



CANADIAN
TRANSPORTATION
AGENCY

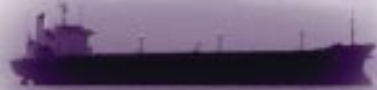
1994

1995

1993



1996



1997

1998



ANNUAL REPORT

1999

Moving *with the*
Times



2000

2001

2003

2002

Canada

Mission Statement

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

www.cta.gc.ca





May 2000

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

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour of presenting to you the Annual Report of the Agency for the year 1999, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

Yours sincerely,

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

Marian L. Robson



ANNUAL REPORT

1999

Moving *with the*
Times



CANADIAN
TRANSPORTATION
AGENCY

©Minister of Public Works and
Government Services Canada, 2000
Printed and bound in Canada

ISBN 0-662-64967-2
Catalogue No. TWI-1/1999

This Annual Report and other Agency publications are
available on the CTA Web site www.cta.gc.ca

For more information about the Agency and its programs
you can also call: (819) 997-0344
(toll free: 1-888-222-2592)

Correspondence to be addressed to:

Canadian Transportation Agency
Jules Léger Building
15 Eddy Street
Hull, Quebec
K1A 0N9

This publication is available in alternative formats.

| | |
|---|----|
| Members of the Canadian Transportation Agency | iv |
| Chairman's Message | v |
| Executive Summary | vi |
| | |
| CHAPTER 1 | |
| Moving with the Times | 1 |
| Introduction | 1 |
| | |
| CHAPTER 2 | |
| Agency Activities in 1999 | 5 |
| Marine Transportation | 5 |
| Rail Transportation | 9 |
| Air Transportation | 20 |
| Accessibility for Persons with Disabilities | 31 |
| | |
| CHAPTER 3 | |
| Assessment of the Operation of the Act | 43 |
| Time for Making Decisions | 43 |
| Rail Transportation | 44 |
| Air Transportation | 49 |
| Conclusion | 50 |
| | |
| CHAPTER 4 | |
| Looking Ahead | 51 |
| | |
| APPENDICES | |
| 1: Statutes and Regulations in Force in 1999 | 55 |
| 2: The Agency's Organizational Structure | 56 |
| 3: Cases Before the Supreme Court of Canada, the Federal Court, and Petitions to the Governor in Council | 59 |
| 4: Agency Advisory Committee and Working Group Participants | 63 |
| 5: Canada's Federal Railway Companies as of December 31, 1999 | 64 |



CANADIAN TRANSPORTATION AGENCY

Marian L. Robson*
Chairman
Ottawa, Ontario
Former port executive,
railway manager and
former Member
National Transportation
Agency

Jean Patenaude*
Vice-Chairman
Montreal, Quebec
Former advisor to
Transport Canada and
railway general counsel

Keith Penner*
Member
Ottawa, Ontario
Former Member of
Parliament for Cochrane-
Superior and former
Member National
Transportation Agency

Richard Cashin*
P.C., O.C., LL.D
Member
St. John's,
Newfoundland
Lawyer, and Past
president and founder,
Newfoundland
Fishermen's Union

Mary-Jane Bennett***
Member
Winnipeg, Manitoba
Lawyer, and active
member of various
boards and committees

Gilles Dufault***
Member
Verdun, Quebec
Former Via Rail executive
and business strategy
consultant

Michael A. Sutton**
Member
Willowdale, Ontario
Former Chair, City of
Toronto Planning Board
and telecommunications
executive

MEMBERS

* appointed July 1, 1996
** appointed December 22, 1997
*** appointed January 20, 1998

In its third full year of operation, the Canadian Transportation Agency faced a fascinating and constantly changing environment. It continued to work closely with Canadian transportation providers and users to keep the country's transportation system efficient and accessible in the midst of change. And, in its quasi-judicial role, the Agency made decisions on a number of cases that will have far-reaching effects on Canada's transportation industry.

This annual report details the Agency's activities in 1999. It also looks ahead to describe future Agency activities and issues the Agency expects to face in 2000 and beyond. In addition, as the *Canada Transportation Act* requires, this report provides the Agency's assessment of the operation of the Act. This assessment should prove useful to the Minister of Transport during the statutory review of the Act, which is expected to begin in summer 2000.

As a fair and transparent regulator and as a quasi-judicial tribunal, the Agency plays a valuable role in Canada's transportation sector. It helps providers and users resolve disputes efficiently outside the court system, using regulation only when necessary.

I believe that the Agency has adapted well to changing conditions in Canada's rapidly evolving transportation sector. It is, I feel, well positioned to continue carrying out the government's transportation policies and providing a forum for resolving transportation-related disputes. As the Agency moves into the next phase of its life with the upcoming review of the Act, I am confident that it will continue to move with the times.

Marian L. Robson

EXECUTIVE SUMMARY

During the four-year history of the *Canada Transportation Act* (the Act), the Canadian transportation sector has continued to evolve. The Canadian Transportation Agency has adapted to these changing needs and times in an effort to assist the Canadian transportation industry and its users.

The Agency is an independent, quasi-judicial, administrative tribunal responsible for making decisions on a wide range of matters affecting Canadian transportation in the air, rail and marine sectors. It has the authority to resolve various rate, service, and other types of transportation complaints, and can encourage parties to resolve disputes informally when appropriate.

In addition, among other activities, the Agency issues licences to air carriers and certificates of fitness to railways; acts as the aeronautical authority for Canada on matters related to the economic regulation of air carriers; and orders the removal of undue obstacles to the mobility of persons with disabilities within the federally regulated transportation network.

The Agency's responsibilities are many and varied. Subsection 42(1) of the *Canada Transportation Act* requires the Agency to report annually on its activities. A full description appears in Chapter 2 of this report. This year, the Agency's major activities included

- reviewing the marine pilotage system;
- providing input to recommendations for reforming the grain handling and transportation system;
- providing advice to assist in developing legislation to respond to a possible merger between Air Canada and Canadian Airlines;
- informing persons with disabilities and seniors about accessibility in travel;
- releasing the Code of Practice for Ferry Accessibility for Persons with Disabilities;
- ensuring that air carriers had adequate liability insurance to handle any Y2K-related claims;
- implementing an administrative monetary penalties program; and
- laying the foundation for a new alternative dispute resolution system.

Subsection 42(2) of the Act requires the Agency to assess the operation of the Act. Chapter 3 of this report provides an assessment of the difficulties the Agency has encountered in the administration of the Act, which include concerns that

- time limits for making decisions, specified in the Act, may give the Agency or other parties insufficient time to resolve issues;
- procedural matters raised during the final offer arbitration process may jeopardize the ability to conclude a fair process;

- the definition of a “federally regulated railway” is unclear;
- the transfer and discontinuance provisions for railway lines may hamper continuation of railway service, the railways’ ability to dispose of their lines and obligations within a reasonable time frame, or the ability of municipalities to acquire railway lines for any purpose; and
- the provisions under the law governing the advertising, sale and discontinuance of certain air services may need slight revisions.

This Agency annual report is the last one to be tabled in Parliament before the Minister of Transport begins his statutory review of the Act, which is expected to start in summer 2000. The information in Chapter 3 should prove valuable to the Minister during this exercise.

As well as summarizing the past year, this annual report also describes activities the Agency plans to undertake in the near future. Outlined in Chapter 4, these activities include

- its involvement with the upcoming review of the Act;
- administering fee disputes between port authorities and port users;
- conducting a new survey of travellers with disabilities, to get a clearer picture of how well the transportation system responds to their needs;
- modifying its role regarding air transportation to reflect changes in the Act;
- continuing to develop and implement an alternative dispute resolution mechanism;
- supporting the federal government’s efforts to improve access and service using innovative information technologies; and
- updating its strategic plan.

In its third full year of operation, the Agency kept abreast of change in the transportation sector. In its actions and decisions, it was sensitive to changes as they occurred in the international arena and across Canadian society as a whole. As the Agency heads into 2000, it will continue to cross the country to listen to the views of transportation providers and users, and will continue to urge Canadians to provide feedback through surveys, newsletters, toll-free telephone lines, the Internet and other means. By using the tools available to it, the Agency will continue to help the transportation sector respond to challenges sweeping across the industry. It will also continue to help users of the transportation system make their needs known and resolve differences with service providers.

The Agency remains committed to constantly building on its transportation knowledge base. This expertise will serve it well as it works towards an efficient, accessible transportation network for all Canadians – as it continues to move with the times.

Moving with the Times

1999 was the Canadian Transportation Agency's third full year of operation and a year that saw great changes to Canada's transportation sector.

INTRODUCTION

In 1999, the Canadian Transportation Agency's third full year of operation, the Agency continued to refine the way it administers the provisions of the *Canada Transportation Act* (the Act). It made further progress in using education and consultation to support its role as a transportation regulator and administrative tribunal. In addition, it responded to many changes in the rapidly evolving transportation sector.

- Throughout the year the Agency conducted extensive consultations and submitted a series of recommendations to the Minister of Transport for improvements to the marine pilotage system.
- The Agency ensured that all licensed Canadian and foreign air carriers continued to maintain adequate liability insurance that would not be affected by Y2K-related claims, in accordance with the Act.
- The Agency increased its efforts to inform seniors about accessibility in travel, as part of the International Year of Older Persons.
- In June, the Agency prepared *A Report on the Movement of Western Grain*, for use in Mr. Arthur Kroeger's review of the grain transportation and handling system in Canada.
- Also in June, the Agency released its third voluntary code, the Code of Practice for Ferry Accessibility for Persons with Disabilities.
- In the fall, proposals were made to restructure Air Canada and Canadian Airlines International. Agency staff worked with Transport Canada staff in developing appropriate legislation to respond to such a merger.
- In November, the Agency's new administrative monetary penalties came into force, allowing the Agency to better tailor sanctions for non-compliance with air transportation regulations to the nature of the violation.
- In concert with certain clients, and as part of a government-wide initiative, the Agency began exploring alternative dispute resolution (ADR) as a less formal way to settle disputes. It established an ADR Advisory Committee, with representatives from industry, to help it design an ADR system and conduct a pilot project.

- In December, the Agency received its first complaint regarding port fees under the new provisions of the *Canada Marine Act*.

MANDATE

The Agency is an independent, quasi-judicial, administrative tribunal responsible for making decisions on a wide range of matters affecting Canadian transportation. The Agency's mandate to make decisions extends to issuing licences to air carriers and certificates of fitness to rail carriers, and includes a dispute resolution authority over some transportation rate and service complaints. The Agency is also the aeronautical authority for Canada on matters related to the economic regulation of air carriers. Within the federally regulated transportation network, the Agency has the authority to remove undue obstacles to the mobility of persons with disabilities.

The Agency is an economic regulator and uses its regulatory authority in conjunction with its dispute resolution powers. Where appropriate, the Agency encourages parties to resolve disputes informally. Because its investigative and adjudicative powers are largely complaint driven, the Agency has taken steps to help more shippers, carriers, travellers, municipalities and others affected by federal transportation to fully understand the Agency's roles and responsibilities, and their rights under the Act. Therefore, its communications and consultation activities are an important facet of the Agency's work. The Agency has made concrete efforts to explain the workings of Canada's transportation legislation and to describe the Agency's processes to Canadians. The Agency also asks for and listens to opinions on regulatory changes that will affect the transportation industry.

AGENCY PROCESSES AND STRUCTURE

The Chairman (who serves as chief executive officer), the Vice-Chairman, five other Members and 245 staff make up the Agency.

Complaints drive many of the Agency's processes, so the Agency has developed a way to handle complaints quickly, effectively and fairly. A panel of at least two Members determines how to deal with each application or complaint. Once all parties have filed their pleadings, Agency staff do any analysis required. The Members consider the matter from economic, legal and operational perspectives, then issue a decision. Under the Act, this decision-making process must take no longer than 120 days, unless the parties agree to an extension. Anyone may request copies of these decisions, as well as rules, orders and regulations. Most decisions and orders are also available on the Agency's Web site at www.cta.gc.ca.

The Agency uses its regulatory authority in conjunction with its dispute resolution powers.

The *Canada Transportation Act* outlines the Agency's primary legislative responsibility. The Agency also shares responsibility with other government departments and agencies for a number of other acts, including the *Canada Marine Act*, the *Pilotage Act*, the *Canadian Environmental Assessment Act*, the *Coasting Trade Act* and the *Railway Safety Act*. It is also solely or partly responsible for various regulations related to these acts (see Appendix 1).

The Agency is divided into four branches, which support and advise the Agency Members: the Air and Accessible

Transportation Branch; the Rail and Marine Branch; the Legal Services and Secretariat Branch; and the Corporate Management Branch (see Appendix 2 for an organizational chart).

Most Agency decisions and publications are available on its Web site at www.cta.gc.ca.

The Air and Accessible Transportation Branch processes licenses and charter permit applications from Canadian and foreign air carriers, and is involved in enforcing Agency licensing requirements. It also helps negotiate and implement international air agreements, and administers international air tariffs. The branch handles general consumer complaints related to air travel. In addition, this branch helps to ensure that all modes of federally regulated transportation are accessible to persons with disabilities, and deals with accessibility complaints related to air, rail, marine or extraprovincial bus travel.

The Rail and Marine Branch deals with rate and service complaints arising in the rail and marine industries, as well as disputes between railway companies and other parties over railway infrastructure matters. It also processes applications for certificates of fitness for the proposed construction and operation of railways. As well, it helps the Agency determine regulated railway interswitching rates and the maximum rate scale for the movement of western grain; assists in developing costing standards and regulations; and audits railway companies' accounting and statistics-generating systems, as required.

The Legal Services and Secretariat Branch publishes and distributes the Agency's decisions and orders; in 1999, the Agency issued 729 formal decisions and 632 orders. It also provides legal advice within the Agency and represents the Agency before the courts. Branch staff also assist with the conduct of Agency meetings and hearings, and help develop and apply Agency procedures and regulations. See Appendix 3 for a list of Agency decisions appealed to the Federal Court in 1999.

The Corporate Management Branch supports the overall function of the Agency by providing corporate services related to human resources, planning, finance, informatics, the library and records.

COMMUNICATING WITH CANADIANS

Communications is an important part of the Agency's activities. The goal of the Agency's communications strategy is to ensure that Canadians interested in transportation understand their rights, their obligations and the Agency's role under the *Canada Transportation Act*, other federal legislation and the regulatory framework they provide. Agency staff regularly look for new opportunities for Agency staff and Members to meet with transportation users and providers across Canada to exchange information with them. Members and staff consult with shippers, carriers, trade associations and other levels of government to discuss issues of concern and potential solutions; participate as guest speakers or panel members at national or international transportation events; and develop and distribute guidelines on a variety of issues to assist those who may interact with the Agency, now or in the future.

The Agency publishes brochures and booklets; it sends out news releases and responds to requests for information; it operates a Web site; and the Agency participates in events across Canada to meet face-to-face with Canadians and answer their questions directly. Speeches, toll-free numbers and seminars are other ways the Agency gets its message out. Because the Agency has diverse audiences with varying needs, it provides its information in many formats, including paper, electronic, braille and audiocassette formats.

In addition to sending each decision and order to the parties involved, the Agency's Secretariat sent them to interested law firms, companies and individuals who subscribe to a list maintained by the Agency. The Agency also distributed its 1998 Annual Report to Canadians and other interested parties the world over.

The Head of the Public Service Award

In 1999, Accessible Transportation Directorate (ATD) staff were nominated for the Head of the Public Service Awards. The purpose of the award is to recognize people within the federal public service "whose outstanding leadership, creativity and commitment make possible the effective administration of our democratic system of government." In the document nominating ATD for the Excellence in Policy category, it noted that the ATD makes policy relevant to Canadians by taking innovative and bold approaches to bring policy-making as close as possible to those affected. The nomination, supported by letters of endorsement from the Air Transportation Association of Canada, the Government of Newfoundland, and the Canadian Paraplegics Association, noted how the ATD consults fully and openly.

AGENCY MANAGEMENT

In 1999, the Agency continued to foster its ability to respond to a changing transportation environment. As part of its strategic plan, the Agency regularly monitored the activities it undertook to achieve its objectives. It made progress on all fronts. For example, an important component of the strategic plan is to establish itself as a facilitator in the Canadian transportation system. The Agency has maintained its efforts to do so.

In its internal management, the Agency, like other government departments, participated in the Universal Classification System (UCS), which seeks to simplify and make consistent the way work is described and valued within the federal public service. As well, it successfully ensured that its information systems greeted the year 2000 with minimal disruption to users. It also continued to build on the expertise and dedication of its employees.

THE 1999 ANNUAL REPORT

The Agency's annual report provides a record of the Agency's work and responds to the requirements of the Act.

Chapter 2 describes the Agency's activities in 1999.

Chapter 3 discusses the operation of the Act and difficulties the Agency has encountered in administering the Act.

Chapter 4 outlines the issues the Agency expects to face in the near future.

Agency Activities in 1999

This chapter summarizes the Agency's work in the past year. For additional information, including the text of Agency decisions, please visit the Agency's Web site at www.cta.gc.ca.

MARINE TRANSPORTATION

The Agency acts as an economic regulator for certain marine activities. Through its powers and often in response to a complaint, the Agency determines whether tariffs, tolls and fees are unjust, unreasonable, discriminatory or prejudicial to the public interest. The Agency also protects the interests of Canadian vessel operators when dealing with applications to use foreign vessels in Canada, while allowing foreign equipment to be used when suitable Canadian vessels are not available.

CANADA MARINE ACT

The 1998 *Canada Marine Act* (CMA) modified the structure and regulation of the marine industry in several ways. Notably, it established port authorities, divested certain ports and harbours, commercialized the St. Lawrence Seaway, amended the *Pilotage Act*, and resulted in other changes related to maritime trade and transport.

Ports

The CMA created new administrative structures for major ports in Canada.

These new entities can establish fees for using their infrastructure and facilities, and for the services they offer. If the Agency receives a complaint that a fee is unjustly discriminatory, it has a mandate to investigate.

The 1998 Canada Marine Act (CMA) modified the structure and regulation of the marine industry in several ways.

In December 1999, Halterm Limited filed a complaint with the Agency, alleging that the Halifax Port Authority had breached its obligations under sections 49 and 50 of the CMA. This new section of the CMA prohibits port authorities from unjustly discriminating among users of the port, giving an undue or unreasonable preference, or subjecting them to an undue or unreasonable disadvantage. The Port of Halifax will respond to this complaint in 2000, and then the Agency will investigate the complaint.

St. Lawrence Seaway

The CMA gave the Minister the authority

to enter into contracts with the St. Lawrence Seaway Management Corporation (SLSMC), which took over operational responsibility for the Great Lakes–St. Lawrence Seaway system. The SLSMC can establish its own fees for the use of any property, service, right or privilege. It must file these tariffs with the Agency, which can investigate any allegations that a fee is unjustly discriminatory. The Agency did not receive any complaints on this matter during 1999.

Federal Bridge Corporation

The CMA abolished the St. Lawrence Seaway Authority, which had managed a number of high-clearance bridges spanning the St. Lawrence River that were not related to Seaway navigation. The CMA transferred this function to the new Federal Bridge Corporation. Its two subsidiaries – the International Bridge Corporation, and the Jacques Cartier and Champlain Bridges Corporation – manage several federal bridges and other properties. If the Agency receives a complaint that a fee set by a bridge corporation is unjustly discriminatory, it can examine it. In 1999, the Agency did not receive any complaints regarding fees set by the bridge corporations.

PILOTAGE ACT

Pilotage authorities establish their tariffs under the *Pilotage Act*. Anyone who believes the proposed tariffs are prejudicial to the public interest may file an objection with the Agency, within 30 days of the tariff's publication in the *Canada Gazette*. The Agency must then investigate the complaint and issue a decision within 120 days, unless the parties agree to an extension.

The Atlantic Pilotage Authority published a proposed tariff in December 1998 to increase pilotage charges in non-compulsory areas of Newfoundland and Labrador by 3 percent. In January 1999, the Newfoundland and Labrador Department of Works, Services and Transportation objected to the proposal on the basis that, given economic conditions and the financial stability of the Authority, the proposal should not be approved. In May 1999, the Agency decided that the tariff proposal was not prejudicial to the public interest, since the Authority's managerial initiatives should result in economic efficiency and financial self-sufficiency.

During 1999, the Great Lakes Pilotage Authority and the Laurentian Pilotage Authority filed tariff proposals that were not contested. An objection was received on a Pacific Pilotage Authority tariff but was later withdrawn. Therefore, the Agency did not carry out any investigations regarding these tariff proposals.

SHIPPING CONFERENCES EXEMPTION ACT, 1987

The Agency administers the *Shipping Conferences Exemption Act, 1987*. If the cartels of container shipping lines known as "shipping conferences" set common tariffs and conditions of service, and comply with certain filing and other requirements, this Act exempts them from the application of the *Competition Act*. Anyone who feels that a conference agreement or practice has unreasonably reduced transportation service or unreasonably increased transportation costs may file a complaint with the Agency. The Agency received no such complaints in 1999.

MARINE PILOTAGE REVIEW

The *Pilotage Act* establishes the Atlantic, Laurentian, Great Lakes, and Pacific Pilotage Authorities. Each of these is a Crown corporation with a statutory responsibility to provide a safe and efficient pilotage service in its geographic region.

Marine pilotage has long been a complex and controversial subject. It has been the topic of six commissions, and numerous inquiries and studies. Although legislative changes were made in the past some issues were unresolved and new issues have arisen. Under Part 7 of the CMA, the Minister of Transport was required to review specific pilotage issues, namely the pilot certification process for masters and officers; training and licensing requirement for pilots; compulsory pilotage area designations; dispute resolution mechanisms; and measures related to financial self-sufficiency and cost reduction. In August 1998, the Minister appointed the Agency to conduct the review in accordance with his terms of reference.

The review included extensive consultations with hundreds of interested parties, including the pilotage authorities, pilots, associations representing shipping lines and shippers, officials from the federal and provincial governments, and other users with an interest in pilotage. These consultations included one-on-one meetings in the regions with specific parties, as well as regional group meetings. The panel visited each region three times. In addition, two national meetings of all parties were held in the National Capital Region.

At the outset of the review, parties had very entrenched positions regarding marine pilotage. Some shippers and shipowners disagreed with the monopolistic structure of the pilotage authorities and advocated commercializing or privatizing pilotage. Some Canadian shipowners felt

strongly that the Canadian marine fleet should be exempted from pilotage because of the skill level of Canadian masters and the advanced technology used on ships. Most parties believed that the designation of compulsory waters for pilotage in the four regions was not based on sound criteria.

In addition to these issues, which were common to all pilotage areas, parties raised many controversial issues particular to specific regions, such as certification in the Laurentian region and coast-wide pilotage service in the Pacific region.

Throughout the consultation process, the panel noted that parties were willing to work towards acceptable solutions through compromise in order to arrive at a consensus acceptable to all. This enabled the Agency to produce a report containing 21 recommendations designed to improve the pilotage system for all parties. The Agency filed its report with the Minister in August 1999.

Recognizing that pilotage is regional by nature, the Agency decided to identify achievable solutions to problems in each pilotage region rather than to identify solutions that would apply in all pilotage regions. Its key recommendations included the following:

- adopt a risk-based methodology for designating compulsory waters;
- implement a pilot quality assurance program in all regions;
- adopt a modernized certification system in the Laurentian region;
- implement an enhanced exemption program for Canadian masters in the Great Lakes;
- adopt a risk-based assessment of vessel size limits and types of vessels subject to compulsory pilotage in the Laurentian and Atlantic regions; and
- encourage pilotage authorities to regularly consult with interested parties.

Section 157 of the CMA required the Minister to table a report in the House of Commons on outstanding pilotage issues. In November 1999, the Minister filed his report, which contained his endorsement of the Agency's 21 recommendations, a

copy of the Agency's report and letters of instruction to the four pilotage authorities. The Minister directed the pilotage authorities to comply with the Agency's recommendations within an established deadline.

COASTING TRADE ACT

Before any foreign vessel is used in the coasting trade of Canada, the Minister of National Revenue must issue a licence for it. However, the Minister of National Revenue cannot do so unless the Agency determines that no suitable Canadian vessel can provide the service or perform the activity described in the application. If the activity entails carrying passengers, the Agency must also determine that an identical or similar marine service is not available from any person operating one or more Canadian ships.

During 1999, the Agency received 117 coasting trade licence applications and approved 108 of them; only one decision was not in favour of a vessel importation. In the remaining eight cases, the applications were withdrawn. The Agency must often handle applications rapidly, sometimes within one to five days; it recognizes the time sensitivity of some requests and uses a flexible and balanced approach that meets the expectations of the marine industry and its users. In 2000, the Agency will commence a review of its industry guidelines on processing these applications and will consult with Canadian operators to discuss ways to best meet the industry's needs.

CANADIAN COAST GUARD

Under the provisions of the *Canada Shipping Act*, the Canadian Coast Guard certifies emergency response organizations and their activities relating to marine oil

spills. As part of the certification process, organizations must submit a list of fees, including the Bulk Oil Cargo Fee (BOCF). The Coast Guard received objections to the BOCF proposed by the Western Canada Marine Response Corporation (WCMRC) in British Columbia. The WCMRC and one objector corresponded until they reached an impasse on three financial issues requiring additional clarification. In February 1999 the Coast Canadian Guard, recognizing the Agency's expertise, asked professional audit staff from the Audit Services Section of the Agency's Rail and Marine Branch to analyze these three issues.

After analyzing the data and holding discussions with the parties, Agency staff submitted two reports to the Coast Guard in May 1999. One report listed the documents reviewed and the audit findings. The other contained confidential financial information and the auditor's detailed analyses. The confidential report helped Coast Guard staff develop their recommendations to the Minister on the appropriate treatment of the disputed items.

COMMUNICATING WITH CANADIANS

As previously described, the Agency conducted extensive communications across the country as part of the marine pilotage review. It also carried out many other communications activities during the year.

The Agency met with members of the marine industry several times over the last year at special events such as annual meetings of maritime associations. Pilotage review was often a topic, as were questions relating to the Agency's mandate in pilotage tariff investigations, shipping conference legislation and the coasting trade application process. Individuals representing the Canadian petroleum industry as well as marine brokers visited the Agency's head office to get an overview of the Agency's marine-related activities or to obtain specific information about applications for coasting trade activities, such as the use of large tankers to carry crude oil from Point Tupper to East Coast and Quebec ports.

Coasting Trade

During 1999, the Agency allowed a number of highly specialized vessels to come into Canada. Most of these were used for developing petroleum and gas resources off the east coast of Canada. The Agency received 20 applications to use various seismic survey and research vessels for exploration within our territorial limits and in the continental shelf zone off Nova Scotia and Newfoundland. The Sable Offshore Project and the installation of gas transmission facilities between Sable Island and Country Harbour, Nova Scotia, required the use of 25 foreign vessels including specialized cranes, rigs, offshore supply, and cable – and pipe-laying vessels.

Some in the coasting trade industry also foresee the development of a passenger vessel and cruise industry, especially along the St. Lawrence River, the Gulf of St. Lawrence, and the coast of Newfoundland. By using foreign vessels during the development stage, new opportunities for a Canadian passenger vessel industry to develop could be created. While benefiting the tourism industry immediately, this could in turn lead to increased opportunities for Canadian vessels in the future.

The Agency also held a familiarization meeting in the Toronto area, where Agency Members and staff met with the Toronto Port Authority and interested parties from the marine community to discuss the Agency's mandate. At this meeting, the discussion focussed primarily on the Agency's mandate regarding coasting trade, the review of outstanding pilotage issues and the Agency's new mandate under the *Canada Marine Act* regarding port fees. This exposure increased awareness of the Agency's role in marine transportation.

The Agency is able to keep close contact with other federal departments involved in the marine sector through its participation in various interdepartmental committees. For example, the Agency works with Industry Canada, Revenue Canada, Public Works, Citizenship and Immigration, Foreign Affairs, and the Coast Guard on both the Coasting Trade Ad Hoc Committee chaired by Transport Canada, and on the Interdepartmental Duty Remission Committee chaired by Finance.

RAIL TRANSPORTATION

The Agency is responsible for administering the provisions under the *Canada Transportation Act* and certain provisions under the *Railway Safety Act* dealing with railway companies and their operation. The Agency's rail branch concentrates on issues related to rail infrastructure, western grain and certain other cost-based rate regulations and rail complaints. These duties include:

- administering legislative provisions affecting rail line construction approval, railway certificates of fitness, and other railway infrastructure matters where municipalities, utility companies,

- landowners and the public interface with Canadian railways;
- determining maximum rate scales for the movements of western grain, and undertaking other statutory railway costing activities, such as establishing regulated interswitching rates; and
 - adjudicating competitive access and rate and service disputes between the railways and shippers.

RAIL INFRASTRUCTURE

Railway infrastructure is essentially a railway's right-of-way, trackage, supporting facilities, protective devices and other such physical aspects of railway operation. The Agency is involved with such infrastructure from the moment someone wishes to construct it or operate over it through its lifetime of operation to its eventual decommissioning.

Certificates of Fitness and Construction Approval

The Agency issues certificates of fitness when it is satisfied that a company proposing to construct or operate a railway has adequate liability insurance. The Agency may also vary existing certificates to reflect changes in railway operations, or suspend or cancel a certificate.

In 1999, the Agency issued new certificates to the Ferroequus Railway Company Ltd. and the Toronto Terminals Railway Company Ltd.; varied three existing certificates; and cancelled that of Consolidated Rail Corporation, whose Canadian operations were taken over by CSX Transportation Inc. An application from the Kelowna Pacific Railway Ltd. was under review at the end of 1999. A complete list of railways that have been granted federal certificates of fitness can be found in Appendix 5.

Subject to certain exclusions, the Agency must also approve the location of any new railway line to be constructed, including main lines, branch lines, sidings, spurs, yard tracks or auxiliary trackage. During the year, the Agency determined that the proposed construction of a Canadian Pacific Railway Company (CP) pre-tripping facility near Alliston, Ontario, was exempt from the Agency approval process, since the construction was to take place within the railway's existing right-of-way. Also approved was the construction of a Canadian National Railway Company (CN) spur near Rosetown, Saskatchewan, to serve grain facilities, as well as the construction of a CN intermodal facility in Edmonton, Alberta. In the latter case, the Agency determined that, for the purposes of approving the location for construction of railway lines, the definition of a "railway line" must include more than main lines and branch lines; it should encompass all types of trackage, including sidings along branch lines, spurs into shipper facilities, tracks to create or expand railway operational yards, and other auxiliary trackage. An appeal of this determination by CN to the Federal Court of Appeal was dismissed.

Railway infrastructure is essentially a railway's right-of-way, trackage, supporting facilities, protective devices and other such physical aspects of railway operation.

The Agency also received an application during the year to construct a CP siding across a CN siding in Windsor, Ontario. The Agency confirmed its jurisdiction over such matters but was not required to rule in this particular case as the CN siding was removed after the application was filed. A further application to the

EVOLUTION IN THE GRAIN INDUSTRY

The evolution of Western Canada's grain handling and transportation system has been shaped, to a large extent by federal government policies. In 1995, the federal government repealed the *Western Grain Transportation Act*, ending the government's subsidization of western grain rail transportation rates. The removal of the subsidy program resulted in farmers paying the full rate in moving grain to port. Recognizing the impact the loss of the subsidy would have on farmers and others involved in the Prairie agricultural sector, the government provided capital and other transitional funding totalling nearly \$2 billion in 1995 and 1996. Also in 1996, the federal government repealed the orders which had been put in place in the 1970s to protect Prairie branch lines from abandonment. This has allowed the railways to proceed with the transfer or abandonment of Prairie lines under the *Canada Transportation Act* provisions.

Prairie branch lines and grain company delivery points have been consolidated at the same time as a trend toward building large, concrete elevators on high-traffic rail lines and closing older, smaller elevators. This consolidation has been driven, at least in part, by the realization that service providers must reduce their costs in order to remain competitive.

In recent years, low commodity prices have meant that transportation and handling charges to farmers are taking up a greater proportion of the selling price of grain. Prairie grain farmers are keenly aware of the expense of moving their grain to port. Many have diversified into specialty crops or are exploring ways to add value by processing grain on the Prairies, with the result that quantities of more valuable commodities and products are shipped. Others are

reducing their total transportation and handling costs by using producer-loaded cars, or by moving grain to high throughput facilities to take advantage of lower freight or elevation charges. Still others are banding together to invest in handling facilities or short-line railways that they believe will ultimately reduce their costs.

The serious difficulties encountered in moving grain to port during the winter of 1996/1997 raised the profile of various weaknesses in the efficiency of the existing grain transportation system. This led the Minister of Transport to appoint retired Supreme Court of Canada Justice Willard Z. Estey to conduct a review of the grain handling and transportation system. Justice Estey's report, submitted to the government in December 1998, recommended sweeping changes to the grain handling and transportation system. He envisioned a commercially oriented system with appropriate safeguards to protect the public interest. In May 1999, the Minister appointed Mr. Arthur Kroeger to work with system participants to help develop the operational details of a more efficient and accountable system based on Justice Estey's vision.

As part of this facilitation process, Mr. Kroeger asked the Agency to estimate the current costs of transporting western grain by rail, and to assess the extent to which the railways shared their productivity gains with shippers. In July 1999, the Agency reported that the cost of rail transportation had fallen between \$4.78 and \$5.71 per tonne per kilometre between 1992 and 1998 to a level between \$25.79 and \$26.72 per tonne. As a result, the Agency estimated the contribution to constant cost to be between 39 and 43 percent. The Agency found that the railways had shared between 49 and 55 percent of their productivity gains since 1992 with the grain industry.

Mr. Kroeger provided his report to the Minister in September 1999. He used the results of the Agency's work as a basis for recommending a future cap on railway grain revenues, which the Agency would determine and monitor annually if implemented. Mr. Kroeger recommended that future revenue caps be derived from a base revenue cap for each railway set at a level 12 percent below the railways' 1998 grain revenues. If the government implements Mr. Kroeger's recommendations concerning railway competition, final offer arbitration and branch line abandonment, the Agency's responsibilities may be affected. At year-end, the government was considering its options in relation to these recommendations.

While the industry continues to redesign the handling and transportation system,

the Agency has, over the years, been involved in resolving disputes regarding railways' level of service to grain shippers. These disputes have included the Canadian Wheat Board's complaint about widespread delays in moving grain to ports in the winter of 1996/1997; a complaint about delays in providing a shipper with cars to move peas to Vancouver; and disputes relating to sites for loading producer cars.

System redesign, including the ongoing closure of grain-dependent branch lines, has prompted producer interests and local governments to create short-line railways. The Agency has been involved in determining the net salvage value of lines where the railway and the local government cannot agree on price.

Agency to construct a CP line across a CN line in Toronto was put on hold before the end of 1999, pending negotiations between the parties.

Infrastructure Disputes

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

In 1999, the Agency, through its decisions and orders, determined 16 disputes concerning road crossings of railways, 45 disputes concerning utility crossings of railways and two disputes concerning private crossings of railways. In addition, the Agency received 104 agreements filed by parties who had conducted their own successful negotiations in relation to railway crossings. The Agency also issued three decisions related to the apportioning of costs to railways and other parties

for railway safety protective devices, such as crossing signals.

The Agency also resolved a complaint concerning railway invoices that municipalities received for work that railway companies had performed related to railway crossings and protective devices. The Agency is currently examining construction and maintenance costs for crossings in consultation with railways, municipal associations and Transport Canada. Further to these consultations, the Agency intends to update the content, format and level of rates in a new *Guide for Railway Charges for Construction and Maintenance of Road Crossings*, formerly known as the Schedule "A" Directives. Parties associated with such work will be able to use this guide to help resolve disputes.

The Agency also resolves non-safety related disputes arising from railway operations, primarily those related to

noise, vibration, pollution or drainage problems. Wherever possible, the Agency tries to help resolve such issues without resorting to a contested legal proceeding and an order or decision. During the year, the Agency ruled on seven complaints in this area and assisted in resolving seven others. In perhaps the most significant decision in this area, the Agency ruled that CN had not met the statutory requirement to do as little damage as possible in operating its yard facility in Oakville, Ontario, and ordered CN to take remedial action. CN has challenged the Agency's jurisdiction in such matters in Federal Court. The Norfolk Southern Railway Company has registered a similar challenge in relation to an Agency order directed at noise emanating from the railway's yard in St. Thomas, Ontario.

When the Agency receives an infrastructure application related to railway construction, it must assess the potential environmental impacts of the proposal under the *Canadian Environmental Assessment Act*. In 1999, the Agency made 39 environmental screening decisions and allowed the projects to proceed, once it was assured that the applicants' compliance with measures the Agency deemed appropriate would mitigate any significant adverse environmental impacts.

During the year, the Agency also completed 171 reviews of existing orders or decisions, primarily regarding road crossings, where facts or circumstances pertaining to those orders or decisions had changed. In most cases, legal responsibility for roads and road crossings had been transferred from provincial governments to municipal governments, so that the parties under the orders or decisions had to be changed.

Finally, the Agency has an agreement with the Province of Ontario under which it applies federal railway crossings laws to railways under Ontario provincial jurisdiction, when required. It can also provide such services to other provinces.

Transfer or Discontinuance

Railways may rationalize their lines without regulatory approval if they follow a process prescribed in the Act. In 1999, the Agency received 12 notices that railways had discontinued railway lines (including spurs) totalling 383.96 kilometres after following this process. In addition, the Agency is aware of 10 transfers of railway lines to federal or provincial entities totalling 1,806.9 kilometres of track.

The Act stipulates that railways need not follow the prescribed process when rationalizing auxiliary trackage, such as sidings, spurs and yard tracks. On two occasions during the year, railway companies asked the Agency to formally determine whether specific pieces of track fit into this category.

The Agency may also be asked to determine whether a railway company has complied with the transfer and discontinuance process set out in the Act. In this regard, the Agency issued two decisions in respect of two lines located in Saskatchewan. In one of these cases, the Agency ruled that CN had not negotiated in bad faith; in the other, it found that CP had complied with the applicable statutory requirements for line rationalization. One case related to a line located in Manitoba was withdrawn. The Agency also responded to seven additional informal concerns regarding the discontinuance process. At the end of 1999, two cases were pending in respect of lines located in British Columbia and Yukon.

RAIL RATES, COSTING, AND MONITORING

The Agency determines the maximum rate scale for western grain movements by rail, and maintains a rail costing and financial analysis capability for regulatory purposes. The Agency also undertakes certain non-recurring and special projects in this area.

Maximum Rate Scale for Transporting Western Grain

Each year, the Agency determines the maximum rate scale for the railway movement of western grain for the next crop year, in accordance with Division VI of Part III of the Act.

The Agency establishes the rates according to distance, by multiplying the rates in Schedule III of the Act by the Freight Rate Multiplier (FRM). The FRM changes each year to reflect changes in inflation and reductions in grain-dependent branch line mileage where service has been discontinued.

When establishing rates, the Agency

- takes into account railway submissions containing historical and forecasted price changes for labour, fuel, material and investments;
- analyzes and audits data contained in those submissions;
- forecasts labour, fuel, material and investment price changes;
- accounts for the abandonment of grain-dependent branch line mileage;
- prepares a comprehensive report for consultation purposes; and
- consults with grain industry representatives.

When this is complete, the annual rate scale is established by April 30 and publicly announced.

The rates contained in the maximum rate scale for the 1999/2000 crop year, which took effect on August 1, 1999, were 0.2 percent higher than the previous crop years. For an average movement of 951 to 975 miles, the maximum rate for a tonne of grain was set at \$32.53, up \$0.07 from the previous rate.

Review of the Western Grain Handling and Transportation System

As previously discussed, in 1999 Mr. Arthur Kroeger released his report regarding Justice Estey's recommendations for improving the western grain handling and transportation system. Mr. Kroeger called for a number of statutory revisions affecting the system that would, if implemented, impact on the Agency's activities with respect to:

- freight rates and capping rail revenue derived from western grain movements;
- the final offer arbitration and branch line abandonment processes; and
- monitoring of the system's components.

Financial Analysis and Costing

The Act requires the Agency to maintain a costing capability for various statutory purposes. To do so, the Agency must maintain a Uniform Classification of Accounts (UCA) for railway records and must make determinations regarding federally regulated railway depreciation rates, cost of capital rates and unit costs.

Uniform Classification of Accounts

The UCA defines the method of accounting and the framework of accounts for railway companies under the legislative

authority of Parliament. It also provides instructions for recording operating statistics, including directions for filing reports with Transport Canada and Statistics Canada, and defines the categories for such data.

Depreciation Rates

The UCA specifies the procedures railway companies must follow when filing their annual depreciation rates for the Agency's approval. The Agency bases the rates for each account or group of accounts covering depreciable property on the estimated service life of the property, which it determines by studying the carrier's history and all available information on future conditions. The Agency uses these rates to determine the railway companies' annual depreciation expenses, which usually comprise a significant portion of total expenses.

Cost of Capital

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

The Agency annually approves cost of capital rates that it uses to determine western grain rates, interswitching rates, variable costs for competitive line rates and other railway costs. The 1999/2000 crop year cost of capital rate for the transportation of western grain is 11.6 percent.

Under the Act, all rates established by the Agency must be commercially fair and reasonable. Further, competitive line rates and regulated interswitching rates must not be lower than the variable costs of moving traffic. Additionally, the Agency may be required, on a case-by-case basis, to determine variable costs of traffic associated with a rate or service complaint.

Net Salvage Value Determinations

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

When a government has accepted a railway company's offer to transfer a line, the parties have 90 days after the acceptance of the offer to agree on the line's net salvage value. If they cannot agree on this value, either party may ask the Agency to determine the net salvage value. A summary of applications related to net salvage value dealt with in 1999 follows.

Branch Line Rehabilitation Agreements and CN Cudworth Subdivision

In early 1999, the Province of Saskatchewan asked the Agency to exclude from net salvage value determination the value of railway line assets acquired through branch line rehabilitation agreements between the federal government and CN and CP in the 1970s and

1980s. The Agency dismissed this application because it was not related to a specific net salvage value determination case before the Agency. However, in its decision, the Agency recognized that in those cases where negotiations regarding the transfer of railway lines are unsuccessful, it may need to resolve disputes over the transfer value, and one or both parties may apply to the Agency for a net salvage value determination. If that were to happen, the Agency found that it would then have a clear mandate to determine the scope and value of the railway's interest in a railway line, including whether rehabilitation assets formed part of the "railway's interest" in a line.

In June 1999, CN applied for a net salvage value determination of a line of railway in its Cudworth Subdivision in Saskatchewan. Shortly afterward, a number of rural municipalities asked the Agency to render a preliminary ruling that the net salvage value determination of CN's Cudworth Subdivision exclude the value of assets funded under various branch line rehabilitation agreements.

After examining the request, the Agency decided to hold a public hearing into the rehabilitation asset issue. The Agency received 52 submissions from interested persons and governments, and held a public hearing in Saskatoon from November 15 to 19, 1999.

The rural municipalities presented two principal arguments: that the agreements and all the surrounding circumstances show that the railways were trustees for the rehabilitation assets, holding them for the benefit of the grain producers, with the federal government being the beneficial owner; and that any inclusion of

these assets in the railways' interest would lead to a double payment by taxpayers.

CN and CP argued that the rehabilitation agreements granted them full ownership of the funded assets, that a trust does not exist, and that since the funds were conveyed absolutely to the railways, there cannot be any question of double payment.

The Agency was considering this matter at year-end and will issue a decision early in 2000*. It will then finalize its determination of net salvage value for the Cudworth Subdivision.

CN Tisdale Subdivision

The Agency received an application to determine the net salvage value of a line of railway in CN's Tisdale Subdivision late in 1998. The Agency issued its decision in April 1999. In determining the cost to remove and salvage track assets, the Agency had to determine whether to include the costs of dismantling a large railway bridge located on the line. The applicant wanted these costs included, but CN stated that its practice is to leave such structures in place if or when a line is discontinued. The Agency concluded that, in this case, a railway bridge would be assigned a zero value for the purpose of determining net salvage value because the costs of dismantling such a structure exceed its gross salvage value. The option of an alternative transportation service would not exist if the bridge were dismantled.

CN Chelan Subdivision

In May 1999, CN filed an application with the Agency. The application was withdrawn in July.

* For reasons set out in decision #33-R-2000, dated January 19, 2000, the Agency decided that rehabilitation assets are to be included in the net salvage value determination.

St. Lawrence and Hudson Railway Company

In May 1999, the Town of Orangeville, Ontario, applied for a net salvage value determination of a line of railway located in the St. Lawrence and Hudson Railway Company's (SL&H) Owen Sound Subdivision. In its preliminary answer, SL&H asked the Agency to rule on two issues: the validity of the application and whether the Agency's net salvage value determination is binding on the parties. The Agency found that any determination of net salvage value may have a direct and important impact on all potential railway line purchasers who have accepted the railway company's offer. The Agency found that the failure to include all purchasers as applicants in a proceeding under subsection 145(5) of the Act may lead to possible problems concerning fairness and evidence. By not including the other members of the partnership that had accepted the offer (here the City of Brampton and Town of Caledon), the Agency found that the Town of Orangeville did not properly apply to the Agency for a determination of net salvage value, and dismissed the application. Given this conclusion, the Agency did not rule on the second issue.

CN Arborfield Subdivision

The Agency issued an interim decision regarding a determination of net salvage value for a line of railway located in CN's Arborfield Subdivision in September 1999. Before valuing the railway line, the Agency had to deal with two questions regarding the interests to be transferred by CN: does the transfer of the Arborfield Subdivision include the east portion of the wye connecting the Arborfield and the Tisdale subdivisions, and does it include the land with respect to the first 0.5 miles of the Arborfield Subdivision?

The Agency found that the east portion of the wye is integral to the operation of the Arborfield Subdivision and, therefore, formed part of the railway's interest to be transferred. In regard to the first 0.5 miles of the Arborfield Subdivision, the Agency agreed with CN's proposal for an easement in perpetuity but only for that portion located within CN's Tisdale Subdivision.

Further, the Agency found that CN had not sufficiently clarified data related to donated assets and the extent of contamination on the right-of-way. The Agency will issue its final decision early in 2000.

Rail Costing Matters

The Agency collects railway costing data and develops railway costs, which it uses to resolve rail service and rate disputes, to set interswitching rates and to carry out other rate regulatory activities. It also determines price indices used to set the 1999/2000 western grain freight rates by April 30 of each year. The Agency also began a comprehensive review of the Schedule "A" Directives in the fall of 1999.

Railway Subsidy Payments

The Agency is required to determine and authorize payment of outstanding subsidy claims submitted under earlier legislation (section 178 of the *National Transportation Act, 1987* and section 270 of the *Railway Act*). These claims are for losses incurred while operating uneconomic branch lines and passenger train services that were eligible for subsidy until June 30, 1996. The Agency finalized all outstanding subsidy payments for Class I and Class II railways, except one 1996 claim that it received in 1999. The Agency expects to finalize the remaining claim during the first quarter of 2000.

Alternative Dispute Resolution (ADR)

As mentioned in Chapter 1, the Agency has started exploring informal mechanisms for resolving disputes. For example, it has taken steps to implement an ADR pilot project in the Rail and Marine Branch. This project is intended to test the design of the ADR system in a specific area before a system is implemented across the Agency. The pilot project may permit mediation in such areas as noise complaints, level of service, net salvage value determinations and other areas falling under the broad category of rail-related matters.

To effectively implement the pilot project, Agency staff conducted research to understand how other tribunals and government departments conduct pilot projects and how they design, implement and evaluate their ADR systems. The ADR Advisory Committee input also helped design and implement the pilot project. The Committee worked to foster an open discussion of the ways the Agency is expected to implement ADR and to encourage a collaborative process of system design.

An Agency ADR training initiative took place in April 1999, along with follow-up training for staff in several ADR models and techniques that could be used in mediation during the pilot project. Agency Members and staff will participate in advanced mediation training early in 2000.

The Agency will implement the ADR pilot project early in the next fiscal year. The project is expected to run approximately one year. This will allow the Agency to mediate a sufficient number of cases to thoroughly test and evaluate all facets of the system.

Coming to a Neighbourhood Near You...

To fulfill its objective of being a facilitator in the resolution of railway transportation-related disputes, the Agency is prepared to go to great lengths. These "great lengths" have stretched from Vancouver, British Columbia, through Saskatoon, Saskatchewan, to Sault Ste. Marie, Sudbury, Woodstock and Toronto, Ontario, and Les Côteaux, Quebec. In each of these places and others across the country, the Agency drew parties together on site to review the matter in dispute first hand and to try to find a mutually acceptable solution to their problem. The Agency has been extremely successful in encouraging complete or at least partial resolution of some contentious issues.

RAIL SERVICE AND RATE COMPLAINTS

Final Offer Arbitration

During 1999, the Agency continued reviewing the statutory final offer arbitration (FOA) process which is used to resolve rate disputes between shippers and carriers. It revised its informal guidelines for selecting an arbitrator, which are used when parties are unable to agree on the choice of an arbitrator. As well, the Agency has developed rules of procedure for conducting FOA, to be prescribed by regulation. The Agency expects the regulation to come into effect in 2000.

The legislation allows parties to an FOA to maintain their confidentiality and as a result the Agency can only discuss certain FOA cases in general terms. The Agency received two FOA requests in 1999 both of which were subsequently withdrawn. As has been the case in many previous FOA requests, in one of the two cases the Agency was required to consider procedural issues before submitting the

matter to an arbitrator. The issues raised related to whether the shipper's FOA submission was deficient. The Agency ruled that the shipper's offer was not deficient and referred the matter for arbitration.

Mr. Gordon Moffat

The Agency issued a public decision in June 1999 on an FOA submission that was filed in 1997. Mr. Gordon Moffat, a Newfoundland shipper, requested intermodal rates based on the principles set out in the Terms of Union between Canada and Newfoundland. The carrier, CN, questioned whether it was appropriate to use FOA to examine Terms of Union rates. Following a public hearing in St. John's, Newfoundland, in November 1998, the Agency found that while Part IV of the *Canada Transportation Act* does not specifically state that FOA matters are subject to the Terms of Union, section 5 of the Act does state that all aspects of the legislation are to be administered with due regard to constitutional requirements. The Agency found that the Terms of Union constitute such a requirement. The Agency determined that CN had offered Mr. Moffat railway intermodal rates from the mainland of Canada to Newfoundland and that those rates fell within the purview of the Terms of Union. The Agency concluded that CN continues to be obligated under the Terms of Union and is obliged to provide service to Newfoundland shippers at railway rates comparable to those for other points in Atlantic Canada and determined that the matter would be referred to an arbitrator. In September 1999, Mr. Moffat filed a request for legal costs which is currently before the Agency.

Naber Seed & Grain Company Limited

In October 1998, Naber Seed & Grain Company Limited filed a complaint with the Agency. Naber claimed that CN had failed to provide adequate and suitable accommodation for movements of green and yellow peas to the Port of Vancouver for export. After investigating the complaint, the Agency found that CN had not met its level of service obligations and issued a decision in March 1999. The Agency ordered CN to negotiate a satisfactory service arrangement and communications procedure with Naber, to ensure the problem does not recur. This decision marked the first time that the Agency performed a detailed assessment of whether an applicant would suffer "substantial commercial harm" if the Agency did not grant the relief sought. Previously, the Agency had only issued an interim decision in a level of service application that did not require an in-depth investigation of the potential commercial harm.

The Agency noted that Naber had, to some extent, quantified the harm it had suffered due to CN's breach of its level of service obligations. This included loss of operating revenue attributable to downtime while awaiting delivery of rail cars; the requirement to pay higher costs for peas when rail service was restored; and berthing and ship demurrage charges incurred because of delays in the arrival of peas in Vancouver. In addition to such costs, the Agency also noted that Naber's failure to meet its contractual obligations would likely damage its reputation with international buyers and potentially slow growth in its operations.

The Agency found that Naber would suffer substantial commercial harm if it did not grant the requested relief.

COMMUNICATING WITH CANADIANS

The Agency and its staff met with members of the rail industry on numerous occasions over the last year. These activities included meetings with CN and CP in Ottawa and Calgary to review procedures and the operation of the Act, a familiarization tour of their facilities and operations in southern Ontario, and a meeting with GO Transit in Toronto. Other meetings occurred at special events, such as the annual conference on railway issues sponsored by the Agency and the Railway Association of Canada, and annual meetings and conferences of transportation and shipper associations.

At trade shows, such as the Logistics Canada Expo (Toronto), staff explained the provisions of the rail legislation and the Agency's role in the industry, and answered questions from members of various organizations. The Agency also attended annual trade shows and meetings across the country, including shipper events such as the Canadian Industrial Transportation Association (Winnipeg), Canadian Fertilizer Institute (Vancouver), Canadian Pulp and Paper Association (Ottawa) as well as municipal events held by the Federation of Canadian Municipalities (Halifax), Union of Municipalities of New Brunswick (Moncton), Union des municipalités régionales de comtés et des municipalités locales du Québec (Québec City), Association of Municipalities of Ontario (Toronto), Northern Ontario Municipalities Association (Kenora), Saskatchewan Urban Municipalities Association (Saskatoon) and Alberta Urban Municipality Association (Edmonton). During the year, the Agency also met with transportation representatives of the Province of Ontario and the City of Toronto. As well, Agency staff consulted with provincial and federal


government officials across Canada on issues related to railway transportation.

In March, Agency staff travelled to The Pas, Manitoba, to address the 56th Annual Convention of the Hudson Bay Route Association and made a presentation on various provisions of the Act relating to rail transportation, as well as on the procedural rules of the Agency. Similar presentations were given at the Northern Ontario Municipalities Association annual meeting and at town hall meetings in Pitt Meadows and Langley, British Columbia.

During the western grain rate scale consultation session held in Winnipeg in March 1999, Agency staff gave participants an overview of the Agency's role, structure and responsibilities relating to rail transportation. In June, a similar presentation was given in Winnipeg to one of the Working Groups for the Kroeger grain handling and transportation process.

Furthermore, in April 1999, Agency staff gave a presentation to a group of Chinese transportation officials on the statutory reporting and costing requirements of federally regulated railway companies.

AIR TRANSPORTATION

 The Agency is the licensing authority for publicly available air services. As well, it is the Canadian aeronautical authority, participating in negotiations with other countries and administering international agreements. The Air Branch has five main functions: licensing, financial evaluation, international agreements, tariffs and enforcement.

Government transportation policy allows market forces to encourage a healthy, responsive air transportation system, and

AIRLINE RESTRUCTURING

Recognizing that Canadian Airlines was facing serious financial difficulty, in August 1999 the government issued an order under section 47 of the *Canada Transportation Act* which suspended the conspiracy provisions of the *Competition Act*. This allowed 90 days for the two major air carriers and other parties to initiate discussions and generate proposals for restructuring the industry. The purpose of the order was to encourage private-sector solutions to be developed and to ensure that the government was able to consider all aspects of any restructuring to protect the public interest.

Following the August announcement, three restructuring proposals were made by Onex Corp. and Air Canada. During this period, Agency staff gathered draft documents relating to these proposals so that the Agency would be in a position to promptly issue a Canadian ownership ruling if and when necessary.

To address the challenge of a radical change in the Canadian airline industry – a change from two competing national airlines to one dominant carrier – the government tabled “A Policy Framework for Airline Restructuring in Canada,” with the House and Senate Transport Standing Committees on October 26. In this document, the Minister of Transport formally indicated the government’s two overriding principles, safety and bilingualism, and the five key areas of public concern: pricing, Canadian ownership and control, service to small communities, competition, and the fair treatment of employees. The framework also set out a special review process for mergers and acquisitions in the airline industry and make terms and conditions of approval enforceable. The Minister indicated at that time that the Agency would be involved in pricing, Canadian ownership and

control, and service to small communities, and would have a role in the approval of any airline merger.

The Agency was asked to make presentations during hearings of the House and Senate Standing Committees on Transport to provide information that would aid them in their response to the Minister’s policy framework. Both Committees provided recommendations to the Minister in December 1999.

Eventually, Air Canada’s proposal to acquire the shares of Canadian Airlines was the final one remaining. At that point, the government’s attention turned to reviewing that proposal and the conditions for its approval. These were announced on December 21.

The government permitted the transaction to take place, based on undertakings negotiated between the Commissioner of Competition and Air Canada and on commitments by Air Canada to the Minister, all of which were made public.

At the end of 1999, the Minister was preparing to table legislation to give effect to the principles outlined in his policy framework on airline restructuring, to accomplish effective consumer protection, to foster competition and to enshrine measures to enforce the commitments and undertakings made by Air Canada. The legislation was scheduled for tabling in February 2000*.

The Agency has provided advice and assistance when requested by the Minister on the drafting of legislative amendments to reflect the Minister’s policy framework. The Agency has also taken steps to prepare to administer changes to the air transport regulatory regime resulting from the proposed new legislation. In late 1999, the Agency began a Canadian ownership review of Air Canada and Canadian Airlines related to their restructuring plans.

* On February 17, 2000, the Minister of Transport tabled Bill C-26 in the House of Commons.

is balanced with essential regulation administered by the Agency to protect travellers, shippers and carriers. Most long-distance travel is done by air, and air travellers have benefited from the competitive market in this mode.

The Agency is the licensing authority for publicly available air services.

AIR CARRIER LICENSING

The Agency issues licences to Canadian applicants for publicly available domestic air services, and to Canadian and foreign applicants for international, publicly available air services to and from Canada. Tables 1 and 2 list air carriers holding Agency licences, by nationality and type of licence, respectively. Table 3 illustrates the major activities of the air licensing program. Agency staff advise and assist applicants by informing them of the Agency's regulatory requirements. To obtain a licence, applicants need a Canadian aviation document, along with the prescribed liability insurance coverage to protect consumers. In some cases, applicants must meet certain financial requirements and be Canadian. Where appropriate, and upon application, the Agency may exempt an applicant from specific requirements.

International Charters

An international charter air service is a non-scheduled international service operated under a contractual arrangement between an air carrier and a charterer. Carriers holding a licence for a non-scheduled international service must obtain an Agency program permit or an authorization to operate Canadian-originating charter flights to any foreign country.

The permit and authorization processes ensure that air carriers operating international charter flights comply with the Air Transportation Regulations (ATR). As part of this compliance, certain types of charter flights are required to make financial guarantees to protect advance payments from charterers. This requirement is one of the Agency's measures to protect consumers.

Charter permits grant specific time frames within which a flight may operate. Sometimes, carriers are asked to perform a flight at a time outside its permitted operation and they require the Agency's authority before the flight can depart. The Agency operates a telephone service, staffed by the Charters Division, for such emergency situations occurring outside its normal business hours. In 1999, the Agency dealt with 453 such situations; 168 of these required contact with Agency Members.

International All-Cargo Charter Air Services

On May 29, 1998, the Minister of Transport announced a new International All-Cargo Charter Air Services policy. This policy gives shippers a greater range of service options by allowing more than one charterer to charter an aircraft, and by allowing freight forwarders and consolidators to charter aircraft from licensed carriers and then resell the space to shippers.

In 1999, the Agency continued to use the flexibility in its exemption powers to implement the new policy. It granted 60 exemptions from the provisions of the ATR that prohibit parties from chartering an aircraft to someone who obtains payment at a toll per unit. The policy also

TABLE 1
AIR CARRIERS BY NATIONALITY

| | Carriers Holding CTA* Licences as of December 31, 1998 | Carriers Holding CTA* Licences as of December 31, 1999 | Carriers with NTA* Licences yet to be replaced as of December 31, 1999 |
|-----------------|--|--|--|
| Canadian | 965 | 878 | 1 |
| US | 788 | 769 | 2 |
| Other | 108 | 108 | 3 |

* CTA and NTA refer to the issuing bodies, the Canadian Transportation Agency and its predecessor the National Transportation Agency.

TABLE 2
LICENCE AUTHORITIES HELD BY NATIONALITY

| Services | Canadian | | | | | US | Other | Total |
|--------------------------------|---------------|--------|-------|-----------|--------------|------------|------------|--------------|
| | Aircraft type | | | | | | | |
| | Small | Medium | Large | All Cargo | Total | | | |
| Domestic | 851 | 25 | 14 | 28 | 918 | | | |
| Non-scheduled International | 410 | 21 | 12 | 23 | 466 | 757 | 82 | |
| Scheduled International | 14 | 29 | 80 | 4 | 127 | 62 | 57 | |
| Total December 31, 1999 | | | | | 1,511 | 819 | 139 | 2,469 |

(For comparison, the total in December 31, 1998 was 2,471)

**TABLE 3
AIR LICENSING ACTIVITIES**

| | Completed in 1998 | Completed in 1999 |
|--------------------------|----------------------|----------------------|
| Applications for: | | |
| New Licences | 211 | 165 |
| Amendment of Licences | 67 | 168 |
| Suspensions | 160 | 189 |
| Cancellations | 79 | 72 |
| Reinstatements | 67 | 69 |
| Exemptions/Rulings | 99 | 50 |
| Other | 5 | — |
| Agency-initiated: | | |
| Suspensions | 196 | 117 |
| Cancellations | 116 | 93 |
| Reinstatements | 58 | 60 |
| Total | 1,058 | 983 |

**TABLE 4
ANNUAL STATISTICS, CHARTERS DIVISION
1998 VS 1999**

| Charter Permits Issued | 1998 | 1999 |
|--|-------|-------|
| Passengers non-resaleable (includes entity passenger and transborder passenger non-resaleable charters) | 154 | 237 |
| Cargo non-resaleable (includes entity cargo/livestock and transborder goods charters) | 213 | 333 |
| Passengers resaleable includes Common Purpose Charters (CPC) Combination of Advance Booking Charters and Inclusive Tours Charters (ABC/ITC) Inclusive Tours Charters (ITC) Advance Booking Charters (ABC) Transborder Passenger Charters (TPC) | 1,288 | 1,159 |
| Additional Statistics | | |
| Exemptions granted to the Charter Regulations | 503 | 1,123 |
| Amendments to approved Charter Programs | 518 | 436 |

allowed the Agency to grant special authority to foreign air carriers for Canadian- and foreign-originating entity cargo charter flights to or from a third country, commonly referred to as fifth freedom flights. The Agency dealt with 178 applications for Canadian-originating fifth freedom cargo charters and with 137 applications for foreign-originating fifth freedom cargo charters.

FINANCIAL EVALUATION

Before the Agency grants a licence to a carrier to operate any air service or to exercise traffic rights granted to Canada in bilateral air agreements, an applicant must meet a number of requirements. The applicant has to be Canadian, or owned and controlled by Canadians; it must have a Canadian aviation document issued by Transport Canada to certify safety; and it must be adequately insured. Licensed carriers must satisfy these three requirements at all times. In addition, the Agency determines that Canadian applicants proposing to operate aircraft with more than 39 seats satisfy financial fitness requirements to protect consumers. As well, the Agency is the body responsible for administering appeals relating to NAV CANADA charges for the air traffic control information and services that it provides.

Canadian Ownership Requirement

In 1999, the Agency completed 99 reviews to verify that Canadian applicants proposing to operate or operating domestic or international air services met Canadian ownership requirements. Of the 99 reviews, seven involved major investigations because the companies had complex ownership structures, or had minority shareholders or business associates who were not Canadian and who could have

exercised control over the applicant. As well, Agency staff have reviewed documents regarding investment in Air Canada by its Star Alliance Partners to ensure that Air Canada remains Canadian as defined in the Act.

Financial Fitness

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet certain financial requirements stipulated in the Act and in the ATR. These requirements are designed to ensure that applicants are financially fit when they start operations and have a reasonable chance of success. The requirements also help minimize disruptions in service and protect consumers. In 1999, the Agency reviewed one such application to determine whether the applicant had enough liquid funds to cover all start-up, operating and overhead costs for a 90-day period.

NAV CANADA Charges

On August 20, 1999, NAV CANADA filed an announcement of reduced service charges with the Agency, under section 40 of the *Air Navigation Services Act*. NAV CANADA reduced certain charges for air navigation services, effective September 1, 1999. Although parties could appeal these charges to the Agency until September 19, 1999, no appeals were received.

Y2K and Air Carrier Insurance

Like many industries concerned about the potential negative ramifications of the so-called "Y2K bug," aviation insurers were refusing to cover Y2K-related claims. Exclusions to coverage began to appear in certificates of insurance filed with the Agency. These "date recognition

exclusions,” which most aviation insurance policies contained, were contrary to the ATR.

The ATR require all licensed Canadian and foreign air carriers to maintain adequate passenger and public liability insurance. They do not permit exclusions in insurance policies that reduce passenger or public liability coverage below specified minimum amounts, unless those exclusions are standard international exclusions pertaining to such things as war, pollution, chemical drift, radioactive contamination and the liability an air carrier assumes under contract.

Following consultations with almost 200 aviation insurers, and discussions with leading underwriters in the British and American insurance markets, the Agency obtained agreement from insurers that they would modify licensed air carriers’ insurance policies to ensure compliance with the ATR. The Agency required all licensed air carriers – approximately 1,875 in total – to provide written certification, signed by their insurers, that date recognition and other disallowed exclusions would apply only to claims for amounts above the prescribed minimum passenger and public liability coverage. By expending significant time, effort and personnel resources, the Agency ensured that all licensees complied with this requirement well before December 31, 1999.

AGREEMENTS

As Canadian aeronautical authority, the Agency participates in bilateral air negotiations to procure additional rights for Canadian air carriers while protecting the interests of Canadians and Canadian air carriers, and administers resulting

bilateral agreements. These rights relate to such matters as the number of airlines and frequency of service, access to points in the other country, the ability to pick up and discharge traffic at points in third countries, and code-sharing. As aeronautical authority, the Agency also ensures that other countries apply their laws and regulations fairly to our airlines, especially in relation to the airline’s ability to conduct its business affairs.

As members of the Canadian delegations to bilateral air negotiations, Agency staff provide advice from the regulatory perspective and draft text for the Canadian delegation to propose during the course of negotiations, focussing especially on capacity, tariffs, charters, code-sharing and commercial agreements.

During 1999, the Agency participated in negotiations with Mexico, Finland, Thailand, Hong Kong, the United Arab Emirates and Israel. In addition, Canada continued written consultations initiated in 1998 with Germany and the Netherlands, while entering into written consultations with Jamaica, Romania and Pakistan. Although negotiations were held with Israel, subsequent written consultations were necessary to agree on a capacity regime for the 1999/2000 winter season.

Several negotiations and consultations focussed on securing the necessary rights to permit Canadian carriers to maximize their code-sharing opportunities with their Star Alliance (Air Canada) and oneworld (Canadian Airlines) partners. With the exception of written consultations with Israel, all negotiations were suspended pending the possible restructuring of the Canadian airline industry. They are expected to resume when the Air Canada purchase of Canadian Airlines is completed.

The Agency made determinations on 80 applications relating to bilateral air agreements and commercial arrangements among air carriers. Of these, 39 involved code-sharing arrangements, 14 involved the contracting by licensees of aircraft and flight crew from another person, and 12 involved capacity issues. The remaining 15 applications concerned matters such as licence conditions, the administration of bilateral agreements or requests for extra-bilateral authorities.

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

The Agency supports Canada's participation in the International Civil Aviation Organization (ICAO) through various activities. With other interested Canadian parties, it develops Canadian positions relating to ICAO facilitation matters. The Agency also participates on Canadian delegations to ICAO assemblies and on the ICAO Legal Commission.

In 1999, Agency staff consulted extensively with other federal government departments, and with all provinces and territories, to draft a response to the ICAO council resolution concerning policies on taxation of international air transport. These policies relate to taxation on fuel, lubricants and other consumable technical supplies; taxation on airline income; and taxation on the sale and use of international air transport. The draft response sets forth the degree to which Canadian tax practices are consistent with ICAO policies.

Agency staff members were also part of the Canadian delegation to the International Air Law Conference, which the ICAO called to update the Warsaw Convention System. This conference

resulted in the modernization and consolidation of a 70-year-old system of international instruments of private international law into one legal instrument, the Montreal Convention, which sets out an improved compensation scheme for those involved in international air accidents. Compensation for death or injury of passengers under this Convention involves a two-tier liability system with a first tier based on strict liability of up to 100,000 Special Drawing Rights (approximately C\$200,000) and a second tier of unlimited liability based on presumed fault of the air carrier.

The Montreal Convention now also allows an action for damages resulting from death or injury of a passenger to be brought in the country in which the passenger lived at the time of the accident, subject to certain conditions. This is in addition to the ability to bring an action for damages, amongst other places, in the country from which the carrier did business or the country of destination.

Furthermore, the Agency participates as part of the ICAO Secretariat Study Group on Unruly Passengers, which was established to consider and find solutions to the problem commonly referred to as "air rage."

TARIFFS

Air transportation tariffs are the documents that set out the contractual obligations between an air carrier and a passenger. They contain a carrier's fares, rates, charges, and terms and conditions of carriage. The Agency does not require air carriers to file their domestic tariffs with the Agency. However, Canadian domestic carriers must provide copies of these tariffs to passengers, shippers and

the Agency on request. In general, when carriers operate international flights to or from Canada, they must file the related tariffs with the Agency. However, under “open skies” bilateral agreements, carriers operating between Canada and the United States, and between Canada and Germany, file only their terms and conditions of carriage, not their fares, rates and charges.

The Agency reviews international tariffs when they are filed or revised to verify that they are consistent with Canadian law, government policy and applicable bilateral agreements. In 1999, Agency staff reviewed 4,866 tariff submissions. Normally, carriers file new or amended tariffs within the period of notice specified in the applicable air transport agreement, usually 30 or 45 days. The Agency, however, also allows carriers to apply for a “special permission” to help the industry respond to competition or other time-critical situations. If granted, the “special permission” allows a carrier to implement a new or amended tariff immediately. In 1999, the Agency processed 8,842 special permission applications. It also issued 26 decisions on complaints from carriers against other carriers regarding tariff matters.

Electronic Tariff Filings

In 1999, the Agency received 14,153 individual tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs; approximately 85 percent of these submissions arrived electronically. Accepting electronic tariff submissions from air carriers increases the Agency’s productivity and gives airlines flexibility.

Third and Fourth Freedom Air Services

To promote competition, the Agency issued a notice on October 20, 1999. It advised carriers offering fares for transportation to or from Canada that under most circumstances the Agency would favourably consider applications for special permission to file reduced fares on less than statutory notice. This new approach applies to markets with direct or code-shared service to or from Canada.

Tariff Provisions for Persons with a Disability

These provisions are discussed in detail on page 33, in the accessibility section of this chapter.

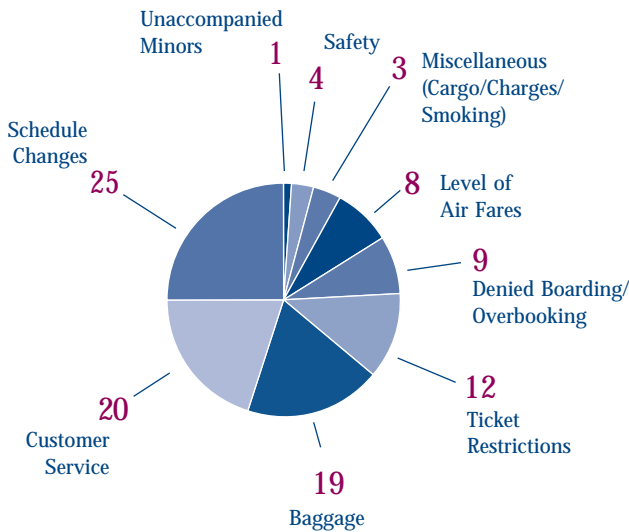
Consumer Complaints

In general, consumers file complaints about flight departures; misplaced, lost or damaged baggage; restrictions on airline tickets; quality of service provided by airline employees; fares; denied boarding; and, more frequently this year, refusal to carry a passenger due to inappropriate passenger behaviour. In reviewing these complaints, the Agency works to ensure that carriers have complied with the terms and conditions set out in their tariffs.

The Agency carried over 33 complaints from the previous year, received an additional 165 written complaints and resolved a total of 155 files. It carried the remaining 43 complaints over to 2000. It also handled approximately 1,100 calls on its 1-800 consumer complaints line.

In most cases, the Agency found that the carriers had complied with their tariff provisions. In one situation, however, the Agency found that the carrier had

FIGURE 1: CONSUMER COMPLAINTS
Number of complaints resolved by issue (%)



not complied. This complaint concerned Skyservice's requirement that a passenger sign a waiver of liability releasing the carrier from any responsibility if the passenger's checked golf clubs were lost or damaged. The Agency determined that this was not in accordance with Skyservice's tariff provisions. It ordered the carrier to apply the terms and conditions of its international charter tariff at all times by not imposing conditions that are not specified in the tariff.

This year, the Agency received four complaints concerning a carrier's decision to refuse transportation because of passenger behaviour. The Agency rendered a decision on one of these complaints, stating that the evidence indicated that the carrier's action was necessary for safety reasons. The Agency has carried over the remaining three complaints to 2000.

ENFORCEMENT

The Agency's Enforcement Program encourages voluntary compliance with the Act, the ATR and the Personnel Training for the Assistance of Persons with Disabilities Regulations (the Personnel Training Regulations). The program comprises two main elements: a periodic inspection program and a targeted investigation program. Before conducting a periodic inspection, an enforcement officer normally contacts the carrier or terminal operator to arrange a convenient time to meet. In investigations, the nature of the case will determine whether the enforcement officer makes prior arrangements.

In 1999, the Agency completed 284 on-site inspections of Canadian-based air carriers and passenger terminal operators, and identified 123 infractions. It also completed 32 investigations of carriers or individuals suspected of operating illegal air services in Canada and identified 22 infractions.

Staff in Moncton, Montréal, Toronto, Winnipeg, Edmonton and Vancouver administer this program. As well as conducting investigations and inspections, they provide information to help transportation providers satisfy legislative and regulatory requirements.

Administrative Monetary Penalties Program

After extensive public consultation with air carriers, terminal operators, other government departments and interested parties, the Agency introduced the Administrative Monetary Penalties (AMPs) program in 1999. Through this program, the Agency can issue warnings, notices of violation or fines to air carriers

that do not comply with certain provisions of the Act, the ATR or the Personnel Training Regulations. The AMPs program allows the Agency to better tailor sanctions to the nature of the violation.

Since a formal warning, rather than a monetary penalty, is the first step in the AMPs process, carriers have ample opportunity to take corrective action before the Agency assesses a monetary penalty. Previously, the only ways the Agency could enforce the law were informal warnings, cease-and-desist orders, licence suspensions or cancellations, and prosecutions. These options were either administrative or judicial; there was no middle ground. While these options remain, AMPs provide an additional means of enforcing the law.

The Canadian Transportation Agency Designated Provisions Regulations came into force on June 11, 1999. Under section 177 of the Act, the Agency designated the relevant provisions of the Act, the ATR and the Personnel Training Regulations and established a penalty scale for each violation to the maximum amount prescribed in the Act to set up the AMPs program. However, in keeping with its commitment to advise interested parties when the program was to be implemented, the Agency did not launch the AMPs program itself until November 15, 1999.

COMMUNICATING WITH CANADIANS

In developing the AMPs program over the past three years, the Agency consulted extensively with air carriers, terminal operators and interested parties. For example, in March 1999, it mailed more than 2,000 notices of prepublication of the Agency's Designated Provisions

Regulations in Part I of the *Canada Gazette*. In November, it sent the same parties a brochure titled *AMPs and You*, which explained the program.


The Agency made presentations to several organizations in 1999. In April, Agency staff met with Canadian Airlines to explain the impact of the AMPs program on air carriers generally and specifically how it might affect Canadian Airlines. Also in April, the Agency Chairman made a presentation to the Air Law Section of the British Columbia Branch of the Canadian Bar Association which addressed the Agency's responsibilities regarding air carrier licensing, air policy, liability insurance and Y2K concerns, and accessible transportation. In December, Agency staff made a presentation to the Canadian Airports Council and Airports Council International – North America on the Agency's role and responsibilities in air transportation.

Law enforcement agencies work with the Agency to help enforce the Act. For instance, they help the Agency deal with illegal air services used to provide access to hunting and fishing areas. In June, Agency enforcement officers made a presentation to wildlife officers in Stephenville, Newfoundland, on the inspection and investigation program. In addition, the Royal Newfoundland Constabulary in Labrador City and the municipal police in Fermont, Quebec, both received presentations on the Agency's mandate, the Act, regulations, and the purpose of the Agency's enforcement activities in September 1999.

During proceedings on restructuring the Canadian airline industry in the fall of 1999, Agency staff gave presentations on the Agency's mandate in air transporta-

tion and its air carrier licensing process to the House of Commons Standing Committee on Transport and the Standing Senate Committee on Transport and Communications.

ACCESSIBILITY FOR PERSONS WITH DISABILITIES

 Eliminating undue obstacles to the mobility of Canadians with disabilities, a core element of the Agency's

mandate, continued to be one of the Agency's busiest areas of activity in 1999. The Agency removes undue obstacles in two ways: on a case-by-case basis by resolving individual complaints, and on a systemic basis by developing regulations and codes of practice. In 1999, the Agency issued significant decisions about accessibility and implemented another code of practice. It also continued consulting with interested parties, holding working committee meetings and building consensus to develop new standards.

In 1998, the Agency produced a booklet entitled *Taking Charge of the Air Travel Experience: A Guide for Persons with Disabilities*. The booklet provides useful information and tips to assist persons with disabilities in planning air travel. Since its release, more than 30,000 copies have been distributed. The high demand for the guide illustrates the great success of this initiative. Some examples of travel tips contained in the guide are:

- Ask for confirmation in writing of all services provided.
- Self-identification of a disability is a vital step.
- Ask questions about the interior layout of the aircraft.
- Documents and medication should be kept within easy reach.

The guide offers travellers with disabilities practical advice on accessible features and services available to them when they are travelling by air. The Agency wanted to find out whether the air travel guide was responding to the needs of travellers with disabilities. In 1999, it asked recipients of the guide to evaluate the publication's clarity and comprehensiveness. Of those surveyed, 83 percent were people with disabilities and 93 percent of those

individuals were travellers. Some of the survey's results are:

- all respondents said the guide is easy to follow and understand, and that the travel tips in it are useful:
"The guide permitted me to plan a trip without having to face many problems."
"The guide was extremely helpful to me before and during my trip."
- a large majority of travellers with disabilities who had travelled by plane since receiving a copy of the guide said they used the guide to plan their trip, and almost all (97 percent) said they feel more confident about travelling thanks to the guide:
"The guide helped me to feel more comfortable about travelling alone."
- 98 percent of respondents said they would recommend the air travel guide to their friends or families;
"Good guide to have to lend to clients who travel and have disabilities. It helped me to answer a lot of their questions."
"Guide is borrowed very often and the comments are positive."

More background on the survey and its results are available on the Agency's Web site.

CODES OF PRACTICE, REGULATIONS, CURRENT RESEARCH INITIATIVES, AND TARIFF PROVISIONS

An important part of the Agency's mandate is developing regulations and codes of practice for accessibility, and monitoring all federally regulated carriers and terminal operators to ensure they adhere to them.

In an effort to provide travellers with disabilities access to Canada's federally regulated transportation network, the Agency weighs both the needs of persons with disabilities for accessible transportation services and the ability of industry to deliver accessible services.

Eliminating undue obstacles to the mobility of Canadians with disabilities, a core element of the Agency's mandate, continued to be one of the Agency's busiest areas of activity in 1999.

Representatives from the community of persons with disabilities and from the transportation industry, along with other interested parties, sit on the Agency's Accessibility Advisory Committee (see Appendix 2 for a list of committee members). The Committee helps the Agency develop regulations, codes of practice and industry guidelines to make the federally regulated transportation network more accessible. The Agency consults the Committee on an ongoing basis for all of its regulatory projects. Many of these consultations take place either in writing or by telephone. However, given the importance and the benefits of face to face consultations, the Agency has committed to yearly meetings with the Committee.

Voluntary Codes of Practice

In keeping with government policy, the Agency sets performance-based standards by adopting codes of practice, which call for voluntary compliance, before it considers developing regulations. These codes of practice – which the Agency develops in consultation with people with disabilities, the industry, and groups representing seniors – set out the minimum measures that carriers and terminal operators should take to make services and equipment accessible to persons with disabilities. Codes of practice are advantageous because the Agency can implement them more quickly than it can implement regulations.

At a special ceremony in June 1999, at Marine Atlantic's Ferry Terminal in North Sydney, Nova Scotia, the Agency released its third code, the Code of Practice for Ferry Accessibility for Persons with Disabilities. The Agency, Marine Atlantic, other ferry industry representatives, and organizations of and for persons with disabilities all participated in this event. During the ceremony, the Canadian Ferry Operators Association not only committed to abide by the Code, but stated that the marine industry – which already meets most of the Code's accessibility standards – will, in many instances, exceed the requirements of the Code. This event once again demonstrates the strength of the voluntary partnerships among the Agency, consumers with disabilities and industry.

The Ferry Code of Practice establishes equipment accessibility standards for extra-provincial ferry services. These include accessibility standards for passageways, elevators, telephones, public areas, cabins and washrooms. The Code

also sets standards for signage and verbal communication.

With the Agency's three codes of practice (air, rail and ferry) and Transport Canada's Bus Code, a code of practice now exists for each federally regulated public transportation system in Canada.

Regulations

During the year, the Agency also consulted with the Accessibility Advisory Committee and with air carriers that operate small aircraft (29 or fewer passenger seats) on the nature and extent of services that carriers can offer persons with disabilities travelling on small aircraft. The Agency wants to determine which provisions of Part VII of the Air Transportation Regulations which currently apply to large aircraft of 30 passenger seats or more could also apply to small aircraft.

During 1999, the Agency also continued to work with the Department of Justice on the Agency's proposed amendment to the Personnel Training for the Assistance of Persons with Disabilities Regulations (the Personnel Training Regulations). The amendment attempts to clarify the intended application of these regulations.

Current Research Initiative

In addition, the Agency has initiated a joint research project with Transport Canada's Transportation Development Centre on boarding devices used by Canadian airport authorities and air carriers. The Agency will use the information collected to determine whether standards are needed for the provision of boarding devices in Canada.

Tariff Provisions for Persons with a Disability

As part of its ongoing international efforts to increase accessibility, the Agency required air carriers filing international scheduled service tariffs to amend the terms and conditions of carriage appearing in such tariffs. These amendments are to: recognize the right of a person with a disability to determine whether he or she needs to travel with an attendant, and include the carrier's policies regarding the carriage of persons with a disability. Including these terms and conditions makes travel easier for persons with disabilities.

As a result, 92 percent of these carriers have filed the appropriate provisions. Six carriers have not complied. At year-end, the Agency was considering the best way to address this issue.

MONITORING

The Accessible Transportation Program regularly monitors, measures and evaluates the industry's compliance with Agency regulations and codes of practice related to persons with disabilities. It does so by conducting surveys, inspecting sites and investigating complaints.

Before a code comes into force, the Agency establishes benchmark data on air carriers' accessibility. The Agency is able to measure improvements in accessibility by comparing the data collected after a code comes into force against the benchmark data.

On January 1, 1999, the Code of Practice: Aircraft Accessibility for Persons with Disabilities (Air Code) came into effect. The code establishes on-board accessibility criteria for persons with disabilities on

aircraft with 30 or more passenger seats. While most of the Air Code's criteria came into effect at the beginning of 1999, the code's washroom requirements will become effective on January 1, 2002.

Passenger Briefing Cards

Air Canada called Agency staff to ask what colour ink to use for printing supplemental passenger briefing cards. These cards are designed for persons who are blind or have low vision and suggest that such passengers request a personal safety briefing from flight crew. Since Air Canada was going to re-order additional cards, it wanted to find out if black was still the best colour to use. Agency staff obtained large print guidelines provided by the Canadian National Institute for the Blind and confirmed that black remains the preferred choice for people with low vision. Additionally, to bring industry and the community of persons with disabilities closer together, Agency staff provided Air Canada with a contact at the CNIB for future reference on matters such as this.

In January 1997, the Agency gathered benchmark data from air carriers. Analysis of the benchmark data revealed that air carriers were well on their way to meeting the Code's provisions. Most carriers met the Code's requirements for proper signage and lighting, glare-free and slip-resistant flooring, and cabin storage for mobility aids. While many of the carriers' large aircraft already had some of the accessibility features required for washrooms, such features were scarce in aircraft with fewer than 100 seats.

In 1999, when the Air Code came into effect, the Agency collected new data on industry compliance with the code. At year-end, the Agency was still analyzing this information and planned to report on it publicly in 2000. Early indications

showed improved awareness of the code's requirements and of the low cost of some of the access requirements that remain to be installed, such as contrasting colour strips on stairs and door handles. The next follow-up of the Air Code will be done in January 2002 when the accessibility criteria for washrooms becomes effective.

In addition to establishing on-board aircraft accessibility criteria with the Air Code, the Agency has taken other actions to address air accessibility issues. In November 1997, it released the *Communication Barriers Report: A Look at Barriers to Communication Facing Persons Disabilities Who Travel by Air*. This report included 25 recommendations for eliminating communication obstacles that persons with sensory and cognitive disabilities face while travelling by air. While this report is not a code, the Agency is nevertheless committed to improving communication issues for persons with disabilities when they travel by air. Throughout 1999, the Agency collected new data from air carriers and major airport operators to assess whether they are implementing the recommendations of this report. These results will be made available in 2000.

During routine visits to the offices of carriers or terminal operators, Agency field investigators check the training records of each company to determine if they comply with the administrative requirements of the Personnel Training Regulations. When evidence of non-compliance with the regulations is found, Agency staff work with the carrier or terminal operator concerned to improve its training program so that it meets the requirements. During the reporting period, staff completed such work with

10 carriers and terminal operators. The Agency asked an additional 11 organizations to submit further information about their training program content and to identify employees who had been trained.

While these industry monitoring initiatives provide the Agency with useful information about the equipment that transportation service providers are making available to assist travellers with disabilities, the information collected does not give the Agency insight into other service issues, such as the effectiveness of staff training. Subsequently in the spring of 1999, the Agency began working on a survey of persons with disabilities to determine their level of satisfaction with the accessibility of Canada's transportation network. Ekos Research Associates was retained to help develop and test the questionnaire. Following discussions with the Advisory Committee and a series of pretesting focus groups with people with disabilities in the summer of 1999, the questionnaire was revised. The Agency is now considering which distribution method will best ensure a representative sample of the target population.

COMMUNICATING WITH CANADIANS

Persons with Disabilities

The Agency encourages persons with disabilities from across Canada to actively promote its accessible transportation activities. The Agency solicits comments and suggestions at community meetings, discussion forums and awareness events, where it also provides tips for travellers with disabilities. Organizations of and for persons with disabilities, as well as industry representatives, support the Agency's efforts. The Agency circulates draft proposals for regulations and codes of practice in print, braille, audio cassette and electronic formats to the more than 3,000 people who have subscribed to the accessible transportation database.

The Accessible Transportation Program's advertising campaign primarily targets publications by and for persons with disabilities, and seniors' publications. The messages relate to the specific transporta-

ACCESSIBLE TRANSPORTATION INFORMATION STATISTICS, 1999

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

| | |
|--|--------|
| <i>Air Travel Guide</i> distributed | 23,156 |
| Accessibility brochures distributed | 20,151 |
| Copies of the consumer publication <i>Fly Smart</i> distributed | 7,392 |
| Newsletters distributed | 11,213 |
| General inquiries and accessibility-related calls received on the 1-800 line | 8,078 |
| Public presentations given | 24 |
| Exhibits (accessibility, travel industry and consumer) displays | 12 |
| Advertisements placed | 13 |

tion needs of these groups. In addition, the Agency regularly produces articles for these publications. Canada's two radio reading services for persons who are blind, La Magnétothèque and VoicePrint, also broadcast the Agency's advertisements. During 1999, the Agency placed 13 advertisements.

Travel Industry

The Agency made a special presentation to the accessibility committee of the Air Transport Association of Canada (ATAC) in November 1999, updating ATAC on current issues in accessible transportation, such as the obesity inquiry, monitoring initiatives, and services to be provided to persons with disabilities on small aircraft. The Agency also spoke to the accessibility advisory committee at Canadian Airlines International to answer operationally oriented questions about Agency codes and regulations.

Since many Canadians make travel arrangements through travel agents, the Agency promotes accessible transportation to travel agents and tour operators. During 1999, the Agency participated as an exhibitor in travel industry shows in Ottawa, Vancouver, Langley, Victoria, Hamilton and Montréal. In October 1999, the Agency was one of more than 400 international exhibitors representing more than 100 countries at the 11th Annual International Tourism and Travel Show in Montréal.

In another accessibility initiative, the Agency is preparing a checklist to help ensure that transportation service providers meet the needs of persons with disabilities during air travel. The checklist is designed to help travel agents when they are making travel arrangements for their customers. It lists services to be pro-

vided by air carriers such as assistance to get to the boarding gate; requests specific seating arrangements to accommodate a disability; and transporting mobility aids free of charge. The Agency has submitted a draft version of the checklist to members of the travel agent industry for their review and comments. The checklist is intended to be a companion document to the air travel guide. Both industry and travellers with disabilities will use the guide, and the checklist when it is completed, as valuable resources to make air travel easier.

Agency staff continued presenting half-day training seminars to travel and tourism students across the country. This year, they gave such seminars in Vancouver, Kelowna and Surrey, British Columbia, and in London, Ontario. They also delivered customer service presentations to the Tourism Educators' Conference of the Pacific Rim Institute of Tourism, and to the 1999 Annual Conference of the International Society of Travel and Tourism.

Increasingly, the Agency provides travel seminars for interested travellers with disabilities at events sponsored by such groups as the Canadian Chronic Obstructive Pulmonary Disease Alliance, the Toronto Chapter of the Canadian Multiple Sclerosis Society and the Gage Transition to Independent Living Service. The Agency regularly exhibits at events that persons with disabilities attend, such as the People in Motion Trade Show in Toronto and the Ottawa-Carleton Symposium on Disability Issues. In cooperation with Air Nova, the Agency conducted a travel seminar at the annual general meeting of the Atlantic Cerebral Palsy Association in Charlottetown.

International Initiatives

On the international front, the Agency continued promoting uniform service standards for Canadians with disabilities travelling abroad. Foreign government bodies and international organizations were interested in learning about Canada's model for increasing the accessibility of transportation services; the Agency has demonstrated that consultation and consensus can be practical and active means for eliminating barriers to the mobility of travellers with disabilities. With the trend toward globalization of transportation services through mergers, alliances and code-sharing, this work is very important for Canadians travelling abroad. The Agency's work internationally showcased Canada's leadership in fostering access to transportation systems for persons with disabilities.

The Agency participates in several international organizations whose members share information about how barriers to the mobility of travellers with disabilities are being removed. The Agency's Chairman delivered a keynote address at the International Aviation Women's Association annual conference in Montréal in October 1999. Agency representatives also participated in "Strengthening the Transport Chain," a conference sponsored by the European Conference of Ministers of Transport, as well as a working meeting of the European Civil Aviation Conference.

Throughout the year, the Agency met with visiting delegations from such countries as China, Japan and Australia to provide in-depth information about Canada's approach to accessible transportation.

In July, the Passenger Vessel Access Advisory Committee of the United States Architectural and Transportation Barriers Compliance Board visited Vancouver to inspect the accessibility features of cruise ships. The Chairman and Agency staff gave a presentation to the Committee on the Canadian approach to accessible transportation.

Since transportation and tourism are interdependent, the Agency has been involved in several activities to make it easier for tourists with disabilities to travel to and from Canada. This work included making a presentation on customer service to the 1999 World Congress for Travellers with Disabilities and Mature Travellers sponsored by the Society for the Advancement of Travel for the Handicapped, and providing an awareness session for representatives from Caribbean and Central American nations organized by the Florida-Caribbean Cruise Association.

Travel Agent Outreach

The Agency encourages travel agents to get as much information as possible so that they may better serve their clients, especially those with disabilities. A tour operator saw the Agency's advertisement for its *Taking Charge of the Air Travel Experience* and requested a copy of the guide. The travel agent indicated that he also wanted to receive some advice on dealing with persons with disabilities. Agency staff encouraged him to discuss passengers' needs when they identified themselves as persons with disabilities and to try to describe the tour to them (especially in terms of difficulty, hours walking, unevenness of the terrain, etc). The agent said he would recommend to his staff that they have more detailed discussions with their clients in future so that they could better meet their needs.

Seniors

Since the incidence of disability increases with age, the Agency works to address the needs of senior travellers as part of its mandate to ensure accessibility of the federally regulated transportation network. During 1999, the International Year of Older Persons, the Agency's efforts to focus on the service needs of seniors culminated with the Agency's active participation as a presenter and exhibitor at the Fourth Global Conference on Aging in Montréal in September. As well, the Agency prepared a special edition of its popular *Moving Ahead* newsletter to mark the international event. The Agency continues to participate on the Interdepartmental Committee on Aging and Seniors Issues, which fosters and facilitates a coordinated cross-sector approach to policy and program development related to an aging population.

Other Interdepartmental Initiatives

The Agency continued to cooperate with other government departments to address the needs of persons with disabilities. For example, it worked with Human Resources Development Canada on the Federal Disability Strategy.

In March, the Minister of Transport and the Chairman of the Agency appeared before the House of Commons' Sub-Committee on the Status of Persons with Disabilities. There, they discussed the roles and achievements of Transport Canada and the Agency in promoting and monitoring federal transportation initiatives aimed at the integration and equality of persons with disabilities.

COMPLAINT RESOLUTION ACTIVITY

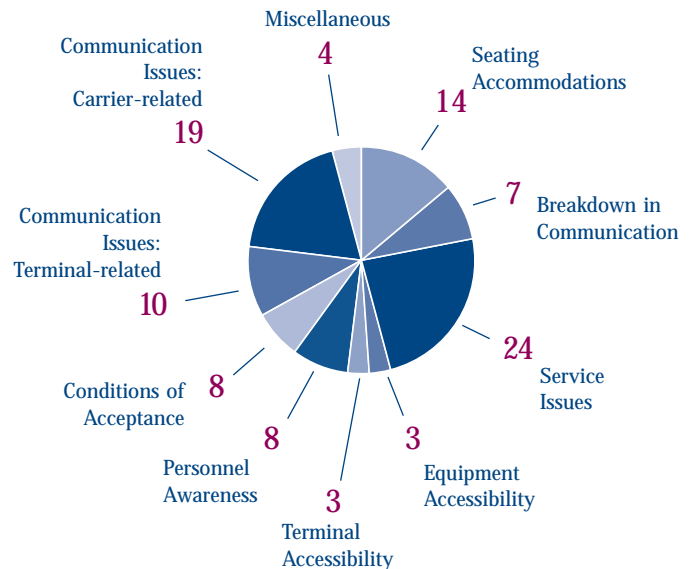
When travellers with disabilities believe they have encountered an undue obstacle, they may file a complaint with the Agency. The Agency will investigate the complaint to determine whether an obstacle exists, then decide whether the obstacle is undue.

When the Agency finds that an undue obstacle exists, the Agency takes action to ensure that the obstacle is removed. Through these actions, the Agency works to eliminate unnecessary or unjustified barriers to travel.

In 1999, the Agency received 70 complaints and issued decisions on 51 complaints. The Agency reported on two investigations in last year's annual report which were ongoing in 1999.

FIGURE 2: ACCESSIBILITY COMPLAINTS

Issues of complaints resolved in 1999 (%)



Air Travel by Persons who are Obese

The Agency received a complaint in late November 1997 against an air carrier regarding charges the carrier assessed to accommodate the additional seating needs of a passenger who is obese. As any ruling in this matter could have significant implications for all carriers, the Agency decided to conduct further consultations before deciding on the complaint. All parties agreed to extend the statutory time limit for rendering a decision to allow sufficient time for consultation. The Agency then appointed an inquiry officer to study whether obesity is a disability for the purposes of applying the accessibility provisions of the Act. It also asked the officer to look into the ways that Canadian air carriers accommodate passengers who are obese and need more seating space.

The officer conducted research and consultations and presented an interim report to the Agency in April 1999. The officer concluded that obesity is a chronic disease and should be considered a disability for applying the provisions of the Act, but only when a person's stature requires additional space to travel. As well, the officer recommended that the charges imposed by carriers for extra seating were unacceptable since the industry had not provided information during the consultations to suggest that the cost implications of providing additional seating space would be excessive. The Agency distributed the report to interested parties and at year-end was considering their comments.

Interprovincial Municipal Urban Transit Systems

In mid-1998, the Agency received three complaints about the accessible services provided by the Société de transport de l'Outaouais (STO). After conducting a preliminary review of the information gathered during pleadings, the Agency decided that it needed more comprehensive information on public transit and para-transit for persons with disabilities. It hired a consultant to study the matter in more depth and to prepare a report. A final report was submitted to the Agency in mid-December 1999, and was forwarded to the three applicants and the STO for their comments. The Agency will consider the consultant's analysis and the parties' comments as it reviews the files and determines whether the STO's accessible services create undue obstacles to travel for persons with disabilities.

COMPLAINTS SUMMARY

Issues that have Triggered Complaints

Complaints in the last 10 years have focussed mainly on service issues, such as lack of assistance in the terminal, methods used to board mobility-impaired passengers, refusal to carry mobility aids and damage to mobility aids. There were also complaints relating to appropriate seating accommodation in aircraft, accessibility of carrier equipment, carrier personnel's lack of awareness of ways to meet the needs of travellers with disabilities, and accessibility in terminals.

In 1999, the Agency noted that the lack, or perceived lack, of telephone-teletype devices (TTYs) is a growing concern within the community of people who are deaf or hard of hearing. While the Agency

continued to receive complaints related to service issues and personnel awareness, the number of complaints related to TTYs rose dramatically, accounting for half of all complaints received. Such complaints related to the failure to provide TTYs in terminals; carriers' failure to provide a TTY service; or carriers' failure to advertise their TTY numbers as widely as they advertise their regular numbers in media such as advertisements, timetables and Web sites.

In most cases, carriers and service providers undertook corrective measures that the Agency ordered. The Agency recognized that the complaints resolution process is limited to the parties to a complaint, but that this was part of a larger, systemic issue. Accordingly, in June Agency staff sent a letter to all Canadian air carriers and airport operators on the matter of TTYs. It encouraged them to review the content of relevant Agency decisions and to assess what, if anything, they should do to ensure they were in compliance with the Communications Barrier Report. The Agency continues to receive complaints on TTY matters.

Twice in 1999, the Agency was asked to rule on the application of the *Canadian Charter of Rights and Freedoms* (the Charter) to complaints. In the context of discrimination, the Charter is applied to those instances where discrimination is caused by the application or operation of law and not to situations caused by private actions.

In one case involving ground transportation at Ottawa's Macdonald-Cartier International Airport, the Agency noted that the private entities providing taxi and shuttle bus services at the airport

are private entities and as such, their actions are not subject to challenge under the Charter.

In a second instance involving the Ottawa-Carleton Regional Transit Commission (OC Transpo), the status of the corporation as a private entity was less clear. The Agency recognized that while OC Transpo is a corporate entity, it is subject to some degree of control by the municipal government. The Agency was of the view that the question of whether that government control was sufficient to bring OC Transpo under the application of the Charter was a matter that would be more properly dealt with in another forum given the broad implications of such a decision on OC Transpo.

The Agency makes its decisions available to individuals who have asked to be placed on mailing lists. They are also available to the general public on the Agency's Web site. Following is a brief summary of some significant decisions the Agency issued in 1999.

Interprovincial Para Transpo Services

An applicant who is mobility impaired filed a complaint about the Ottawa-Carleton Regional Transit Commission's (OC Transpo) procedure for requesting transportation on its door-to-door Para Transpo service to Hull, Quebec. All regularly scheduled trips for work or post-secondary education to Hull are automatically provided. However, it requires passengers to reserve 24 hours in advance for casual needs and to be placed on a waiting list. The applicant believed this requirement results in unfair and unequal treatment for persons with disabilities, as persons without disabilities are not subject to this requirement.

The Agency recognized that because of the nature of the service provided by Para Transpo, the administration, scheduling and coordination of all reservations requires greater planning on a daily basis. Without an automated reservation and scheduling system, the required 24-hours notice for casual trips was found to be necessary. The Agency found that while the reservation process was inconvenient, it did not constitute an undue obstacle.

TTY Issues

A person who is deaf and uses a TTY filed a complaint with the Agency concerning the absence of a TTY reservation number on the Web site of Bradley Air Services Limited (First Air). While the Agency noted that First Air does provide other ways for customers to communicate with the carrier, such as a fax number and an e-mail address, not all persons who are deaf have access to these means. It concluded that, given the size and nature of First Air's operations, the lack of a TTY reservation line constituted an undue obstacle to the applicant's mobility. The Agency ordered the carrier to install a TTY and to include the number on its Web site; in all seat-sale advertisements; and in all other publications, when reprinted, that provide information about the air carrier that is otherwise available to the general public.

Parties filed other TTY-related complaints against both Canadian and foreign air carriers in 1999. These carriers included Air Canada, Canadian Airlines International Ltd., Bearskin Lake Air Services, Air St-Pierre S.A., Northwest Airlines and Lufthansa German Airlines. The Agency also issued decisions relating to the provision of public pay phone TTYS in airports in Montréal, Toronto,

Bathurst and Ottawa, as well as in VIA Rail Canada Inc. terminals in Bathurst and Truro.

Damage to an Electric Wheelchair

The Agency received a complaint regarding the difficulties a traveller experienced when his electric wheelchair was severely damaged when he was travelling with Air Canada. Air Canada arranged and paid for the repairs to the wheelchair, but the applicant had to use a temporary manual wheelchair for five days. The applicant said his wheelchair allows him freedom of movement in all aspects of his daily living, both at work and at home.

In its decision, the Agency found that the damage caused and the failure to adequately inform the passenger of the available options regarding a suitable temporary replacement wheelchair constituted undue obstacles to his mobility. Air Canada subsequently submitted the training records of some of the employees involved in handling wheelchairs; informed its employees of the importance of safely handling mobility aids; and submitted a brochure outlining repair options for damaged mobility aids, including provisions relating to replacement aids. In 2000, the Agency will review all submitted material and determine whether further action is required.

Refusal to Carry a Service Animal

An individual who is blind filed a complaint following British Airways' refusal to carry his guide dog in the aircraft passenger cabin on a flight between Toronto and New York City. The Agency found this refusal to be an undue obstacle to his mobility. The airline based its refusal on quarantine restrictions implemented by the government of the United Kingdom.

The Agency found that these restrictions do not apply to Canada–United States traffic and told the carrier to amend its procedural manual. During the investigation, the Agency noted British Airways’ policy provision that guide dogs are to be muzzled, and it asked the carrier to remove this provision.

Following the decision, British Airways advised the Agency that it would review its corporate policy on the carriage of service animals. British Airways’ response is an example of how the complaints process can lead to a better transportation system for all.

Assessment of the Operation of the Act

Each year, the Agency assesses the operation of the Canada Transportation Act and difficulties it observed in the administration of the Act.

Subsection 42(2) of the Act directs the Agency to assess, in its annual report, the operation of the Act and any difficulties the Agency has encountered in administering the Act. This chapter responds to that directive, paying particular attention to areas where the current Act differs from previous legislation. This assessment is based on the Agency's experience with the new Act and on comments from transportation providers and users.

The Agency's mandate is to administer transportation legislation, as established by Parliament in the Act. Therefore, the assessment in this chapter will not comment on existing policy. Rather, it focusses on how the provisions of the legislation make it possible to implement the Act's underlying policies effectively and efficiently.

TIME FOR MAKING DECISIONS

In previous years, the Agency has identified problems with the time limits for making decisions. Relevant limits include 60 days to complete a final

offer arbitration process to 120 days to make a decision on most other matters. In the situations highlighted below and outlined in greater detail in previous annual reports, these time limits may give the Agency or other parties insufficient time to resolve the issues.

- Procedural challenges or unusually complex issues may arise during a final offer arbitration (FOA) process, slowing the process down.
- Incomplete applications or complaints will trigger the statutory time frame, whether the originating documents are complete or not.
- Legal issues, such as those relating to confidentiality of information or to jurisdiction, may arise at a preliminary stage. Often, the Agency must resolve such preliminary matters before dealing with the main application.

The 120-day deadline is also problematic when a complaint may indicate a systemic problem in the transportation network. Such problems are best addressed using a systemic approach, such as developing regulations or codes of practice. However, such an approach involves extensive consultations and can take

several months. The Agency believes it appropriate to consider alternatives that would allow it, on its own motion, to extend the 120-day limit in such cases where not doing so could cause serious prejudice to one or more parties.

In 1999, time limits were an issue in several cases. Here are two examples.

CN Cudworth Subdivision

As discussed in Chapter 2, CN applied for a net salvage value (NSV) determination for a line of railway in its Cudworth Subdivision in June 1999. Following this application, several rural municipalities asked the Agency to rule that the NSV determination of CN's Cudworth Subdivision should exclude the value of assets acquired under branch line rehabilitation agreements.

Some problems are best addressed using a systemic approach, such as developing regulations or codes of practice.

The Agency determined that it was appropriate to delay the Cudworth NSV proceedings and decision until after it had rendered a decision on the rehabilitation asset issue. However, it would not have been possible to determine the NSV within the 120-day time limit. Therefore, the Agency needed permission from the parties involved, as it does in all such cases, to extend the deadline for giving its NSV determination. In this case, the parties did give their approval. As a result, the Agency exceeded the 120-day time frame contemplated for rendering an NSV decision.

Edmonton Intermodal Facility

On February 24, 1999, CN applied to the Agency for approval of the construction of the Edmonton Intermodal Facility. The

Agency did not render its final decision on the application until October 4, 1999, some 222 days later. In this case, an environmental assessment was required under the *Canadian Environmental Assessment Act* (CEAA). That Act suspends the Agency's power to make decisions under the *Canada Transportation Act* until the environmental assessment is complete and a decision has been made under the CEAA. However, the CEAA does not specify time limits for the assessment and does not oblige other parties to respect time frames the Agency may have to meet under the Act. This case involved numerous parties and complex environmental issues. As a result, the extensive environmental assessment required the Agency to delay its decision under the Act well beyond the 120 days specified in section 29 of the Act.

RAIL TRANSPORTATION

DISPUTE RESOLUTION AND COMPETITIVE ACCESS ISSUES (Sections 111 to 139 and 159 to 169)

The Act contains several provisions related to dispute resolution and competitive rail access. These are commonly referred to as the level of service, interswitching, competitive line rate (CLR) and final offer arbitration (FOA) provisions. They address railway rates and levels of service, and provide measures to enhance competition.

Table 5 compares the number and type of applications received during the last three and a half years under the *Canada Transportation Act* to similar applications received during the eight-and-a-half-year period governed by the *National Transportation Act, 1987*. The table shows that the FOA and level of service provisions continue to be used the most.

TABLE 5
COMPARISON OF APPLICATIONS
RELATED TO DISPUTE RESOLUTION
AND COMPETITIVE ACCESS

| <i>National Transportation Act, 1987</i> January 1, 1988 to June 30, 1996 | | | | |
|--|----------------------------|------------------------|----------------|----------------|
| Provisions | Relevant section(s) | Number of cases | Decided | |
| Competitive Line Rate (CLR) | Sections 134 to 144 | 6* | 5 | |
| Interswitching | Subsection 153(3) | 10 | 3 | |
| Level of Service | Section 147 | 19 | 13 | |
| Final Offer Arbitration (FOA) | Sections 48 to 57 | 9 | 2 | |
| Public Interest** | Sections 59 to 63 | 12 | 9 | |
| <i>Canada Transportation Act</i> July 1, 1996 to December 31, 1999 | | | | |
| Provisions | Relevant section(s) | Number of cases | Decided | Pending |
| Competitive Line Rate (CLR) | Sections 129 to 136 | 0 | 0 | 0 |
| Interswitching | Sections 127 to 138 | 0 | 0 | 0 |
| Level of Service | Sections 113 to 116 | 18 | 9 | 3 |
| Final Offer Arbitration (FOA) | Sections 159 to 169 | 13 | 5 | 0 |
| Public Interest** | N/A | N/A | N/A | N/A |

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

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

Final Offer Arbitration

The 1996 Act shortened the statutory time frame for the FOA process from 90 days to 60 days. The Agency has previously reported in detail on problems associated with FOA, particularly those related to the shortened statutory time frame, the process itself and the costs of arbitration. These problems remain and are summarized below.

- Some shippers feel that carriers are reluctant to negotiate and note that one party can slow the process down by raising procedural objections, sometimes to the point that the process cannot be completed within the 60-day time limit and must begin again.
- Some parties feel that shippers are at a disadvantage in the FOA process because they must reveal their final offer to the carrier, who then reacts to that offer. Carriers maintain that sequential filing works well.
- There are concerns that the FOA process has become too legalistic and costly, and that it may yield unfair results.
- Shippers feel that some carriers have an advantage of familiarity because they are exposed to the FOA process more often, while many shippers use it only once. On the other hand, carriers remain concerned that arbitrators may make decisions without sufficient knowledge of railway operations, previous decisions made by arbitrators, or the intent of the Act.

Despite these problems, use of the FOA provision continues to rise. It was used nine times between 1988 and 1996, but has been used 13 times since July 1996.

In 1999, the Agency worked to improve the FOA process. For instance, the pri-

vate, commercial elements of FOA are confidential, unless the parties agree otherwise. However, the outcome of procedural challenges – such as whether an international or intermodal rate can be arbitrated – can be made public, so long as all of the private, commercial elements in dispute, including the identity of the parties, remain confidential. The Agency has decided to publish a summary of its decisions dealing with procedural challenges. This should increase the understanding of parties who wish to use FOA and improves the process for all involved. The Agency is working on other ways to make the outcomes of these challenges more widely understood.

The Agency is also reviewing its process for selecting arbitrators and is establishing rules of procedure for conducting FOA. These initiatives should assist arbitrators and streamline arbitration proceedings. They will also help shippers and carriers with the FOA process, particularly when the cost of the process is a significant factor in the decision to use FOA.

In response to shippers' concerns about the FOA process, in 1999 Justice Estey (in his review of the grain handling and transportation system) and Mr. Arthur Kroeger (in his implementation process) recommended several legislative changes to the existing FOA process. For example, Justice Estey and Mr. Kroeger proposed that both shipper and carrier submit their offers to the arbitrator simultaneously.

Certificates of Fitness

The Agency issues certificates of fitness to persons intending to construct or operate a railway, once it is assured that adequate liability insurance is in place. This provision was designed to help new railway operators enter the marketplace

while protecting the interests of shippers and the public, and it continues to work well. One issue has been raised with respect to certificates concerning the jurisdiction under which an applicant railway will operate.

The Agency issues certificates of fitness only to railways that are within Parliament's legislative authority. Parties have asked the Agency to identify the factors that it considered in confirming that an applicant railway falls within the federal domain. The Agency intends to address the issue by including the relevant factors within the decision that is issued with any new certificate of fitness.

Railway Line Construction

In 1998, the Agency reported that two of its decisions concerning the construction of railway lines had been appealed to the Federal Court of Canada. While upholding the Agency's rulings, the Court nonetheless clarified the interpretation of section 98 of the Act relating to railway construction.

One case involved the construction of a railway line to serve the Union Carbide facility near Prentiss, Alberta. The Federal Court ruled that the Agency was correct in its interpretation that the Agency's mandate under section 98 was restricted to the reasonableness of the location of the railway line and did not extend to the reasonableness of the line itself.

In another case, involving the construction of the Edmonton Intermodal Facility, the Federal Court upheld the Agency decision. That decision had concluded that, for the purposes of section 98 of the Act, the definition of a railway line must include not only main lines and branch lines, but also sidings, spurs,

yard tracks and other auxiliary trackage. Two other concerns arose in 1999 with respect to section 98. First, it was noted that Agency approval is required only for the construction of railway lines and not for other railway facilities, such as stations, depots, wharfs, warehouses or other buildings. Such facilities are included in the definition of a railway under section 87 of the Act and may therefore be constructed by a railway company pursuant to section 95 of the Act. As no approval is required for such facilities, they do not need to be subjected to an environmental assessment under federal legislation. However, because such facilities are part of a federal railway, their construction would also be exempt from provincial and municipal approval processes. Therefore such facilities may be constructed without any approval process or environmental assessment.

Similarly, railway lines or facilities built within "...100 m of the centre line of an existing railway line for a distance of no more than 3 km," do not require Agency approval. If no Agency approval is required, then no environmental assessment is required under the *Canadian Environmental Assessment Act*. Major facilities such as intermodal yards and transshipment centres can be built within these approval-exempted limits. These facilities that can be built without environmental assessments may be more extensive than was contemplated when the Act was promulgated.

TRANSFER AND DISCONTINUANCE OF RAILWAY LINES

In previous years, the Agency has reported that, in general, the railway line trans-

fer and discontinuance provisions operate as intended, but indicated that there were specific concerns about some provisions. These concerns remain. Described in detail in previous annual reports, these concerns are summarized below:

- the lack of requirement for a **notice of impending transfer**, which would allow parties to prepare for the effects of changes in railway operations;
- the possibility that there may be no **continuation of rights** for shippers and governments once a railway leaves federal jurisdiction;
- the lack of requirement for **evidence of transfer** to ensure that railway lines transferred without advertisement will continue to operate;
- the short **time frames** within which governments must decide whether to buy a railway line offered for transfer;
- the requirement that governments must accept a railway's offer to transfer a railway line before they can apply to have the Agency determine the price or **net salvage value**; and
- the freedom that railways have concerning **segmentation of railway lines**.

In 1999, two other issues arose concerning negotiation processes within the transfer and discontinuance provisions.

Simultaneous Negotiations

The Act allows a railway to offer to transfer a railway line to governments for no more than net salvage value while continuing to negotiate (after the minimum four-month period stipulated in the Act) with potential short-line operators who have expressed an interest in the same line. Provincial and municipal government bodies are concerned that their acceptance of the railway's offer may

hinder any concurrent railway negotiations with others who intend to continue rail service in their area. At the same time, if governments hesitate to accept an offer because of continuing commercial negotiations, the time frames available to governments to accept an offer may expire.

Good Faith

The Act requires a railway to negotiate in good faith with any person who has expressed an interest in buying a railway line for continued operations following an advertisement to transfer such a line. Some parties have asked why there is no equivalent provision when a railway is negotiating with a government body, either for the determination of the net salvage value or for the final transfer of the line after net salvage value has been determined.

NET SALVAGE VALUE

Under the Act, the Agency may determine the value of a railway line upon application by a government or a railway company, if these parties cannot agree on the net salvage value of the line. The parties may make this request to the Agency anytime they have been unable to agree on the net salvage value, within 90 days of the acceptance of the offer. In previous annual reports, the Agency has identified problems with the Act relating to net salvage value. Those that remain:

- Provincial and municipal governments would like to know the price of a transfer before accepting a railway's offer to transfer a railway line; many carriers do not support this idea.
- The sale, lease or transfer of a line may be incomplete long after the parties have entered into the agreement. However, the railway's obligations to

provide service continue. As a result, railways may be unable to dispose of their lines and obligations within a reasonable time frame, as the Act intended.

This is one area where alternative dispute resolution may help the parties reach an agreement.

AIR TRANSPORTATION

While no major difficulties related to the air transportation provisions of the Act arose in 1999, a number of minor issues continued to surface as the Agency gained experience with the operation of the Act.

ADVERTISING AND SALE OF NEW AIR SERVICES (Section 59)

Section 59 prohibits a company from accepting bookings and selling transportation before it receives a licence for a new air service. This concept and a financial fitness test were elements of Canada's 1994 International Air Transportation Policy, which was designed to protect consumers from new Canadian international charter carriers that could sell transportation but fail to actually operate a charter service.

By extending the scope of section 59 to all publicly available air services, the Act has applied the prohibition to foreign charter carriers, well-established Canadian and foreign scheduled carriers seeking to add new routes, companies bidding on public contracts and new companies seeking to advertise their upcoming services before taking bookings.

Although the Agency has successfully dealt with the broad scope of section 59 by using its powers to exempt carriers from the section's application where compliance is unnecessary, undesirable or impractical, the scope of the section should be limited to the intent of the consumer protection measures set out in the 1994 International Air Policy.

NOTICE OF DISCONTINUANCE AND REDUCTION OF SERVICES

(Section 64)

Section 64 requires the last or second-last licensed air carrier wishing to discontinue a domestic service to a particular point, or to reduce the number of flights to fewer than one a week, to give at least 60 days' notice of the proposal. This notice formally announces to other operators in the area that a commercial opportunity exists and gives the community time to seek replacement carriers.

If a licensee fails to comply with section 64, section 65 allows the Agency to direct that carrier to reinstate service, but only following a written complaint and only where it is practicable for the carrier to do so. When financial distress causes an air carrier to terminate all operations, it would be difficult for the Agency to find that it is practicable for the licensee to resume services. In fact, should a licensee's insurance or air operator certificate become invalid, the Agency could not order the licensee to reinstate the service, as subsection 63(1) would require the Agency to suspend or cancel the licence.

Section 64 applies to all domestic air services, regardless of the nature of the service. For example, seasonal and lodge operators, as well as certain charter operators who operate to a point temporarily, are subject to the notice requirement.

On November 27, 1999, Inter-Canadian ceased all operations. The airline had served several points in Eastern Canada. On December 2, 1999, the Government of Newfoundland and Labrador filed a complaint under section 65 of the Act arguing that Inter-Canadian failed to provide 60 days notice of discontinuance of its domestic service at Stephenville, as required by section 64 of the Act.

On December 10, 1999, the Agency found that Inter-Canadian had failed to comply with section 64 of the Act with respect to its service at Stephenville. However, because the company had ceased all operations and no longer had access to aircraft, the Agency did not direct Inter-Canadian to reinstate service at Stephenville.

Although the Agency has been able to deal with these situations by using its powers to exempt carriers where compliance is unnecessary, undesirable or impractical, consideration should be given to specifying in the Act that this provision applies only to those air carriers who have operated for a minimum of six months. This change would exclude seasonal operators and would allow air carriers to enter markets temporarily.

CONCLUSION

In this chapter, the Agency has assessed the operation of the Act and difficulties observed in administering the Act, based on its experience. By consulting with the members of the transportation community and other interested parties, the Agency has been able to gain insight into how the Act affects them. Such insight will help the Agency in its continued attempts to respond to changes in the Canadian transportation environment.

Looking Ahead

As the transportation sector and the Canada Transportation Act evolve, the Agency will evolve along with them so that Canada's transportation industry can compete with the best in the world.

During the four-year history of the *Canada Transportation Act*, the transportation industry has evolved in response to Parliament's intention to rely more heavily on market forces to dictate its structure and competitiveness. To that end, Parliament continues to refine the legislative framework to encourage airlines, shipping firms and railways to do what they do best: transport people and goods across Canada's vast spaces and beyond our borders. At the same time, the Canadian Transportation Agency has adapted to these changing needs and times in an effort to assist the Canadian transportation industry and its users.

This emphasis on allowing shippers and carriers to find commercial solutions to business issues rather than regulating their solution has required the Agency to approach its activities from a different perspective than that of its predecessors. Key to this approach is the need for the Agency to be flexible so that it may respond quickly to changing conditions in the industry. Therefore the Agency uses a variety of methods – including, but not limited to, regulation – to help

Canada achieve an efficient and accessible transportation system.

Parliament's intent is that the marketplace should prevail without interference unless absolutely necessary, to ensure that our transportation industry can compete with the best in the world. As the transportation sector and the legislation evolve, the Agency will evolve with them to allow them to do just that. This chapter discusses some of the ways that the Agency will be "moving with the times" in 2000.

STATUTORY REVIEW OF THE ACT

Section 53 of the *Canada Transportation Act* requires a review of the Act and other legislation pertaining to economic regulation of transportation. This review will likely begin in summer 2000, when the Minister of Transport announces his plan for conducting the review. The Agency's ongoing consultations with various sectors of the transportation industry, shippers, carriers, consumer groups and other levels of government should contribute to the growing understanding of how the Act has benefited or constrained various parties.

MARINE ISSUES

In November 1999, the Minister of Transport tabled his report on marine pilotage. The report contained the Agency's recommendations concerning pilotage in Canada and Transport Canada's responses to those recommendations. This report is considered a significant step in ensuring a healthy, efficient regime that will respond to the legitimate needs of its users, ensure navigational safety and protect the marine environment.

Following changes to the *Canada Marine Act* (CMA), the Agency now administers various provisions that deal with disputes arising between port authorities and port users about fees. In this regard, the Agency received an application from Halterm Limited in December 1999 claiming that the Halifax Port Authority contravened sections 49 and 50 of the CMA by unjustly discriminating against Halterm and proposing fees that were not fair and reasonable. The Agency was considering this matter at year-end.

RAIL ISSUES

In September 1999, Mr. Arthur Kroeger submitted his recommendations for Canada's grain transportation and handling system to the Minister of Transport. If accepted, these recommendations would affect the Agency's activities, particularly those related to the transportation of western grain, running rights, abandonment and other issues. Until any such changes occur, the Agency will continue to issue an annual rate scale for western grain movements before April 30 every year and hear applications and complaints under the existing Act.

The Agency will continue to take note of the potential effects of recent and future changes in the rail industry, such as takeovers, mergers and short line consolidation. It will also consult with the railway industry and with the Federation of Canadian Municipalities on noise impact issues.

The Agency's decision on railway assets funded under branch line rehabilitation agreements in the Cudworth case is expected to be issued in early 2000¹. It will set a precedent for the treatment of these assets when determining the net salvage value of branch lines being transferred to governments.

AIR ISSUES

The recent restructuring of the Canadian airline industry will likely affect the Agency's role in the domestic industry significantly. In any airline merger, the Agency will ensure that the new entity is Canadian. Other related legislative amendments may give the Agency additional tariff and enforcement responsibilities². The merger of Canadian Airlines International and Air Canada will also likely rationalize international routes and will require the Agency to assist the federal government in amending or renegotiating certain bilateral agreements between Canada and other countries.

International airline alliances, liberalization of market access, multilateralism, code-sharing services and other developments will continue to increase the need for the Agency to interpret legislation and bilateral agreements. The Minister's ongoing review of international passenger charter policy may also result in changes to the current regulatory framework.

1. For reasons set out in decision #33-R-2000, dated January 19, 2000, the Agency decided that rehabilitation assets are to be included in the net salvage value determination.

2. On February 17, 2000, the Minister of Transport tabled Bill C-26 in the House of Commons. It proposed, among other things, to amend the Agency's responsibilities to prevent unreasonable price increases on monopoly routes and to deal with certain types of consumer complaints regarding air travel within Canada.

ACCESSIBILITY ISSUES

As discussed in Chapter 2, the Agency has developed a survey of travellers with disabilities, to get a clearer picture of how well the system responds to their needs. It will conduct the survey in 2000. By evaluating the experiences of travellers with disabilities, the survey will help the Agency and transportation service providers understand the impact of their efforts, as well as the challenges that remain. It will also help the Agency set goals and priorities for improving the accessibility of travel in Canada.

In 2000, the Agency will begin developing a code of practice on communication issues in the federal transportation network. This code will address communication issues that travellers with sensory and cognitive disabilities face when they travel, such as a perceived lack of TTYs (telephone teletypes for the deaf). The Agency will also work on developing a monitoring tool to assess the industry's application of the Rail Code of Practice.

Also in 2000, the Agency will finalize the checklist it is developing to help transportation service providers meet the needs of persons with disabilities when they are travelling by air. As well, it will continue its work to resolve issues related to the accessibility of Canada's transportation system to persons who are obese.

ALTERNATIVE DISPUTE RESOLUTION

In 2000, the Agency will continue developing an alternative dispute resolution (ADR) mechanism. It plans to implement a one-year pilot project in the rail mode

to thoroughly test and evaluate the system. The results of this pilot will determine the shape that an Agency-wide ADR process may take.

FEDERAL COURT DECISIONS

A number of Federal Court judgments are expected in 2000 that may significantly affect the Agency's jurisdiction in certain areas. These judgments are expected to determine, among other issues,

- whether the Agency can hear and determine railway noise complaints and, if it has such jurisdiction, what type of evidence is needed to sustain such complaints;
- whether the Agency can hear and determine railway crossing cost apportionment disputes under the *Canada Transportation Act* and the *Railway Safety Act* after the crossing work has been completed;
- whether the rail portion of an inter-modal through rate is eligible for final offer arbitration; and
- the degree to which the railway rate regulation referenced in Term 32(2) of the 1949 Terms of Union of Newfoundland with Canada, continues to apply in the current environment.

AGENCY MANAGEMENT

In 2000, the Agency will continue to participate in government-wide programs, such as the implementation of the Universal Classification System (UCS) referred to in Chapter 1. The Agency will also focus its attention on the federal government's efforts to improve access and service using innovative information technologies. Some of these new approaches include e-commerce, Public Key Infrastructure and "Canada On-line."

In November 1999, the federal government released the results of the Public Service Employee Survey. The survey was designed to reveal federal public service employees' views on the workplace and on how their work environment can support their career aspirations and their learning and development needs. Like employees throughout the public service, Agency staff noted a variety of challenges they face, such as accomplishing additional work with fewer resources, handling changing priorities and streamlining internal processes. The Agency is currently developing an action plan to address the concerns raised in the survey.

The Agency will also review the strategic plan it developed in 1997, when it was adapting to its mandate under the new *Canada Transportation Act*. After three years, the Agency wants to adjust its strategic goals, where required, to adequately respond to changes in both the transportation and government environments. This review will ensure that the Agency's operations are aligned with today's realities and anticipated developments. The Agency's overall objective – to help Canada achieve an efficient and accessible transportation system – will remain.

CONCLUSION

In its third full year of operation under the *Canada Transportation Act*, the Agency kept abreast of change in the transportation sector. In its actions and decisions, it strived to be sensitive to changes as they occurred within the industry and Canadian society as a whole. As the Agency heads into 2000, it will continue to listen to the views of transportation providers and users across the country, and will continue to urge Canadians to provide feedback through surveys, newsletters, toll-free telephone lines, the Internet and other means. By using the tools available to it, the Agency will continue to help the transportation sector rise to the challenges of deregulation, competition, technological advances and any other changes, yet unknown, that will sweep across the industry. It will also continue to help users of the transportation system make their needs known and resolve differences with service providers.

The Agency strives constantly to enhance its understanding of the transportation industry. That expertise will serve it well as it works towards an efficient, accessible transportation network for all Canadians – as it continues to move with the times.

STATUTES AND REGULATIONS IN FORCE IN 1999

ACTS

The Agency has sole responsibility for:

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

The Agency shares responsibility to Parliament for the following Acts:

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

REGULATIONS

The Agency has sole responsibility for the following regulations, rules and other statutory instruments:

| | |
|--|--|
| Air Transportation Regulations | Railway Interswitching Regulations |
| Canadian Transportation Agency Designated Provisions Regulations | Railway Third Party Liability Insurance Coverage Regulations |
| National Transportation Agency General Rules | Railway Traffic and Passenger Tariffs Regulations |
| Personnel Training for the Assistance of Persons with Disabilities Regulations | Railway Traffic Liability Regulations |
| Railway Costing Regulations | Uniform Classification of Accounts and Related Railway Records |

The Agency shares responsibility to Parliament for the following regulations:

Carriers and Transportation and Grain Handling Undertakings Information Regulations
The Jacques-Cartier and Champlain Bridges Inc. Regulations
The Seaway International Bridge Corporation, Ltd. Regulations

THE AGENCY'S ORGANIZATIONAL STRUCTURE

EXECUTIVE

Marie-Paule Scott, Q.C.
General Counsel
and Secretary

Gavin Currie
Director General
Air and Accessible
Transportation Branch

Seymour Isenberg
Director General
Rail and Marine Branch

Joan MacDonald
Director General
Corporate Management
Branch

AIR AND ACCESSIBLE TRANSPORTATION BRANCH

Agreements, Tariffs and Enforcement

D. Western
Director

Phone: (819) 997-6643
Fax: (819) 953-5562

Licensing and Charters

R. Landry
Director

Phone: (819) 953-8761
Fax: (819) 953-5562

Accessible Transportation

H. Nadeau
Director

Phone: (819) 953-2749
Fax: (819) 953-6019

International Agreements

F. Rosen
Manager

Phone: (819) 953-9793
Fax: (819) 953-5562

Tariffs

G. Danylchenko
Manager

Phone: (819) 997-6419
Fax: (819) 953-5686

Enforcement

D. Rennick
Manager

Phone: (819) 953-9786
Fax: (819) 953-5562

Licensing

R. Guerra
Manager

Phone: (819) 997-6359
Fax: (819) 953-5562

Charters

S. Boutet
A/Manager

Phone: (819) 997-6227
Fax: (819) 953-5572

Financial Evaluation

J. Jacob
Manager

Phone: (819) 997-8960
Fax: (819) 953-5562

Regulations, Research and Analysis

D. Mainville
A/Manager

Phone: (819) 997-0806
Fax: (819) 953-6019

Complaints and Investigations

A. Hampel
Manager

Phone: (819) 953-9151
Fax: (819) 953-6019

Monitoring and Liaison

C. Stark
Manager

Phone: (819) 953-2748
Fax: (819) 953-6019

Senior Investigators, Enforcement

Pacific

G. King
800 Burrard Street
Suite 641
Vancouver, British Columbia
V6Z 2V8

Phone: (604) 666-0620
Fax: (604) 666-1267

Central

M. Pearson
Suite 702, 269 Main Street
P.O. Box 27007
Winnipeg Square Postal Outlet
Winnipeg, Manitoba R3C 4T3

Phone: (204) 984-6092
Fax: (204) 984-6093

Quebec

R. Laliberté
Suite 8023
101 Roland-Therrien Boulevard
Longueuil, Quebec
J4H 4B9

Phone: (450) 928-4173
Fax: (450) 928-4178

Western

L. Brooklyn
Suite 1100
9700 Jasper Avenue
Edmonton, Alberta T5J 4C3

Phone: (780) 495-6618
Fax: (780) 495-5639

Ontario

J. Anderson
Suite 300, 4900 Yonge Street
Toronto, Ontario
M2N 6A5

Phone: (416) 952-7895
Fax: (416) 952-7897

Atlantic

B. Mercer
Unit 109, 1045 Main Street
Moncton, New Brunswick
E1C 1H1

Phone: (506) 851-6950
Fax: (506) 851-2518

RAIL AND MARINE TRANSPORTATION BRANCH

Rail Rates Costing and Monitoring Directorate

N. Thurston
Director

Phone: (819) 997-4914
Fax: (819) 953-5564

Rail and Marine Complaints and Audit Services

P. Juneau
Director

Phone: (819) 953-0374
Fax: (819) 953-5564

Rail Infrastructure

I. Spear
Director

Phone: (819) 953-0327
Fax: (819) 953-8353

Freight Division

B. Hennessy
Manager

Phone: (819) 953-9912
Fax: (819) 953-5564

Cost Determinations

F. Urban
Manager

Phone: (819) 953-9918
Fax: (819) 953-5564

Financial and Costing Systems Analysis

G. Nera
Manager

Phone: (819) 997-2036
Fax: (819) 953-5564

Grain Division

J. Riegler
Manager

Phone: (819) 997-6542
Fax: (819) 953-5564

Marine Complaints and Investigations

D. Pilon
Manager

Phone: (819) 997-8354
Fax: (819) 953-5686

Rail Complaints and Investigations

J. Cochrane
Manager

Phone: (819) 997-1081
Fax: (819) 953-5564

Audit Services and Statistical Analysis

M. Gibbons
A/Manager

Phone: (819) 953-5526
Fax: (819) 953-5564

Engineering and Environmental Services

P. Lacoste
Manager

Phone: (819) 953-2117
Fax: (819) 953-8353

Dispute Resolution

G. Gordon
Manager

Phone: (819) 953-0328
Fax: (819) 953-8353

Approvals and Determinations

K. Rochon
Manager

Phone: (819) 953-0365
Fax: (819) 953-8353

CASES BEFORE THE SUPREME COURT OF CANADA, THE FEDERAL COURT, AND PETITIONS TO THE GOVERNOR IN COUNCIL

SUPREME COURT OF CANADA Cases Decided in 1999

**Marilyn Sharp v. Canadian
Transportation Agency and
Canadian Pacific Railway Company**
Court File No.: 27474

Application for leave to appeal from the Judgment of the Federal Court of Appeal dated June 11, 1999, further to an appeal to that Court by Marilyn Sharp from an Order of the Canadian Transportation Agency which approved an application by the Canadian Pacific Railway Company pursuant to subsection 98(2) of the *Canada Transportation Act* for approval to construct a line of railway.

Application for leave to appeal denied by the Supreme Court of Canada on December 15, 1999.

FEDERAL COURT OF APPEAL Cases Decided in 1999

**Marilyn Sharp v. Canadian
Transportation Agency and
Canadian Pacific Railway Company**
Court File No.: A-549-98

Appeal of Agency Decision No. 178-R-1998 and Order No. 1998-R-194, both dated April 21, 1998, which approved an application by Canadian Pacific Railway

Company pursuant to section 98 of the *Canada Transportation Act* for approval of the construction of a proposed line of railway near Prentiss, Alberta.

The appeal was dismissed by the Federal Court of Appeal on June 11, 1999.

**Canadian National Railway Company v.
Naber Seed & Grain Co. Ltd.**
Court File No.: 99-A-17

Application for leave to appeal Agency Order No. 1999-R-150 and Decision No. 132-R-1999, both dated March 24, 1999, concerning a level of service complaint by Naber Seed & Grain Co. Ltd.

The application for leave to appeal was dismissed on July 8, 1999.

**Canadian National Railway Company v.
Canadian Transportation Agency**
Court File No.: A-46-99

Appeal of Agency Letter-Decision No. LET-R-238-1998 dated September 9, 1998, which required the Canadian National Railway Company to file an application pursuant to section 98 of the *Canada Transportation Act* for Agency approval to construct the Edmonton Intermodal Yard Facility.

The appeal was dismissed by the Federal Court of Appeal on November 29, 1999.

Canadian National Railway Company v. Eagle Forest Products Limited Partnership

Court File No.: A-731-97

Appeal of Agency Decision No. 457-R-1997 and Order No. 1997-R-453, both dated July 17, 1997, in the matter of a complaint by Eagle Forest Products Limited Partnership pursuant to subsection 116(1) of the *Canada Transportation Act* alleging that CN failed to fulfil its common carrier obligations to provide adequate and suitable accommodation for delivering traffic originating from its mill in Miramichi, in the province of New Brunswick.

The appeal was dismissed by the Federal Court of Appeal on December 13, 1999.

Cases Discontinued in 1999

Canadian American Railway Company v. National Transportation Agency

Court File No.: A-488-96

Appeal of National Transportation Agency Letter-decision dated November 20, 1995, which required the Canadian American Railway Company to apply for a Certificate of Fitness in accordance with the terms specified in section 12 of the *Railway Act*.

By Order of the Federal Court of Appeal dated February 23, 1999, the appeal was deemed to be discontinued.

Iqaluit Chamber of Commerce v. Bradley Air Services Limited

Court File No.: 98-A-38

Application for leave to appeal Agency Decision No. 437-A-1998 dated September 2, 1998 which found that Bradley Air Services Limited operating as First Air and/or Ptarmigan Airways has not imposed an unreasonable basic fare or unreasonable increase in the basic fare

since October 1995 in respect of domestic services it operates to/from Iqaluit.

Although leave to appeal was granted by the Federal Court of Appeal on January 18, 1999 in this case, no notice of appeal was filed by the Applicant. Pursuant to subsection 41(2) of the *Canada Transportation Act*, no appeal, after leave to appeal has been obtained, lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made. Accordingly, this case was closed.

Air Canada v. Gilles Daoust

Court File No.: A-98-99

Application for judicial review of Agency Decision No. 630-AT-A-1998 dated December 18, 1998 concerning an application by Gilles Daoust pursuant to subsection 172(1) of the *Canada Transportation Act* with respect to the difficulties he experienced with boarding assistance, seating assignment, services provided on board the aircraft and the late delivery of his wheelchair upon arrival in Mirabel on a return trip from London, England to Montréal, Quebec, with Air Canada.

Notice of Discontinuance filed with the Federal Court of Appeal on December 15, 1999.

Air Canada v. Pierre Paradis

Court File No.: A-50-99

Application for judicial review of Agency Decision No. 635-AT-A-1998 dated December 22, 1998 concerning an application by Pierre Paradis pursuant to subsections 172(1) and (3) of the *Canada Transportation Act* concerning the cancellation of his reservation by Air Canada.

Notice of Discontinuance filed with the Federal Court of Appeal on December 15, 1999.

Cases Pending in 1999

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

Court File No.: A-507-96

Appeal from National Transportation Agency Order No. 1995-R-491 and Decision No. 791-R-1995, both dated November 28, 1995, in the matter of an application by Mr. Jean Lemonde, on behalf of Minikami (Club de mini basket-ball en fauteuil roulant “Les Kamikazes”), pursuant to subsection 63.3(1) of the *National Transportation Act, 1987*.

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

Court File No.: A-385-98

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

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

Court File No.: A-649-98

Appeal of Agency Letter-Decision No. LET-R-210-1998 dated July 16, 1998, regarding a complaint by the Corporation of the City of Windsor regarding Canadian Pacific Railway Company’s failure to comply with the rail line abandonment provisions of the *National Transportation Act, 1987* as they pertain to maintenance obligations for the University Avenue and Riverside Drive bridges at mileages 112.40 and 112.60 of the former Windsor Subdivision, in the City of

Windsor and a request that Canadian Pacific restore these bridges to their former condition as streets, pursuant to the *Canada Transportation Act*.

Canadian National Railway Company v. Mark Brocklehurst/Carol Syrnyk, Alison J. Burnham, Tessa M. Chalmers, Rob Kerr, Peter and Margaret Krysmanski, Mary Kay Martin, Peter D. Pellier

Court File No.: A-537-99

Appeal of Agency Order No. 1999-R-123 and Decision No. 87-R-1999, both dated March 8, 1999, concerning the noise levels emanating from the operations of the Canadian National Railway Company in its Oakville Yard in Oakville, Ontario.

Canadian National Railway Company v. Ville de Saint-Pierre, Ville de Montréal-Ouest

Court File No.: A-531-99

Appeal of Agency Letter-Decision No. LET-R-122-1999 dated April 27, 1999, relating to an application for the apportionment of costs of certain works related to the Saint-Jacques Street Viaduct, in the Ville de Saint-Pierre and in the Ville de Montréal-Ouest.

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

Court File No.: A-613-99

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

Canadian National Railway Company v. Randy and Sue Taylor

Court File No.: A-729-99

Appeal of Agency Order No. 1999-R-308 and Decision No. 391-R-1999, both dated July 6, 1999, regarding a complaint by Randy and Sue Taylor concerning the noise, vibrations and diesel fumes emanating from the Norfolk Southern Railway Company idling locomotives, stored in the Canadian National Railway Company St. Thomas Yard, near Hiawatha Street, in St. Thomas, Ontario.

Norfolk Southern Railway Company v. Randy and Sue Taylor

Court File No.: A-741-99

Appeal of Agency Order No. 1999-R-308 and Decision No. 391-R-1999, both dated July 6, 1999, regarding a complaint by Randy and Sue Taylor concerning the noise, vibrations and diesel fumes emanating from the Norfolk Southern Railway Company idling locomotives, stored in the Canadian National Railway Company St. Thomas Yard, near Hiawatha Street, in St. Thomas, Ontario.

The Privacy Commissioner of Canada v. Canada Labour Relations Board

Court File No.: A-685-96

Appeal of the judgment of the Trial Division of the Federal Court of Canada delivered on August 12, 1996 relating to the refusal of access to an individual of personal notes taken by Board members during a hearing.

Note: This case does not involve a decision of the Agency. The Agency is simply an intervenor in this case.

PETITIONS TO THE GOVERNOR IN COUNCIL

Cases Decided

Marilyn Sharp v. Canadian Transportation Agency and Canadian Pacific Railway Company

Petition to the Governor in Council relating to Agency Decision No. 178-R-1998 and Order No. 1998-R-194 which approved an application by the Canadian Pacific Railway Company for approval of the construction of a railway line for a distance of 12.6 kilometres, at Prentiss, in the County of Lacombe, in the Province of Alberta.

By Order in Council P.C. 1999-1789 dated October 6, 1999, the Governor in Council declined to vary or rescind Agency Decision No. 178-R-1998 and Order No. 1998-R-194.

Cases Pending

Canadian National Railway Company v. Canadian Transportation Agency

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

AGENCY ADVISORY COMMITTEE AND WORKING GROUP PARTICIPANTS

**Canadian Association
for Community Living**
C. Laurin-Bowie

**Canadian Association
of the Deaf**
E. Richman

**Canadian Association
of Independent
Living Centres**
T. Walters
M. Brault

**Canadian Council
of the Blind**
J. Rempel

**Canadian Hard of
Hearing Association**
C. Cantlie

**Canadian National
Institute for the Blind**
F. Cutler
J. McDonald

**Canadian Paraplegic
Association**
E. Boyd

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

**Council of Canadians
with Disabilities**
E. Norman
B. Brown

**Easter Seals/
March of Dimes
National Council**
W. Hoch

**Institut Nazareth
et Louis-Braille**
P. Ferland

Kéroul
M. Tremblay
P. Tanguay

One Voice Seniors
R. Hammond

Air Canada
E. Arcand

**Air Transport
Association of Canada**
G. Elliot

**Canadian
Airports Council**
N. Raynor

**Canadian Airlines
International**
M. McRae
B. Schneider

**Canadian Ferry Operators
Association**
B. Harbidge

Marine Atlantic
B. Harbidge

**Railway Association
of Canada**
R.H. Ballantyne

VIA Rail Canada Inc
R. MacDonald
K. Coffen

**Canadian Human Rights
Commission**
H. Goldberg

**Government of
Newfoundland and Labrador**
S. Appleby

**Human Resources
Development Canada**
M. Regnaud

Transport Canada

- **Cabin Safety Standards**
F. Wokes
- **Accessible Programs**
L. Greenblatt
- **Transportation
Development Centre**
B. Smith

CANADA'S FEDERAL RAILWAY COMPANIES
AS OF DECEMBER 31, 1999

| | |
|---|--|
| Algoma Central Railway Inc. | Minnesota, Dakota & Western Railway Company |
| Arnaud Railway Company | National Railroad Passenger Corporation (Amtrak) |
| Bangor and Aroostook Railroad Company (Van Buren Bridge Company) | Nipissing Central Railway Company |
| Burlington Northern and Santa Fe Railway Company | Norfolk and Western Railway Company |
| Canadian American Railroad Company | Okanagan Valley Railway Company |
| Canadian National Railway Company | Ottawa Central Railway Inc. |
| Canadian Pacific Railway Company | Pacific and Arctic Railway and Navigation Company/British Columbia Yukon Railway Company/British Yukon Railway Company Limited carrying on business as or proposing to carry on business as White Pass & Yukon Route |
| Cape Breton Development Corporation doing business as Devco Railway | Quebec North Shore & Labrador Railway Company |
| Chemin de fer de la Matapédia et du Golfe Inc. | RaiLink Canada Ltd. |
| CSX Transportation Inc. (Lake Erie and Detroit River Railway Company Limited) | St. Lawrence & Atlantic Railroad (Québec) Inc. |
| Eastern Maine Railway Company | Sault Ste. Marie Bridge Company |
| Essex Terminal Railway Company | Toronto Terminals Railway Company Limited, The |
| Ferroequus Railway Company Limited | Union Pacific Railroad Company |
| Goderich-Exeter Railway Company Limited | Waterloo-St. Jacobs Railway Company Limited |
| Hudson Bay Railway Company | VIA Rail Canada Inc. |
| International Bridge and Terminal Company, The | Wabush Lake Railway Company, Limited |
| Maine Central Railroad Company and Springfield Terminal Railway Company | |