechanisms for resolving crossing disputes; and grain issues, such as freight rate regulation, applicability of the competitive access and dispute resolution provisions, the Minister of Transport's review of the efficiency of the grain handling and transportation system, and the policies governing car allocation.

…the Agency consulted extensively with railway companies, shippers and shipper associations, port authorities, terminal operators, municipalities, utility companies and government officials.

TRANSPORTATION OF WESTERN GRAIN

Rate regulation for western grain has been streamlined with the policy decision to remove government subsidies for western grain movements and to move the western grain regime closer to commercial realities in rail rate and service negotiations. In place of the *WGTA*, the Act has created a less complex process for determining freight rates. The Agency determines a **maximum annual rate scale** for the upcoming crop-year by April 30 of each year after consulting with interested parties. Western grain movements subject to maximum rail rates include shipments for offshore export via west coast ports, Churchill and Thunder Bay/Armstrong; U.S. export shipments to Thunder Bay/Armstrong; and domestic shipments to Thunder Bay/Armstrong.

The rate scale continues to be mileage related. It sets out the applicable maximum rate that the railways can charge shippers for movements over mileage blocks involving 25-mile increments. Railway companies and shippers can negotiate rates lower than those in the maximum rate scale, such as in situations where a shipper can load blocks of multiple cars in a short period at one location. In addition, charges affecting car demurrage, storage, and certain loading and unloading activities are excluded from the maximum rate scale. Furthermore, higher rates than those set out in the maximum rate scale are also allowed, upon Agency approval, in certain joint line movement situations and when certain car types are involved. The higher rate is based on the additional incurred costs.

For the **1996-97 crop-year**, the maximum rate scale, which came into effect August 1, 1996, increased 7.1 per cent over the 1995-96 rates. This reflected a two-year increase in inflation since the *Budget Implementation Act, 1995*, which reformed western grain transportation policy, effectively froze rail freight rates for western grain movements at 1994-95 levels for the 1995-96 crop-year. For a typical movement of between 1,026 and 1,050 miles, the maximum rate for a tonne of grain was set at $34.09, an increase of $2.27 over previously approved rates.

The process of determining the maximum rate scale incorporates railway submissions of historical and forecasted price changes for labour, fuel, material and investment; subsequent Agency analysis

and audit; preparation of a report for the purposes of consulting with interested parties; round-table consultation on a preliminary rate scale determination with grain industry parties, including producer representatives, grain companies, federal and provincial governments, and the railways; and finalization and Agency approval of the maximum rate scale by April 30 each year.

In December 1996, the Agency began the process for determining the maximum rate scale for the **1997-98 crop-year** by requesting information from the railways. The maximum rate scale will be determined by applying a freight rate multiplier to the Schedule III rates in the Act. The multiplier will be based on the change in the composite price index for volume-related costs over the previous year and will include an adjustment for costs saved by abandoning the operation of grain-dependent branch line mileage.

In anticipation of the implementation of revised legislative requirements affecting the determination of the maximum annual rate scale beginning with the 1998-99 crop-year, the Agency initiated a methodology study in the fall of 1996 to determine annual changes in **railway productivity**. The Agency initiated this process with a presentation to the Senior Executive Officer Group (senior officials of the grain handling and transportation industry) in September 1996. It made a similar presentation in November, to the broader base of grain industry parties. The Agency will continue to consult with interested parties throughout 1997 in the course of this project.

The Minister of Transport will conduct a **statutory review of the efficiency of the grain handling and transportation system** in 1999. The Minister is required to review the effect of the Act on the efficiency of the system and to determine the sharing of efficiency gains between shippers and railways. In addition, the Minister will determine whether repealing the current grain rate provisions will have a significant adverse impact on shippers and whether they should be repealed.

Transport Canada set up a consultation group, representing the Agency, Transport Canada and Agriculture and Agri-Food Canada, to define the guidelines and data requirements for the review. During the summer of 1996, the group discussed the basics of the review. To begin and foster consultations with industry participants, the consultation group wrote and distributed a focus report in early October 1996. The report sets out the objectives for the review, as well as a definition of the grain handling and transportation system, and possible indicators for the measurement of efficiency gains.

In October and November 1996, the consultation group met with some 30 industry organizations affected by western grain rate regulation. In December, the consultation group summarized the common points and issues resulting from these meetings, and defined the group's position. This will be reflected in a status report that Transport Canada will distribute to industry participants. The status report will facilitate the consultation process in early 1997, and will establish guidelines and data requirements for the review.

Rate regulation for western grain has been streamlined… to move the western grain regime closer to commercial realities in rail rate and service negotiations.

DISPUTE RESOLUTION AND COMPETITIVE ACCESS

The Agency administers rail rate and service complaints, and conducts a variety of investigations. These may involve the setting of competitive interswitching rates, rail competitive access, level of service or trackage rights provisions of the Act, all of which are designed to assist shippers in obtaining access to lines of competing railways. For any application by a shipper in respect of a transportation rate or service, the Agency may grant the relief sought, in whole or in part. In making its decision, the Agency must "be satisfied ... that the applicant would suffer substantial commercial harm if the relief were not granted." Factors to be considered include the market or market conditions relating to the goods involved, the location and volume of traffic of the goods, the scale of the operation connected with the traffic and other relevant issues.

Since 1988, shippers with access to the lines of only one railway can have cars interswitched from one railway to another at prescribed rates, within a 30-kilometre radius of the point of interchange. The Agency may extend interswitching rights to shippers located beyond the 30-kilometre limit in certain cases. Shippers with access to only one railway and located outside the 30-kilometre limit can ask the Agency to set a competitive line rate for movements over the railway that serves them to the interchange point for furtherance to another railway. They must first complete arrangements with the connecting carrier for the balance of the movement. Competitive line rates can apply at either the point of origin or destination, and are based on the applicable interswitching rate and railway revenue information derived in competitive situations. Under the Act, shippers located on a line transferred to a provincial short-line railway are still entitled to obtain interswitching or a competitive line rate in respect of the federally regulated portion of the movement.

Other rail complaints can involve issues relating to joint rates, level of service obligations, interswitching facilities, running rights and joint-track usage. The Agency also administers final offer arbitration. This mechanism, designed to resolve private commercial disputes between shippers and carriers, continues under the Act. The final offer arbitration process was extended in 1996 to allow for the resolution of disputes involving rates or any of the conditions associated with the provision of services by a railway company to a commuter rail authority designated by the government of a province, or to a railway company engaged in passenger rail services.

INTERSWITCHING

Regarding the most often used competitive access provision, interswitching, the Agency may make regulations prescribing terms and conditions for interswitching traffic, distance zones and rates per car. The Agency reviews interswitching regulations where circumstances warrant, and at least once in every five-year period. While reviewing the regulations for the purpose of the 1997 rate development, the Agency was cognizant of the new provision in section 112 of the Act, which requires that a rate or condition of service established by the Agency "be commercially fair and reasonable to all parties." In determining the rates for the *Railway Interswitching Regulations*, the Agency must consider the railways' variable costs for providing the interswitching service. Since the regulated interswitching rates are set out on a per-car basis over four zonal distances by car block size, the railway costs are developed accordingly. The variable costs are based on Canadian National Railway Company (hereinafter, CN) and Canadian Pacific Railway Company (hereinafter, CP) yard and train workloads by interswitching location, and estimated 1997 unit costs are derived from the latest approved unit costs, adjusted for inflation and productivity.

The Agency determines costs by railway, zone, type of handling (yard or train switching) and car-block size, and uses regression techniques for smoothing purposes.

After soliciting comments from interested parties as a form of preliminary consultation, the Agency decided to maintain the 1996 rate levels in effect pending completion of a more in-depth consultation process. These rates were published in the *Canada Gazette*. Consultations for 1997 final rates are planned for early 1997 in Edmonton, Alberta; Winnipeg, Manitoba; and Hull, Quebec. Shippers want the current rate-setting methodology to be maintained, to ensure the continued effectiveness of the interswitching provisions. Carriers, on the other hand, have argued that rates should be free from regulation and established by the marketplace. If regulation is to continue, carriers believe that prescribed rates should reflect a full contribution towards constant costs. This discussion is ongoing.

During the reporting period, the Agency also initiated consultations on amendments to the *Railway Interswitching Regulations*. It did so to incorporate legislative amendments designed to ensure that shippers located on the line of a federal railway that has been transferred to a provincial shortline remain entitled to interswitching rates in respect of the federally regulated portion of the movement.

Dispute Resolution Activity

The following sets out a description of the case work relevant to this activity that was dealt with by the Agency after the implementation of the Act.

APPLICATION FOR CONNECTION

On June 28, 1996, **W. G. Thompson and Sons Limited** filed an application pursuant to subsection 150(1) of the *NTA, 1987* asking the Agency to order that a line of railway operated by CSX Transportation, Inc. (hereinafter, CSXT) be connected to a line of railway operated jointly by CN and CP. The company's facility was connected via a private siding to the CSXT line, which CSXT had received authorization to abandon. The Agency determined that since one of the two lines was to be abandoned, it was inappropriate to require a connection. It also noted that the new Act's provisions dealing with level of service allow an applicant to obtain relief when the applicant wishes to extend a private siding where a railway company has refused the request for a connection.

This provision was not retained in the new legislation.

PUBLIC INTEREST RATE APPEAL

Halifax Grain Elevator Ltd. (hereinafter, HGEL) asked the Agency to investigate whether certain CN tariffs were prejudicial to the public interest. The rates in question applied to movements of feed grains from western Canada and southwestern Ontario origins to destinations in the Annapolis Valley region of Nova Scotia.

In August 1996, the Agency ruled in favour of HGEL and ordered CN to raise rates affected by these tariffs. This decision was based on evidence further to legislation in effect at the time the application was filed, namely, the *NTA, 1987*. This legislation

provided for public interest applications and findings as to whether actions of carriers were prejudicial to the public interest. As part of its analysis of this file, the Agency reviewed rail costs for the subject movements, analyzed traffic data and conducted an on-site investigative audit of the applicant's financial position.

Subsequently, HGEL filed a further application alleging that the applied rate increases did not comply with the Agency's ruling. The Agency denied this application, as it determined that CN had complied with the original ruling.

In an associated proceeding, three parties requested a delay in the implementation of rates until they could fulfill sale commitments based on the former rail rates. The Agency restored the former rail rates for these three parties to enable them to complete these movements on committed grain orders. It subsequently received similar requests. As a result, the Agency granted a blanket stay to all rail shippers who had previously committed grain orders with CN for the balance of the contracts.

This type of proceeding will not recur under the new Act as the public interest provision was not retained in the legislation.

LEVEL OF SERVICE OBLIGATIONS

Between July 1 and December 31, 1996, the Agency considered four level of service complaints. **McCain Foods Limited** filed a complaint alleging that CP was not fulfilling its service obligations to provide adequate and suitable accommodation for the receiving and delivering of traffic to McCain's Grand Falls, New Brunswick facility. At issue was a misunderstanding between CN and CP with respect to whether a running rights agreement was still in effect. The Agency ruled that CP was required to resume rail service. In view of the urgent nature of the complaint, the normal pleading process was abridged and the Agency rendered a decision within nine days.

The **Lethbridge Chamber of Commerce** submitted a complaint to the Agency, claiming that CP was violating sections 113 and 114 of the Act by closing down its Lethbridge intermodal facility. These statutory provisions require that a railway company furnish, according to its powers, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway. Since CP was already providing an intermodal service at Calgary, the Agency determined that closure of the Lethbridge facility would not prevent the railway from providing reasonable service levels. In view of the pressing nature of the request, the Agency rendered a decision within 14 days.

Rehau Industries Inc. filed an application alleging the shippers in the Prescott/Morrisburg area were significantly affected by CN's service reductions from daily service to bi-weekly service. Agency staff arranged for meetings between the parties, which resulted in a satisfactory agreement for both participants. Rehau Industries Inc. subsequently withdrew its complaint.

The final complaint, submitted on November 18, 1996, was from **Millwork Home Centre Limited** in Oshawa, Ontario. The company alleged that CN had not maintained the line over the past few years and as a result, a private spur installed in 1991 was now unserviceable. Prior to publication, the Agency was informed that the applicant withdrew this complaint.

FINAL OFFER ARBITRATION

With respect to final offer arbitration applications, the Agency dealt with two matters submitted by shippers.

In one case, 1995 and 1996 rate disputes between the parties had proceeded to final offer arbitration. However, on October 21, 1996, both parties advised the Agency of their withdrawal from the process. Subsequently, the arbitrators who had been involved in the process advised the Agency

that their fees and associated costs had not been dealt with by the parties to the arbitration. The Agency determined the relevant costs and apportionments, and invoiced the parties.

The other shipper, in the forestry sector, submitted an application for final offer arbitration on freight rates from an eastern Canadian facility to destinations within Canada and the United States. The carrier submitted that the application did not constitute a submission for final offer arbitration since the traffic involved international rates, which were not subject to the Act. The Agency determined that the jurisdiction of the Act is an issue to be considered by the Agency, not an arbitrator. Furthermore, the Agency concluded that the application should not be referred to an arbitrator, as the authority to accept a final offer arbitration is limited to those offers containing rates, terms and conditions for the movement of goods within Canada and not within the United States. The Agency has now received a revised application and the matter is under review.

The Agency also handled informal requests for information on how the arbitration process works and maintained an up-to-date list of available arbitrators, which it provided to the parties upon request.

NET SALVAGE VALUE DISPUTE

In June 1996, VIA Rail Canada Inc. applied for a net salvage value determination pursuant to section 168 of the *NTA, 1987* regarding CN's Chatham Subdivision between Bloomfield at mileage point 63.9 near Chatham, Ontario and Tecumseh at mileage point 99.2 to the east of Windsor, Ontario (a distance of some 35 miles). The issue became the subject of an oral hearing in July 1996.

The Agency's decision on September 16, 1996 defined the term net salvage value of the branch line as including the net salvage value of the track materials and structures associated with the branch line, plus a value for the land to be transferred. The Agency concluded in this case that the land to be transferred is to be valued as a separate and contiguous corridor that will continue to be used for railway operations. Its value was based on the market value of adjacent lands discounted for use as a railway corridor.

Under the Act the Agency can be called upon to establish the net salvage value of railway lines when they are transferred to a government in certain circumstances.

RAIL COSTING AND AUDIT-RELATED MATTERS

To help it determine railway costs for regulated activities, the Agency prescribes the *Uniform Classification of Accounts* (hereinafter, the *UCA*) and the *Railway Costing Regulations*. Federally regulated railways use the *UCA* when reporting their operating expenses, revenues and other statistics. The costing regulations set out the items and factors for making railway costing determinations, including the costs of capital and depreciation. The Agency also reviews and audits certain accounting systems and operating statistics of federally regulated railways to ensure compliance with the governing legislation, and to ensure that railway data are uniform and compatible for costing use. During the reporting period, audit staff conducted some 40 projects of varying complexity, sensitivity and monetary importance.

The elimination of railway subsidies has led the Agency to evaluate its data requirements. This affects the railways' reporting under the *UCA* and the costing of railway operations. In the fall of 1996, the Agency began working with the railways to streamline the railways' *UCA* reporting requirements and simplify the costing process, while ensuring that the resulting costs are fair and reasonable.

Cost of Capital

The cost of capital is the total return on an investment that an investor requires. Although cost of capital is not an expense in accounting terms, it is recognized as a cost of railway operations pursuant to the Act. The Agency annually approves rates for cost of capital for use in regulated western grain rates, interswitching rates, variable cost determinations for competitive line rates and other railway costing requirements.

The cost of capital reimburses the railway for its financing costs, namely, debt and equity. The measurement of the cost of equity, or the return that shareholders expect, involves complex technical analyses of various financial models, risk assessment and other technical relationships.

In July 1985, the Canadian Transport Commission (hereinafter, the CTC) issued the "Cost of Capital Methodology Decision," which sets out the rationale for determining railway cost of capital rates for regulatory purposes.

Since the issuance of the CTC's 1985 decision, and particularly within the last few years, significant structural and legislative changes affecting the rail transportation industry have occurred that warranted the Agency's review of the traditional methodologies for determining cost of capital rates. Foremost was the privatization of CN, the restructuring of CP and numerous legislative changes, including the repeal of the *WGTA*, the *NTA*, *1987* and the *Railway Act*, and the implementation of the Act.

In August 1996, the Agency began reviewing the **methodology for determining cost of capital rates** used in railway cost-based rate regulation. It began this review as a result of the potential impact that the structural and legislative changes previously noted could have on the development of these cost of capital rates.

After receiving submissions from interested parties in late October 1996, the Agency provided participants with the terms of reference for a consultative hearing to be held in January 1997. The hearing will deal with two risk factors affecting the cost of equity, and whether the railways' recent write-down of eastern asset values for shareholder reporting should be reflected in the net rail investment and the sources of capital. The decision on the review will be released in March 1997.

Other Costing and Statistical Analysis Matters

The Agency made other costing determinations including railway unit cost, depreciation rate, cost of capital rate and price index approvals. These determinations support regulated rate activities and are used by Class I and Class II railways to develop their respective outstanding branch line and passenger subsidy claims.

During 1996, Transport Canada staff asked Agency staff to provide technical rail costing advice and analysis on certain matters, including the use of government hopper cars in western grain service and western grain railway service to the port of Churchill. In addition, federal departments, including Transport Canada and Statistics Canada, requested railway traffic data from the Agency's databases for policy and statistical analysis purposes.

Railway Mapping Services

Through its information development service, the Agency prepares maps depicting the rail network in Canada. Between July 1 and December 31, 1996, it undertook more than 50 information development projects. Agency staff generated maps to support certificate of fitness applications and level of service complaints, and to illustrate the maximum rate scale for movements of grain from points in western Canada to ports of export. They also designed maps to depict the current rail network in Canada, by subdivision, and to illustrate the potential impact of the Class I railways' three-year plans. Furthermore, staff developed maps to illustrate grain routings from western Canada to the Atlantic provinces and to show the evolution of shortlines in Canada.

Other Activities

In the fall of 1996, the Chairman and senior rail management participated in the Agency's public meetings with various representatives from grain producer groups, grain companies, grain commodity organizations, railway companies, provincial and federal governments, and related agencies (including the Canada Grain Commission and the Canadian Wheat Board). The meetings gave participants an opportunity to learn more about the Act and the Agency's structure and role. As well, the meetings provided a forum for raising issues and concerns affecting grain transportation. Of notable concern to participants were the following issues: the usefulness of the competitive access provisions in an environment where the railways are, for the most part, simply charging the maximum rate allowable for the movement of grain; the difficulty in attaining a competitive line rate; the alleged lack of sharing in railway efficiency gains through incentive rates; the methodology to be employed in the 1999 Efficiencies Review in terms of measuring efficiency gains in grain handling and transportation; and the possible effects of this review process on the continuation of rate regulation for western grain. Until the issues and concerns are actually referred to or become the subject of a proceeding before the Agency, the Agency is not in a position to render any particular comment on these matters.

During the reporting period, the Agency received several hundred inquiries on a variety of topics, such as:

- general methodology for determining rail costs;
- the new line discontinuance process;
- shortline railway issues;
- historical data and information relating to payments made under the *WGTA* and *Atlantic Region Freight Assistance Act* final subsidy payments and claims;
- levels of service for freight and passenger services;
- tariffs, rates (including competitive line rates), demurrage, liability and regulatory matters;
- joint track usage and running rights provisions;
- railways' three-year plans;
- maximum grain rates by origin and destination;
- status and costing information related to grain-dependent branch lines and associated mileages;
- legislative review of the grain handling transportation system; and
- legislative changes affecting rate regulation for western grain movements.

RAIL INFRASTRUCTURE

The new legislation has significant implications for Canadian railways and parties that interact with those railways on infrastructure matters. The new legislation imported and consolidated many of the railway line construction and railway crossing related sections of the *Railway Act*, defined a new means by which railways are authorized to construct or operate lines, and continued former functions for cost apportionment and dispute resolution. The Act also has a new provision that allows the Minister to enter into agreements with a province and designate the Agency to administer the legislation respecting railway crossings on behalf of the province.

The new legislation has significant implications for Canadian railways and parties that interact with those railways on infrastructure matters.

In general, the Agency's responsibilities in this area include **resolving issues** between railways and parties such as municipalities or other road authorities, utility companies, adjacent landowners or other parties who may wish to cross a rail line or who may be affected by or have a dispute with those railways; **approving** the construction of railways; and **determining** adequate third party liability insurance for the construction or operation of railways.

ROAD CROSSINGS OF RAILWAYS

Road authorities and railway companies may enter into, and file with the Agency, agreements respecting the construction, reconstruction, maintenance or apportionment of costs of road crossings of railways. These agreements become orders of the Agency. If the parties cannot agree on any aspect of the crossing, either party may apply to the Agency to resolve the issue.

As of July 1, 1996, the Agency had 80 applications before it respecting road crossings of railways. Of this total, it completed 58, authorizing the construction of, or changes to, level crossings and grade separations of railways, and apportioning the costs of construction and maintenance between the parties. At year end, 22 applications remained active. Under the new legislation, the Agency received 41 applications respecting road crossings of railways and completed 27 before December 31, 1996. The other 14 matters remained active. One agreement was filed during 1996 to become an order of the Agency. However, the Class I railways have informed the Agency that the volume of agreements filed will increase substantially during 1997.

The Agency also receives complaints concerning road crossings. As of July 1, 1996, three complaints were active, with two being settled before December 31, 1996. Under the Act, the Agency received an additional five complaints after July 1, 1996. Three of these cases were carried forward to 1997.

UTILITY CROSSINGS OF RAILWAYS

Utility companies and railway companies may enter into, and file with the Agency, agreements respecting the construction, reconstruction, maintenance or apportionment of costs of utility crossings of railways. These agreements become orders of the Agency. If the parties cannot agree on any aspect of the crossing, either party may apply to the Agency to resolve the issue.

Fifteen applications respecting utility crossings of railways were before the Agency as of July 1, 1996.

Before year end, 14 orders were issued authorizing 14 new pipeline or wire crossings of railways, and apportioning the costs of construction and maintenance between the parties. Under the new Act, the Agency received 11 applications, with 7 completed and 4 in progress at the end of December 1996.

Directives

The Agency prepares the *Schedule "A" Directives - Railway Rates for Maintenance and Construction* to assist railways and other parties, such as road authorities or utility companies, in their cost apportionment agreements. These directives can also be appended to any Agency order allowing the crossing to be constructed or in which the Agency has apportioned construction or maintenance costs. They are a set of instructions that provide a third party assessment of rail costs and set a consistent, nation-wide structure for billing for work to be done on railway crossings or railway crossing warning systems, or for any other railway construction or maintenance works. The Agency issues these directives, which the parties associated with railway-related construction work may use and resolves complaints concerning the use of these directives.

As of July 1, 1996, the Agency had one active complaint before it concerning charges associated with the directives. This matter was resolved during the year. Following passage of the Act, the Agency received four additional complaints. Two of these complaints remained active at year end. Agency staff also handled numerous inquiries and held meetings with industry representatives concerning the content and future use of the directives.

Railway Crossings of Other Railways

Agreements respecting the construction of one railway across another railway may be filed with the Agency. The agreement becomes an order of the Agency authorizing such construction as per the terms of the agreement. Where the two railways cannot agree, the Agency may, by order, authorize the construction of the railway crossing or any related work.

No agreements respecting the construction of one railway across another railway were filed with the Agency and no new applications were received between July 1 and December 31, 1996.

Private Crossings of Railways

The Agency may determine whether a landowner has the right to a suitable crossing of a railway. Where no statutory right exists, the Agency may nevertheless authorize by order any crossing it determines to be necessary, and set terms and conditions for that crossing.

As of July 1, 1996, nine applications or complaints concerning private crossings (formerly farm crossings under the *Railway Act*) were active before the Agency. Four were completed, with the other five under review at year end. Under the Act, the Agency received five applications, completing two before December 31, 1996.

Damage from Railway Construction or Operation

Upon complaint, the Agency will determine whether a railway company has met its obligations to do as little damage as possible when constructing or operating a railway.

Prior to July 1, 1996, the NTA investigated complaints concerning noise, pollution or vibration arising from railway operations, under the provisions of the *Railway Act*. Of the 12 complaints active as of July 1, 1996, 6 have been completed and the other 6 are still under review. The Agency will

continue to handle these types of complaints under the broader legislative authority of the Act. The Agency received 5 complaints during the reporting period, with 2 still under review at year end.

The Agency also receives complaints concerning drainage and rights-of-way, under its general powers to determine if a railway has met its obligations to do as little damage as possible. There was one active drainage complaint at year end. Under the *Railway Act*, its previous mandate, the Agency had five drainage complaints before it as of July 1, 1996. All cases were in progress at the end of 1996. Four complaints concerning rights-of-way were before the Agency on July 1, 1996, and all were completed during the year.

Railway Works Cost Apportionment

Under the *RSA*, the Agency may determine the apportionment costs of construction, alteration, maintenance or operation of a railway work where the parties who may benefit from that work cannot agree. A railway work includes not only road and utility crossings of railways, but also railway lines and their supporting structures, any system of switches or signals such as protective devices at crossings, or any other structure along, across or beside a line of railway that facilitates railway operations, such as fencing.

From the *RSA*, the Act imported the definitions of "road crossing," "utility crossing" and "utility line," as well as the outline used in section 16 of the *RSA* for the apportionment of costs of railway works by the Agency. The Agency used this process in all cost apportionment decisions under the Act for road and utility crossings of railways. In addition, the Agency had nine applications for apportionment of costs of other railway works active as of July 1, 1996, with eight cases under review at year end. One additional application received during the reporting period was carried forward to 1997.

One major decision of note was the Agency's determination in a dispute respecting the apportionment of costs for the installation and future maintenance of fencing along CN's Bala Subdivision in the municipality of Metropolitan Toronto. The Agency ruled that fencing along railway lines constitutes a railway work. Section 16 of the *RSA* may be applied to resolve any cost apportionment disputes that deal with fencing. The Agency determined that the railway fencing was a benefit to both CN and the Municipality of Metropolitan Toronto. Metropolitan Toronto is appealing this decision to the Federal Court of Appeal.

Railway Operation Compensation

Under the *RSA*, the Agency may determine the amount of compensation to be paid to the owner, lessee or occupier of land adjoining a railway who has suffered a loss as a result of a railway entering onto that land to prevent a threat to safe railway operations.

The Agency handled general inquiries about its responsibilities under section 26 of the *RSA* during the reporting period, but received no formal applications.

Certificates of Fitness

The Act allows any person to construct or operate a railway providing he or she has a certificate of fitness issued by the Agency. The Agency issues such a certificate once it is satisfied that there will be adequate liability insurance coverage for the proposed construction or operation of the railway. The Agency may also vary an existing certificate to reflect changes in railway operations, or suspend or cancel a certificate if necessary.

In July 1996, the Agency advised all known federal railways of the changes brought about by the Act and of their potential obligations. During

the reporting period, it received nine certificate of fitness applications. It issued the first certificate to the St. Lawrence and Hudson Railway Company (hereinafter, SL&HR) to accommodate its start-up in October 1996. This certificate was subsequently cancelled when the Agency issued a certificate of fitness to CP, which encompassed the SL&HR. The Trans-Ontario Railway Company and the Norfolk and Western Railway Company were also granted certificates of fitness during the reporting period, authorizing them to operate in Canada. The Agency expects a number of new applications early in 1997, as the one-year exemption period granted to federal railways existing as of June 30, 1996 will expire on July 1, 1997.

Railway Line Construction Approval

With some exceptions, a railway company may not construct any railway line without the approval of the Agency. When deciding whether the location of the proposed railway line is reasonable, the Agency will take into consideration the requirements for railway operations and services, the interests of any localities that will be affected by the line and the impacts on the environment.

During the reporting period, the Agency approved two applications for railway line construction approvals that were active as of July 1, 1996. These two approvals authorized a track relocation and connection, which improved CN's service to the Ultramar refinery near St. Romuald, Quebec. No new applications for construction approval were submitted, although the Agency received inquiries about the procedures required to construct a new railway line in western Canada.

Railway Track Determinations

The Agency determines, as a question of fact, what constitutes a yard track, siding, spur or other track auxiliary to a railway line for the purposes of determining whether such track is subject to the transfer and discontinuance provisions of the Act.

The Agency completed two track determinations during the reporting period, allowing two separate spur lines to be discontinued without following the discontinuance provisions of the Act.

Relocation of Railway Lines in Urban Areas

Under the *Railway Relocation and Crossing Act*, a province and all the municipalities within a designated urban area may agree on a transportation and financial plan, which may affect the operations of a railway company within that area. The Agency has the authority to order changes to the railway's operation up to, and including, the cessation of railway operations over designated railway lines, if such plans are filed with and accepted by the Agency.

No applications were active as of July 1, 1996, nor were any received before December 31, 1996. There were, however, numerous inquiries from municipalities concerning the provision's potential use.

Canadian Environmental Assessment Act

The *Canadian Environmental Assessment Act* obligates the Agency to protect the environment by ensuring that the environmental implications of any project requiring Agency approval have been considered. The Agency screens the environmental assessment included with each application for an order. Following the screening process, the Agency then allows the project to proceed based on the mitigation suggested by the proponent; disallows the project; or refers the matter to the Minister of the Environment for comprehensive study, mediation or panel review.

The Agency received 119 such applications under the Act or the *Railway Act* during the reporting period. The environmental assessment was

completed for every application. In each case, the Agency allowed the project to proceed once it was assured that the mitigation proposed by the proponent would ensure that the project had no significant environmental impacts. No projects were referred to the Minister of the Environment. The Agency is also responsible for follow up on the environmental implications of many of the projects it has authorized. A number of Agency orders have included conditional clauses that require the Agency to ensure that proponents are meeting the environmental obligations set out in the orders, by reviewing and approving filed documents, consulting with proponents and holding site meetings, where necessary.

Federal/Provincial Crossing Agreements

Under the Act, the Minister of Transport may enter into agreements with provincial Ministers of Transportation, providing for the administration of laws respecting railway crossings in relation to persons who operate railways within the legislative authority of the province.

In July 1996, the Minister of Transport signed one agreement with the Minister of Transportation of Ontario. This agreement permits the Agency to administer sections of the Act and the *RSA* respecting railway crossings in relation to shortline railways regulated by the *Shortline Railways Act*. Ontario enacted this legislation in 1995. The Agency may now issue orders and resolve disputes for five provincial railways listed in the schedule to the agreement. During the reporting period, the Agency also conducted preliminary discussions with three other provinces that might eventually be interested in having the Agency administer the laws respecting crossings in relation to railways under their jurisdiction.

Rail Rationalization and Subsidy Settlement

Abandonment Decisions

With the enactment of the new legislation on July 1, 1996, federal railway companies no longer require Agency approval before discontinuing operations over a railway line. Prior to that legislative change, however, the NTA issued decisions on five railway applications. While these decisions were completed before July 1, 1996, some of the abandonment dates were set for the latter half of 1996 and early 1997. The decisions approved the abandonment of 235.7 miles in 1996 and a further 7.8 miles in 1997. Further detail on these cases is provided in the following table.

Railway Abandonment Orders in 1996

Order	Issue Date	Railway/Subdivision	Miles	Effective Date	Between End Points
1996-R-48	Feb. 06/96	CP Outlook/Kerrobert	5.0	Mar. 07/96	Broderick to Outlook
1996-R-74	Feb. 22/96	CN Montmagny	7.8	Feb. 22/97	Harlaka to St. Romuald
1996-R-152	Apr. 18/96	CN Beachburg	125.8	May 18/96	Pembroke to Nipissing
1996-R-173	Apr. 30/96	CN Newmarket	77.1	May 30/96	Yellek to Capreol
1996-R-217	June 04/96	CSXT Blenheim	27.8	Dec. 31/96	East Blenheim to West Lorne

Rail Rationalization Activities under the Canada Transportation Act

A federal railway can transfer or discontinue operations of a railway line according to procedures set out in sections 141 to 146 of the Act. Under the Act, a railway may cease operations on a railway line after it has prepared and made available a three-year plan of its intentions either to retain, transfer or discontinue any rail segment in its railway line network, and has attempted without success to sell the line to private parties for use as an operating line of railway, or to the government for any use. If the line is offered to the government, its transfer must be at a value no greater than its net salvage value. Either party may apply to the Agency for a net salvage value determination. Since the implementation of the Act, the Agency has received no such application.

CN and CP published their three-year plans in August 1996, and proceeded to implement their intentions for a number of railway line segments. By year end, only one railway line could not be sold and was discontinued, namely, the 5.2-mile segment of CN's Big River Subdivision in Saskatchewan. Ten line segments were transferred by year end and a further 12 transfer or discontinuance cases were still in the process of being offered for sale as of December 31, 1996. The following table provides further detail on the status of all rail line segments that the railways were actively trying to transfer or discontinue during 1996. The table also shows CN's and CP's intentions according to the initial published plan and the mileage involved.

Year End (1996) Status of Selected Cases from CN and CP Three-Year Plans

Railway/Subdivision	Intention per Plan	Rail Line Miles	Status
CN Chandler	discontinue	56.1	advertised Sept. 3
CN Cowan	discontinue	83.5	advertised Sept. 3
CN Lac La Biche	discontinue	39.0	advertised Sept. 3
CN Lampman	discontinue	4.5	advertised Sept. 3
CN Oak Point	discontinue	123.2	advertised Sept. 3
CN Sorel	discontinue	2.7	advertised Sept. 3
CN St. Raymond	discontinue	14.9	advertised Sept. 3
CN Steep Rock	discontinue	12.1	advertised Sept. 3
CN Taschereau	discontinue	82.4	advertised Sept. 3
CN Waterways	discontinue	162.9	advertised Sept. 3
CN Winnipegosis	discontinue	10.9	advertised Sept. 3
CN Cascapedia	transfer	98.0	transferred Dec. 1
CN Chandler	transfer	48.1	transferred Dec. 1
CN Vankleek	transfer	20.8	transferred Nov. 22
CP Goderich	discontinue	3.1	advertised Dec. 6
CP Cartier	transfer	76.2	transferred Oct. 30
CP Chalk River	transfer	114.8	transferred Oct. 30
CP Newport	transfer	58.4	transferred Sept. 28
CP North Bay	transfer	117.3	transferred Oct. 30
CP Sherbrooke	transfer	59.7	transferred Oct. 10
CP Stanbridge	transfer	13.7	transferred Oct. 30
CP St. Guillaume	transfer	28.0	transferred Oct. 10

Other Railway Rationalization Activities

Section 32 of the Act permits the Agency to review, rescind or vary an existing decision or order if it finds facts or circumstances have changed significantly. In response to an application filed by McAsphalt Industries, the Agency varied the effective date of a previous NTA order, which had authorized the CP Scarborough Pit Spur rail line to be abandoned on November 5, 1996. At the request of McAsphalt Industries and CP, the Agency agreed to vary the abandonment date to January 10, 1997.

Railway Subsidy Payments

With the passage of the Act, the traditional branch line subsidy and passenger train service subsidy programs administered by the Agency were eliminated. However, the Agency is required to finalize the processing of any outstanding claims under section 178 of the *NTA, 1987* and section 270 of the *Railway Act*. Respective subsidy claims reflecting relevant operations in existence up to June 30, 1996 are being processed by the Agency under the transitional program, which is expected to end in 1998.

With respect to branch line subsidies, the claims are filed by federal railways for subsidy of actual losses incurred while operating a branch line that had been ordered continued under a NTA order. CN and CP can file three subsidy claims pertaining to each year of operation of an eligible branch line: an **advance claim** allows the railway to receive a limited subsidy during the year in question, as a cash advance against its conservatively estimated losses; an **initial claim** allows a further payment based on preliminary financial and operational data, if filed by July of the next year; and a **final claim** allows final payment based upon final railway data.

Payments and adjusted settlements are made after the Agency analyzes each claim, and verifies the financial and operational data filed for each rail line operation for which the railway claims a loss.

A similar process exists for the processing of eligible passenger train service subsidy claims.

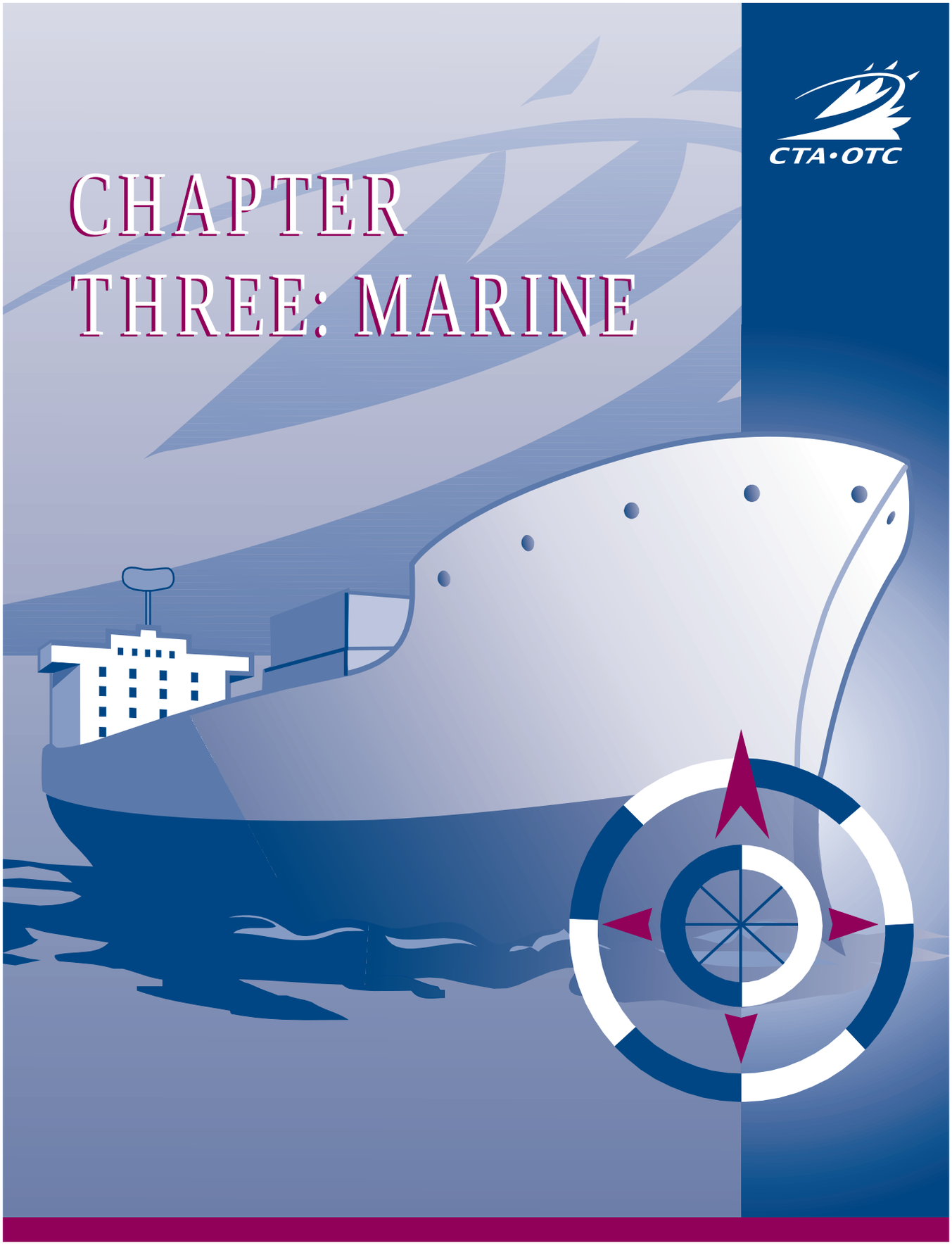
The following table shows the subsidy claims processed by the Agency in 1996, and the amount and type of payment made to each eligible Class I or II railway filing a claim. The Agency has paid $906,101 to Class I railways and $476,176 to Class II railways, for a total of $1,382,277, since July 1, 1996. For comparison purposes, the subsidy payments made under the former legislative authorities from January 1 to June 30, 1996 are also provided.

Further information on the subsidy program will be provided in Part II of the *Canada Gazette*.

SUBSIDIES PAID IN 1996

	PAYMENT MADE JAN. 1-JUN. 30, 1996	PAYMENT MADE JUL. 1-DEC. 31, 1996
CLASS I RAILWAYS		
CN		
In respect of 1993 final		$13,302
In respect of Dec. 1995 advance	$546,408	
In respect of 1995 initial		$892,799
In respect of 1996 advance	$3,225,939	
CP		
In respect of 1995 Dec. advance	$52,864	
In respect of 1996 advance	$182,256	
CLASS II RAILWAYS		
Ontario Northland Transport Commission		
In respect of 1992 final		$476,176
In respect of 1995 Dec. advance	$250,880	
In respect of 1996 advance	$1,341,687	
Quebec North Shore & Labrador		
In respect of 1995 Dec. advance	$131,616	
In respect of 1996 advance	$972,033	
Algoma Central Railway		
In respect of 1995 Dec. advance	$148,775	
In respect of 1996 advance	$483,054	
CSX Transportation, Inc.		
No payment yet approved	0	0
TOTAL PAYMENT	**$7,335,512**	**$1,382,277**

CHAPTER THREE: MARINE



Marine

***With respect to the marine mode, the Agency oversees applications, complaints and investigations affecting various marine activities within federal jurisdiction. The Agency's functions with respect to the marine mode are defined in the* Canada Transportation Act, *the* Coasting Trade Act*, the* Pilotage Act*, the* St. Lawrence Seaway Authority Act *and the* Shipping Conferences Exemption Act, 1987.**

The coming into effect of the Act did not affect the Agency's mandate under the various marine-related acts. However, changes to the marine industry have been ongoing since late 1995. Specifically, in December 1995, the Minister of Transport announced a national marine policy, which included the objective of commercializing the operations of the St. Lawrence Seaway and major Canadian ports, as well as changes to the provision of marine pilotage services. In June 1996, the *Canada Marine Act*, Bill C-44*, was introduced in the House of Commons to give effect to the marine policy objectives. On July 17, 1996, the Minister of Transport announced the signing of a letter of intent with a group of seaway users to establish a not-for-profit corporation to operate the St. Lawrence Seaway. The *St. Lawrence Seaway Authority Act* will be repealed upon passage of the *Canada Marine Act*. The responsibility to establish seaway tolls will be transferred to the not-for-profit corporation. While the *Canada Marine Act* permits the commercialization of the operations of the St. Lawrence Seaway, the legislation continues the Agency's mandate to investigate complaints that Seaway-related charges are unjustly discriminatory.

The *Canada Marine Act* proposes an amendment to the *Pilotage Act* whereby pilotage authorities would be able to implement tariff proposals 30 days after the publication of the proposal in Part I of the *Canada Gazette*. This represents a change from the present situation where, when an objection is filed against the proposal, a pilotage authority must wait for the Agency to issue a ruling before implementing the tariff proposal.

* On April 25, 1997, Bill C-44 died on the Senate Order Paper.

The *Canada Marine Act* contains one new dispute resolution mechanism related to port charges. The Agency would investigate complaints filed by interested persons that fees set by commercialized port authorities are unjustly discriminatory. The Agency would communicate its findings to the port authority, which must govern itself accordingly.

Coasting Trade Act

The *Coasting Trade Act* was enacted in 1992 to protect owners and operators of Canadian ships in the Canadian coasting trade. Under the *Coasting Trade Act*, the Agency determines whether there are any suitable Canadian ships available to provide a service or perform an activity which is proposed to be undertaken by non-Canadian ships.

Any party wishing to use a foreign-registered vessel in the Canadian coasting trade must apply to Revenue Canada and simultaneously copy the application to the Agency. The Agency must determine whether a suitable Canadian vessel is available to perform the activity described in the application. After receiving an application, the Agency issues a "request for offers" of Canadian vessels to ship owners and operators in the region where the activity is to take place. Once the period for offers and comments has expired, the Agency makes a determination on the availability of suitable Canadian vessels, which it transmits to Revenue Canada.

From July 1 to December 31, 1996, the Agency received 67 applications for the use of foreign vessels in Canadian waters. In 59 cases, the Agency determined that no suitable Canadian ships were available; in 3 cases, the Agency determined that a suitable Canadian ship was available; and in 4 cases, the application was withdrawn. Generally, the applicant withdraws an application when offers of Canadian vessels are received from Canadian owners and operators in response to the Agency request for offers. In some instances, Canadian owners make an offer of a vessel that they later withdraw when they find out more details about a planned activity, and realize that the vessel is not suitable. Only one application was carried forward to 1997.

In November 1996, the Agency received an application from **P.F. Collins Customs Brokers Ltd.** for the use of specialized vessels to assist in the final construction process of the Hibernia platform off Newfoundland. The Agency issued a request for offers of Canadian vessels and received offers from the industry. The Agency determined that the vessels offered were suitable and available, and issued a decision in that regard on December 23, 1996. On December 31, 1996, P.F. Collins Customs Brokers Ltd. appealed the Agency's decision to the Governor in Council.*

Other than processing the above-noted applications, the Agency has been involved in two special projects. The first one was initiated by the Agency's predecessor, the NTA. Staff participated in a series of consultations with coasting trade parties to explain the Agency's process and discuss some concerns identified in the processing of coasting trade licence applications, such as a fast-track system for urgent applications, designation of tall ships, multi-vessel applications and applications of a general nature. As a result of these consultations, the Agency is contemplating new guidelines for processing applications.

In late fall, the Agency undertook a major survey of the Canadian marine industry to update its various marine data banks. Once the process is completed, the Agency plans to make the Canadian Merchant Fleet List available electronically in the spring of 1997.

* A ruling was issued by the Governor in Council on February 18, 1997, upholding the Agency's decision.

Pilotage Act

The *Pilotage Act* created four pilotage authorities in Canada, each of which is a Crown corporation. A pilotage authority administers an efficient system of marine pilotage in specified Canadian waters to ensure the safety of navigation. Each pilotage authority has the power to impose fair and reasonable pilotage charges on users, which generate sufficient revenue to enable the pilotage authority to be financially self-sufficient.

Each time a pilotage authority wants to increase or amend its pilotage charges, an amended pilotage tariff regulation containing the proposed increase or amendment must be published in Part I of the *Canada Gazette*. Following the publication of a tariff proposal, any person who believes that the proposed tariff is prejudicial to the public interest may file an objection with the Agency. All objections must be filed within 30 days of the date of the publication of the tariff proposal in the *Canada Gazette*.

Once an objection to a pilotage proposal has been filed, the Agency must investigate the tariff proposal and decide whether it is prejudicial to the public interest. A pilotage authority must abide by the Agency ruling.

On November 9, 1996, the Pacific Pilotage Authority published a tariff increase in Part I of the *Canada Gazette*. On October 26, 1996, the Laurentian Pilotage Authority published revised *Pilot Boat Tariff Regulations* in Part I of the *Canada Gazette*. The Agency did not receive any objections with respect to either of these tariff amendments. There were no other tariff increases published by pilotage authorities from July 1 to December 31, 1996.

St. Lawrence Seaway Authority Act

Under the *St. Lawrence Seaway Authority Act*, the St. Lawrence Seaway Authority may establish tolls and charges for the services it provides, and for the maintenance of the Seaway and associated infrastructure. Any person who believes that the tolls or charges established by the St. Lawrence Seaway Authority are discriminatory may file a complaint with the Agency.

Under the Act, tolls may also be established by agreement between Canada and the United States and, in the event of such an agreement, shall be charged by the Authority in accordance with directions given by the Governor in Council.

The Agency did not receive any complaints about St. Lawrence Seaway Authority tolls and charges during its first six months of operation.

Shipping Conferences Exemption Act, 1987

The *SCEA, 1987* was enacted to permit cartels of shipping lines to serve the Canadian import and export trade. Since Canada does not have an ocean merchant marine to handle its foreign trade, it must rely on shipping lines of other nations to provide such services. Cartels of foreign shipping lines, which jointly set rate and service conditions, have existed for many decades and are accepted by most trading nations. Canadian legislation exempts these cartels from certain provisions of the *Competition Act*, which prohibits collusion between companies offering the same services.

Associations of cartels of shipping lines, or conferences, are eligible for the exemption granted by the *SCEA, 1987* upon filing certain documents with the Agency. Conferences must file a copy of the agreement drawn up between the shipping lines, which sets out the service and pricing arrangements they have agreed on. Conferences must also file copies of all common

tariffs with the Agency. Notice of tariff increases must be filed at least 30 days in advance.

Notice of increases in surcharges (e.g. currency adjustment factors, terminal handling charges, fuel adjustment factors) must be filed at least 14 days in advance. The conference agreement must allow each member shipping line to set rates that differ from those in the common tariff. This is referred to as the right to take independent action. Conferences are permitted to draw up confidential service contracts with shippers, and copies of such contracts must be filed with the Agency. Under a service contract, a shipper agrees to ship a minimum volume of traffic in return for a price that is usually below the regular tariff rate.

The *SCEA, 1987* also contains a complaint mechanism whereby a person may file a complaint with the Agency if he or she believes that a conference agreement or action reduces competition and results in an unreasonable increase in price or reduction in service.

The Agency did not receive any complaints filed pursuant to the above-mentioned mechanism during the reporting period. However, it did receive approximately 3,500 tariff pages for filing, 70 service contracts, and 6 amendments to basic agreements. No new conferences were established, and 3 conferences were dissolved during the reporting period.

A list of conferences serving Canada via east and west coast ports that have filed tariffs with the Agency is provided in Appendix C. The list includes their scope of operations, names of member lines and ports of call.

CHAPTER FOUR: ACCESSIBLE TRANSPORTATION

Accessible Transportation

An important part of the Agency's mandate is to ensure that persons with disabilities can obtain access to the federally regulated transportation system without encountering undue barriers. To this end, the Agency works closely with consumers and industry, and delivers a number of programs.

Legislative Provisions

Accessibility was an integral part of the national transportation policy in the *NTA, 1987* and was further confirmed in the new Act. The Agency has powers to ensure that no modes of transportation subject to federal jurisdiction pose undue obstacles to the mobility of persons with disabilities. Specifically, it may take action in the following broad areas: fares and conditions of carriage; transportation facilities, equipment and signage; the training of transportation personnel; and the communication of information to persons with disabilities. To remove undue obstacles to the mobility of persons with disabilities, the Agency conducts research, analysis, inquiries and investigations, provides information and advice, and resolves complaints. Much progress was made under the NTA and the Agency intends to follow the course set by its predecessor.

First Contact

Consultation is a vital characteristic of the Agency's continuing efforts to maintain an accessible transportation system by eliminating undue obstacles to the mobility of persons with disabilities. Furthermore, ongoing monitoring of industry and consumer issues is important to ensure the Agency can respond to problems that arise. Consultations being paramount to the program, the Agency has an Accessibility Advisory Committee to provide advice and input on proposed accessibility provisions. (A list of Members of this committee is attached as Appendix D.) The Committee comprises representatives of groups of and for persons with disabilities, industry, manufacturers and other government departments. Their participation in the ongoing consultations helps the Agency identify workable solutions to meet the needs of travellers with disabilities.

During the transition from the National Transportation Agency to the Canadian Transportation Agency, some organizations voiced their concern about the change of name. Since people with disabilities were just beginning to become aware of the benefits offered by the NTA's programs, the Agency was concerned that it would lose the gains it had made over the years. It takes considerable time and effort to create an awareness of the services and provisions that can help make travel easier for persons with disabilities. To avoid this confusion and any uncertainty about the Agency's continuing role that might arise as a result of the name change, the Agency launched a number of aggressive initiatives immediately after the promulgation of the Act. Within days of the Agency's creation, a special bulletin to announce the name change was distributed to more than 2,000 people, who had asked to be informed about accessibility matters.

On the Move brochures are available upon request.

The Agency advertised in disability publications, and placed an advertisement in the *Globe and Mail*'s special fall issue on disabilities. It placed messages in newsletters and magazines of organizations working with persons with disabilities emphasizing that "access will continue." Staff members conveyed this theme personally in meetings and conversations with key representatives of the community of persons with disabilities. The *On the Move* series of brochures was updated to reflect legislative changes and made available on request. This series includes a general program description, a complaint guide and an explanation of the air accessibility regulations currently in effect.

To inaugurate this enhanced dialogue and consultation, the Members of the Agency attended a special meeting of the Accessibility Advisory Committee in November 1996. This forum gave representatives of industry and organizations an opportunity to talk directly to the decision-makers. These valuable presentations and the subsequent dialogue provided a practical snapshot of current accessibility issues from the perspective of the industry and of travellers with disabilities. As the first meeting of its kind, it reinforced the importance that the Agency places on accessibility and on the needs of persons with disabilities.

Business as Usual

Accessibility continues to be a prominent feature of the Act.

The Agency will accelerate the establishment of accessibility provisions within the transportation network by introducing codes of practice to guide the industry, and will provide a general framework describing how the Agency is likely to view a particular accessibility issue if it receives a complaint.

The Agency continues to have the power to remove undue obstacles from the federal transportation network through regulatory action, when appropriate.

Speaking Out

The Agency considers it important to provide travel accessibility information to persons with disabilities as well as to industry, and staff members accept invitations to speak on the subject of travelling with a disability.

As such, Agency staff spoke at various events, including, in particular, the following ones: the 50th Annual Worldwide Airline Customer Relations Association Conference, where delegates representing more than 54 carriers from 34 countries discussed ways of enhancing customer service in the airline industry, which included discussing customer service issues as they relate to the needs of travellers with disabilities; the Third Paralympic Congress in Atlanta, Georgia, which brought together leaders from disability rights and sports movements, the corporate sector and non-governmental organizations, as well as government policy makers and political leaders, from around the globe, to discuss and proactively address problems facing people with disabilities; and the Second Annual Guide Dog Conference, held in New Westminster, B.C.

The Network Grows

The Agency is a new neighbour on the Integrated Network of Disability Information and Education (hereinafter, the INDIE) sponsored by Human Resources Development Canada. The INDIE allows persons with disabilities visiting this site on the Internet to link directly to the Agency's home page which contains, among other things, information on accessible transportation. Many persons with disabilities, particularly persons who are deaf, are relying more and more on this electronic medium to communicate with service providers and to obtain information on government programs.

The following numbers allow quick and easy access to the Agency's accessibility program: **1-800-883-1813** and TTY **1-800-669-5575**

Ready Access

The Agency's toll-free numbers, both voice and text telephone (hereinafter, TTY), continued to give persons with disabilities quick access to information on the Agency's accessibility programs. The Agency also receives written enquiries from Canada and abroad for information and copies of publications. It produces responses in large print, in braille or on audio cassette, in both official languages. More than 1,300 people called the toll-free line asking for information or seeking assistance with potential travel problems. The Agency sent out more than 9,600 brochures during the reporting period.

The Agency's *On the Move* series includes the following titles:

Improving Access for Travellers with Disabilities

Air Travel Accessibility Regulations

Accessibility Complaint Guide

Regulatory Powers and Alternative Cooperative Measures

Developing regulations pertaining to accessibility and overseeing their application to all modes of transportation under federal jurisdiction are important aspects of the Agency's mandate.

During its first six months of operation, the Agency also explored alternatives to regulations in keeping with the government's policy to effect changes through non-regulatory measures. The Agency introduced its first code of practice entitled *Code of Practice: Aircraft Accessibility for Persons with Disabilities (Fixed-Wing Aircraft with 30 or More Passenger Seats)*. The Code was launched in November 1996 at a public event attended by representatives of the two major Canadian air carriers, as well as the members of the Agency's Accessibility Advisory Committee and the

Chairperson of the Minister of Transport's Advisory Committee on Accessible Transportation. The representatives of the two air carriers stated in the public forum that they support the Code and will soon begin phasing in changes.

The Code of Practice details which air carriers and aircraft are covered, when and how carriers should follow the Code, and what the accessibility criteria are. These can be summarized as follows:

- All aircraft with 30 or more passenger seats should satisfy criteria for signage, lighting, integrated boarding stairs, handrails, floor surfaces, space for service animals at passenger seats, tactile row markers, supplemental passenger briefing cards and communication of announcements, by January 1, 1999.
- Newly manufactured or retrofitted aircraft with 30 or more passenger seats should have movable aisle armrests on 50 per cent of aisle seats, by January 1, 1999.
- Aircraft with more than one aisle should provide at least one washroom that is accessible to persons with disabilities, including persons in an on-board wheelchair, by January 1, 1999 for newly manufactured aircraft, and by January 1, 2002 for retrofitted aircraft.
- Single-aisle aircraft should have at least one washroom that is accessible to persons with disabilities, with the exception of persons in an on-board wheelchair, by January 1, 1999 for newly manufactured aircraft, and by January 1, 2002 for retrofitted aircraft.
- Aircraft with a wheelchair-accessible washroom should carry an on-board wheelchair, by January 1, 1997. Aircraft with 60 or more passenger seats not equipped with such a washroom should provide an on-board wheelchair upon request for use by passengers who can use the washroom, but are unable to reach it without the use of such a wheelchair, by January 1, 1999.
- Aircraft with 100 or more passenger seats should provide cabin storage space for a passenger-owned manual wheelchair if the configuration of the aircraft permits it, by January 1, 1999.

The Agency will conduct periodic surveys to monitor progress in implementing the Code. Throughout the process, the Agency will continue to deal with individual complaints to determine whether there is an undue obstacle to the mobility of persons with disabilities.

Marine and Rail Codes of Practice

During the reporting period, the Agency distributed a draft code of practice dealing with marine equipment to members of the Accessibility Advisory Committee and to affected extra-provincial ferry operators for comments. It analyzed the comments and amended the draft code to reflect them. The Agency will be releasing its code of practice on marine matters that fall under its jurisdiction in 1997.

Similarly, work continued on a draft code of practice dealing with the accessibility of rail equipment and terms and conditions of carriage for persons with disabilities. The Agency amended the draft provisions in light of comments from the Agency's Accessibility Advisory Committee, and will release the code to the general public for comment in April 1997.

Communication of Information

To identify any communication barriers facing persons with disabilities while they travel by air, the Agency consulted with more than 50 groups representing persons who are blind, visually impaired, deaf or hard of hearing, as well as those who have a cognitive or learning disability, and with air carriers and airport operators. As a result

of the consultations, the Agency became convinced that there were indeed communication barriers facing travellers with disabilities during the different stages of air travel, and that communication is a weak link. It prepared an interim report with recommendations on how airlines and airports could remove the identified obstacles and released it for comments by interested parties, who were given until February 1997 to submit their comments.

The recommendations address such issues as:

- the publication of an information brochure with travel tips for persons with disabilities;
- the availability in alternative formats of travel-related information, such as brochures describing services and individual travel information, to persons with disabilities;
- the availability of TTY services;
- the involvement of persons with disabilities in refresher training of transportation personnel;
- the elimination of the gap between the airport's main entrance and the air carrier's check-in counter;
- the consideration of the needs of persons with disabilities when developing new technologies or facilities, such as electronic ticketing;
- the involvement of persons with disabilities in the design or development of services to better meet the information needs of travellers with sensory or cognitive disabilities;
- the improvement of communication systems in airports; and
- the publication of information about terminal layouts.

Other Activities

Staff began to assess whether amendments are required to the *Personnel Training for the Assistance of Persons with Disabilities Regulations* (hereinafter, the *Training Regulations*). As well, they began reviewing these regulations and Part VII of the *Air Transportation Regulations: Terms and Conditions of Carriage of Persons with Disabilities* to determine which provisions should be "designated" so that parties contravening these provisions will be subject to administrative monetary penalties. For more details on administrative monetary penalties, see the section entitled "Enforcement" in Chapter One.

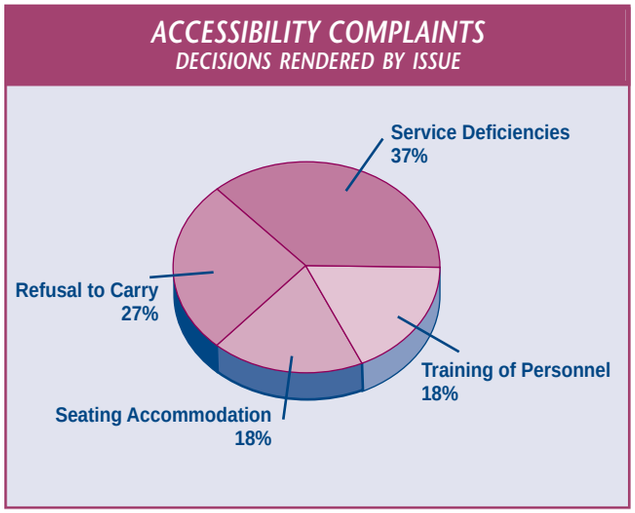
Removing Undue Obstacles

In certain cases, when educational and other initiatives have failed to produce the required change, travellers with disabilities who encounter obstacles within the federally regulated transportation system may file a complaint with the Agency. In cases where the Agency determines, after investigation, that there is an undue obstacle, it may order corrective action to remove the obstacle or order compensation for expenses incurred by the traveller, or both.

On July 1, 1996, the Agency carried over 11 complaints that were received by the NTA on which decisions had not yet been rendered. In addition, 6 files were carried over due to follow-up actions required as a result of decisions issued by the NTA.

During the period between July 1 and December 31, 1996, the Agency also received 8 new complaints. It closed a total of 9 files during this period: 3 complaints received by the NTA, 4 complaints received by the Agency and 2 follow-up actions. Although the Agency can hear complaints related to travel by air, rail and marine modes, the 9 complaints resolved during the

reporting period all related to air travel. Work also continued on the remaining 16 files. These complaints are highlighted in greater detail in the following section.



Complaints Resolved

REQUIRING PASSENGER'S ATTENDANT

Mrs. Muthanna filed a complaint against Air India on behalf of her husband, Dr. Muthanna (Decision No. 534-A-1996, dated October 25, 1996). Because of his visual impairment, Air India had refused to accept Dr. Muthanna as a passenger without an attendant. The Agency determined that this refusal by Air India resulted in an undue obstacle to Dr. Muthanna's mobility. It was also determined that this could have easily been avoided had Air India had a proper policy with respect to the carriage of, and terms and conditions applicable to the transportation of, persons with disabilities. Air India was required to submit a report to the Agency on the policies and procedures it will develop and implement to avoid a similar situation in the future. As a goodwill gesture, the carrier provided the customer with a full reimbursement of expenses claimed.

Ms. Falta filed a similar complaint against KLM Royal Dutch Airlines (hereinafter, KLM) in Decision No. 601-A-1996, dated December 20, 1996, because of the airline's refusal to accept the applicant for travel without an attendant on a flight from Mirabel to Amsterdam. The Agency determined that KLM's advice to Ms. Falta that she was required to travel with an attendant constituted an undue obstacle to her mobility. KLM was required to issue a bulletin to its medical doctors reminding them of KLM's existing practice of providing assistance to persons with disabilities during boarding and deplaning and to provide a copy of this bulletin to the Agency.

IMPROVING COMMUNICATION

Mrs. Jubber filed a complaint with the NTA on behalf of her sister, Mrs. Matthews, against Canadian Airlines International Ltd. (hereinafter, Canadi*n), Decision No. 479-A-1996, dated August 28, 1996, arguing that the requirement to provide detailed medical information was an invasion of her privacy and that the seat selection and the assistance provided by Canadi*n's personnel at the Goose Bay, Labrador airport were obstacles to her mobility. The Agency determined that the information required by Canadi*n's form did not create an undue obstacle to the mobility of the applicant. With respect to those aspects of the complaint concerning the level of service provided, the Agency determined that there was a lack of understanding contributing to this unfortunate incident but, based on the evidence submitted, was unable to determine that an undue obstacle existed. The Agency noted that clearer communications between the parties might have prevented the incident. No further action was required of the carrier.

MEETING THE NEEDS OF WHEELCHAIR USERS

In this complaint against Royal Aviation Inc. (hereinafter, Royal), Decision No. 542-A-1996, dated October 28, 1996, Mr. Rowe raised concerns related to his seat assignment, rerouting of his flights, boarding and deplaning assistance, and late delivery of his wheelchair upon arrival when he travelled between Ottawa and Orlando. The Agency found that the seating assigned to Mr. Rowe did not constitute an undue obstacle but that the carrier should establish communications with passengers with disabilities to determine if designated seating is compatible with a person's disability. While noting the training received by some of Royal's contracted ground handlers, the Agency asked the carrier to file its training program, including information set out in the schedule to the *Training Regulations*. Royal was also asked to inform the Agency as to the number of employees subject to the *Training Regulations*, what training these employees have received, and when training will be completed. Further, Royal was asked to provide an investigation report regarding the delivery of Mr. Rowe's wheelchair. The Agency will review the information to assess whether Royal's training program complies with the requirements of the *Training Regulations*.

Ms. Neelin filed a complaint with the NTA against Air Canada on similar grounds on behalf of her mother, Mrs. Neelin (Decision No. 597-A-1996, dated December 17, 1996). The complaint concerned the level of service that Air Canada provided to Ms. Neelin's mother. The complainant alleged that Mrs. Neelin's wheelchair was not provided for her use in the Toronto airport, as had been requested; that the carrier's employees improperly handled the airline's wheelchair, resulting in an injury to Mrs. Neelin; and that there was a lack of appropriate assistance provided in Toronto and London, England following the incident. The Agency found that the fact that the passenger's wheelchair was not available and that attendants mishandled the airline's wheelchair did indeed constitute an undue obstacle to the mobility of Mrs. Neelin. The Agency recognized, however, that since the time of this incident, Air Canada has provided its employees with extensive training to enhance the knowledge, skills, sensitivity and awareness of its employees who interact with the travelling public regarding the needs of persons with disabilities. The Agency was unable to consider the element of the complaint dealing with expenses arising from the injury. The applicant was advised that should she wish to pursue this element of the complaint, the Agency would require a detailed and itemized list of the expenses claimed to have been incurred as a result of Mrs. Neelin's injury, with justification as to why each expense should be found to have arisen from the undue obstacle.

REQUIRING MEDICAL AUTHORIZATION

Mrs. Mallet filed a complaint with the NTA (Decision No. 554-A-1996, dated November 12, 1996) because Iberia Airlines of Spain (hereinafter, Iberia) refused to accept her as a passenger on a flight from Mirabel to Madrid on March 10, 1995 as she was considered to have a medical condition that required medical authorization. The Agency determined that the breakdown in communication at the time of reservation, and the lack of consultation with the passenger and her attendant at the airport, resulted in Iberia's refusal, and that this refusal did constitute an undue obstacle to the traveller's mobility. Iberia was required to reimburse Mrs. Mallet for the additional expenses incurred as a direct result of this refusal.

PROVIDING REQUESTED ASSISTANCE

Ms. Trempe's complaint against Air Canada (Decision No. 608-A-1996, dated December 31, 1996) involved difficulties she experienced in trying to obtain services she requested in advance of her flight from Vancouver to Montreal on July 29, 1996 (i.e. pre-assigned seat, assistance in boarding and with carry-on baggage). Another issue was the manner in which the assistance was provided. The Agency found that Air Canada failed to provide assistance from initial check-in to the boarding gate, a service the complainant had requested at least 48 hours prior to travel. Air Canada was required to show cause why the Agency should not rule that it had contravened the relevant regulatory provisions. In addition, Air Canada must provide details concerning the training of various employee groups at the Vancouver airport. Air Canada was also to provide an update on the steps taken at the airport to prevent a similar incident from occurring. The Agency will review the information provided and determine if further action is necessary.

Following Up on Complaints

Ms. Hamilton filed a complaint with the NTA against Air Canada regarding the level and quality of assistance provided to her by the air carrier and also about the fact that she was not provided with a wheelchair at the terminal, as had been requested. Following its investigation, the Agency issued a decision on December 12, 1995. It found that there was an undue obstacle and asked Air Canada to file its sensitivity and awareness training program and to inform the Agency whether employees and contractors had received the training required by the *Training Regulations*. The carrier was also asked to implement procedures regarding wheelchair assistance. Air Canada provided the requested information, which the Agency reviewed and accepted in Decision No. 470-A-1996, dated August 20, 1996. No further action was required.

Mrs. Vecchiarelli filed a similar complaint on behalf of her son against Canada 3000. Mrs. Vecchiarelli was unable to pre-book bulkhead seating for her son. Furthermore, the crew had insisted on having her son's body support brace removed for takeoff and landing. On April 20, 1995, the NTA determined, in Decision No. 208-A-1995, that an undue obstacle to the mobility of Mrs. Vecchiarelli's son existed for two reasons: first, the lack of awareness, knowledge and understanding by agents and personnel of the carrier regarding the needs of persons with disabilities and their accommodation on board aircraft; and second, an apparent failure of sensitivity and awareness training of ground and in-flight personnel of the carrier. These elements resulted in an inadequate level of assistance being provided to Mrs. Vecchiarelli's son and family. In Order No. 1995-A-159, dated April 20, 1995, the NTA ordered Canada 3000 to provide the NTA with a copy of its training program; the bulletin issued to advise all in-flight crew of changes to reflect acceptance of medical devices during takeoff and landing; a report with details of its training program; and steps taken to ensure that all persons who book or sell seats are aware of the policy of pre-booking for passengers with special needs. All requested material was submitted. The Agency, in Decision No. 495-A-1996, dated September 11, 1996, determined that all requirements contained in Order No. 1995-A-159 and Decision No. 208-A-1995 had been met and no further action was required.

Complaints Outstanding

The following issues have been raised by complainants with disabilities. No decisions had yet been rendered by the end of 1996 on these complaints:

- The unavailability of accessible washrooms at an airport. The applicant, a traveller who uses a wheelchair, alleges that non-disabled persons were using accessible washrooms.
- The lack of accessible rail cars; the capacity of the stair lifts at a rail station to accommodate scooters; the carrier's requirement that persons with disabilities arrive at the station one and a half hours prior to departure for boarding assistance; the confusion among reservation agents as to how to reserve a wheelchair space and/or tie-down; and the lack of services provided by on-board personnel.
- An air carrier's failure to provide on-board medical oxygen service and assistance compatible with a passenger's disability.
- An air carrier's lack of seat selection procedures to meet the specific needs of passengers with disabilities and the level of assistance provided by carrier personnel; the general condition of the boarding chairs used in two airports.
- The service provided by air carrier personnel following the announcement of a nine-hour delay in departure.
- An air carrier's inability to maintain pre-assigned accessible seats in situations of last-minute aircraft substitution; the inaccessibility of the women's "accessible" washroom at an airport.
- An air carrier's failure to provide adequate accessible seating and the absence of an on-board wheelchair.
- The level of service provided by an air carrier's personnel to a person with a disability when travelling from Toronto to Victoria.
- Misinformation about the availability of insulin in an air carrier's on-board medical kit.
- Misinformation provided at time of reservation by carrier personnel concerning a self-reliant passenger, and the resulting refusal of transportation at the airport.
- The service provided by air carrier personnel during a transfer.
- An air carrier's requirement that a passenger travel with an attendant for a round trip between Toronto and Dusseldorf, and the full fare charged for the attendant.

In addition, the Agency is processing four files requiring follow-up actions as a result of NTA decisions.

Monitoring

The Agency carries out a variety of monitoring functions on an ongoing basis to measure and evaluate the industry's mandatory and voluntary compliance with Agency regulations and codes of practice concerning the provision of transportation-related services to persons with disabilities within the federal transportation network. It does this through surveys, investigations into complaints and site inspections. The enforcement and compliance activities highlighted in Chapter One support part of the Agency's activities in respect of accessible transportation. For example, during routine visits to the offices of carriers or terminal operators, Agency field investigators may find that the records of the training of company staff do not comply with the administrative requirements of the *Training Regulations*. If this happens, staff then work with the carrier or terminal operator concerned to improve their training program to meet these requirements. During the reporting period, staff completed such work with 33 carriers and terminal operators. The Agency has asked an additional 29 organizations to submit further information related to their training program content and to identify staff who have been trained.

CHAPTER FIVE: ASSESSMENT OF THE OPERATION

OF THE *CANADA TRANSPORTATION ACT* AND ANY DIFFICULTIES OBSERVED IN ITS ADMINISTRATION

Assessment of the Operation of the Canada Transportation Act *and any Difficulties Observed in its Administration*

Subsection 42(2) of the Act requires that the Agency provide, in its Annual Report, an assessment of the operation of the Act and that it report on any difficulties observed in its administration.

At the end of the reporting period covered by the present report, the new legislation had only been in force for six months and many provisions had not yet been tested. For example, section 27 of the Act, which deals with the "substantial commercial harm" requirement, had yet to be argued before the Agency in any proceeding. Other areas of the legislation were still under consideration by the Agency including, for example, various issues relating to railway certificates of fitness. Also, in the area of regulatory compliance, the Agency was studying the prospect of using administrative monetary penalties.

Accordingly, the Agency must attempt to provide an assessment of the operation of the legislation and report on any difficulties associated with it when, in many instances, these matters are somewhat speculative. Problems may or may not arise, depending on Agency and industry experience. Indeed, as is the case with any new law, many perceived or anticipated problems resolve themselves over time.

With this in mind, this chapter presents certain matters that the Agency believes fall within the scope of its reporting function under subsection 42(2).

AGENCY ISSUE

FINAL OFFER ARBITRATION

Sections 161 to 169 of the Act deal with final offer arbitration (hereinafter, FOA) provisions. They are similar to those found in the *NTA, 1987* with few changes.

The Agency is aware of a number of difficulties associated with requests for FOA. For example, the 90-day period allowed under the *NTA, 1987* to complete the arbitration has been reduced to

60 days. Other provisions for FOA, however, have not changed, such as the time frame of 10 days for the carrier's final offer, 15 days for information exchange, 7 days for interrogatories and 15 days for response. Should the parties fully use these statutory time frames, only 13 days remain for the arbitrator to hear and decide on the matter in question. The arbitrators have indicated to the Agency that this is insufficient time to deal with a matter.

Further, the first day of the statutory time period begins when the Agency receives a request for FOA, not when the arbitrator receives it from the Agency. On average, it has taken approximately 10 to 12 days to refer the actual matter to the arbitrator, as the Agency must first determine that it has received complete and proper submissions from both parties. On occasion, this determination has been delayed by the parties submitting objections and procedural or interim requests. Then, a list of arbitrators has to be sent to the parties so that they can select potential arbitrators. If no names are selected in common, the Agency then has to choose an arbitrator, causing further delay. This has happened on a number of occasions.

RAIL ISSUES

Certificates of Fitness

The term "**railway**" is defined under the legislation, in part, as being a railway within the legislative authority of Parliament. It includes, for example, branches, extensions, sidings, railway bridges, tunnels, stations, depots, wharfs and rolling stock. The term "**operate**" (a railway) is also defined in the legislation as including "... any act necessary for the maintenance of the railway or the operation of a train." Both definitions are very broad and capture virtually all possible aspects of a railway's operation.

The Agency has found that the industry is uncertain which railways in Canada fall within the scope of these provisions. For example, it is not apparent whether commuter service trains or specialty train operations are railways that require certificates of fitness. Nor is it obvious whether shippers who operate shuttle trains from the shipper's property to yard tracks located on federal railway lines are operating railways requiring a certificate of fitness. This uncertainty may be removed for the industry when the Agency issues its decisions on who requires a certificate of fitness. These decisions will be issued in the first half of 1997.

Net Salvage Value

If no agreement is reached for the transfer of a line offered for sale, or the transfer is not completed in accordance with the agreement, subsection 145(1) of the Act specifies that a railway must offer the railway line to all levels of government at a value not more than the net salvage value. If any level of government accepts the offer, but cannot agree with the railway company on the net salvage value within 90 days of acceptance, the Agency may, on the application of either party, determine the net salvage value under subsection 145(5) of the Act.

It is unclear from the Act whether the Agency can determine the net salvage value of the railway line without the precondition that a government accept a railway offer. If this is the case, a government and a railway company could enter into an agreement or contract for the transfer of a railway line without either party knowing the actual price of the transfer. Interest has therefore been expressed in an alternative that would allow the Agency to determine the net salvage value prior to acceptance of the offer to transfer.

ACCESSIBLE TRANSPORTATION ISSUE

ACCESSIBLE TRANSPORTATION AND INTERVENOR FUNDING

In the context of the accessible transportation mandate, there are occasions where the Agency would like the flexibility to provide funds to a member of the community of persons with disabilities to ensure their participation in some aspect of the Agency's process. Such provision of funds is commonly referred to as intervenor funding. The Agency is unable to grant such funding because the Act, as was the case with the *NTA, 1987*, does not contain the power to grant it.

APPENDICES:

- **APPENDIX A:**
  Cases before the Federal Court of Appeal
- **APPENDIX B:**
  Major Regulatory Initiatives
- **APPENDIX C:**
  Shipping Conferences Serving Canada
- **APPENDIX D:**
  Members of the Agency's Accessibility Advisory Committee

Appendix A:

Cases before the Federal Court of Appeal

(Reference to this Appendix was made on page 1 of the Introduction.)

CASES DISCONTINUED IN 1996

The Corporation of the City of Oshawa v. National Transportation Agency

Federal Court of Appeal
File: A-713-91

On May 30, 1991, the appellant, the Corporation of the City of Oshawa, was granted leave to appeal National Transportation Agency Order No. 1990-R-684, dated November 29, 1990 with respect to the apportionment of costs for the widening of Canadian Pacific's railway bridge over Oshawa Creek in the City of Oshawa.

The City of Oshawa appealed the Agency's decision on the following grounds:

- the City had been denied procedural fairness in that no hearing was held;
- the Agency erred in law in making the Order in that it failed to consider the law of riparian ownership, which provides strict liability for flooding caused by the obstruction of the natural watercourse;
- in making its decision, the Agency erred in law by considering irrelevant matters and by ignoring relevant matters;
- the Agency erred in law when it assigned costs to the appellant on the grounds that it owed a duty of care to protect developed properties in the flood plain, and had negligently allowed such development to occur;
- the Agency erred in law by making a decision for which no evidence was before it; and
- the Agency failed to address a major issue, that is, the cost of re-routing rail traffic during reconstruction of the bridge.

On September 16, 1996, the City of Oshawa discontinued this appeal.

Seafarers International Union of Canada and Andrew Boyle v. Cape Breton Development Corporation, National Transportation Agency, Minister of National Revenue, Attorney General for Canada and Her Majesty the Queen in Right of Canada

Federal Court - Trial Division
File: T-1647-88

On March 24, 1988, by Order in Council P.C. 1988-554, pursuant to section 665 of the *Canada Shipping Act*, the *Coasting Trade Exemption Regulations* were enacted.

The plaintiffs filed a statement of claim in the Federal Court - Trial Division on August 24, 1988. The plaintiffs submitted that the regulations were illegal, null and void, and *ultra vires* the Governor in Council. The plaintiffs sought a declaration that Order in Council P.C. 1988-554 was null and void *ab initio* and *ultra vires*. As an alternative, the plaintiffs requested an injunction to prevent the defendants from applying for, obtaining, considering or granting any exemption from the use of any foreign registered ship that had been previously registered in Canada.

By order of the Federal Court - Trial Division, dated October 24, 1996, this action was dismissed for want of prosecution.

CASES DECIDED IN 1996

Brotherhood of Maintenance of Way Employees and David W. Brown v. National Transportation Agency

Federal Court of Appeal
File: A-231-94

On March 16, 1994, the appellants were granted leave to appeal Agency Order No. 1993-R-402, dated December 21, 1993, which ordered the appellants to return to the Agency copies of confidential exhibits filed with the Agency at a public hearing and to maintain the confidentiality of those documents.

The appellants argued that the Agency did not have the jurisdiction to order it to return the confidential documents.

The appeal was heard in Ottawa on October 8, 1996. In its judgment, the Federal Court of Appeal determined that the Agency had the authority to order the confidentiality of certain documents filed at its public hearing and that it further had the authority, pursuant to subsection 36(1) of the *National Transportation Act, 1987* to compel the appellants to respect that order of confidentiality.

The appeal was dismissed.

CASES PENDING IN 1996

J. Normand Wong
v. Her Majesty the Queen in Right of Canada as represented by the National Transportation Agency

Federal Court - Trial Division
File: T-3255-90

On December 4, 1990, the plaintiff filed a statement of claim in the Federal Court - Trial Division for monetary compensation arising out of an alleged breach of contract for services entered into by the plaintiff with the Agency on May 17, 1990.

The action has yet to be heard and has remained dormant for over two years.

Canadian National Railway Company
v. National Transportation Agency and Township of Yarmouth

Federal Court of Appeal
File: A-474-95

On June 13, 1995, the Canadian National Railway Company was granted leave to appeal National Transportation Agency Order No. 1995-R-73 and Decision No. 110-R-1995, both dated March 2, 1995, which granted the Township of Yarmouth authority to construct a new culvert and which ordered Canadian National to pay an equal share of the costs of constructing said culvert and removing the existing drainage structure.

Canadian National alleges that the Agency committed an error of law or jurisdiction by:

- considering sections 212 and 213 of the *Railway Act*, R.S.C. 1985, c. R-3, a valid legal framework for the Township of Yarmouth's application, since the work for which the township asks Canadian National's financial participation does not fall within the scope of the said sections;
- omitting to apply subsection 215(5) of the *Railway Act* concerning principles on apportionment when using subsection 213(1) of the same Act;
- omitting to refer to the proper criteria to assess the contribution expected from Canadian National;
- not considering the possible double jeopardy of Canadian National if it was to accept jurisdiction over the matter; and
- assessing the share for each party where it should have decided only on the jurisdiction.

The appeal has yet to be heard.

Transport Loupage Inc.
v. National Transportation Agency

Federal Court of Appeal
File: A-622-95

On August 11, 1995, Transport Loupage Inc. was granted leave to appeal a National Transportation Agency letter decision dated August 29, 1994. In that letter decision, the Agency denied subsidy payments to Transport Loupage Inc. on outstanding subsidy claims. It also recommended that payments totalling $95,022.04 made to Transport Loupage Inc. under the *Atlantic Regional Special Selective and Provisional Assistance Regulations*, SOR/78-495, between the time of carrier and shipper restructuring in January 1990 and the Agency's audit in April 1993, be repaid by Transport Loupage Inc.

The appellant alleges that the Agency erred in law and jurisdiction by:

- violating the rules of natural justice and procedural fairness;
- incorrectly applying paragraph 2(2)(*h*) of the *Atlantic Regional Special Selective and Provisional Assistance Regulations*;
- giving preference to the English version of the text in paragraph 2(2)(*h*) of the *Atlantic Regional Special Selective and Provisional Assistance Regulations*, contrary to the principles of statutory interpretation; and
- demanding the reimbursement of subsidy payments paid to Transport Loupage Inc. since February 13, 1990 without having the statutory authority to do so.

The appeal has yet to be heard.

Transport Loupage Inc.
v. National Transportation Agency

Federal Court of Appeal
File: A-688-95

On October 24, 1995, Transport Loupage Inc. applied to the Federal Court of Appeal for an order of *mandamus* requiring the Agency to pay the sum of $30,902.10 in subsidy payments to Transport Loupage Inc. pursuant to the *Atlantic Regional Special Selective and Provisional Assistance Regulations*, SOR/78-495 for transportation movements made between April 20 and July 19, 1995.

The Agency does not contest that Transport Loupage Inc. is entitled to the subsidy payments for that period. The Agency is, however, attempting to set off that amount from the amount of $95,022.04 that the Agency has requested from Transport Loupage Inc. as reimbursement for subsidy payments it had received and to which the Agency had determined it was not entitled.

On November 27, 1996, the Federal Court of Appeal adjourned the hearing of this matter and ordered that it be heard with the appeal in Court File No. A-622-95.

Eastern Maine Railway Company v. National Transportation Agency

Federal Court of Appeal
File: A-364-96

On April 26, 1996, the appellant, Eastern Maine Railway Company, was granted leave to appeal a National Transportation Agency letter decision dated November 20, 1995, wherein the Agency determined that Eastern Maine Railway Company is required to apply for a certificate of fitness in accordance with the terms specified in section 12 of the *Railway Act*, R.S.C. 1985, c. R-3.

Eastern Maine Railway Company alleges that the Agency erred in law and exceeded its jurisdiction in interpreting section 10.1 of the *Railway Act* as governing the appellant and in compelling it to apply for a certificate of fitness from the Agency pursuant to section 12 of that Act. In particular, Eastern Maine Railway Company submits that the Agency interpreted section 10.1 of the *Railway Act*:

- in isolation and as a stand-alone provision without regard to its statutory context;
- as a regulatory requirement and not a corporate requirement; and
- in a manner inconsistent with a previous decision and with those of its predecessors in respect of railway companies incorporated in a foreign jurisdiction and operating in Canada.

The appeal has yet to be heard.

Canadian American Railway Company v. National Transportation Agency

Federal Court of Appeal
File: A-488-96

On April 26, 1996, the appellant, Canadian American Railway Company, was granted leave to appeal a National Transportation Agency letter decision dated November 20, 1995, wherein the Agency determined that Canadian American Railway Company is required to apply for a certificate of fitness in accordance with the terms specified in section 12 of the *Railway Act*, R.S.C. 1985, c. R-3.

Canadian American Railway Company cites the following points of issue:

- whether the Agency erred in law and jurisdiction in distinguishing between regulatory provisions of the *Railway Act* and corporate provisions of the *Railway Act*. In particular, Canadian American questions the Agency's interpretation of section 10.1 of the Act; and
- whether the Agency erred in law in deciding that there has been a "change in law" that insulates other U.S. incorporated railways from the Agency's interpretation of the incorporation requirement, and whether the Agency erred in failing to follow its previous decisions.

The appeal has yet to be heard.

VIA Rail Canada Inc.
v. National Transportation Agency
and Jean Lemonde

Federal Court of Appeal
File: A-507-96

On June 3, 1996, the appellant was granted leave to appeal National Transportation Agency Order No. 1995-R-491 and Decision No. 791-R-1995, both dated November 28, 1995, which determined that certain tariff provisions contained in VIA Rail Canada Inc.'s Special Local and Joint Passenger Tariff 1, NTA 1, section 13-D constitute an undue obstacle to the mobility of persons with disabilities.

The appellant alleges that:

- the Agency erred in law or exceeded its jurisdiction in finding that section 13-D of the Special Local and Joint Passenger Tariff 1, NTA 1, constituted an undue obstacle to the mobility of disabled persons under subsection 63.3(3) of the *National Transportation Act*, *1987*;
- the Agency erred in law in that it failed to take into account the goal of economic efficiency in the provision of a viable and effective passenger rail service, as mandated by the National Transportation Policy set out in subsection 3(1) of the *National Transportation Act*, *1987*;
- the Agency erred in law in its interpretation of the terms of the *Personnel Training for the Assistance of Persons with Disabilities Regulations*, SOR/94-42; and
- the Agency erred in law in its interpretation of paragraphs 128(2)(*a*), (*b*) and 125(*q*) of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

The appeal has yet to be heard.

The Municipality of Metropolitan Toronto
v. Canadian National Railway Company

Federal Court of Appeal
File: A-1029-96

On November 26, 1996, the Municipality of Metropolitan Toronto was granted leave to appeal Canadian Transportation Agency Order No. 1996-R-358 and Decision No. 482-R-1996, both dated August 29, 1996, which ordered that the costs of installation and future maintenance of the fencing along Canadian National Railway Company's right-of-way and track of a portion of the Bala Subdivision, in the Municipality of Metropolitan Toronto, should be shared equally between Canadian National and the Municipality.

The appellant cites the following grounds for appeal:

- the Agency erred in law or jurisdiction by ordering the apportionment of costs pursuant to section 16 of the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.), in that the fencing was not a "railway work" as defined in section 4 of that Act; and
- the Agency erred in law or jurisdiction by making the aforesaid order, in that the Municipality was not a "person who stands to benefit" from the completion of the fencing, pursuant to section 16.1 of the *Railway Safety Act*.

The appeal has yet to be heard.

Appendix B:

Major Regulatory Initiatives

(Reference to this Appendix was made on page 4 of the Introduction.)

Cost Recovery Regulations - Proposed New Regulations

Pursuant to the government's policy on "External User Charges for Goods, Services, Property, Rights and Privileges," and pursuant to subsection 34(1) of the *Canada Transportation Act*, the Agency intends to implement regulations to charge carriers and other parties fees for some functions of the Agency.

Adoption of this initiative would reduce the government's net cost of providing some services. The Agency will consult carriers and other interested parties before prepublishing any proposal in Part I of the *Canada Gazette*.

Designated Provisions Regulations - Proposed New Regulations

The *Canada Transportation Act* contains general enforcement provisions that include the authority to impose administrative monetary penalties as a consequence of a person's failure to comply with a legal requirement.

These regulations will specifically designate which provisions of the Act, regulations, order or directive made pursuant to this Act, or any condition of a licence issued under this Act, will be subject to administrative monetary penalties, as well as the penalties to be imposed for each violation. The statute sets out a maximum penalty of $25,000 in the case of a corporation, and of $5,000 in the case of an individual.

This initiative will improve compliance, more effectively deter violations, and result in more cost-efficient enforcement. Further, the initiative is necessary to ensure that the Agency continues to meet its regulatory enforcement responsibilities.

General Rules

As a result of the coming into force of the *Canada Transportation Act*, the *General Rules*, which set out the procedures to be used by parties appearing before the National Transportation Agency, require amendment to bring them into accordance with the legislation.

During the reporting period, consultations were conducted with transportation companies, transportation-related associations and transportation lawyers for each mode.

As a result of the coming into force of the Act, the Agency is in the process of revoking a number of existing regulations.

AIR

Air Transportation Regulations - Proposed Amendments

The Agency is examining international charter provisions in the *ATR* as part of the government's review of existing regulations to ensure that the use of the government's regulatory powers results in the greatest possible prosperity for Canadians.

The Agency intends to streamline the *ATR* to reduce the regulatory burden. The Agency intends to simplify and consolidate the *ATR* and, where appropriate, to make the regulations on international charters more consistent with Canada-U.S. charter provisions. With respect to tariffs, the Agency intends to address changing industry practices.

The insurance provisions of the *ATR* are also being reviewed. Consultations have taken place with selected air carriers, government departments and agencies, insurance underwriters, and air carrier associations. It is anticipated that this review will result in amendments being made to ensure that those affected by aircraft accidents will receive just and reasonable compensation.

Further to the amendments to the regulations which were published in Part II of the *Canada Gazette* on July 24, 1996, amendments will also be made to incorporate comments received within the 60-day period and to correct typographical and clerical errors.

RAIL

Railway Costing Regulations - Proposed Amendments

These regulations govern the format under which railway cost submissions must be filed with the Agency. This initiative to amend the regulations is intended to remove redundant legislative references, and to make the regulations conform with the new *Canada Transportation Act*, revised costing practices, and document filing requirements that are being developed in accordance with the new Act's thrust toward simplification of procedures.

These revisions to the regulations will ensure a uniform framework for use in determining railway costs for various applications brought before the Agency, including cost adjustments to maximum grain rates; the development of interswitching rates; the 1999 statutory review of the impact of the new Act on the efficiency of grain handling and transportation; cost-based rate and service complaints; and certain competitive access provisions. Implementing these amendments will benefit the railways by simplifying reporting requirements, and by reducing the resources needed to file information with the Agency. The Agency will consult with interested parties in the development of the amendments.

Uniform Classification of Accounts - Proposed Amendments

This regulation prescribes a uniform accounting system for CN and CP, for the purposes of submitting costing, revenue and expense information to the Agency. It is designed to ensure a consistent manner of reporting railway data to the Agency. Accounts may also be prescribed for any other railway within the legislative authority of Parliament.

Consequential amendments will be required to ensure that this regulation conforms with the new *Canada Transportation Act*. Amendments may also be required to reflect changes in railway costing procedures that are under development.

Railway Interswitching Regulations - 1997 Rate Adjustment

The *Canada Transportation Act* requires that railway companies perform interswitching; that is, transfer the traffic of a shipper to the lines of a railway other than one serving the shipper directly, whenever this shipper is located within 30 km of a connection or interchange with a second railway. This regulatory initiative is intended to establish the charges a railway may impose for performing interswitching during the 1997 calendar year.

The amended rates will ensure that railways performing interswitching in 1997 are adequately compensated for the costs of providing the service, and that shippers will have access to the services of a second railway at a price that will not impede the transfer of traffic from one railway company to another.

ACCESSIBLE TRANSPORTATION

Personnel Training for the Assistance of Persons with Disabilities Regulations - Proposed Amendments

These regulations prescribe training which personnel working in the transportation network must undergo to ensure that travellers with disabilities have access to a consistent level of service. The Agency proposes to make minor amendments to these regulations, primarily to clarify to which carriers and terminal operators they apply.

The Agency will consult mainly with: organizations of and for persons with disabilities; domestic carriers and their associations; terminal operators; provincial and federal government departments having an interest in persons with disabilities; central agencies; and other interested persons. Other stakeholders will be made aware of the Agency's plans through distribution of a notice for comment.

The Agency also intends to develop a number of guidelines in the area of accessible transportation.

Appendix C:

Shipping Conferences Serving Canada

(Reference to this Appendix was made on page 56 of Chapter Three.)

Shipping Conferences Serving Canada Via East Coast Ports

CONFERENCE	SCOPE OF OPERATION	MEMBER LINES	PORT OF CALL
Canadian Continental Eastbound Freight Conference	Belgium, France, Germany and the Netherlands	Atlantic Container Line Canada Maritime Cast Limited (1983) Hapag-Lloyd OOCL	Halifax Montreal Montreal Halifax Montreal
Continental Canadian Westbound Freight Conference	Belgium, France, Germany and the Netherlands	Atlantic Container Line Canada Maritime Cast Limited (1983) Hapag-Lloyd OOCL	Halifax Montreal Montreal Halifax Montreal
Canada-United Kingdom Freight Conference	United Kingdom	Atlantic Container Line Canada Maritime Cast Limited (1983) Hapag-Lloyd OOCL	Halifax Montreal Montreal Halifax Montreal
Canadian North Atlantic Westbound Freight Conference	United Kingdom	Atlantic Container Line Canada Maritime Cast Limited (1983) Hapag-Lloyd OOCL	Halifax Montreal Montreal Halifax Montreal
American West African Freight Conference	Inbound/outbound conference serving West African ports and interior points	America-Africa-Europe Line Maersk Line SITRAM Torm West Africa Line Westwind Africa Line Wilhemsen Line Farrell Lines	U.S. ports Halifax U.S. ports U.S. ports U.S. ports U.S. ports U.S. ports

Shipping Conferences Serving Canada Via East Coast Ports

CONFERENCE	SCOPE OF OPERATION	MEMBER LINES	PORT OF CALL
The "8900 Lines" Agreement	Middle East ports in Bahrain, Iraq, Iran, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates	Maersk Line Sea-Land	Halifax Halifax/U.S. ports
Canadian Westbound Rate Agreement (CWRA)	The Commonwealth of Independent States, Hong Kong, Indonesia, Korea, Malaysia, the People's Republic of China, the Philippines, Singapore, Taiwan, Thailand, Japan (CWRA only), and outports to Brunei, Kampuchea, Laos and Vietnam	American President Line Maersk Line "K" Line Mitsui OSK Lines Neptune Orient Lines N.Y.K. Line OOCL Sea-Land	MLB/Vancouver Halifax U.S. ports U.S. ports Halifax Halifax MLB/Vancouver MLB/Long Beach
Japan-East Canada Freight Conference	Japan	Mitsui OSK Lines N.Y.K. Line	U.S. ports Halifax
Canada/Australia-New Zealand Association of Carriers	Australia, New Zealand	Blue Star Line (North America) Ltd. Columbus Line Ocean Star Container Line Wilhemsen Line	Halifax/U.S. ports Halifax/U.S. ports Halifax Halifax
East Canada South American Rate Agreement	Inbound/outbound conference serving Argentina, Brazil, Paraguay, Uruguay	Alianca S.A. American Transport Lines Columbus Line Ivaran Lines Nacional Line	U.S. ports U.S. ports Halifax/U.S. ports U.S. ports U.S. ports
Canada Caribbean Shipowners Association	Inbound/outbound conference serving various ports in the West Indies, Belize and Honduras	Bernuth Lines Seabord Marine TEC Marine Trailer Marine Transport Co. Tropical Shipping and Construction Company, Ltd. USA TEC Marine Inc.	U.S. ports U.S. ports U.S. ports U.S. ports U.S. ports U.S. ports

Shipping Conferences Serving Canada Via East Coast Ports

CONFERENCE	SCOPE OF OPERATION	MEMBER LINES	PORT OF CALL
Mediterranean Canadian Freight Conference	Inbound/outbound conference serving Italy, Spain and some French Mediterranean ports	Canada Maritime	Montreal
		CAST Europe	Montreal
		DSR-Senator Lines	Montreal
		Jadroplov	Montreal
		Zim Israel Navigation	Halifax
Canadian Common Tariff Conference	Caribbean/ South American Countries	Bernuth Lines Ltd.	U.S. ports
		Cari-Freight Shipping Co., Ltd.	U.S. ports
		Compagnie Générale Maritime (CAGEMA)	U.S. ports
		Crowley American Transport	U.S. ports
		Seaboard Marine, Ltd.	U.S. ports
		Seafreight Line, Ltd.	U.S. ports
		Tecmarine Lines, Ltd.	U.S. ports
		Tropical Shipping and Construction Company, Ltd.	U.S. ports

Shipping Conferences Serving Canada Via West Coast Ports

CONFERENCE	SCOPE OF OPERATION	MEMBER LINES	PORT OF CALL
Canada Westbound Rate Agreement (CWRA)	The Commonwealth of Independent States, Hong Kong, Indonesia, Korea, Malaysia, the People's Republic of China, the Philippines, Singapore, Taiwan, Thailand, Japan (CWRA only), and outports to Brunei, Kampuchea, Laos, Vietnam	American President Lines Maersk Line "K" Line Mitsui OSK Lines Neptune Orient Lines N.Y.K. Line OOCL Sea-Land	U.S. ports Vancouver/U.S. ports Vancouver Vancouver Vancouver Vancouver Vancouver U.S. ports
Japan-West Canada Freight Conference	Japan	"K" Line Mitsui OSK Lines	Vancouver Vancouver
Australia/Canada Container Line Association	Australia	Blue Star PACE Columbus Line Australia New Zealand Direct Line	Vancouver U.S. ports U.S. ports
New Zealand/Canada Container Lines Association Conference Agreement	New Zealand	Blue Star PACE Columbus Line Australia New Zealand Direct Line	Vancouver U.S. ports U.S. ports
Mediterranean North Pacific Coast Freight Conference	Inbound/outbound conference serving ports in Mediterranean and Black Sea, Atlantic coast of Spain, Portugal and Morocco	d'Amico Line Italia Line Zim Israel Navigation	U.S. ports U.S. ports U.S. ports
New Zealand/Pacific Coast North American Shipping Lines	New Zealand	Blue Star PACE Columbus Line	Vancouver U.S. ports

Appendix D:

Members of the Agency's Accessibility Advisory Committee

(Reference to this Appendix was made on page 59 of Chapter Four.)

Canadian Association of the Deaf
Canadian Association for Community Living
Canadian Council of the Blind
Canadian Hard of Hearing Association
Canadian National Institute for the Blind
Canadian Paraplegic Association
Confédération des organismes de personnes handicapées (COPHAN)
Council of Canadians with Disabilities
Niagara Centre for Independent Living
One Voice Seniors Network (Canada) Inc.
Transportation Action Now

Air Transport Association of Canada
Association québécoise des transporteurs aériens inc.
Bombardier
Canadian Ferry Operators Association
Marine Atlantic
Railway Association of Canada
VIA Rail Canada Inc.
Transport Canada