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TRANSPORTATION
AGENCY



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DU CANADA

annual report 2002



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May 2003

The Honourable David M. Collenette, PC, MP
Minister of Transport
Transport Canada Building - Place de Ville
330 Sparks Street
Ottawa, ON 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 2002, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

The Air Travel Complaints Commissioner's reports, which cover the periods of January-June 2002 and July-December 2002 and which are tabled separately in the House of Commons, are also part of the Agency's 2002 Annual Report. As a convenience to readers, certain parts of these reports are specifically mentioned in this document.

Yours sincerely,

A handwritten signature in cursive script that reads "Marian L. Robson".

Marian L. Robson
Chairman

Mission

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

Mandate

The Agency has a mandate to administer the economic regulatory provisions affecting all modes of transport under federal jurisdiction found in various Acts of Parliament. Among other responsibilities, the Agency:

- licenses air and rail carriers;
- resolves complaints between shippers and railways concerning rail rates, service and other matters as well as complaints between travellers and airlines concerning air tariff matters;
- removes undue obstacles to persons with disabilities who travel via the air, rail and marine networks;
- approves proposed construction of railway lines;
- administers the railway revenue cap regime concerning Western grain transportation;
- protects the interests of Canadian marine vessel operators when authorizing foreign vessels to operate in Canadian waters; and
- participates in international bilateral negotiations and administers bilateral agreements as the Canadian aeronautical authority.

Values

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

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



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Chairman's Message

As we begin this review of our activities in 2002, the Canadian Transportation Agency stands on the brink of completing a century of service to the people of this country.

It all began in 1903 when Parliament adopted the *Railway Act* and, with its enactment the following year, created the first Board of Railway Commissioners. Through a series of amalgamations and evolution, the Agency's jurisdiction has grown from rail matters alone to include air and marine modes, along with responsibility for removing undue obstacles in transportation for people with disabilities. The Agency's evolution has coincided with technological advances, shifting demands of the economy and other changing dynamics of Canada's transportation industry.

During my more than 30 years of work in transportation, I have watched and participated in many of these changes. In 1996, I became the Chairman of the Canadian Transportation Agency. Since then, my colleagues and I have observed, as tribunal members, an industry serving Canadians in the face of fluctuating economic realities that include reorganizations, mergers, acquisitions, service growth in some areas and cutbacks in others, global competition and evolving user demands. The trend in the Government of Canada's policy through this period has been toward more reliance on market forces and less on regulation.

In these turbulent times, the Canadian Transportation Agency remains dedicated to performing its role as the regulator and licensor of transportation under federal jurisdiction, and to informing Canadians of our responsibilities and decisions.

At the core of our mandate is the resolving of disputes, never an easy task. If a party—whether a traveller, shipper or a municipality—has an unresolved complaint about a federally regulated carrier, the issue can be brought to us for a fair hearing. We at the Agency have all sorts of tools in our kit to help settle disputes.

The traditional avenue is through a formal process in which a complaint is lodged and Agency Members, in a tribunal setting, decide the issue after exchanges of pleadings and advice from staff. In 2000, however, we began using mediation in a pilot project. Last year, of the disputes mediated, most related to railways and accessible transportation. I'm delighted to say that eight cases were settled as a result of the mediation process.

Another pilot project, launched in 2002, involved modified hearings. When Agency Members don't have enough information or the information is conflicting, they go to the source of the complaint and listen to the disputing parties in an oral hearing. The modified hearing gets to the heart of the problem and a decision is issued quickly.

In 2000, Parliament gave our Agency yet another innovative tool for resolving disputes: the Office of the Air Travel Complaints Commissioner. The Commissioner and Agency staff provide Canadians with a vigorous new vehicle for addressing consumer complaints in the air industry. On October 1, we welcomed Ms. Liette Lacroix Kenniff as the new Air Travel Complaints Commissioner. She replaces Mr. Bruce Hood, who had held the Office for two years. Also, on December 16, the Agency welcomed Mr. Beaton Tulk as a new Member.

The year's work cannot be discussed without mentioning the Agency team, the Members and staff who have worked side by side to accomplish so much. I am pleased to note that the Agency's recent Public Service Employee Survey results, released in December 2002, found that 89 per cent of our employees think the Agency is a good place to work and 93 per cent are satisfied with their work arrangements. Naturally, there are areas of concern and we are working on them. But we are confident that we have a hard-working and dedicated team with high morale and enthusiasm, a sound foundation on which our organization can move into its second century.

In preparation for that move, Agency management spent much of 2002 discussing with Transport Canada officials possible amendments to the *Canada Transportation Act*. The Agency looks forward to legislative initiatives by the Minister of Transport in transportation regulation and will respond to Parliament's direction as it always has, with Canadians' interests at heart.

Marian L. Robson



Executive Summary

In 2002, the Canadian Transportation Agency completed its sixth full year as an independent quasi-judicial administrative tribunal and regulator of transportation under federal jurisdiction.

The Agency works to promote efficient and fair practices in air, rail and marine transportation. It has a broad mandate that includes, among other things, licensing air and rail carriers; approving rail construction; protecting the interests of Canadian marine operators in permitting foreign vessels to work in Canadian waters; and settling disputes and complaints regarding federally regulated air, rail, and marine transportation. The Agency also works to remove undue obstacles to mobility for persons with disabilities.

Communicating with Canadians is a priority for the Agency in achieving an efficient and accessible transportation system. Agency programs are directed at informing and consulting transportation service providers and users. Through printed material, the Agency's Web site and participation in public events, the Canadian Transportation Agency provides information about its services, and also the rights and obligations of transportation operators and their customers.

As required under Subsection 42 (1) of the *Canada Transportation Act*, the Agency reports annually to Parliament on its activities in each area under its mandate: air, rail, marine and accessible transportation.

During 2002, the Agency issued a total of 494 orders, 704 decisions, 60 agreements, 1,367 permits issued by Members, 46 final letter decisions, 2,671 rulings and 488 unique interim

decisions. Of those, 5,134 decisions related to air transportation, 277 related to rail, 175 related to marine and 244 related to accessible transportation.

In this Annual Report, the Agency's activities in 2002 are summarized in four chapters: Air, Rail, Marine and Accessible Transportation. Each chapter outlines not only the regular administrative and regulatory work in each area, but also major decisions and initiatives undertaken by the Agency. At the end of each chapter Agency rulings that have been appealed to higher courts are listed.

Some of the highlights of the Air Transportation chapter are:

- Agency Members dealt with an air rage complaint involving an unruly passenger and a charter air carrier in a modified hearing. The air carrier refused to carry the passenger on a return trip because the passenger had smoked in a lavatory on the initial flight.
- The Agency ordered a Quebec tour operator to stop selling flights to foreign destinations after the operator could not provide the name of a licensed air carrier for the flights.
- Proposed amendments to the Air Transportation Regulations were sent to the Department of Justice for review. The amendments are intended to reflect the International Passenger Charter Air Services Policy, which came into effect on April 4, 2000, and the International All-Cargo Charter Air Services Policy, issued on May 29, 1998.
- The Agency placed a 120-day time limit on a fuel surcharge sought by Air Canada for passengers on international flights. The Agency expressed concern about the proliferation of surcharges in the aviation industry in recent years.

- Liette Lacroix Kenniff was appointed Air Travel Complaints Commissioner on October 1, 2002, replacing Bruce Hood.
- In December, the Air Travel Complaints Commissioner intervened to assist air travellers stranded when a Toronto travel agency sold more than 700 airline tickets without remitting the payments to the airlines involved.
- The Agency hired an independent consultant to carry out a pricing study of domestic air routes in Western Canada. The Agency solicited bids for a consultant to undertake a similar study in the Atlantic region.

Notable events in the Rail Transportation chapter include:

- The Agency decision on the Ferroequus Railway Company's application for running rights on Canadian National Railway lines between Camrose, AB, and the Port of Prince Rupert, BC.
- The Agency decision on two complaints filed by Naber Seed & Grain, a specialty crop shipper, involving allegations that Canadian National Railway Company failed to fulfil its common carrier obligations in crop year 2000-2001.
- A review of the Railway Interswitching Regulations that included formal consultations with railways, shippers and government agencies to seek comments about amendment proposals.
- Other consultations were carried out on the subjects of Western grain revenue determination, maintenance rates and charges for railway works at road/rail crossings and the Agency's mediation process.
- The Agency revised its list of arbitrators to be used in Final Offer Arbitration.

- The Agency concluded consultations to update a new Guide for Railway Charges for Construction and Maintenance of Road Crossings, formerly known as the Schedule "A" Directives.
- The Minister of Transport and the Province of Ontario agreed that the Agency may apply federal railway crossing laws to railways under Ontario provincial jurisdiction, when required.
- The mediation program.

Major issues in the Marine Transportation chapter include:

- In a program to update guidelines on processing coasting trade licence applications, a panel of four Agency Members conducted a cross-country consultation in six major cities. They heard from 67 concerned parties and received 15 written submissions.
- The Agency launched the Canadian Merchant Fleet List on the Agency's Web site.
- An oral hearing was conducted in Quebec City to hear a dispute on a coasting trade licence application.
- The Agency conducted a survey on the quality of its coasting trade services and client satisfaction.
- After a three-day public hearing in Montreal, the Agency decided that a tariff increase proposed by the Laurentian Pilotage Authority was prejudicial to the public interest. A lower tariff increase was recommended.
- The Agency recommended mediation between the Great Lakes Pilotage Authority and the Shipping Federation of Canada over a proposed tariff increase. The two parties negotiated a successful agreement on the tariff proposal on their own.

- At the end of the year, the Agency suggested mediation between the Atlantic Pilotage Authority and the Shipping Federation of Canada over a tariff increase.
- Bill C-14, an Act to amend filing rules under the *Shipping Conferences Exemption Act* and other acts, came into effect on January 30. The Agency issued new guidelines for filing.
- The Agency investigated six complaints regarding the cost of air travel for persons with disabilities who require additional seating because of their disabilities.
- The Agency issued a decision on the complaint against VIA Rail's assistance to a group of passengers using wheelchairs in December 1993. The complaint, made by Jean Lemonde, had originally been filed with the National Transportation Agency but was later appealed to the Federal Court of Appeal.

Notable events in the Accessible Transportation chapter are:

- The Agency made a ruling on the obesity complaint of Linda McKay-Panos against Air Canada, deciding that Ms. McKay-Panos did not have a disability for the purposes of Part V of the Act. Ms. McKay-Panos appealed the ruling to the Federal Court.
- In another obesity ruling, the Agency decided that the complainant did have a disability for the purposes of the Act, but that the complainant had not encountered an undue obstacle to her mobility.
- After receiving 10 allergy-related complaints, the Agency examined the jurisdictional issue of whether an allergy is a disability for the purposes of Part V of the Act and decided allergy complaints must be considered on a case-by-case basis.
- The Agency received 23 complaints regarding Air Canada's policy and procedures on the use of medical oxygen and began investigating the jurisdictional issue of whether the use of medical oxygen can be considered a disability under the Act.
- The Agency continued to investigate a complaint by the Council of Canadians with Disabilities about the level of accessibility of VIA Rail's "Renaissance" cars.
- The Agency expanded its mediation pilot project to be used in accessible transportation.
- Comments from interested parties were analysed by Agency staff regarding amendments to Part VII of the Air Transportation Regulations that would make the regulations apply to aircraft with 20 to 29 seats.
- The Agency held public consultations on guidelines for accommodating passengers with disabilities on aircraft with 19 or fewer seats.
- Monitoring surveys of the Agency's three codes of practice, commonly called the Air Code, Rail Code and Ferry Code, were in various stages of completion, after all three codes were fully in effect on January 1, 2002.
- Agency field investigators started verifying information submitted by carriers in the monitoring surveys of the three codes of practice.
- The Agency conducted public consultations on a new code of practice on Removing Communication Barriers for Travellers with Disabilities (the Communication Code). The Agency worked on a guide to explain the Code.

- The Agency continued research, with the Transportation Development Centre of Transport Canada, on boarding devices used by Canadian airport authorities and air carriers.
- The Agency participated in a review of the Canadian Standards Association's Barrier-Free Design Standard (B651), and helped draft a proposed standard for accessible dispensing machines which was submitted to the Canadian Standards Association.
- Transport Canada launched the Access to Travel Web site to supply information on accessible transportation services across Canada. The Agency assisted in the project.
- The Agency published a checklist to help travel agents and the transportation service industry when making travel arrangements for customers with disabilities.

A chapter on Assessment of the *Canada Transportation Act* details the concerns encountered by the Agency in administering the Act in 2002.

The Agency Team chapter introduces the Members and staff, and the Accessibility Advisory Committee, which acts as a consulting body for accessibility issues. This section also contains a description of how the Agency works by outlining the function of each directorate in the Agency.

The chapter also describes:

- The formal complaints process.
- The modified hearing, an experiment developed by the Agency to help in hearing complaints in an informal setting.
- Mediation, a pilot project used in rail, marine and accessible transportation.
- Modern comptrollership, a government-wide program to modernize management practices.
- The Official Languages program.
- Agency results in the Public Service Employee Survey.
- Government On-Line, a government initiative to improve communications with Canadians using the latest information technology.

Finally, the acts and regulations for which the Canadian Transportation Agency is responsible are listed at the end of this chapter.

AIR



The Agency issues licences and charter permits to Canadian and foreign air carriers and enforces licensing requirements. It helps negotiate and implement international air agreements and administers international air tariffs. The Agency also helps to protect the interests of the travelling public, shippers and Canadian air carriers by ensuring that proposed fares, rates, charges and terms and conditions of carriage are reasonable and consistent with Canadian legislation and regulations, and with the relevant bilateral agreements. It handles complaints related to air fares on domestic, non-competitive routes. Through the Office of the Air Travel Complaints Commissioner, it also handles consumer complaints related to air travel.

AIR TRANSPORTATION

Major airlines around the world struggled with huge financial losses and insolvency in 2002, as the troubled air industry continued to be squeezed by lower demand and higher operating costs in the aftermath of September 11, 2001.

In Canada, the air industry fared slightly better. WestJet continued its expansion and Air Canada, while grappling with financial losses, launched its subsidiary carrier, Zip Air, to offer no-frills service and lower fares in Western Canada.

The Agency noted an increase in air carrier licensing and charter application activities over the previous year, some of that occurring in early 2002 as carriers filled gaps in air service left by the bankruptcy of Canada 3000 in November 2001.

Several new airlines emerged in 2002, many of them operating aircraft with seating capacity for 90 passengers or more. The Agency issued licences to Air North Yukon's Airline, Jetsgo, Air Canada's Zip, Zoom Airlines, HMY Airways and reinstated the licences of CanJet Airlines. The Agency issued a total of 159 new licences in 2002, compared with 147 in 2001.

TARIFFS

Every air carrier in Canada is required to publish a tariff, which outlines the terms and conditions, fares, rates and charges for its air services, and make it available to the public on request. Air carriers operating international services to and from Canada must file their tariffs with the Agency. Two exceptions are carriers operating between Canada and the

United States, and between Canada and Germany, which only file their general terms and conditions of carriage with the Agency.

AIR RAGE

In 2002, the Agency issued decisions on five air rage cases. The cases arose from various disputes about how air carriers dealt with passengers who were considered to be unruly during a flight.

Air carriers have the right to impose sanctions on unruly passengers. However, to protect passengers from arbitrary action, a carrier's tariff must clearly state the sanctions to be taken against unruly passengers. The sanctions may include prohibitions from travel with that carrier for specific periods of time, up to and including a lifetime ban.

In one case, Skyservice, a Canadian charter carrier, refused to transport a passenger on a return flight after the passenger had smoked in the lavatory two weeks earlier while flying from Toronto to Port of Spain, Trinidad.

After the smoking incident on March 14, 2001, the Skyservice crew recommended that a warning letter be sent to the passenger before the return flight, but the carrier's security manager decided that a letter refusing any future transportation on Skyservice was warranted.

The passenger filed a complaint with the Air Travel Complaints Commissioner. The complaint was forwarded to the Agency where the Members determined that there was conflicting and insufficient information from both parties. The Agency Members decided to conduct a modified hearing in Toronto where the complaint had originated.

The modified hearing, which is a simplified oral hearing in which Members ask questions directly to the disputing parties in an informal setting, was held in Toronto on July 25, 2002. (The process of a modified hearing is described on page 68.)

On October 31, 2002, the Agency ruled that there was no evidence that the passenger posed a threat to the safety of the aircraft on the return flight. The Agency also ruled that Skyservice's tariff did not clearly state the carrier's policy with respect to the refusal to transport passengers. The Agency directed Skyservice to amend its tariff to clearly reflect its policy and to refund the passenger's return airfare including out-of-pocket expenses incurred as a result of having been left stranded in Trinidad for three days.

In another decision regarding denied boarding, the Agency upheld the air carrier's right to pay the same amount for compensation irrespective of the fare originally paid. The Agency ruled that the fare paid by a passenger has no connection to any burden or disadvantage that may be imposed on that passenger as a result of being denied boarding.

Under amendments made to the *Canada Transportation Act* on July 5, 2000, the Agency may require a carrier to compensate passengers who incur expenses as a result of the carrier's failure to adhere to provisions set out in its tariffs.

The Agency also reviews international tariffs to ensure that they are consistent with Canadian law and applicable bilateral agreements. In 2002, the Agency processed 7,032 special permission tariff applications. It also addressed 23 complaints from carriers about the pricing practices of other carriers. In most instances,

Agency through its staff resolved the issues informally. In 10 instances, the Agency was required to issue formal orders.

The Agency received 71 consumer complaints in 2002 about pricing on international and transborder routes. In another 30 instances, Agency staff satisfied passenger inquiries before they became complaints. The Agency issued 13 significant decisions in 2002 relating to tariff consumer complaints, including the five air rage cases mentioned above.

In 2002, the Agency received 14,623 tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs; 95 per cent of these submissions arrived electronically. Electronic tariff submissions, part of the Agency's contribution to the Government On-Line initiative, speeds the approval process and gives airlines more flexibility. In 2003, Agency staff will assist in a review of the Computer Reservation System Regulations which is being undertaken by Transport Canada.

INTERNATIONAL CHARTERS

During the first few months of 2002, Agency staff received numerous queries from the public concerning a Quebec tour operator known as Canada Air Charter. It was advertising international charter flights (mostly to the Caribbean and Central and South America). The callers wanted to know if the company held a licence and the answer was no.

In April 2002, the Agency received an application from Electra Airlines, an airline based in Athens, Greece, for permits to fly to the destinations advertised by Canada Air Charter. This application was denied by the Agency given that Electra Airlines did not hold the

required licence for non-scheduled international service.

Concerned about the situation, the Agency wrote to Canada Air Charter requesting that it provide its air carrier information. When it failed to furnish a satisfactory reply, the Agency, in a precedent-setting move, issued a cease-and-desist order to Canada Air Charter on May 7, 2002, ordering it to stop selling the charter service to the public.

In June, a British air carrier applied to the Agency for permits to operate the Canada Air Charter advertised flights and its request was denied because only in exceptional circumstances is a foreign charter carrier given permission to provide air service between Canada and a country other than its own. When such rulings are made by the Agency, it must take into account both the interests of Canadian travellers in having access to the service and the interests of Canadian carriers who might already be providing similar services.

On July 5, however, the tour operator surrendered its provincial permits to L'Office de la protection du consommateur du Quebec, which immediately appointed an administrator to take care of the consumers who had purchased travel from Canada Air Charter. Following this, the Agency denied all outstanding permit requests that had been submitted on behalf of the tour operator. At the end of 2002, the case remained in the hands of Quebec authorities. Agency staff is aware that an estimated 6,000 individual cases have been or are being reviewed by the provincially appointed administrator.

During 2002, the Agency considered a total of 64 applications by foreign air carriers to operate passenger charter flights from Canada to countries other than their own. Of those, 29

were denied after the Agency determined that there was sufficient capacity already provided by Canadian scheduled and charter carriers. The Agency reviewed all of the applications in accordance with paragraph 22 (b) of the Air Transportation Regulations, which provides that the issuance of permits for charter carriers be consistent with Canada's national and international transportation policies. In particular, the Agency considered the applications in the context of the International Passenger Charter Air Services Policy, announced by the Minister of Transport on April 4, 2000. Guideline 9 of this policy directs that the interests of Canadian travellers in having access to such services must be balanced with the interests of the Canadian carriers that might be affected.

All air carriers holding a licence for a non-scheduled international (charter) service must obtain an Agency program permit or an authorization to operate flights from Canada to a foreign country. This ensures compliance with the Air Transportation Regulations.

For certain types of charter flights, carriers must obtain financial guarantees to protect advance payments by the charter customer.

Sometimes, carriers are asked to provide a flight outside the Agency's normal working hours. Because Agency authorization is needed before the flight can depart, the Agency operates an emergency telephone service. In 2002, the Agency dealt with 423 emergency situations, 197 of them requiring approval by Agency Members.

The Agency is amending the Air Transportation Regulations to reflect the International Passenger Charter Air Services Policy, which came into effect on April 4, 2000, and the International All-Cargo Charter Air Services Policy, issued on May 29, 1998. The Agency began consultations on the amendments in December 2000. In 2002, the amendments, with some modifications, were sent to the Department of Justice for review. In 2003, they will be published in Part I of the *Canada Gazette* and comments will be solicited.

Charter permits issued	2001	2002
Passengers non-resaleable charters (includes entity charters)	341	453
Cargo non-resaleable (includes entity cargo/livestock and transborder goods charters)	237	163
Passengers resaleable (includes common purpose charters, combination of advance booking charters and inclusive tour charters, inclusive tour charters, advance booking charters and transborder passenger charters)	768	878
Additional statistics		
Exemptions granted to the charter regulations	706	1,008
Amendments to approved charter programs	296	285

Until the proposed amendments come into effect, the Agency will continue to exempt air carriers from compliance with provisions of the existing regulations that conflict with these policies. In 2002, the Agency granted 19 such general exemptions.

The proposed amendments reduce the number of international charter types from 10 to four: passenger resaleable charters, passenger non-resaleable charters, all-cargo charters and foreign-originating charters. The provisions for transborder charters are incorporated into those for international charters so that similar rules would apply to both. The amendments would also allow foreign carriers to operate charters under the same conditions as Canadian carriers, provided that the foreign carriers' countries treats Canadian carriers in a similar manner.

The objectives of the International Passenger Charter Air Services Policy are to enhance options for Canadian travellers in international markets; to avoid unnecessary economic regulatory constraints; to support the development of Canada's charter industry; and to maintain the integrity of Canada's policy for scheduled international air services and the integrity of Canada's bilateral air agreements for scheduled international air services.

The International All-Cargo Charter Air Services Policy gives shippers more service options by allowing more than one charter customer to charter an aircraft, and by allowing freight forwarders and consolidators to charter aircraft from licensed carriers and then resell the space to shippers. The policy also allows the Agency to grant special authority to foreign air carriers for Canadian and foreign-originating entity cargo charter flights to or from a third country,

VIGNETTE

The Air Travel Complaints Commissioner received several complaints about the unsanitary condition of lavatories on Air Transat aircraft. The Commissioner brought the matter to the attention of Health Canada, which conducted an on-site inspection of the carrier's aircraft. Health Canada determined that the size of the waste tanks on the carrier's Airbus 310 was inadequate for the number of passengers aboard. Air Transat agreed to increase the capacity of the waste tanks. This should ensure that the lavatories are fully operational at all times during a flight.

referred to in the policy as fifth-freedom all-cargo charters. (See page 20 for explanation of freedoms.)

During 2002, the Agency approved 92 applications for Canadian-originating fifth-freedom all-cargo charters and 184 applications for foreign-originating fifth-freedom all-cargo charters.

SURCHARGES

On June 7, 2002, the Agency placed a 120-day time limit on a fuel surcharge sought by Air Canada for passengers on international flights. Air Canada, faced with escalating fuel costs, had been seeking an open-ended surcharge for tickets issued on or after June 10, 2002.

In its decision, the Agency noted that there has been a proliferation of surcharges in the aviation industry in recent years. The Agency expressed concern that the ever-increasing use of surcharges limits the consumers' ability to compare advertised air fares, as

the advertised price does not usually disclose the true price that the consumer will have to pay at the time of purchase. The Agency suggested that air carriers incorporate surcharges into fares.

If surcharges are used, however, they should be a temporary measure in response to unforeseen and unavoidable increases in costs. The issue of surcharges was also addressed in recommendations made by the Agency's Air Travel Complaints Commissioner in 2002.

AIR TRAVEL COMPLAINTS COMMISSIONER

Liette Lacroix Kenniff began her functions as Canada's Air Travel Complaints Commissioner on October 1, 2002, replacing Bruce Hood. The Commissioner reviews and attempts to resolve written air travel complaints that are not resolved by an air carrier to the satisfaction of the air travel consumer, when no other remedy exists. The Commissioner reports semi-annually to Parliament on the number and type of complaints received, how they were handled and the carriers involved, and also outlines any systemic problems detected.

In 2002, the Air Travel Complaints Commissioner prepared two reports for the periods July 1 to December 31, 2001, and January 1 to June 30, 2002, which were subsequently tabled. Among several recommendations, Ms. Lacroix Kenniff noted that air carriers should show the true cost of the tickets, including taxes, surcharges or additional fees, and that the carriers should avoid misleading advertising such as showing one-way fares when only a round-trip ticket can be purchased. The Commissioner also

recommended that air carriers compensate passengers when they are downgraded from full service to no-frills service.

In November 2002, the Air Travel Complaints Commissioner intervened to help air passengers stranded when a Toronto travel agency allegedly sold more than 700 tickets without remitting payment to the airlines involved. The Commissioner requested that all the affected airlines honour the tickets. Of those, only British Airways and BWIA-West Indies Airways agreed to accept all tickets issued by the travel agency. At the end of the year, the issue with the other airlines remained unresolved.

The Office of the Air Travel Complaints Commissioner received 1,764 written complaints in 2002. Most of the complaints were handled through the Commissioner's informal complaints resolution process. Eight complaints were transferred to the Agency to be handled by Members in a formal process.

The total number of complaint issues is greater than the number of complaints because one complaint usually involves several issues, e.g. one complaint might include issues about quality of service, loss of baggage and scheduling problems.

COMPLAINT TYPES

- Level I:** dissatisfied customer complains directly to the Commissioner without writing to the carrier first.
- Level II:** dissatisfied customer complains to the Commissioner after a carrier fails to respond to a complaint or if the customer is not satisfied with the response.

TYPES OF COMPLAINT ISSUES RECEIVED IN 2002

Issue	January-June	July-December	Total	%
Quality of Service	611	327	938	33.3
Schedule	346	165	511	18.1
Ticket	208	223	431	15.3
Baggage	207	147	354	12.5
Denied Boarding	101	45	146	5.2
Reservations	77	50	127	4.5
Frequent Flyer Program	77	45	122	4.3
Safety	45	27	72	2.6
Fares	29	28	57	2.0
Charges	14	8	22	0.8
Unruly Passenger	12	9	21	0.7
Cargo	5	9	14	0.5
Unaccompanied Minors	1	3	4	0.1
Allergies	1	1	2	0.1
Total	1,734	1,087	2,821	100%

Data may also differ from the semi-annual Air Travel Complaints Commissioner's reports. This is due to the dynamic nature of the complaints database, which tracks complaints on the basis of their current status at the time of reporting and the occasional change in complaint issues.

Reports and information about the Air Travel Complaints Commissioner are posted on the Agency's Web site (www.cta.gc.ca).

The Commissioner will complete two semi-annual reports in 2003. The Office will continue

COMPLAINTS RECEIVED IN 2002 BY LEVEL

January-June					July-December				
Month	Level I	Level II	Other	Total	Month	Level I	Level II	Other	Total
January	147	66	34	247	July	47	39	14	100
February	110	51	19	180	August	59	46	21	126
March	86	59	18	163	September	53	40	13	106
April	90	45	42	177	October	48	52	18	118
May	70	68	28	166	November	48	80	36	164
June	58	31	11	100	December	49	48	20	117
Total	561	320	152	1,033	Total	304	305	122	731

	Level I	Level II	Other	Total
Grand Total	865	625	274	1,764

'Other' refers to a complaint directed to another jurisdiction, e.g. Transport Canada or Industry Canada.

COMPLAINTS RESOLVED IN 2002 BY LEVEL

January-June					July-December				
Month	Level I	Level II	Other	Total	Month	Level I	Level II	Other	Total
January	107	51	26	184	July	140	61	12	213
February	89	56	24	169	August	97	31	21	149
March	104	66	47	217	September	88	41	16	145
April	78	56	26	160	October	74	45	13	132
May	126	46	50	222	November	52	77	22	151
June	123	50	10	183	December	60	96	17	173
Total	627	325	183	1,135	Total	511	351	101	963

	Level I	Level II	Other	Total
Grand Total	1,138	676	284	2,098

to refine the complaint handling processes for more efficiency.

AIR CARRIER LICENSING

The Agency licenses Canadian air carriers to transport passengers or cargo within Canada. It also licenses Canadian and foreign applicants to operate scheduled and non-scheduled (charter) international air services to and from Canada. The Agency processed 1,286 air-licensing activities in 2002, an increase from 1,182 in 2001. Activities included applications for new licences, suspensions, cancellations and reinstatements.

A licence applicant must have adequate liability insurance and must hold a Canadian aviation document issued by Transport Canada. If an applicant proposes to operate publicly available air services as a Canadian air carrier, it must prove it is Canadian-owned and controlled. Also, if a Canadian applicant proposes to use medium-sized or large aircraft, it must meet certain financial requirements. Air services

proposed by an applicant cannot be sold or offered for sale in Canada before the licence is granted, pursuant to Section 59 of the Act.

CANADIAN OWNERSHIP AND CONTROL

In 2002, the Agency completed 76 reviews to verify that Canadian applicants proposing to operate or already operating domestic or international air services met Canadian ownership requirements, as defined in the Act. Twelve reviews involved major investigations because the companies had complex ownership structures, or they had non-Canadian minority shareholders or business associates who might have exercised control over the applicant. The Agency denied four applications because the applicants failed to establish that they were Canadian.

FINANCIAL FITNESS

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet financial

requirements stipulated in the *Canada Transportation Act* and in the Air Transportation Regulations. Applicants must prove they have enough liquid funds to cover all start-up, operating and overhead costs for 90 days. These requirements are designed to ensure that applicants are financially fit and have a reasonable chance of success, which in turn minimizes disruptions in service and protects consumers.

The downturn in the Canadian aviation industry, marked by the collapse of Canada 3000 in November 2001, appears to have presented opportunities for new entrants into the marketplace. There was an increase in applications for licences requiring financial fitness reviews. In total, the Agency completed seven financial fitness reviews in 2002, three involving existing licensees.

AIR CARRIERS BY NATIONALITY

	Carriers holding Agency licences as of December 31, 2001	Carriers holding Agency licences as of December 31, 2002
Canadian	878	854
United States	745	730
Other Foreign	108	107

LICENCE AUTHORITIES HELD BY NATIONALITY

Services	Canadian					United States	Other Foreign	Total
	Aircraft type							
	Small	Medium	Large	All cargo	Total			
Domestic	833	19	13	31	896	–	–	896
Non-scheduled international	400	17	12	23	452	719	86	1,257
Scheduled international	14	26	74	4	118	50	59	227
Total December 31, 2002*	1,247	62	99	58	1,466	769	145	2,380

*For comparison, the total on December 31, 2001, was 2,440.

If the Agency determines that a licensee no longer meets the licensing requirements, the licence will be suspended or cancelled. The Agency may also suspend or cancel a licence at the request of the licensee (air carriers with seasonal operations to hunting or fishing lodges often make such requests).

AIR LICENSING ACTIVITIES

	Completed in 2001	Completed in 2002
Applications for:		
New licences	147	159
Amendment of licences	143	125
Suspensions	206	249
Cancellations	74	80
Reinstatements	74	88
Exemptions/rulings	154	178
Other	2	5
Agency initiated:		
Suspensions	211	207
Cancellations	110	135
Reinstatements	61	60
Total	1,182	1,286

Of the 159 new licences issued in 2002, 16 went to the following six Canadian applicants for the operation of an air service using large aircraft (seating capacity of at least 90 passengers).

Licensee	Type of services
Air North Charter & Training Ltd. carrying on business as Air North Yukon's Airline	<ul style="list-style-type: none"> • Domestic service • Non-scheduled international service* • Scheduled international service between points in Canada and points in the U.S.
Jetsgo Corporation carrying on business as Jetsgo	<ul style="list-style-type: none"> • Domestic service • Non-scheduled international service* • Scheduled international service between points in Canada and points in the U.S.
HMY Airways Inc.	<ul style="list-style-type: none"> • Non-scheduled international service*
Zip Air Inc. carrying on business as Zip	<ul style="list-style-type: none"> • Domestic service
Zoom Airlines Incorporated	<ul style="list-style-type: none"> • Domestic service • Non-scheduled international service* • Scheduled international service between points in Canada and points in the U.S.

Table continues page 17...

Licensee	Type of services
Air Transat A.T. Inc. carrying on business as Air Transat	<ul style="list-style-type: none"> • Scheduled international service between Canada and Italy • Scheduled international service between points in Canada and points in the Netherlands • Scheduled international service between points in Canada and points in Portugal • Scheduled international service between points in Canada and points in Ireland • Scheduled international service between points in Canada and points in Belgium

* Non-scheduled international service licences issued to Canadian applicants authorize the transportation of traffic on a charter basis between Canada and any other country.

IMP Group, carrying on business as CanJet Airlines, does not appear in the above table because IMP held licences with the Agency that were suspended at IMP's request since December 7, 1998. IMP requested reinstatement of its licences with large aircraft on May 7, 2002. It advised the Agency that it was substituting its previous trade name, Air Atlantic, with CanJet Airlines. The Agency reinstated the domestic licence, large aircraft, and the non-scheduled international licence, large aircraft, on June 19, 2002, and the scheduled international licence, large aircraft, on November 4, 2002.

The Agency also granted 14 exemptions to Section 59 of the Act, that is, the prohibition to selling services prior to holding a licence. To protect consumers purchasing travel from the unlicensed carriers, the Agency ordered that any funds received had to be held in a

trust account by the carrier and that before any reservation was made, all passengers were to be notified that the air service was subject to government approval. As well, all advertising issued in the carrier's name had to contain this information. The prospective carrier was also obliged to make arrangements with a licensed carrier to transport all passengers at no additional cost to them, if the licence was not issued in time for the travel dates booked.

Subsection 79(2) of the Act states that where a carrier has contravened Section 59, the Agency may, for a period not exceeding 12 months after the event, refuse to issue a licence for air service to that carrier. The Agency refused to issue a licence to Electra Airlines before October 31, 2002, after the Agency determined that Electra Airlines contravened Section 59 of the Act on May 10, 2002. To date, Electra Airlines has not re-applied for a licence.

DISCONTINUANCE OR REDUCTION OF DOMESTIC AIR SERVICES

An air carrier must give notice of its intention to discontinue or reduce domestic air services when:

- the discontinuance would result in only one or no air carrier serving a point;
- an air carrier proposes to reduce the frequency of an air service to less than one flight per week, so that only one or no air carrier would serve that point at least once per week; or
- the discontinuance of a year-round, non-stop scheduled air service between two points in Canada would significantly reduce capacity on the route.

The air carrier must give 120 days' notice to the Agency, the Minister of Transport, the minister responsible for transportation in the

affected province or territory, and to the affected communities, unless the air service has operated for less than a year. In the latter case, the notice period is 30 days. An air carrier may ask the Agency to reduce the notice period. The *Canada Transportation Act* requires that any air carrier that wishes to discontinue or reduce service must provide an opportunity for elected officials of the municipal or local government of the affected communities to meet and discuss with the air carrier the possible impact this may have. If, after receiving a written complaint, the Agency determines that a licensee did not give proper notice, the Agency may order the reinstatement of air service for up to 60 days. A licensee that has given proper notice cannot be prevented from discontinuing or reducing air service.

In 2002, the Agency received notices of discontinuance or reduction of service from the following carriers:

Carrier	Points and dates of proposed discontinuance or reduction
WestJet	Discontinuance of its year-round non-stop scheduled air service between Winnipeg and Thompson, MB. Effective November 3, 2002.
Jazz Air	Discontinuance of its domestic air services serving Yarmouth, NS, and St. Leonard, NB. Effective January 4, 2003.
Air Canada	Removal of its designator code from all flights authorized by its licence serving High Level, Rainbow Lake and Peace River, AB, but that air service will continue to be provided by Central Mountain Air under its own designator code. Effective January 4, 2003.
Jazz Air	Discontinuance of its service to Stephenville and its year-round non-stop scheduled air services to St. John's/Deer Lake, Deer Lake/Goose Bay, St. John's/Goose Bay and Deer Lake/Wabush, NL. Effective January 8, 2003.

The Agency addressed nine matters related to the notice requirements of Section 64 of the Act for discontinuance or reduction in air services. In five cases involving complaints, the Agency decided that Section 64 did not apply. The cases were either dismissed or referred to the Air Travel Complaints Commissioner. In another matter, a licensee requested a ruling on whether it was required to provide notice of discontinuance. If so, the licensee requested an abridgement of the notice period. The Agency determined that a notice was not required.

The Agency received three requests for an exemption from giving notice or for a reduction in the notice period. In those cases, the Agency ordered that some form of notification be provided.

Regarding the notices of discontinuance or reduction to service provided by carriers (as detailed in the above table), the Agency did not receive any complaints during 2002 concerning carriers that failed to respect their obligations.

AGREEMENTS

Bilateral air transport agreements and other arrangements between governments provide the legal and regulatory basis for the operation of international air services. The agreements establish traffic rights for each country's airlines and a regulatory process for applying national laws in air services.

With officials from Transport Canada and the Department of Foreign Affairs and International Trade, and led by Canada's Chief Air Negotiator, Agency staff participates in the negotiation of air transport agreements. Negotiations include the discussion of the cities that can be served,

the capacity that can be offered and pricing regulations. Agency staff contribute expertise in the preparation of proposed agreement texts, implementation of air agreements, regulation of air services including charter matters and airline commercial agreements, such as code sharing. The Agency also provides information on regulatory activities of other countries based on information from contacts with foreign aeronautical authorities. Once an agreement is established, the Agency, as the designated aeronautical authority for Canada, is responsible for administering the provisions related to licensing and economic regulation.

Canada currently has 73 bilateral air agreements and arrangements. In 2002, Agency staff participated in 11 negotiations with nine countries and territories: by attendance at formal meetings with delegations from Italy, Russia, South Korea, the Czech Republic, Switzerland and Hong Kong; and by correspondence with Israel, New Zealand and Luxembourg. Canada gained enhanced access for Canadian air carriers to Switzerland, Italy, the Czech Republic and New Zealand in exchange for greater access by foreign carriers to the Canadian market. In most cases, the agreements involved the inclusion or expansion of code-sharing rights, access to more cities, liberalized capacity entitlements and pricing. Canada also renewed and expanded temporary arrangements to provide for services between Canada and Israel.

Since the events of September 11, 2001, the international aviation industry has struggled with reduced demand and rising costs related to insurance, security and fuel. This increase in the cost of operating international air services has resulted in an increase in the use by airlines of code-sharing arrangements to expand or

maintain their international service networks. For example, Air Canada and Mexicana expanded their code sharing to allow Mexicana to sell travel in its name between Toronto and the points of Rome, Madrid and Frankfurt, on Air Canada flights for part of the service between Mexico and Europe.

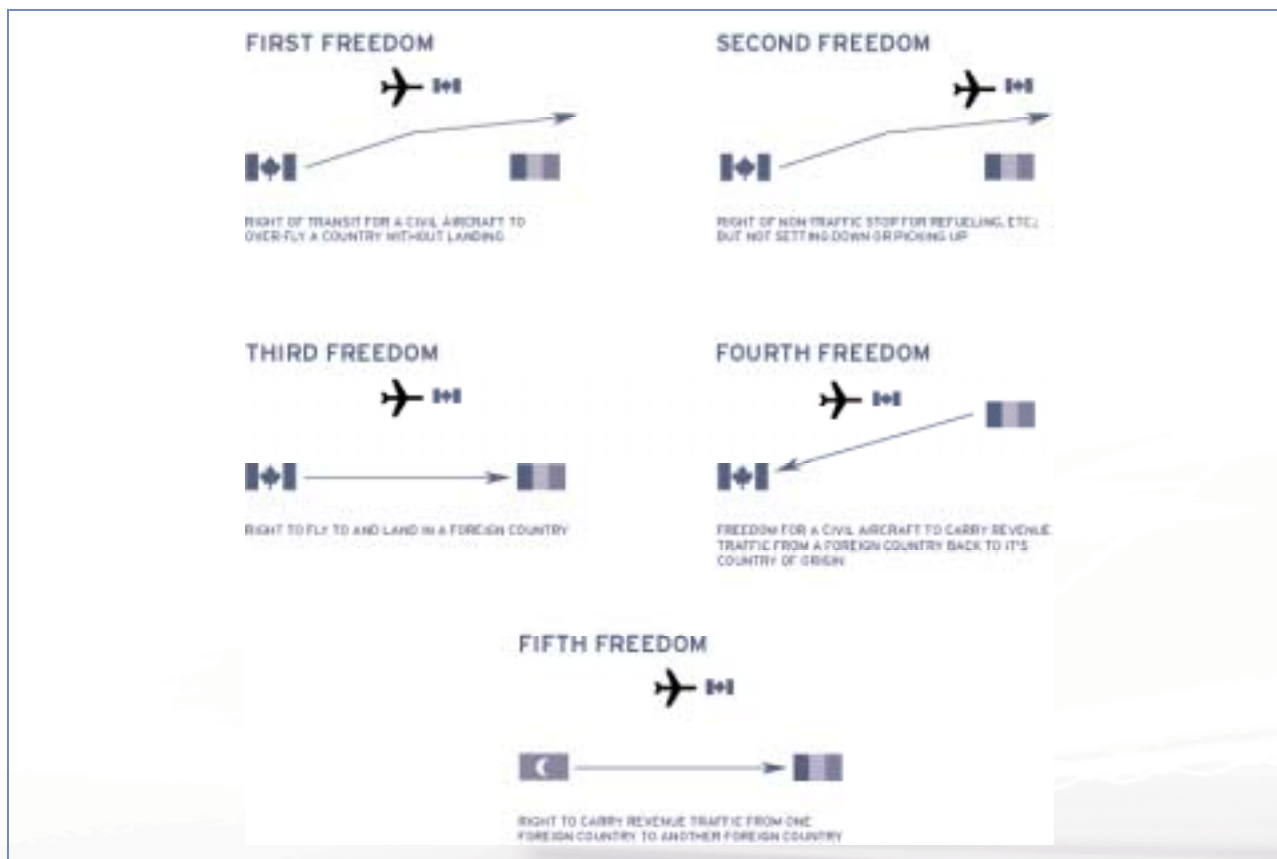
In 2002, the Agency processed 98 applications relating to bilateral air agreements and arrangements, and commercial arrangements between air carriers, of which 69 related to code sharing or lease of aircraft with flight crew.

The Agency may grant applications for temporary extra-bilateral authority where rights to operate the proposed services are not provided for in a bilateral agreement or arrangement. The Agency consults affected Canadian interests, particularly airlines and airports, in these

matters. Extra-bilateral authority is granted on a temporary basis. In 2002, the Agency processed 17 applications for extra-bilateral air services involving rights such as code sharing, providing fifth-freedom services and serving cities not provided for in an agreement or arrangement. (See below for explanation of freedoms.)

In 2002, the Agency licensed (until April 2003) Luxembourg air carrier Cargolux Airlines International, to operate two scheduled international all-cargo flights per week between Calgary and Luxembourg on a Luxembourg–Prestwick–Seattle–Calgary–Prestwick routing and to carry local traffic between Seattle and Calgary and between Calgary and Prestwick, i.e. exercise fifth-freedom traffic rights between these points.

THE FIVE FREEDOMS



The Agency also granted extra-bilateral authorities to permit Korean Air (in cooperation with Air Canada) to continue to operate all-cargo flights via Anchorage, Alaska, and for Korean Air to exercise fifth-freedom traffic rights between Anchorage and Toronto.

Under extra-bilateral authorities, Air Canada operated scheduled services on the route Toronto–Shannon–Dublin–Toronto during the summer, and Martinair Holland operated additional international scheduled passenger services to and from Calgary and Edmonton from April to October 2002.

Agency staff also participated in several forums of the International Civil Aviation Organization such as Sessions of the Facilitation Division and in Canadian committees dealing with air issues such as the National Facilitation Committee.

In 2002, the Agency began a redesign of its internal electronic database of bilateral agreements and relations to improve its functions as a research tool and facilitate expanded access. This work will continue in 2003.

NAV CANADA CHARGES

The Agency is the appeal tribunal for NAV Canada charges. On October 2, 2002, NAV Canada filed a Notice of Revised Service Charges for air navigation services with the Agency, under Section 36 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, c.20. The notice proposed, among other items, a three per cent increase in customer service charges effective January 1, 2003. Users were given until December 2, 2002, to contest the proposals. On December 13, NAV Canada filed an

VIGNETTE

When a passenger travelling to Costa Rica picked up the ticket at Pearson International Airport in Toronto, the price was \$300 more than what had been stated on Grupo TACA's Web site. The discrepancy was caused by the Web site quoting prices in U.S. dollars. Grupo TACA refused to refund the difference, arguing that the passenger had the option of not buying the ticket when the real price was discovered. The passenger, however, had understood that Grupo TACA would refund the difference on arrival in Costa Rica. The Air Travel Complaints Commissioner intervened and Grupo TACA agreed to give the passenger a cheque for US \$200. The carrier also made changes to its Web site to prevent further misunderstanding.

Announcement of Revised Service Charges pursuant to Section 37 of the *Civil Air Navigation Services Commercialization Act*, reflecting the same three per cent increase. There was a 30-day period to appeal. At the end of the year, no appeals had been received.

DOMESTIC AIRLINE PRICING

During 2002, the Agency concluded investigations of complaints about pricing on seven different non-competitive routes within Canada. In all cases, the Agency found that the fares were not unreasonable when compared to the fares offered by the carrier on similar, competitive domestic services. An eighth complaint was withdrawn.

On July 4, 2002, the Governor in Council extended to July 5, 2004, the period within which the Agency may make a finding about unreasonable pricing on non-competitive routes in Canada under the Act.

The Agency continued in 2002 to monitor the prices offered by carriers on non-competitive routes in Canada to determine how they compared with prices on similar competitive routes.

The Agency hired an independent aviation specialist group, InterVISTAS Consulting, to carry out a pricing study. Air routes in Western Canada were chosen as the focus of the analysis because strong competition between Air Canada and WestJet on many of the routes makes price comparisons possible.

InterVISTAS's report identified that Air Canada's continuously available fares on the routes under review to have remained relatively stable over time. The report did raise questions about fares on the following five routes: Kamloops–Vancouver; Kamloops–Whitehorse; Castlegar–Vancouver; Cranbrook–Vancouver; and Kamloops–Saskatoon. In 2003, the Agency will investigate the fares on these five routes and, if warranted, take remedial action. The executive summary of the InterVISTAS report is posted on the Agency's Web site (www.cta.gc.ca).

At the end of 2002, the Agency solicited bids for a consultant to undertake a similar study in the Atlantic region where there has been much market activity. New carriers, such as CanJet and Jetsgo, have arrived on the scene, older carriers have expanded their routes and others, such as Jazz Air, have left a number of markets. In 2003, the Agency will publish the results of the Eastern Canada airfare study and, if resources allow, start a study of another Canadian region.

VIGNETTE

Many Canadians cancelled air travel plans after the events of September 11, 2001. In response to complaints, Air Canada issued vouchers valid for 12 months and, after the Air Travel Complaints Commissioner approached the air carrier, it agreed to extend travel vouchers to 24 months from the date of issue, provided change fees and any difference in fare were paid. A family, which had purchased five non-refundable tickets, had cancelled their Air Canada flight and returned their tickets to their travel agent in exchange for a refund of the taxes. When the family sought compensation from Air Canada, the carrier refused on the basis that the taxes had been refunded, because the tickets had been returned to the travel agent. The Air Travel Complaints Commissioner intervened and Air Canada agreed to give the family five travel vouchers valid one year from the date of issue. The vouchers had a value of \$1,260.50, the base price of the five tickets before taxes.

ENFORCEMENT

The Agency encourages voluntary compliance with the *Canada Transportation Act*, the Air Transportation Regulations and the Personnel Training for the Assistance of Persons with Disabilities Regulations. Staff based in Agency offices in Moncton, Montreal, Toronto, Winnipeg, Edmonton and Vancouver administer periodic inspections and targeted investigation programs. In 2002, Agency staff completed 240 on-site inspections of Canada-based air carriers and

32 passenger terminal operators. The Agency also conducted 23 investigations of carriers or individuals suspected of operating illegal air services in Canada and identified a number of infractions.

The Agency can enforce the law with administrative monetary penalties. Other options include formal reprimands, cease and desist orders, licence suspension, licence cancellation or prosecution.

The Administrative Monetary Penalties Program is an alternative to administrative sanctions and prosecutions. A formal warning is normally the first step, giving carriers a chance to take corrective action; any subsequent break of the same provision of the law or regulation will be subject to a monetary penalty (from \$5,000 up to \$25,000).

In 2002, the Agency issued three warnings, none of which was appealed, and one notice of violation. Sixty-nine informal warnings were issued as a result of periodic carrier inspections. Fourteen informal warnings were also issued after periodic facilities inspections.

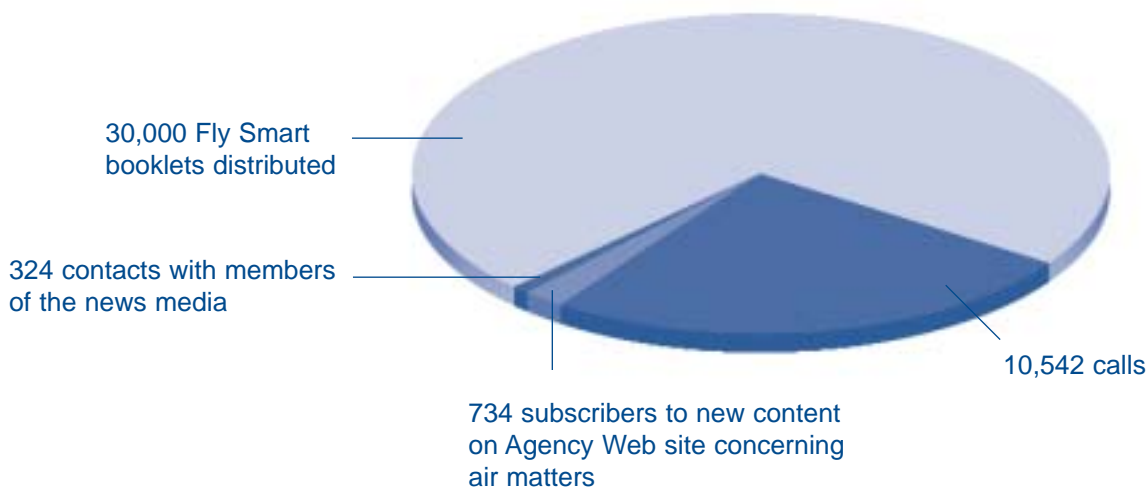
In the spring of 2001, a Notice of Violation was issued to a United States carrier alleging that it had conducted four flights without holding a licence issued by the Agency. The penalty assessed was \$20,000. The penalty was not paid in the time period allowed and the matter was referred to the Civil Aviation Tribunal (CAT).

A hearing adjudicated by the Vice-Chairperson of CAT was held on January 17, 2002. On February 2, 2002, CAT found that the carrier had contravened the *Canada Transportation Act* as alleged. The penalty of \$5,000 on each of four counts for a total of \$20,000 was upheld.

COMMUNICATIONS WITH CANADIANS

The Agency had 324 contacts with news media in 2002 on air matters, compared with 271 in 2001. Nine news releases and three background stories were provided on major air issues that the Agency dealt with in 2002.

The Air Travel Complaints Commissioner's call centre answered 10,542 calls in 2002. Staff participated in five air travel trade shows across the country and the Commissioner



personally held consultations with groups and associations representing consumers, travel agents and air carriers.

A revised version of *Fly Smart*, a 50-page booklet with advice for air travellers, was published in September 2002. The Office of the Air Travel Complaints Commissioner distributed 30,000 copies through its call centre and trade shows during 2002 and it is also available electronically on the Agency's Web site (www.cta.gc.ca).

Information about the Agency, the Office of the Commissioner and its activities is posted on the Agency's Web site. The Office is also available by calling a toll-free telephone number, 1-888-222-2592, or TTY (telecommunications device for persons with a hearing disability) 1-800-669-5575, accessible from Monday to Friday, 8 a.m. to 8 p.m. Eastern Time.

CASES BEFORE THE COURTS

FEDERAL COURT OF APPEAL - CASES DISCONTINUED IN 2002

AIR CANADA V. DAN MOTISCA AND CANADIAN TRANSPORTATION AGENCY

Court File No.: 01-A-14

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

Motion Record for leave to appeal was not filed with the Court before January 31, 2002, as per Federal Court order dated May 28, 2001. The Court closed the case.

RAIL



The Agency's mandate in rail transportation ranges from the licensing and approval of new operations, the resolution of rate and service disputes between railways and shippers or other parties, the administration of the Western grain revenue cap regime, to the eventual discontinuance of service and disposal of assets of a railway line.

RAIL TRANSPORTATION

In 2002, the Agency made rulings on two cases involving running rights (the right for one railway to run its trains over the lines of another) that are significant, not only for the grain transportation industry but for all shippers using Canadian rail service.

In one ruling, the Agency denied an application from Ferroequus Railway Company Limited that sought the right to run and operate trains hauling grain on Canadian National Railway Company (CN) lines between Camrose, AB, and the port of Prince Rupert, BC. The Agency's guiding principle in denying this application was that a statutory running right is an "exceptional remedy" that requires actual evidence of market abuse or failure before an application under Section 138 of the *Canada Transportation Act* may be granted. In this case, the Agency also considered for the first time the public interest component laid out in Section 138 of the Act.

Similarly, as part of its investigation into a level of service complaint filed by Naber Grain & Seed, the Agency considered the shipper's request that the Hudson Bay Railway Company be allowed to operate its trains over a portion of CN rail lines as a remedy to the breach of the level of service obligation of CN. The Agency denied Naber's request stating that there were other alternatives to running rights available at that time to remedy the unsatisfactory service.

RUNNING RIGHTS

Feroequus filed its running rights application in October 2001, to run and operate its trains hauling grain over CN lines from interchanges with the Canadian Pacific Railway (CPR) at Lloydminster, SK, and Camrose, AB, to Prince Rupert, BC.

Feroequus claimed that, because its proposed operation would receive traffic originating on CPR lines, this application conformed to the

Agency's 2001 ruling on the scope of the running rights provision under Section 138 of the Act. The Agency had found earlier that the provision did not permit it to grant a running right to a railway company seeking the right to solicit traffic along the lines of the host railway company.

A number of procedural issues were raised by CN and CPR over the course of Ferroequus's application. These included the use of CPR's assets at both the interchanges in Lloydminster and Camrose as well as the solicitation of traffic such as Canadian Wheat Board (CWB) grain along CPR's lines. CPR requested and was granted intervener status in the matter.

Following a hearing in which Ferroequus presented its proposal to the Agency, CN and CPR, the Agency determined that it could not consider the application in its current form because Ferroequus was including the use of CPR tracks at both interchanges without naming CPR as a party to the application. The Agency dismissed CN and CPR arguments regarding the improper solicitation of traffic.

As a result, Ferroequus filed an amended application, eliminating references to Lloydminster and to CPR assets at Camrose. The Agency accepted the amended application. CN and CPR applied to the Federal Court for leave to appeal the Agency decisions regarding solicitation and the acceptance of the amended application. Both applications were dismissed on May 16, 2002.

Given the potential impact on the grain transportation industry and precedent-setting nature of the application for all shippers, the Agency concluded that a public hearing should be held. The hearing, presided over by five

Agency Members, was held in Winnipeg, MB, from April 29 to May 8. The case represented the first time the Agency looked at the public interest component in Section 138 of the Act. Included in the Agency's considerations were written submissions from more than 20 shipper organizations.

On September 10, 2002, in a majority ruling, the Agency denied the application on the grounds there was no compelling evidence of any prevailing public interest need for imposing the running rights. The Agency concluded that Ferroequus had not established the existence of a rate or service problem in the relevant markets, nor had it established that granting the running rights would eliminate or alleviate any lack of adequate and effective competition. The Agency concluded that granting Ferroequus's application would have a negative impact on many of the participants in the grain handling and transportation system.

One Member, while agreeing with the majority, concluded that there are other remedies available for rate and service problems such as regulated interswitching, final offer arbitration or filing of a level of service complaint. The Member found that there would have to be a severe, systemic and sustained problem in the marketplace before granting running rights as a remedy.

Another Member, in a dissenting opinion, supported the granting of Ferroequus's application, subject to certain conditions. That Member found that the financial benefits to CWB grain producers brought about by enhancing competition on the route to Prince Rupert would far outweigh any inconveniences that the non-CWB producers may have suffered. The Member found the application was in the public interest.

In October, Ferroequus filed an application for leave to appeal the Agency decision with the Federal Court of Appeal. The Federal Court granted leave to appeal on December 6, 2002. CN also applied to the Agency for an award of costs arising from Ferroequus's October 25, 2001, application. The Agency will render its decision in this matter in 2003.

LEVEL OF SERVICE

On June 11, 2002, the Agency issued a decision on two complaints filed by Naber Seed & Grain, a specialty crop shipper, involving allegations that CN failed to fulfil its common carrier obligations in crop year 2000-2001. The Agency had conducted a hearing from January 28 to February 6, 2002, in Saskatoon, SK.

The Agency determined that CN failed to provide adequate and suitable service by rationing the allocation of hopper cars to carry specialty crop products from Naber's facilities at Melfort and Star City, SK, and Kathryn, AB, to the ports of Vancouver and Prince Rupert, BC, in a 20-week period from November 2000 to April 2001.

The Agency noted that the delivery of cars to Naber was restricted and the car shortage experienced by Naber was severe at times, with consequent adverse effects on its operations. The Agency concluded that CN's grain handling and transportation system is not geared to meet the needs of the specialty crop shippers. The Agency also noted that this was Naber's third complaint and that the level of service received during that complaint period still didn't meet Naber's transportation requirements. For that reason, the Agency examined the need to find an effective remedy to reduce the likelihood of a further breach of CN's service obligations.

One remedy sought by Naber was granting to the Hudson Bay Railway Company the right to operate its trains over a portion of CN rail lines to provide rail service to Naber's Melfort and Star City facilities. The Agency denied the running rights request on the basis that there were other alternatives available and ordered 11 separate operational measures dealing with car ordering, allocation, spotting and other elements.

In November, a complaint about the level of service provided by CN was filed by Novell Polymers Inc. Novell alleged that CN had failed to fulfil its common carrier obligations by refusing to scale hopper cars for the carriage of plastic raw materials. The Agency will consider the matter in 2003.

INTERSWITCHING

Under Subsection 128(1) of the Act, the Agency publishes the Railway Interswitching Regulations, which prescribe the rates for interswitching rail traffic. The Act allows any person to request that their traffic be interswitched at the rate provided for in the Regulations to another railway carrier if their point of origin or destination is located within the interswitching limit of a 30-kilometre radius from an interchange.

The Agency reviews the interswitching operations of CN and CPR annually and revises the rates as required so that each rate will reflect changes in the average variable costs of all movements of traffic subject to that rate.

Subsection 128(5) of the Act requires the Agency to review the Regulations when warranted and, also, at regular five-year intervals.

In August 2002, the Agency began a consultation process to review the Regulations. It asked for comments from interested parties about the application of the Regulations and for amendment proposals. The Agency also asked for comments on its own proposal of interswitching rate changes, which includes a general reduction in the interswitching rate structure to reflect a decline in the estimated costs in each category of the interswitching traffic.

The Agency received 22 submissions on the rate-change proposals, mainly from railways, shipper associations and provincial governments. Respondents raised several other issues including the continued need for regulated interswitching, the level of contribution toward fixed costs incorporated in the interswitching rates, the definition of the interswitching distance zones and the size of the car blocks needed to reduce per-car interswitching rates.

The Agency will consider all submissions in the development of regulatory proposals. The proposed amendments will be published in Part I of the *Canada Gazette* in 2003.

The Agency received two applications requesting orders directing the interswitching of traffic in 2002. An application filed by the Trustee of Canadian American Railroad Company sought an order directing the interswitching of traffic between Canadian American Railroad Company and CN at the point where New Brunswick Southern Railway Co. and CN join in the port of Saint John, NB.

The Bangor & Aroostook System, in filing the reply in this proceeding, requested as an alternative to the interswitching order that the application be extended to include a request for

running rights over CN's line at the port of Saint John and, a level of service complaint concerning CN's refusal to grant the Canadian American Railroad Company access to the potash terminal on CN's line at the port of Saint John. CN filed an objection requesting that the complaint be dismissed. The application and CN's objection will be considered in 2003.

The second application, filed by CN, requested an order directing the interswitching of traffic between CN and Montreal, Maine & Atlantic Railway at Ste-Rosalie, QC, and a determination that the junction at Ste-Rosalie constitutes an interchange for the purpose of Section 127 of the Act. The Agency will render its decision on the matter in 2003.

FINAL OFFER ARBITRATION

Final offer arbitration, under Part IV of the Act, provides a means for resolving disputes between shippers and carriers through the use of an independent arbitrator or a panel of three arbitrators who will choose without modification the final offer of either the shipper or the carrier. Unless the parties agree to a different time frame, arbitration must be completed within 60 days, or 30 days for disputes involving freight charges of less than \$750,000.

Under these confidential processes, parties choose their arbitrators and can benefit from procedural flexibility and enforcement of the arbitrator's decision as a decision of the Agency.

During 2002, the Agency received notices from two shippers of their intentions to submit their disputes for final offer arbitration. In both cases, the shippers later advised the Agency

that the matters had been settled without need for arbitration.

Section 169 of the Act requires the Agency to periodically update its list of arbitrators. Bill C-34 amended this section in 2000 to include a requirement that the Agency provides a statement of each arbitrator's area of expertise and how that expertise would assist in conducting final offer arbitration.

In October, the Agency updated the list. The amended list of 37 arbitrators will be distributed in 2003 to the federal and provincial arbitration and mediation institutes, railway companies operating in Canada, major shipper groups and law firms that have participated in previous arbitration proceedings. The list will be available on the Agency's Web site.

OTHER RATE OR SERVICE COMPLAINTS

In July, the Agency ruled on an application by the Canadian Industrial Transportation Association (CITA) seeking a declaration from the Agency that the Canadian National Railway Company Tariff No. CN 9000 and the Canadian Pacific Railway Company Tariff No. CPRS 6666 were not authorized by the Act. These tariffs reflect additional charges that the railways impose on shippers for services such as late return of cars, changing destinations, and fuel surcharges, to name a few.

Both CN and CPR filed preliminary motions questioning the Agency's jurisdiction to consider the application, the standing of the applicant to file the application, and requesting that the application be split into two, should it proceed.

The Agency noted that CITA asked for a declaration that the tariffs do not have the

"force of law". This was considered to mean that, if the tariffs offend or breach the Act, they do not have any legal basis. Further, CITA submitted that if the railway companies were not mandated to do something under the Act, then they could not do it, making reference to previous legislation.

The Agency acknowledged that, historically, it had the necessary authority to consider such laws of general application. Under the *Railway Act* and the *National Transportation Act, 1987*, industry-specific laws were set out. However, under the *Canada Transportation Act*, there is clear policy that the Canadian railway industry is to be deregulated, leaving railway companies free to conduct business as they see fit, with a limited number of exceptions set out in the Act.

The Agency determined that it had no statutory authority to make the declaration requested by CITA and dismissed the CITA application. It concluded that tariffs are now commercial matters, to be resolved between a railway company and its customers, with final offer arbitration and the courts available to resolve disputes in the pre-contract or post-contract stages, respectively.

Further, the Agency ruled that if a shipper apprehends anti-competitive conduct or consequences relating, for example, to abuse of dominant market power, it may bring the matter to the attention of the Commissioner of Competition.

The Agency granted CN and CPR's motions to dismiss the application.

CERTIFICATES OF FITNESS

The Agency issues certificates of fitness when it is satisfied that a company proposing to construct or operate a railway under federal jurisdiction has adequate liability insurance. Certified companies are then monitored for continued compliance. The Agency may also vary certificates to reflect changes in railway operations, or suspend or cancel a certificate.

In 2002, the Agency granted new certificates to the Montreal, Maine & Atlantic Railway, Ltd., and the Montreal, Maine & Atlantic Canada Co., which had taken over operations of the former Canadian American Railroad Company and the Bangor and Aroostook Railroad Company (and its wholly owned subsidiary Van Buren Bridge Company), and other provincial and American railway companies.

The Agency also granted a new certificate of fitness to the Acadian Railway Trains L.P. for its tourist train operation while ruling that two other tourist train operators did not meet all the requirements for a certificate.

Two other certificates of fitness were amended, one for CPR to reflect a shift in corporate structure, and the other for the Chemin de fer de la Matapedia et du Golfe Inc., to reflect the merger with its affiliate company, the Chemin de fer Baie des Chaleurs Inc.

In the case of the former Devco Railway (whose certificate was cancelled by the Agency), the Agency granted a new certificate to 510845 N.B. Inc. This certificate was later cancelled and a new certificate was issued to Sydney Coal Railway (later changed to 3986250 Canada Inc.), which acquired the operations.

The Agency cancelled the certificate of the Waterloo-St. Jacobs Railway Company Ltd. At the end of 2002, it was considering a certificate application for the Prairie Alliance for the Future Inc.

In 2002, an appeal to the Federal Court of an Agency decision denying a certificate to the Agence metropolitaine de transport for its commuter rail service in Montreal was discontinued.

In 2003, the Agency will continue to address jurisdictional questions in applications for new or amended certificates as the railway industry continues to restructure. Specifically, the

CANADA'S FEDERAL RAILWAY COMPANIES AS OF DECEMBER 31, 2002

3986250 Canada Inc.

Acadian Railway Trains L.P.

Algoma Central Railway Inc.

Arnaud Railway Company

Bangor and Aroostook Railroad Company
(Van Buren Bridge Company)

Burlington Northern and Santa Fe Railway Company, (Burlington Northern [Manitoba] Ltd. and Burlington Northern and Santa Fe Manitoba, Inc.)

Canadian American Railroad Company

Canadian National Railway Company

Canadian Pacific Railway Company

Capital Railway

Chemin de fer de la Matapedia et du Golfe Inc.

CSX Transportation Inc. (Lake Erie and Detroit River Railway Company Limited)

continued on page 31

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

Agency will watch with interest as both B.C. Rail and Ontario Northland Railway consider their futures.

CONSTRUCTION APPROVAL

Subject to certain exclusions, the Agency must approve the location of new railway lines, including main lines, branch lines, sidings, spurs, yard tracks or other auxiliary trackage. The Agency may also be asked to approve the construction of railway crossings including bridges and underpasses. In each case, the Agency must first assess the environmental impact of a project under the *Canadian Environmental Assessment Act*. In 2002, the Agency made five environmental screening decisions, allowing the projects to proceed when assured that applicants took measures deemed by the Agency to be appropriate to mitigate any significant adverse environmental impacts.

The Agency also received the project description from CPR for a proposed railway tunnel at Windsor, ON, which according to CPR, when combined with roadway construction, would improve the flow of rail and road traffic between Canada and the United States.

The Agency also monitored environmental compliance for previously approved rail line construction projects in Edmonton and Prentiss, AB, and continued screening the relocation of part of the CPR Coutts Subdivision near Milk River, AB.

In response to inquiries, the Agency also supplied information to interested parties about proposals for a CN Intermodal Terminal near Milton, ON, and a rail link to Toronto's Pearson Airport.

INFRASTRUCTURE ISSUES

The Agency resolves disputes over railway rights of way, tracks, supporting facilities, protective devices and other physical aspects of a railway's operation. In 2002, the Agency reached decisions in seven disputes about road crossings of railways, three disputes over utility crossings, and five disputes about private railway crossings. An appeal to the Federal Court of an earlier Agency decision concerning a private crossing is scheduled to be heard in 2003.

The Agency also received 61 agreements filed by parties who had conducted their own negotiations related to railway crossings. The Agency issued two decisions apportioning costs among railways and other parties for railway protective devices, such as crossing signals or fencing along rights of way. The Agency's jurisdiction to apportion costs in a fencing dispute near Montreal was challenged in the Federal Court of Appeal and will be heard in 2003.

The Agency concluded consultations with railways, municipal associations and Transport Canada to update a new Guide for Railway Charges for Construction and Maintenance of Road Crossings, formerly known as the Schedule "A" Directives. The revised guide, to be published in 2003, will be a useful resource in the resolution of disputes about road crossings.

The Agency completed five reviews of existing orders or decisions, primarily related to road crossings, where relevant facts or circumstances had changed. In most cases, legal responsibility for roads and road crossings had been transferred from provincial to municipal governments.

The Minister of Transport and the Province of Ontario agreed that the federal railway crossing laws apply to railways under Ontario provincial jurisdiction, and that the Agency administers those laws. The Agency has had preliminary discussions with other provinces to enter into similar agreements.

WESTERN GRAIN REVENUE CAPS AND REVENUE

Under Sections 150 and 151 of the Act, the Agency must determine the maximum revenue entitlement (or revenue cap) and actual revenue for a prescribed railway company (currently CN and CPR), for the movement of Western grain for each crop year. The determinations must be made by December 31 following the crop year, which ends on July 31. If the railway company revenue exceeds its revenue cap, it must pay the excess amount plus a penalty to the Western Grain Research Foundation, for research in the industry.

On December 17, 2002, the Agency ruled that CN and CPR revenues for the movement of Western grain did not exceed the revenue caps for crop year 2001-02. CN's grain revenue of \$280.2 million was \$13.5 million below its revenue cap of \$293.7 million, while CPR's Western grain revenue of \$277.9 million was \$8.7 million below its revenue cap of \$286.6 million.

Following the release of an Agency decision in 2001 on what constitutes grain revenue for the purpose of the Agency's Western grain railway revenue determinations under the revenue cap regime, the Agency ruled on CPR's new demurrage rules (which affect grain revenue) regarding penalty charges imposed on shippers for inefficient activities in late 2001. The Agency found that it was unreasonable to characterize

a portion of the amount earned by CPR, as a result of these new rules, to be demurrage. Consequently, a portion of the amount earned was to be included in the calculation of the revenue cap. One Member, writing in dissent, argued that the revised CPR policy was entirely in respect of demurrage. Therefore, all the amount earned under the new rules should be excluded from the Agency's determination of the revenue cap. CPR appealed this demurrage decision to the Federal Court in early 2002 and the case is to be heard in 2003.

GRAIN TRANSPORTATION ISSUES

In 2002, Agency staff assisted Transport Canada in assessing potential amendments to the Act regarding the revenue cap regime. Information was provided on wording changes to the administrative process that the Agency must follow in efficiently capturing any increased costs to the railways following the potential sale, lease or disposal of the Government of Canada hopper car fleet.

The Agency also assisted Canadian government departments in responding to the U.S. Department of Commerce's investigation of the North Dakota Wheat Commission's petition for a countervail duty on Canadian wheat exports to the United States. The Agency provided information on the revenue cap regime, Canadian government-owned hopper cars and branch-line discontinuance payments.

The Agency also assisted other Government of Canada departments in responding to the U.S. Trade Representative's petition to the World Trade Organization, under Article XXII of the General Agreement on Tariffs and Trade, 1994, on the export of wheat by the Canadian Wheat Board and the treatment Canada gives to imported grain.

COST OF CAPITAL

In early 2002, the Agency approved separate cost of capital rates for CN and CPR. The rates, approved annually by the Agency, are used to develop the volume-related price index which, in turn, is used to determine the railway revenue cap for the movement of Western grain, interswitching costs and rates, among other things.

The cost of capital rates for CN and CPR, which will be used in calculating their respective revenue caps for crop year 2002-03, are 11.37 per cent and 10.95 per cent. The cost of capital is the return on investment that investors require when providing funds for capital investments. The Act and applicable regulations recognize it as an established economic cost of railway operations. The cost of capital includes the costs of financing the acquisition of capital assets—namely interest on debt and return on equity. The cost of debt is equal to the interest on related bonds. Measuring the cost of equity, or the return that shareholders expect, involves analysing financial models and assessing risk.

REGULATORY RAILWAY COSTING

The Agency collects railway financial and operating data, and reviews railway costs annually. The data are used to create a costing model that helps in adjudicating rail service and rate disputes, setting interswitching rates and other regulatory activities.

CN and CPR submit their railway costs to the Agency annually, with supporting financial and operating data. In 2002, the Agency updated railway operating costs for 2001. The Agency also provided costing analysis and research to Transport Canada during its review of the *Canada Transportation Act*.

HISTORICAL PRICE INDICES

The Agency develops price indices annually to determine the level of change in railway costs such as labour, fuel and material.

Separate indices are developed for CN and CPR. The price indices are required to establish the maximum revenue cap for CN and CPR for Western grain movement and to estimate costs for railway operations.

TRANSFER AND DISCONTINUANCE

Railways may rationalize their lines without regulatory approval if they follow a process prescribed in Division V, Part III of the Act. However, the Agency may be asked to determine whether a railway company has complied with the transfer and discontinuance process. In some cases, railways may discontinue auxiliary trackage (such as sidings, spurs and yard track) without having to follow the prescribed process. As a result, the Agency may be asked to determine whether a specific piece of track is subject to the prescribed process.

In 2002, the Agency ruled that the track between mileages 1.9 and 6.6 of the Stevensville Spur, formerly the CPR Fort Erie Subdivision, constituted a "spur" and therefore was exempted from the prescribed discontinuance process.

NET SALVAGE VALUE DETERMINATIONS

Section 143 of the Act requires railway companies to advertise the availability of railway lines for continued operation before discontinuing them. Parties are free to negotiate an acceptable sale price. However, any party to the negotiation for transfer of a

line can ask the Agency to set the net salvage value of the line for continued operation. The requesting party must reimburse the Agency for its costs in handling the application. If the railway does not transfer the line after advertising it, it must offer to transfer the line to the federal, provincial, municipal or district government for no more than the net salvage value of the line. The governments may use the line for any purpose after taking possession.

When a government accepts a railway company's offer to transfer a line, the parties have 90 days to agree on the line's net salvage value. If they cannot agree, either party may ask the Agency to determine the net salvage value. The Agency received no applications for net salvage value determinations for federal rail lines in 2002.

However, in early November, the Nova Scotia Utility and Review Board granted an application from the Cape Breton and Central Nova Scotia Railway to discontinue service and abandon a portion of the Sydney Subdivision, pursuant to the Province of Nova Scotia's *Railways Act*, 1993. The Province of Nova Scotia asked the Agency to determine the net salvage value of the line. The Agency will complete its report for the Province of Nova Scotia in 2003.

The Rural Municipality of Bayne No. 371 filed an appeal with the Federal Court of Appeal in relation to an Agency decision on June 30, 2000, regarding the impact of municipal reclamation bylaws on the net salvage value of CN lands and other assets or interests in its Cudworth Subdivision of Saskatchewan. On May 2, 2002, the Appellant filed a Notice of Discontinuance with the Federal Court of Appeal.

MEDIATION ACTIVITY

The mediation program attracted interest from a growing and diverse group of parties in 2002. Requests for mediation services came from municipalities, shippers, producers, provincial ministries, main-line, short-line and commuter railways, shipowners and private individuals.

As in the past, requests for mediation on issues pertaining to rail yard noise and disturbance, crossing and fencing issues, and rates were

received this year. The Agency also received requests for mediation of commuter rail and rail infrastructure issues, and one request for mediation in a dispute between two carriers, a first of its kind for the program.

There were 13 mediation requests in 2002. Two cases reached settlement, one did not and two other cases did not go forward because the second party was unwilling to enter into mediation. The remaining eight cases are to continue into 2003.

THE FOLLOWING RAILWAY LINES TOTALLING 387.87 MILES WERE DISCONTINUED IN 2002:

Subdivision	Head-block	From	To	Miles	Kms	Prov.	Date
CN							
Massena Spur (Rouses Pt. Sub/St. Remi Spur)	72.5	0	6.1	6.1	9.8	QC	August 17, 2002
H.B. Hagersville/ TH&B Spur		62.63	63.7	1.07	1.7	ON	August 1, 2002
H.B. Hagersville/ Burford Spur		2.1	3.7	1.6	2.6	ON	August 1, 2002
Joliette/ Longue Pointe Spur	127.7	0.65	3.36	2.71	4.3	QC	September 8, 2002
Cudworth		38.38	84.55	46.17	73.87	SK	July 31, 2002
CPR							
Stevensville Spur		1.9	6.6	4.7	7.5	ON	April 29, 2002
Lomond		0.0	97.0	97.0	155.2	AB	June 20, 2002
CN/CPR							
Welland Sub (CN CASO)		33.96	37.96	4.0	6.4	ON	September 30, 2002
Welland Sub (CN CASO)		37.9	48.7	10.8	17.3	ON	February 26, 2002
Welland Sub (CN CASO)		11	33.9	22.9	36.6	ON	February 26, 2002
Waterford (CN CASO)		0.0	45.4	45.4	72.6	ON	February 26, 2002

In addition, the Agency is aware of 1 transfer of a railway line to federal or provincial entities totalling 5.5 kilometres of track.

COMMUNICATING WITH CANADIANS

In 2002, the Agency continued its commitment to inform, consult and communicate with the railway industry, its users and those who interact with it; the methods were varied and extensive.

Two major hearings held in 2002, one in Winnipeg, MB, on Ferroequus's application for running rights and the other in Saskatoon, SK, on Naber Seed & Grain, concerning two complaints against CN, were open to the public. The Agency held a technical briefing in Winnipeg, MB, on September 10, 2002, for members of the news media in connection with the Ferroequus decision.

Formal consultations were undertaken in 2002 with railways, shippers, provincial governments, federal departments, municipalities and other interested parties on the subjects of Rail Interswitching Regulations, Western grain revenue determination, maintenance rates and charges for railway works at road/rail crossings and the Agency's mediation process. The Agency also conducted a survey on its consultation process concerning Western grain with all respondents indicating they were generally satisfied with the Agency's process.

Formal presentations were made to visiting railway delegations from China as well as to the management of Canadian National Railway Company. The Agency also hosted its annual forum for members of the Railway Association of Canada to meet with Agency representatives and numerous federal departments. The Agency participated in six municipal trade shows in Alberta, Saskatchewan, Ontario and Quebec, with exhibits focusing on its services and mandate. Five new brochures concerning railway infrastructure matters were published

and made available on the Agency's Web site (www.cta.gc.ca), which was itself redesigned and improved for easier access.

The Agency had numerous contacts with members of the news media in 2002 on rail matters. Six news releases and five background pieces were provided on major rail issues that the Agency dealt with in 2002. Also in 2002, the Agency distributed some 5,000 rail infrastructure brochures and had 283 subscribers to new content on the Agency Web site concerning rail matters.

CASES BEFORE THE COURT

FEDERAL COURT OF APPEAL - CASES DECIDED IN 2002

CANADIAN NATIONAL RAILWAY COMPANY V. FERROEQUUS RAILWAY COMPANY AND THE CANADIAN TRANSPORTATION AGENCY

Court File No.: O2-A-9

Application for leave to appeal Agency Decision LET-R-86-2002 dated March 21, 2002, regarding an application by Ferroequus Railway Company pursuant to Sections 93 and 138 of the *Canada Transportation Act* and in respect of motions filed by the Canadian Pacific Railway Company and Canadian National Railway Company for dismissal.

On May 16, 2002, the Federal Court of Appeal dismissed the application for leave to appeal.

CANADIAN NATIONAL RAILWAY COMPANY V. FERROEQUUS RAILWAY COMPANY AND THE CANADIAN TRANSPORTATION AGENCY

Court File No.: O2-A-10

Application for leave to appeal Agency Decision LET-R-101-2002 dated April 5, 2002, regarding an application by Ferreoquus Railway Company pursuant to Sections 93 and 138 of the *Canada Transportation Act* and in respect of motions filed by CPR and CN for dismissal.

On May 16, 2002, the Federal Court of Appeal dismissed the application for leave to appeal.

FEDERAL COURT OF APPEAL - CASES DISCONTINUED IN 2002

AGENCE METROPOLITAINE DE TRANSPORT ET METROPOLITAN RAILWAYS INC. V. CANADIAN TRANSPORTATION AGENCY ET AL.

Court File No.: A-508-01

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

On November 28, 2002, the Appellant filed a Notice of Discontinuance.

RURAL MUNICIPALITY OF BAYNE NO. 371 ET AL V. CANADIAN TRANSPORTATION AGENCY, CANADIAN NATIONAL RAILWAY COMPANY AND CANADIAN PACIFIC RAILWAY COMPANY

Court File No.: A-743-00

Appeal of Agency Decision No. 445-R-2000 dated June 30, 2000, relating to a determination

by the Agency regarding the impact of municipal reclamation bylaws on the net salvage value of CN lands and other assets for interests in its Cudworth Subdivision in the Province of Saskatchewan.

On May 2, 2002, the Appellant filed a Notice of Discontinuance.

FEDERAL COURT OF APPEAL - CASES PENDING IN 2002

REAL FAFARD ET JACQUES BORDUAS V. CANADIAN NATIONAL RAILWAY COMPANY, VILLE DE ST-BASILE-LE-GRAND AND TRANSPORT CANADA

Court File No.: A-374-01

Appeal of Agency Decision No. 18-R-2001 dated January 12, 2001, relating to an application by Real Fafard and Jacques Borduas pursuant to Section 103 of the *Canada Transportation Act* to construct and maintain a private level crossing across the CN right of way at mileage 58.84 of the St-Hyacinthe Subdivision, in the town of St-Basile-le-Grand, in the Province of Quebec.

VILLE DE MONTREAL V. CANADIAN PACIFIC RAILWAY COMPANY

Court File No.: A-608-01

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

**CANADIAN PACIFIC RAILWAY COMPANY V.
CANADIAN TRANSPORTATION AGENCY**

Court File No.: A-193-02

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

**FERROEQUUS RAILWAY COMPANY V.
CANADIAN NATIONAL RAILWAY COMPANY
AND THE CANADIAN TRANSPORTATION
AGENCY**

Court File No.: 02-A-26

Application for leave to appeal Agency Decision No. 505-R-2002 dated September 10, 2002, relating to Ferroequus's application to the Agency for an order granting it the right to run and operate its trains on and over specified lines of CN between Camrose, AB, and Prince Rupert, BC, and for an order varying Ferroequus's certificate of fitness in accordance with the requested running rights.

**PETITIONS TO THE GOVERNOR IN
COUNCIL - CASES CLOSED IN 2002**

**CANADIAN NATIONAL RAILWAY COMPANY
V. CANADIAN TRANSPORTATION AGENCY**

Petition to the Governor in Council regarding Agency Decision No. 593-R-1998, issued in connection with an application by CN pursuant to Section 16 of the *Railway Safety Act* for a determination by the 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.

On June 14, 2001, the Governor in Council rescinded Decision No. 593-R-1998 and the Agency was asked to reconsider its decision on the cost apportionment of the actual costs of the installation of an automatic warning system based on the safety determination that such a system is required.

**PETITIONS TO THE GOVERNOR IN
COUNCIL - CASES PENDING IN 2002**

**VILLAGE OF STENEN V. CANADIAN
TRANSPORTATION AGENCY**

Petition to the Governor in Council regarding Agency Decision No. 103-R-2000 dated February 15, 2000, relating to a level of service complaint against CN at the Village of Stenen, SK.

MARINE



The Agency exercises its marine mandate under the *Canada Marine Act*, *Coasting Trade Act*, *Pilotage Act* and the *Shipping Conferences Exemption Act*. In response to coasting applications to use foreign vessels in Canadian waters, the Agency makes recommendations to the Canada Customs and Revenue Agency on whether suitable Canadian vessels are available to perform the activity described in the application. The Agency also has the power to determine, in response to a complaint, whether tariffs, tolls and fees established by the Canada Port Authorities, the St. Lawrence Seaway Development Corporation and the pilotage authorities are unjust, unreasonable, discriminatory or prejudicial to the public interest.

MARINE TRANSPORTATION

The Agency is committed to protecting the interests of Canadian marine operators and shippers and, at the same time, to ensuring that commercial activities are carried out fairly and efficiently in Canadian waters.

In a continuing effort to broaden communications with the marine industry, a panel of four Agency Members and staff conducted a cross-country consultation in 2002 on updating guidelines for the processing of coasting trade licence applications.

The Agency also launched the Canadian Merchant Fleet List on the Agency's Web site (www.cta.gc.ca). The list provides information on all Canadian-registered vessels in operation in Canadian waters by type and area of service, and is an invaluable tool for users and operators in the industry.

In response to a complaint, the Agency issued a ruling on a proposed tariff increase by the Laurentian Pilotage Authority. The Agency decided the pilotage authority should lower its proposed increase, which it did.

COASTING TRADE ACT

Under the *Coasting Trade Act*, the transport of goods or passengers and any other commercial activity in Canadian waters, including the continental shelf area, is reserved for Canadian-registered vessels except for situations where no suitable Canadian vessels are available to carry out an activity.

Before an applicant can get a coasting trade licence to bring a foreign vessel into Canadian waters for a commercial activity, the Agency must determine that no suitable Canadian vessel is available. If the activity entails the carriage of passengers, it must also determine that there is no adequate identical or similar marine service offered by an operator of Canadian vessels.

On June 25, 2002, the Agency approved the preparation by staff of updated guidelines on processing coasting trade licence applications. The Agency then conducted a series of oral and written consultations with the industry to gather information and comments. A panel of four Members was appointed to conduct the consultations with the assistance of staff. In October and November, the Members and staff met 67 interested groups and organizations in St. John's, Halifax, Montreal, Quebec City, Toronto and Vancouver. Fifteen written submissions were also received regarding changes sought by the industry in how the Agency works within the *Coasting Trade Act*.

The panel heard from representatives of Canadian interests, such as Canadian vessel owners and operators, shipping associations and unions, as well as representatives of foreign interests such as importers of foreign vessels, brokers, and associations. Representatives of various other federal government departments and provincial officials also attended the meetings.

In general, interested parties agreed that the current 10-day notice period does not always meet the needs of users and that different advance notice periods should apply to different types of activity. Operators of Canadian vessels tended to prefer longer time periods while importers of foreign vessels and some shippers wanted shorter notice periods.

Both Canadian and foreign interests agreed that more information is required from applicants and respondents to enable the Agency to decide on applications.

There was also a consensus about the need for flexibility in dealing with more urgent cases justified by unforeseen circumstances or commercial opportunities. Another issue raised was that applications for large tankers should also be subject to an advance notice period that would be more appropriate for spot markets of petroleum products.

After the consultations, a summary of the issues discussed was sent to all participants for review. The summary was also made available on the Agency Web site.

In 2003, after completing an analysis of the comments, the Agency will prepare a new draft of proposed guidelines. The industry will be asked again for comments before the Agency gives final approval to the guidelines.

Meanwhile, in 2002, the Agency received 82 coasting trade applications and approved 71 applications for the use of foreign vessels in Canadian waters.

For the first time, the Agency decided to hold an oral hearing in one of the coasting trade applications.

The case involved an application filed on behalf of Lydon Dredging and Construction Company, Ltd., to use an American dredge to carry out maintenance dredging in the Grande Entree channel at Iles-de-la-Madeleine, QC, for the Canadian Salt Company. Objections were received from Canadian operators that stated they could do the work.

On August 9, 2002, after a hearing in Quebec City from August 5 to 7, the Agency determined that there was a suitable Canadian vessel available for part of the period involved. The Agency allowed the temporary use of the foreign dredge only for the time period when there was no Canadian vessel available.

In 2002, the Agency also conducted a survey on the quality of its coasting trade services and client satisfaction. Based on this survey, the Agency intends to implement a project to make coasting trade licence applications available electronically. However, this project cannot move ahead until the issue of electronic signatures for official documents is resolved.

The Canadian Merchant Fleet List, which is a compilation of Canadian-registered ships contained in the Agency coasting trade database, was made available to the general public in 2002 on the Agency Web site. Letters were sent to all applicants, owners and operators of Canadian-registered vessels, marine associations and government departments informing them that the list was available on the Web site. The Agency requested that each operator verify its own information and notify the Agency of necessary changes. In 2003, the Agency's databases will be updated to reflect those changes.

PILOTAGE ACT

Under the *Pilotage Act*, a qualified Canadian marine pilot must be on board most ships to navigate into or out of major Canadian ports and along Canadian waterways. Four pilotage authorities (Atlantic, Laurentian, Great Lakes and Pacific) are responsible for pilotage services in their respective regions and set the tariffs for these services.

Any proposed change or increase in a tariff must be published in Part I of the *Canada Gazette*. Objections to tariff changes can be filed with the Agency. Once an objection has been filed, the Agency must carry out an investigation of the proposed tariff within a 120-day period and issue a decision.

On July 6, 2002, the Laurentian Pilotage Authority published a notice of a proposed 3.95 per cent increase in pilotage charges to take effect on January 1, 2003. Objections to the tariff proposal were filed by the Chamber of Maritime Commerce, the Canadian Shipowners Association and the Shipping Federation of Canada. An intervention in support of the tariff proposal was filed by the Corporation des pilotes du Bas Saint-Laurent. The Agency carried out an investigation that included hearing arguments over a three-day period in Montreal from November 4 to 6. On November 29, the Agency issued a decision, with reasons to follow. It recommended a 2.5 per cent tariff increase as the 3.95 per cent increase was deemed to be prejudicial to the public interest.

The Great Lakes Pilotage Authority (GLPA) published proposed tariff increases in Part I of the *Canada Gazette* on October 19, 2002. The amendments affected three areas: International

District No. 1 (6.3 per cent increase), a portion of International District No. 2 (28 per cent), and a 16 per cent increase in docking/undocking charges in Lake Ontario. Other administrative charges were also proposed. Following the publication of the proposal, the Shipping Federation of Canada (SFC) contacted the Agency regarding an objection. The Agency suggested that the SFC consider mediation rather than an objection that would lead to an investigation. The Agency also contacted the GLPA to suggest mediation with the SFC. The two parties then met and negotiated a successful agreement on the tariff proposal on their own. The GLPA will publish its tariff with the negotiated rates in 2003. This is an example of how the Agency works to get parties together to negotiate an agreement that can avoid the longer, formal Agency investigative process.

The Atlantic Pilotage Authority published a notice of proposed tariff increases on October 26, 2002. The proposed increases varied for different compulsory areas. An objection to the tariff proposal was filed by the Shipping Federation of Canada. The Agency contacted both parties to suggest mediation. The parties made formal requests for mediation in December 2002. Mediation meetings were planned for early 2003. The Agency investigation of the tariff proposal was suspended pending the outcome of mediation.

The Pacific Pilotage Authority published a proposed tariff amendment in the *Canada Gazette* on March 23, 2002. No objections were filed.

CANADA MARINE ACT

The *Canada Marine Act* governs the independent Canadian port authorities at 20 major ports across the country, the St. Lawrence

Seaway Management Corporation and other public port facilities managed by the Government of Canada.

The port authorities manage port operations related to shipping, navigation, transportation of passengers and goods, handling and storage of goods and other activities deemed necessary to support port operations. Port authorities also manage the federal property where the port is situated.

The port authority sets fees for the use of port facilities and various transportation services. Objections to the port fees may be filed with the Agency.

In late 1999 and in early 2000, two complaints were filed with the Agency about lease payments to the Halifax Port Authority and the Vancouver Port Authority. These complaints raised a question about the Agency's jurisdiction and whether lease payments were fees set by a port authority. In December 2002, the Federal Court ruled that lease payments were made in accordance with a confidential contract and, as such, did not come under the Agency's jurisdiction. No complaints regarding port fees were filed in 2002.

The St. Lawrence Seaway Management Corporation is responsible for managing the seaway and establishes the fees for the use of seaway property and services. All tariffs of fees must be filed with the Agency. Complaints about fees can be filed with the Agency. No complaints were filed in 2002.

The Federal Bridge Corporation manages a number of bridges across the seaway. The Seaway International Bridge Corporation and the Jacques-Cartier and Champlain Bridges Corporation, both subsidiaries of the Federal

Bridge Corporation, set fees to cover the cost of managing, maintaining and operating the bridges. Complaints about fees set by a bridge corporation may be filed with the Agency. No complaints were filed in 2002.

In May 2002, the Minister of Transport announced the appointment of a four-member panel to start consultations with operators and shippers in order to make recommendations as part of the five-year review of the *Canada Marine Act*. On November 14, the Agency met the panel to explain the Agency's marine mandate and its previous involvement with the Ministerial Pilotage Review. The panel's report is expected in 2003.

SHIPPING CONFERENCES EXEMPTION ACT

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

Bill C-14, an Act to amend the *Shipping Conferences Exemption Act*, 1987 (SCEA) and other Acts, came into effect on January 30, 2002. It removed the requirement that shipping conferences file tariffs with the Agency. Instead, shipping conferences must now make their tariffs available to the public electronically. The Agency issued new guidelines for filing on January 10, 2002, after consultation with the marine industry. Under the SCEA, a complaint may be filed with the Agency if a person believes that a conference agreement or an action by a member line reduces competition and results in an unreasonable increase in price or a reduction in service. No complaints were filed in 2002.

COMMUNICATIONS WITH CANADIANS

The Agency maintains frequent contact with the marine industry through consultations, by attending marine conferences and marine functions, and by participating in marine workshops.

In addition to the consultations on the processing of coasting trade applications, the Agency also had verbal and written contacts with the marine industry about the posting of the Merchant Fleet List on the Agency Web site.

In addition to the cross-country consultations mentioned earlier to update guidelines for the processing of coasting trade licence applications, the Agency also consulted interested parties after the new filing provisions of the *Shipping Conferences Exemption Act* came into effect on January 30, 2002.

The Agency attends port/government interface meetings hosted by the Association of Canadian Port Authorities and semi-annual meetings of the Canadian Marine Advisory Council.

The Agency also has regular contact with the Shipping Federation of Canada, the Canadian Shipowners Association, the Chamber of Maritime Commerce, the Chamber of Shipping of British Columbia, St. Lawrence Shipoperators Association and the four pilotage authorities.

The Agency had several contacts with members of the news media in 2002 on marine matters, mainly concerning the coasting trade. Also in 2002, the Agency had 197 subscribers to new content on the Agency Web site concerning marine matters.

CASES BEFORE THE COURTS

FEDERAL COURT OF APPEAL - CASES DISCONTINUED IN 2002

TYCOM (U.S.) INC. V. SECUNDA MARINE SERVICES LIMITED AND ATLANTIC TOWING LIMITED

Court File No.: A-314-01

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

On October 1, 2002, the Appellant filed a Notice of Discontinuance with the Federal Court of Appeal.

TYCOM (U.S.) INC. V. SECUNDA MARINE SERVICES LIMITED AND ATLANTIC TOWING LIMITED

Court File No.: A-267-01

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

On October 1, 2002, the Appellant filed a Notice of Discontinuance with the Federal Court of Appeal.

FEDERAL COURT OF APPEAL - CASES PENDING IN 2002

WESTSHORE TERMINALS LIMITED V. VANCOUVER PORT AUTHORITY

Court File No.: A-625-00

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

FEDERAL COURT - TRIAL DIVISION - CASES PENDING IN 2002

WESTSHORE TERMINALS LTD. V. ATTORNEY GENERAL OF CANADA ET AL.

Court File No.: T-1103-00

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



ACCESSIBLE

Under Part V of the *Canada Transportation Act*, the Agency has the mandate to eliminate undue obstacles to the mobility of persons with disabilities in the federal transportation network. The Agency seeks to remove undue obstacles by promulgating regulations, developing codes of practice, communicating proactively with the transportation industry and disability community, resolving individual accessibility-related complaints and ordering corrective measures, if required.

ACCESSIBLE TRANSPORTATION

The process of making decisions on accessibility-related complaints has become more complex in recent years as the Agency deals with a widening range of disability applications. In 2002, the Agency had six complaints from persons who are obese, 10 from persons with allergies and 23 complaints from persons who require medical oxygen.

Under the Act, people who perceive undue obstacles to the mobility of persons with disabilities in the federal transportation network (air, rail and marine) can bring a complaint to the Agency for a fair hearing.

In considering a complaint under Subsection 172 (1) of the Act, the Agency uses a three-step process, namely:

- Whether the person has a disability for the purposes of the Act.
- Whether there was an obstacle to the mobility of persons with disabilities.
- Whether the obstacle was undue.

PERSONS WHO ARE OBESE

The first case to raise the question of whether obesity is a disability for the purposes of the Act was the Linda McKay-Panos complaint against Air Canada, concerning seating accommodation and the carrier's policy of charging passengers for additional seating required because of obesity.

In this case, the Agency first addressed the jurisdictional question of whether obesity is a disability for the purposes of Part V of the *Canada Transportation Act*. The Agency held a public hearing in Calgary and issued a decision on December 12, 2001.

In the 2001 jurisdictional decision, the Agency considered the evidence presented in the context of "impairments", "activity limitations" and "participation restrictions", which are used in the World Health Organization's model of disability, known as the International Classification of Functioning, Disability and Health (ICF). The Agency concluded that obesity, in and of itself, is not a disability, but there may be individuals who are obese who have a disability for the purposes of Part V of the Act because of their obesity. The Agency therefore decided to continue to consider obesity complaints on a case-by-case basis.

In 2002, the Agency returned to the consideration of the McKay-Panos case and, on October 23, 2002, issued a decision that dismissed the application against Air Canada.

The majority decision found that although Ms. McKay-Panos might have health problems, impairments, limitations or restrictions caused by obesity, she does not have a disability for the purposes of the accessibility provisions of Part V of the Act. The Agency stated that, although the ICF was a useful tool in the 2001 jurisdictional decision, it could not be the determining factor in assessing a person's disability for the purposes of Part V of the Act.

The Agency noted that most of the evidence provided by the applicant pertaining to activity limitations related to the aircraft seat, which the majority determined was irrelevant to whether she has a disability for the purposes of the Act. The Agency also noted that she had not identified activity limitations relating to accessing the transportation system since she can physically access airports, check her luggage, present herself at security points in airports and reach the boarding gate, like the

majority of Canadians. The Agency found that being unable to fit comfortably in the seat should not be enough evidence of the existence of a disability, because many people experience discomfort in the seat.

One of the three Members on the panel dissented and concluded that the applicant has a disability for the purposes of the Act. In the Member's view, the use of a model of disability analysis such as the ICF is needed to assess whether or not physical conditions that are not obvious disabilities, such as obesity, are disabilities for the purposes of the Act.

Furthermore, the Member pointed to the fact that the ICF was accepted by the Agency in the 2001 jurisdictional decision and supported by the parties as being an appropriate analytical framework to apply in determining the existence of disability. Finally, this Member stated that accessibility of the federal transportation network means that each phase of the transportation cycle is accessible, that the seat is central to the transportation experience when travelling on an aircraft, accessing it is crucial for any person travelling by air and it provides the context which is necessary to the identification of "activity limitations" and "participation restrictions".

On November 22, 2002, Ms. McKay-Panos filed a motion with the Federal Court of Appeal seeking leave to appeal the Agency's 2002 decision. This request is presently outstanding.

OTHER OBESITY CASES

After issuing the McKay-Panos decision, the Agency considered a complaint filed by another person who is obese against Air Canada regarding seating accommodation.

On December 17, 2002, the Agency issued a decision wherein the majority determined that, based on the evidence presented by the applicant regarding her medical condition, the applicant is a person with a disability for the purposes of the accessibility provisions of the Act. The Agency noted that although Air Canada's position was that the applicant has a disability, this position was specifically limited to her mobility impairment arising from two of her medical conditions, namely osteoarthritis and edema in her legs.

The majority also found that, although the applicant may have experienced some discomfort in her originally assigned seat, because Air Canada accommodated her needs by giving her an available business-class seat at no additional charge, the applicant did not encounter an obstacle to her mobility.

A third Member concurred with the majority that the applicant has a disability for the purposes of the Act. The Member pointed out that the complaint was with respect to the applicant's inability to use the assigned seat on board the aircraft as a result of the applicant's obesity and not the applicant's medical condition as recognized by Air Canada. Therefore, the Member decided that, in this case, there needs to be a determination that the applicant's obesity is a disability for the purposes of the Act.

Using the ICF model, the Member found that the applicant is an obese person with a disability for the purposes of Part V of the Act. The Member also did not agree with the majority regarding the obstacle finding. The Member found that the complainant experienced the following three obstacles: the seating assignment provided, the treatment received

VIGNETTE

The Agency received a complaint about statements made by a VIA Rail service manager regarding a person's right to self-determination and the requirement to travel with an attendant. The Agency found that the service manager's statements constituted an undue obstacle to the traveller's mobility. VIA was required to highlight the incident in its corporate training program to ensure that similar incidents do not occur again. VIA also had to provide a written copy of the Agency's decision to the VIA employee involved in the incident.

from Air Canada staff and Air Canada's policy to charge one-and-a-half fare for seating that would accommodate the applicant's needs.

The Agency decided to adjourn most of the other obesity-related cases pending the completion of the McKay-Panos appeal.

PERSONS WITH ALLERGIES

In 2002, there were 10 applications before the Agency from persons who have allergies. Following Air Canada's submission that an allergy is not, in and of itself, a disability, the Agency decided to consider the jurisdictional issue of whether an allergy is a disability for the purposes of Part V of the Act.

In considering this preliminary jurisdictional issue, the Agency decided to rely on the concepts for determining a disability used in the December 12, 2001, jurisdictional decision on whether obesity is a disability, being the World Health Organization's ICF model of disability analysis.

In a decision issued on May 10, 2002, the Agency concluded that an allergy, per se, is not a disability for the purposes of Part V of the Act, but there may be individuals who because of their allergies, have a disability for the purposes of Part V of the Act. As a result the Agency decided to continue to consider allergy complaints on a case-by-case basis.

Because the analysis that the Agency must complete on the definition of disability in these cases is similar to the analysis used by the Agency in the obesity applications and given that this analysis is presently before the Federal Court of Appeal, the Agency adjourned the allergy applications until that appeal is completed.

PERSONS WHO REQUIRE MEDICAL OXYGEN

In 2002, the Agency had 23 complaints before it regarding Air Canada's policy and procedures on the use of medical oxygen.

In 2002, Air Canada raised the jurisdictional issue of whether persons who require medical oxygen are persons with disabilities for the purposes of Part V of the Act. In response, in September 2002, the Agency sought Air Canada's comments on the Agency's opinion that, regardless of whether a person requires continuous oxygen or requires it only periodically, the fact that a person requires medical oxygen to be available in order to travel by air is sufficient to enable the Agency to determine that the person has a disability for the purposes of Part V of the Act.

Air Canada responded that it was not admitting or accepting that these persons are persons with disabilities and cited the Agency's decision in the McKay-Panos case as authority for the proposition that the Agency should not consider the obstacle when assessing a person's disability. Air Canada further responded that the Agency must provide the reasons why it would recognize that persons requiring oxygen onboard an aircraft are persons with a disability.

The Agency will continue its investigation in 2003.

VIA RAIL'S "RENAISSANCE" CARS

The Agency continued in 2002 to investigate an application by the Council of Canadians with Disabilities (CCD) about the level of accessibility of passenger rail cars known as the "Renaissance" cars that were purchased by VIA Rail in 2000. CCD contends that various features of the Renaissance cars constitute undue obstacles to the mobility of persons with disabilities.

During the year, both CCD and VIA filed substantial additional information regarding the accessibility of the Renaissance cars and presented their final oral arguments at a one-day hearing in Toronto on April 8, 2002. Following the filing of additional information, inspections of the cars were conducted and, on December 10, the Agency adopted and issued its final inspection report on the Renaissance cars.

The Agency is continuing its investigation and a decision is expected in 2003.

EXTRA SEAT CHARGES

In 2002, the Agency had six complaints before it regarding the cost of air travel for persons with disabilities who require additional seating

WHAT IS AN UNDUE OBSTACLE?

The terms "obstacle" and "undue" were not defined in the *Canada Transportation Act* to allow the Agency to exercise its discretion to eliminate undue obstacles in the federally regulated transportation network.

The words "obstacle" and "undue" lend themselves to broad meanings. "Obstacle" usually means something that impedes progress or achievement, whereas the word "undue" commonly means exceeding or violating propriety or fitness, or excessive.

There is a distinction to be drawn between an obstacle and an undue obstacle. While the Agency may determine that a transportation feature or situation represents an obstacle to some persons with disabilities, it must also determine whether that obstacle is undue. This involves balancing the interests of persons with disabilities with those of the transportation service provider.

It is only upon finding that an obstacle is undue that a transportation service provider may be required to take corrective measures to eliminate the undue obstacle. The Agency has broad powers to impose measures such as the requirement to purchase equipment, to change or develop a policy or procedure, or to train staff or alter the training program. Further, if a person with a disability has incurred expenses because of an undue obstacle, the Agency can also order the transportation service provider to reimburse the person for the expenses incurred.

for either themselves or for their personal care attendants because of their disabilities.

Five complaints are related to the domestic air industry while one complaint involves the international air industry. Of the five domestic complaints, four were filed by individuals against Air Canada (and, in one case, Air Canada Regional Inc.) regarding the fares charged for additional space required to accommodate a person, including a person on a stretcher, and to accommodate a personal care attendant.

The fifth complaint was filed by CCD, on behalf of itself and two individuals, against Air Canada, Tango, Jazz and WestJet regarding fares charged for additional seating space; against Canada Customs and Revenue Agency regarding the levying of the air traveller's security charge; and against the Gander Airport Authority and the Air Transport Association of Canada regarding the levying of the airport improvement fee at the Gander airport.

The applicants assert that persons with disabilities who require additional space to accommodate their disabilities should pay the same costs for air travel as do other passengers for one seat and that, insofar as the fares and other charges are levied in a manner that requires them to pay for the additional space that is required, this constitutes an undue obstacle to their mobility.

The investigation of these complaints will continue in 2003.

LEMONDE V. VIA RAIL CANADA

The Agency issued a decision on August 28, 2002, as a result of rehearing a complaint that had been filed with the National Transportation Agency (NTA) in 1994 by Jean Lemonde.

VIGNETTE

A person with a severe visual impairment who uses a white cane filed a complaint about United Airlines, Inc.'s failure to provide wheelchair assistance at the Vancouver International Airport. At the time of booking, the person advised her travel agent of her disability and that she and her companion needed assistance to move between the gates in airports. The travel agent requested that two wheelchairs be provided between gates for all flights. The person travelled between Grand Island, Neb.; Denver, Colo.; and Vancouver and Victoria, BC. The flight from Denver to Vancouver was delayed and arrived in Vancouver 4.5 hours behind schedule. No assistance was provided by United to get to the gate for the connecting flight to Victoria. The passenger missed the flight, had to take a later one and, as a result, had to hire a taxi for \$35. United reimbursed the taxi fare. The Agency found that United's failure to provide wheelchair assistance constituted an undue obstacle to the traveller's mobility. United was directed to revise employee procedures to ensure that services for persons with disabilities are provided even when a flight is delayed, and to advise employees at the Vancouver airport of the importance of delivering services to persons with disabilities.

The complaint concerned VIA Rail's assistance to a group of passengers using wheelchairs in December 1993. The NTA decided on November 28, 1995, that part of VIA Rail's tariff constituted an undue obstacle to the mobility of persons with disabilities insofar as it put the onus on an attendant to provide boarding and deboarding assistance to persons with disabilities who use wheelchairs.

VIA appealed this decision of the NTA to the Federal Court of Appeal. The appeal was heard on September 25, 2000, and a judgment issued on October 10, 2000, setting aside the NTA decision on the basis of its failure to give adequate reasons for its decision, and referred the matter to a differently constituted panel of Members, to conduct a new inquiry.

The Agency examined VIA's tariff provisions which required, in cases where a passenger using a mobility aid is travelling with an attendant, that the attendant be capable of providing assistance to the passenger in getting on and off the train. Furthermore, the Agency examined VIA's related policies and procedures.

In its August 28, 2002, decision, the Agency found that:

- At stations equipped with high-level platforms or mechanical lifts, this policy constituted an undue obstacle except where a group of persons using wheelchairs was involved.
- At stations without high-level platforms or mechanical lifts, this policy constituted an obstacle but was deemed reasonable and thus did not constitute an undue obstacle.
- To the extent that VIA's tariff, policy and documents provide information that is inconsistent or unclear, this constituted an undue obstacle.

The Agency required VIA to:

- Revise its tariff to clearly reflect that no attendant is required to assist a passenger in a wheelchair to get on or off a train at the 49 stations equipped with either a high-level platform or mechanical lifts.

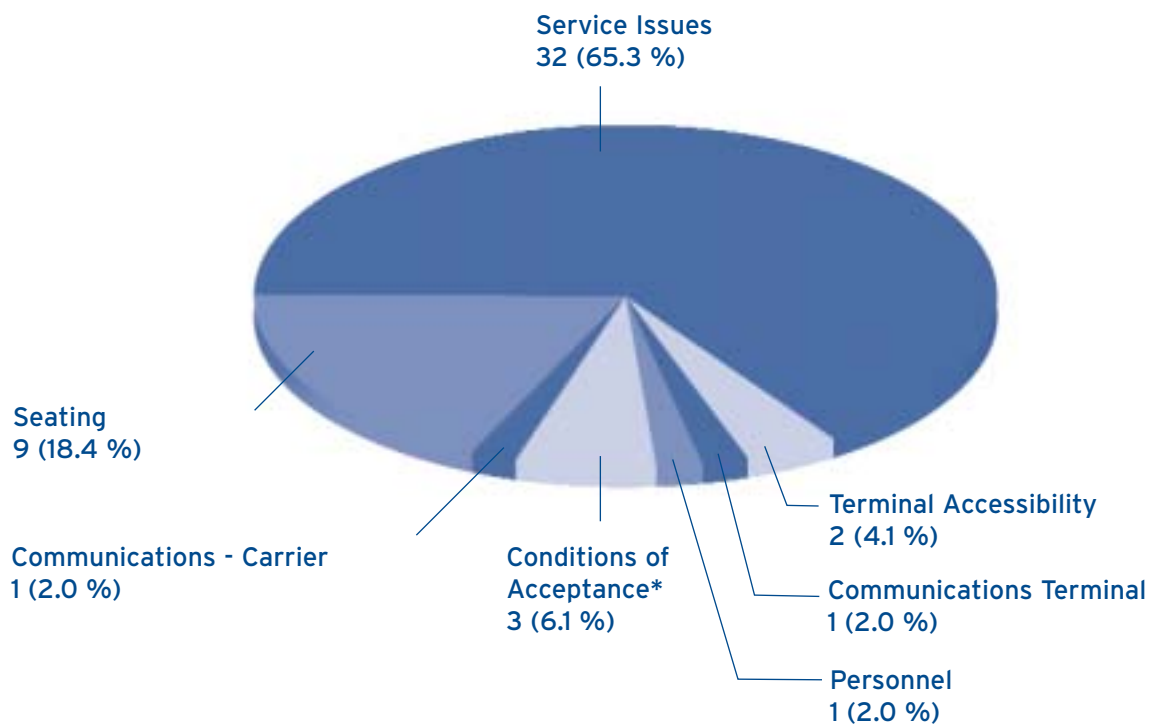
- Clarify the role of attendants and the role of VIA staff with respect to assistance needed, including dialogue, to help people with disabilities to get on and off a train at the other stations.
- Clarify when and where alternative accessible transportation would be provided.
- Review its publicly available documentation and policies to ensure consistency with its amended tariff.

VIA was required to submit all of this information to the Agency and the Agency will review VIA's submission in 2003.

ACCESSIBILITY COMPLAINTS RESOLVED IN 2002

During 2002, 51 new complaints were received by the Agency. The Agency issued 36¹ decisions, comprising the resolution of 24 cases, 13 follow-up decisions verifying that orders for corrective measures had been implemented, and two decisions concerning a review of the Agency's initial determinations and one decision on the jurisdictional question of whether an allergy is a disability for the purposes of the Act.

ACCESSIBILITY COMPLAINT ISSUES²



*Conditions of Acceptance include reservation policy and acceptance of mobility aids.

1. In some instances one decision can resolve more than one case.
2. The total number of complaint issues is greater than the number of complaints because a complaint may involve more than one issue, e.g. a complaint might include issues about seating, service and personnel difficulties.

In addition, the Agency issued 57 procedural and other interlocutory decisions in a letter format regarding matters under consideration by the Agency. Fourteen cases were withdrawn, including five as a result of mediation. The Agency also acted as a facilitator in four cases resolving the matters prior to travel thus avoiding potential complaints.

MEDIATION: A COMPLAINT RESOLUTION OPTION

During 2002, the Agency expanded its mediation pilot project to accessible transportation. Six cases went to mediation, resulting in five mediated settlements and one partially mediated settlement. An explanation of the mediation process is on page 68. The Agency will continue in 2003 to promote mediation as a way of settling disputes.

ACCESSIBILITY COMPLAINT GUIDE

In 2003, the Agency will update its accessibility complaint guide to ensure that the information received from applicants is complete. This should reduce the time required to process the complaint. The Agency's Accessibility Advisory Committee will also be consulted on the proposed changes to the guide.

REGULATORY WORK

The complaints process is not the only way in which the Agency works to eliminate undue obstacles to the mobility of persons with disabilities. The Agency consults on a regular basis with its Accessibility Advisory Committee. This Committee has representatives from the community of persons with disabilities, the transportation industry and other interested parties.

VIGNETTE

When a traveller with a disability, who uses a battery-operated scooter, checked in at the Toronto airport, Air France personnel initially refused to carry the scooter. After checking the carrier's reservation system, the scooter was accepted for carriage, but Air France staff refused to disconnect the batteries. A companion of the traveller removed the batteries and placed them in a box to be put on the plane. The Agency found that both the initial refusal by Air France personnel to carry the scooter and the refusal to disconnect the batteries constituted undue obstacles. Air France was told to issue an advisory bulletin to check-in personnel about the importance of checking the carrier's computer systems for reservation information on the needs of a person with a disability. Air France was required to implement a policy and training program on the handling of mobility aids for its check-in agents at Canadian airports, as well as to amend its tariff to reflect that it is the carrier's responsibility to assemble and disassemble mobility aids.

The Agency has two sets of regulations related to persons with disabilities: Part VII of the Air Transportation Regulations - Terms and Conditions of Carriage of Persons with Disabilities, promulgated on January 1, 1994; and the Personnel Training for the Assistance of Persons with Disabilities Regulations, promulgated on January 26, 1995.

In 2001, the Agency drafted amendments to Part VII of the Air Transportation Regulations so that they would apply not only to aircraft

with 30 or more passenger seats, but also to aircraft with 20 to 29 seats. The proposed modifications were distributed to more than 4,000 interested parties, including aircraft operators, for review.

In 2002, the Agency analysed the comments received in preparation for submission of the final text of the proposed amendments.

In 2002, the Agency held public consultations on guidelines for accommodating passengers with disabilities on aircraft with 19 or fewer seats. In 2003, the Agency will continue its work on the guidelines.

The Agency has field investigators who visit transportation service providers and terminal operators across Canada to verify training records in order to monitor compliance with the Personnel Training for the Assistance of Persons with Disabilities Regulations. To date, investigators' visits have been well received. In a few cases, the Agency provided carriers with information and guidance to help them implement accessibility improvements more quickly. Personal contact helps to impress on industry the importance of awareness and vigilance in improving service to customers with disabilities.

CODES OF PRACTICE

Although the Agency has the power to make regulations for the purpose of eliminating undue obstacles in the federal transportation network, in keeping with the Government of Canada's policy to pursue voluntary approaches thoroughly before proposing regulations, the Agency has developed codes of practice.

VIGNETTE

A person who uses a motorized wheelchair travelled with Air Canada from Winnipeg to Ottawa. The flight was delayed, arriving in Ottawa at about 1 a.m. The traveller required an accessible taxi to get to a hotel. The ground transportation services desk in the terminal was closed and there was no signage or information about ground transportation services. No accessible taxi service was available and the municipal Para Transpo service did not respond to phone calls. The hotel shuttle bus service did not have an accessible bus in service. Because there was no alternative, the person took a regular taxi, with his motorized wheelchair carried in the trunk. The Agency ruled that the lack of accessible ground transportation constituted an undue obstacle to the traveller's mobility. The Agency required the Ottawa Macdonald-Cartier International Airport Authority to report on plans to prevent a recurrence of the situation, including the feasibility of keeping the ground transportation services desk open until after the last flight of each day. The airport also had to report on what contingency plans were developed for accessible transportation when the accessible taxis are out of service for maintenance or repair.

The Agency has developed three codes of practice for the federal transportation network to improve accessibility for persons with disabilities:

- Aircraft Accessibility for Persons with Disabilities (the Air Code);

- Passenger Rail Car Accessibility and Terms and Conditions of Carriage by Rail of Persons with Disabilities (the Rail Code);
- Ferry Accessibility for Persons with Disabilities (the Ferry Code).

These codes were introduced on different dates and their provisions came into effect at different times. As of January 1, 2002, all three codes of practice were fully in effect.

COMMUNICATION CODE

In 2002, the Agency conducted extensive public consultations on a fourth code of practice on Removing Communication Barriers for Travellers with Disabilities (the Communication Code). The Communication Code sets criteria for improving communications and access to information for travellers with disabilities, and will apply to air, rail and ferry transportation service providers and terminals.

In spring 2002, a draft of the Communication Code was distributed to 77 air carriers, 45 airports, five rail carriers and five ferry operators under federal jurisdiction, as well as the Agency's database of close to 3,000 interested parties. Many concerns were raised by respondents. The Agency decided to extend the consultation process to address those concerns and to ensure that the Communication Code would be fully implemented.

The Agency is developing a guide to assist transportation service providers in implementing the new Communication Code, and to provide guidance to other carriers not covered by the Communication Code. The guide will give information about recommended changes to signage, public announcements, Web sites, automated kiosks, public telephones, information monitors and other communication tools.

The Agency's Accessibility Advisory Committee will be consulted about the guide in early 2003 and the guide will be distributed with the new Communication Code.

MONITORING THE CODES OF PRACTICE

The codes of practice provide for the Agency to conduct periodic monitoring of industry compliance. In 2001 and 2002, the Agency conducted industry monitoring surveys to assess carriers' progress in implementing the provisions in the codes (Air, Rail and Ferry). These surveys collected information on the accessibility features present when each code was released (benchmark data) and those present on the date the code entered into effect (implementation data). Full participation was obtained from all carriers for all three surveys.

In 2002, the Agency's field investigators also started to verify information submitted by carriers in the monitoring surveys of the three codes of practice. Carriers report in writing on their measures to meet the code requirements. This self-reporting is then verified through actual on-site comparison of the paper reports submitted to the Agency.

RAIL CODE MONITORING

The Rail Code was released in February 1998 and came into effect on April 1, 2001. A monitoring questionnaire was distributed to all rail carriers covered by the Rail Code in autumn 2001 to collect both benchmark and implementation data.

In the first rail industry monitoring survey, more than two-thirds of the accessibility criteria for rail cars had a level of medium, high or full compliance, and the other third had low or non-compliant rates.

The criteria in the Rail Code with a high level of compliance related to signage, lighting, stairs, floor surfaces and handrails and grab bars. The criteria with the lowest levels of compliance related to wheelchair-accessible sleeping cars, movable armrests and identification of call buttons in accessible washrooms.

Between 1998 when the Rail Code was released, and 2001 when it was implemented, the level of compliance remained stable. Thirteen per cent of the criteria showed improvements and only four per cent showed a decline.

During 2001 and 2002, the Agency reviewed all survey questionnaires submitted by the rail carriers, analysed the resulting data and prepared its first Rail Code compliance monitoring report. The Agency will release this report in 2003.

FERRY CODE MONITORING

The Ferry Code was released in June 1999 and came into effect on January 1, 2002. A monitoring questionnaire was distributed to all ferry operators covered by the Ferry Code in the winter of 2002 to collect both benchmark and implementation data.

In the 2002 survey of ferry operators, more than half of the accessibility criteria in the Ferry Code had full compliance, 28 per cent had high compliance, nine per cent had medium compliance and only three per cent had low or no compliance. Between 1999 and 2002, 43 per cent of ferry accessibility criteria showed improved compliance ratings while 18 per cent declined.

The greatest improvements in Ferry Code criteria were related to signage, lighting, stairways, handrails and wheelchairs provided by operators. The criteria with the lowest levels

of compliance included supplemental passenger briefing cards, identification of accessible seats in passenger lounges, tactile markers for call buttons and thermostats in accessible cabins.

During 2002, the Agency reviewed all survey questionnaires submitted by the ferry operators, analysed the data and at year-end was preparing its first Ferry Code compliance monitoring report. This report will be released in 2003.

AIR CODE MONITORING

The Air Code was released in January 1997. Most of the provisions in the Air Code came into effect on January 1, 1999. The washroom provisions came into effect on January 1, 2002.

The Agency conducted a survey to collect benchmark data in 1997 and implementation data in 1999. During the winter of 2002, a monitoring questionnaire was again distributed to all air carriers covered by the Air Code to collect follow-up data.

For the 2002 Air Code survey, 36 per cent of the accessibility criteria had full compliance, 40 per cent had high compliance, 13 per cent had medium compliance and nine per cent had low compliance.

The criteria in the Air Code with a high level of compliance include signage, lighting, handrails, floor surfaces and supplemental passenger briefing cards. The criteria with the lowest levels of compliance are tactile row markers and signs.

During 2002, the Agency reviewed all survey questionnaires submitted by the air carriers and analysed the resulting data. At year-end, the Agency was preparing the Air Code's third

compliance monitoring report, which will be released in 2003.

OVERALL RESULTS

The results of the 2002 industry surveys are encouraging. Most of the criteria are at a level of full or high compliance in all three modes and only a few are at a level of low or non-compliance. This shows the positive impact of the Agency's codes of practice and monitoring on the transportation industry. It also shows that carriers want to improve the levels of accessibility of their fleets.

Generally, the criteria with a low rate of compliance included colour contrasting and tactile identification of equipment and accessories, such as signs and markers for call buttons. On average, rail carriers showed improvement in the identification of accessible washrooms, tactile markers on accessories in accessible washrooms, and emergency window exits.

In 2003, the Agency will present the survey results of the three codes of practice to its Accessibility Advisory Committee and send copies of the reports to all carriers that participated in the surveys.

Transportation service providers are encouraged to continue their commitment to overall fleet accessibility. They should regularly assess themselves against the requirements of the codes, remembering that all new equipment should meet or exceed the codes' accessibility criteria.

The Agency will continue to conduct periodic surveys to measure and report on improvements in accessibility.

VIGNETTE

The Agency received a complaint about the difficulties a person with a disability experienced in obtaining preselected seats on an Air Transat flight. While the Agency found that the person encountered an obstacle, it ruled that the obstacle was not undue in view of the fact that the carrier followed its policies, but the information entered in the reservation record was erroneous, and that the applicant ultimately obtained the seat needed. Notwithstanding this finding, the Agency concluded in its decision:

"First, it is apparent that the different configurations of Air Transat's Boeing 757 aircraft can result in confusion, especially when passengers have requested bulkhead seating. The Agency encourages Air Transat to investigate the possibility of refining its computer system to include the configurations of each of these aircraft so that the correct layout can be matched by agents to the specific aircraft being used to operate a particular flight."

"Second, the Agency recognizes that written confirmation is important to persons with disabilities as it provides them with a sense of security. The Agency is therefore of the opinion that it is not unreasonable for passengers with disabilities to expect to receive confirmation of their requested seating assignment. It suggests that Air Transat consider amending its policies to include the provision of written confirmation of advance seat selection when requested to do so by persons with disabilities."

BOARDING DEVICES

The Agency continued its joint research project with the Transportation Development Centre of Transport Canada on boarding devices used by Canadian airport authorities and air carriers. In September 2002, a draft report was prepared on small aircraft aisles and seating accessibility. The report evaluated various boarding devices based on criteria developed by persons with mobility impairments. At year-end, the Agency was reviewing the draft report. A final report will be released in 2003. This report will help to determine whether standards are needed for the provision of boarding devices in Canada.

THE CANADIAN STANDARDS ASSOCIATION'S BARRIER-FREE DESIGN STANDARD AND DISPENSING MACHINE STANDARD

During 2002, the Agency participated in a review of the Canadian Standards Association's Barrier-Free Design Standard (B651). The Canadian Standards Association (CSA) created a new technical subcommittee, in which the Agency is an active member, to harmonize the Barrier-Free Design Standard with the International Standards Organization's standards on accessibility.

The Agency, Transport Canada and the Canadian Human Rights Commission hired a consultant to initiate the work on a standard for accessible dispensing machines. A working committee was established and a working draft was prepared and forwarded to the CSA for their consideration. The CSA then formed a technical subcommittee, with the Agency as a member, to develop a standard for dispensing machines. In 2003, the subcommittee's work will continue.

ACCESSIBLE TRANSPORTATION WEB SITE

In 2002, the Canadian Transportation Agency continued to work with Transport Canada to develop a Web site on accessible transportation services. In fall 2002, Transport Canada launched

the Access to Travel Web site (www.accesstotravel.gc.ca) to supply information on accessible transportation services across the country. The site aims to make accessible travel easy and enjoyable for persons with disabilities, seniors and other travellers with unique needs.

STAFF TRAINING

Members and staff strive to keep informed about accessibility-related matters in Canada. In 2002, the Agency continued to maintain a high level of training for its staff with full-day disability awareness training programs, conducted at the Ottawa Rehabilitation Centre by people with disabilities. For the first time, Agency field investigators from across Canada participated in the program.

COMMUNICATING WITH CANADIANS

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. The Agency circulates draft proposals for regulations and codes of practice in print, braille, audiocassette and electronic formats to a database of close to 3,000 interested parties.

Since many Canadians make travel arrangements through travel agents, the Agency promotes accessible transportation to travel agents and tour operators.

During 2002, the Agency participated with exhibits at 12 travel industry shows in various Canadian cities.

The Agency has prepared a checklist designed to help travel agents and transportation service reservation staff when they are making travel arrangements for their customers with disabilities.

The Agency provided 11 travel seminars for interested travellers with disabilities at events sponsored by groups such as the Ottawa Rehabilitation Centre. Throughout 2002, the Agency continued promoting uniform service standards for Canadians with disabilities travelling abroad. The Agency's work has showcased Canada's leadership on the international scene in fostering access to transportation systems for persons with disabilities. In 2002, the Agency met visiting delegations from countries such as France, Belgium and Mexico to provide information about Canada's approach to accessible transportation.

The Agency participated in Canada's celebration to mark the 10th anniversary of the United Nations International Day of Persons with Disabilities on December 3, 2002. The annual observance aims to increase awareness and understanding of disability issues and trends, and to mobilize support for practical action at all levels by, with and for persons with disabilities.

As part of the day's celebration, the first Federal Disability Report titled *Advancing the Inclusion of Persons with Disabilities - A Government of Canada Report* was released. The Agency had

worked on the report with Human Resources Development Canada and provided extensive material for the document.

INFORMATION ACTIVITIES

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

CASES BEFORE THE COURTS

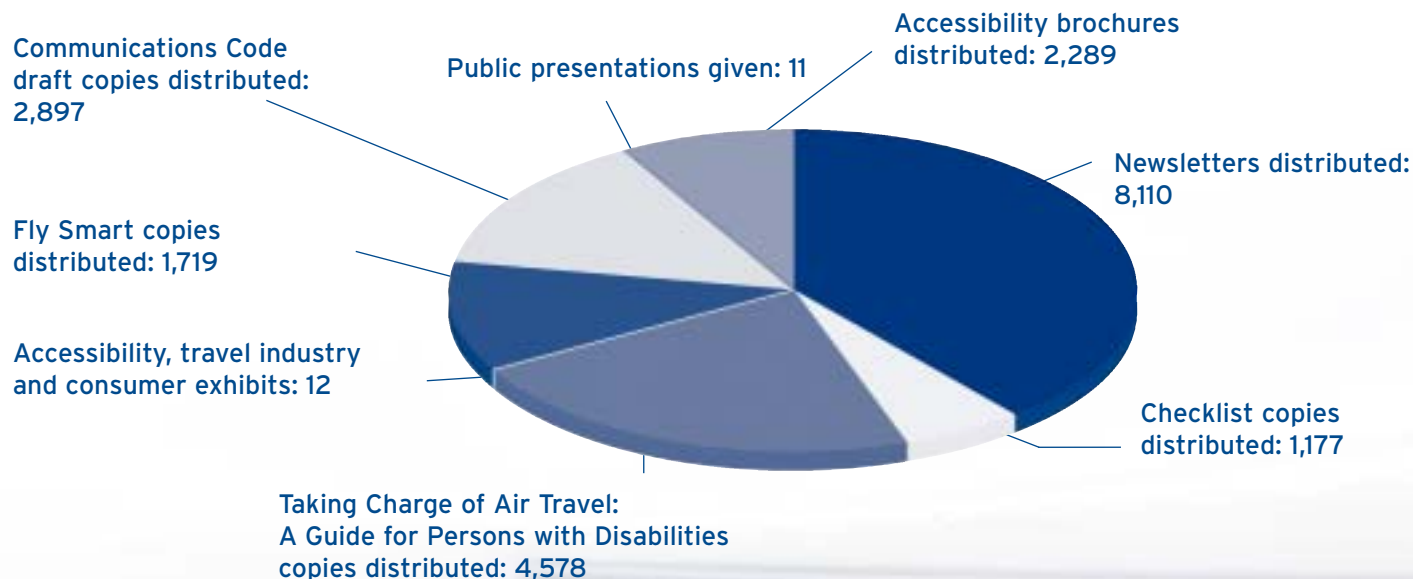
FEDERAL COURT OF APPEAL - CASES PENDING IN 2002

LINDA MCKAY-PANOS V. AIR CANADA AND THE CANADIAN TRANSPORTATION AGENCY

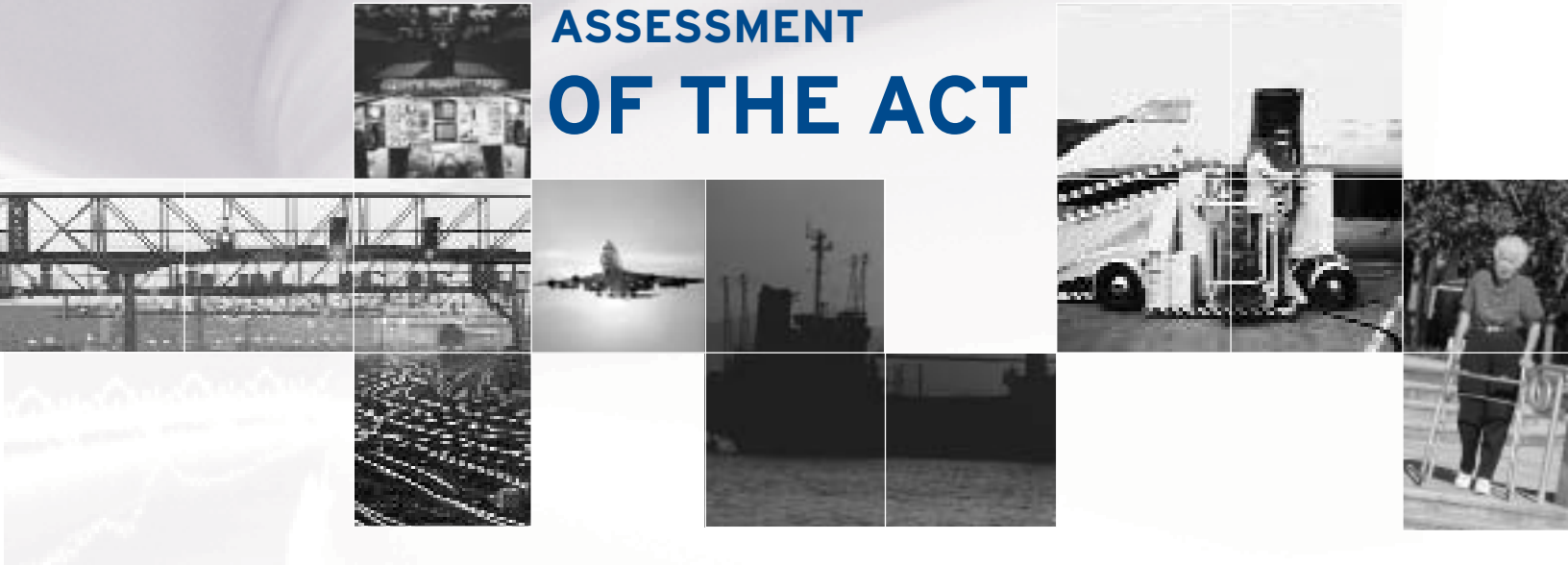
Court File No.: 02-A-32

Application for leave to appeal Agency Decision No. 567-AT-A-2002 dated October 23, 2002, that found that Ms. McKay-Panos, an obese person, did not have a disability for the purposes of Part V of the *Canada Transportation Act*.

FIGURES FOR 2002



ASSESSMENT OF THE ACT



It is the responsibility of the Canadian Transportation Agency to prepare an annual assessment of the operation of the *Canada Transportation Act*. In 2002, Agency staff consulted with Transport Canada over proposed amendments to the Act. New legislation is to be introduced in 2003. The following is a summary of concerns encountered in 2002:

AIR TRANSPORTATION

In 2002, certain ambiguities in the wording of Section 66 regarding unreasonable fares or rates led to varying interpretations of this section of the Act. It would assist the industry and the Agency to clarify the intent of the legislation. The Agency suggests that the term "point", and the type of data to be used in analysing fares or cargo rates, could be defined more clearly.

Another area of the Act that raised questions in 2002 was Section 64. The requirement for an air carrier to notify affected communities that it proposes to reduce or discontinue air services to a Canadian point applies to all domestic air services, regardless of the nature of the service. For example, seasonal and lodge operators, as well as certain charter operators that operate to a point temporarily, are subject to the notice requirement.

Although the Agency may exempt air carriers from compliance with the provisions, it may be desirable to exclude some operations such as seasonal or temporary operations from notice requirements.

RAIL TRANSPORTATION

Few new issues were observed in 2002. Previous concerns relating to the provisions governing the movement of Western grain, the final offer arbitration process and the transfer and discontinuance process have been reconciled with the passage of previous amending legislation such as Bill C-34.

The following concerns, encountered in 2002, have been raised in previous annual reports and it is expected that many will be considered during the legislative review of the Act.

CERTIFICATES OF FITNESS

The Act provides little guidance or restriction on structuring an organization to either come under, or avoid, federal jurisdiction. It also does not provide for the review of a transfer of a rail line from a main-line carrier to a short-line carrier. The result is that there are no means to ensure that:

- A new short-line carrier is operating under the proper jurisdiction.
- Shippers and consumers have all the rights accruing to them.
- Adequate liability insurance protects shippers and consumers.
- Proper railway safety and accident investigation regimes are applied.

RAILWAY LINE CONSTRUCTION

The environmental impact of major railway projects may not be assessed if a railway line, including intermodal terminals, railway yards and other such projects, are within existing rights of way or within 100 metres of the centre line of an existing railway line for a distance of no more than three kilometres; or the project is not classified as a railway line, such as stations, wharves, and depots.

The Agency has the authority to consider the reasonableness of the location of a new rail line but, without the authority to consider the actual need for the new rail line, it cannot under the Act consider the availability of viable alternatives to physical construction, such as interswitching or running rights.

FINAL OFFER ARBITRATION

In an arbitration proceeding, the Agency may be asked to determine whether the dispute is eligible for final offer arbitration in terms of jurisdiction. Under such a circumstance, the shipper has the discretion to continue the arbitration. As a result, the carrier may incur unnecessary expenses should a ruling that denies eligibility be rendered after arbitration has started and, in some cases, after the arbitrator has made a decision.

TRANSFER AND DISCONTINUANCE OF RAILWAY LINES

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

- The lack of requirement for a notice of impending transfer, which would allow affected parties located on a line to prepare for the effects of changes in railway operations.
- The possibility that there may be no continuation of rights for shippers and governments once a railway leaves federal jurisdiction.
- The lack of requirement for evidence of transfer to ensure that railway lines transferred without advertisement will continue to operate.
- The short time frames for governments to decide whether to buy a railway offered for transfer.
- The requirement that a government must accept a railway's offer to transfer a railway line before the government can ask the Agency to determine the price or net salvage value (Subsection 145(5) only).

- The lack of any standard for negotiations between railways and governments on net salvage value and other aspects of a transfer (Section 145 only).
- The lack of certainty about the cessation of railway obligations under the Act in cases where a railway and a government continue to negotiate the details of the transfer long after reaching the agreement to transfer the railway line.

The lack of provision for regulatory oversight of transfer agreements makes it difficult for parties to:

- Ensure that a transfer was made for continued operations and ascertain the jurisdiction under which the new short-line carrier should operate.
- In the case of leases, determine whether the terms of the lease constitute a valid transfer as contemplated by the Act or who—the lessee or the lessor—is the proper operating authority on that line.
- Determine the regulatory consequences of the termination of a lease by either party including the eligibility of former grain-dependent branch lines for compensation for discontinuance.
- Determine the future jurisdiction of a line and any other consequences of a lease expiring.

Other issues include:

- The lack of clarity concerning the rights or obligations of either a railway company or a government should the transfer of a railway line between them be unable to be completed in accordance with their agreement.

- The beneficial effect on one government or community-based group interested in acquiring the line, of reducing the 12-month period during which a line must remain in a railway company's three-year plan before steps can be taken to discontinue it, can be offset by the harmful effect on other similar parties who may need the extra time to evaluate their options.
- A municipality negotiating for the net salvage value of a line to be discontinued may not have the same benefit available to it as a municipality negotiating for continued operations of a line, as the Agency does not have the authority under Section 145 (as it does under the net salvage value process of Section 143) to reduce the net salvage value of a railway line by the cost of replacing any infrastructure it believes the railway has removed to reduce traffic.
- Should grain-dependent branch lines discontinued prior to April 1, 2000, also be eligible for the \$10,000 per mile compensation payable by CN or CPR for similar lines discontinued after that date and should the compensation process be initiated for grain-dependent lines that have not been discontinued yet and have not been operational for some time?

NOISE, VIBRATION AND POLLUTION

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



THE AGENCY TEAM



The Canadian Transportation Agency is empowered under the *Canada Transportation Act* to implement the Government of Canada's transportation policy. The underlying principle of the Agency's work is that all users and providers of federally regulated transportation services (air, rail and marine) should be treated with fairness. If market forces alone do not result in fair, reasonable rates or service for transportation users, carriers, commercial shippers and individual travellers, the Agency has a mandate to ensure that they receive the protection provided for them under the legislation.

The Agency acts as an economic regulator and aeronautical authority, and works to facilitate accessible transportation. As an independent quasi-judicial tribunal, it has the powers of a superior court to settle disputes and make decisions on a wide range of economic matters involving federally regulated modes of transportation. Through the Office of the Air Travel Complaints Commissioner, the Agency handles general consumer issues and complaints related to air travel.

WHO WE ARE

The Agency exercises its powers through its Members—up to seven permanent Members appointed by the Governor in Council and up to three temporary Members appointed by the Minister of Transport. There are currently seven permanent Members, including the

Chairman, who is also its Chief Executive Officer, Vice-Chairman, and three temporary Members, including the Air Travel Complaints Commissioner.

A staff of about 270 employees assists the Members in their decision-making process and provides operational support.



MEMBERS

(top row - left to right)

Marian L. Robson, Chairman and CEO

Born in Saskatoon, SK, Home town Vancouver, BC
Former port executive, railway manager
and National Transportation Agency Member
Appointed July 1, 1996

Gilles Dufault, Vice-Chairman

Born in Montreal, QC, Home town Montreal, QC
Former VIA Rail executive and business
strategy consultant
*Appointed January 19, 1998 as a Member;
appointed Vice-Chairman in August 2000*

Keith Penner, Member

Born in Leask, SK, Home town Ottawa, ON
Former Member of Parliament from
Northern Ontario and National Transportation
Agency Member
Appointed July 1, 1996

Guy Delisle, Member

Born in Alma, QC, Home town Calgary, AB
Lawyer, and former Senior Legal Counsel
and Temporary Member of the National
Energy Board
Appointed January 8, 2002

Liette Lacroix Kenniff, Air Travel Complaints Commissioner and Member

Born in Montreal, QC, Home town Montreal, QC
Former General Manager for the International
In-Flight Service Management Organization,
as well as Manager for the International Air
Transport Association and Air Canada
Appointed October 1, 2002

(bottom row - left to right)

Mary-Jane Bennett, Member

Born in Saint-Boniface, MB,
Home town Winnipeg, MB
Lawyer, and active member of various
boards and committees
Appointed January 19, 1998

Richard Cashin, Member

Born in St. John's, NL, Home town St. John's, NL
Lawyer, and past President and founder,
Newfoundland Fishermen's Union
Appointed July 1, 1996

George Proud, Member

Born in Charlottetown, PEI, Home town Ottawa, ON
Former Member of Parliament for
Hillsborough and former Member
of the Legislative Assembly of
Prince Edward Island
Appointed January 8, 2001

Beaton Tulk, Member

Born in Ladle Cove, NL, Home town St. John's, NL
Former Premier, Deputy Premier and Minister
of Industry, Trade and Rural Development
Appointed December 16, 2002

Michael A. Sutton, Member

Born in Salisbury, England, Home town Toronto, ON
Former Chair, City of Toronto Planning
Board, and telecommunications executive
Appointed December 22, 1997



WHAT WE DO

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

The **Air and Accessible Transportation Branch** processes licences and charter permit applications from Canadian and foreign air carriers, and is involved in enforcing Agency licensing requirements. It helps negotiate and implement international air agreements, administers international air tariffs, and deals with appeals of NAV Canada user charges. This branch also provides support to the Office of the Air Travel Complaints Commissioner, established in 2000, which handles air travel complaints by consumers.

The branch helps to ensure that all modes of federally regulated transportation are accessible to persons with disabilities and deals with their complaints related to air, rail and marine transportation. This duty is accomplished in two ways: on a case-by-case basis by assisting the Agency in resolving individual complaints; and on a systemic basis by assisting the Agency in developing regulations, codes of practice and standards concerning the level of accessibility in modes of transport under federal jurisdiction.

The **Rail and Marine Branch** deals with rate and service complaints in the rail and marine industries, as well as disputes between railway companies and third parties in railway infra-

structure matters. It processes applications for certificates of fitness for the proposed construction and operation of railways, and provides technical advice and recommendations to Members concerning railway interswitching rates. Railways' revenue caps for the movement of Western grain, the development of railway costing standards and related regulations, and the audit of railway companies' accounting and statistics-generating systems (as required), all fall within the branch's responsibility.

This branch also assists the Agency in protecting the interests of Canadian marine vessel operators when dealing with applications to use foreign vessels in Canada, by making recommendations to the Canada Customs and Revenue Agency on whether suitable Canadian vessels are available.

In respect to pilotage and ports, the Agency is authorized to determine, often in response to a complaint, whether tariffs, tolls and fees are unjust, unreasonable, discriminatory or prejudicial to the public interest.

The **Legal Services and Secretariat Branch** provides legal advice and counsel in all matters brought before the Agency and ensures that the rules of natural justice and fairness are followed in the process leading to a decision or an order.

The branch also provides legal advice and counsel in enforcement cases and in cases of complaints that are brought to the attention of the Air Travel Complaints Commissioner.

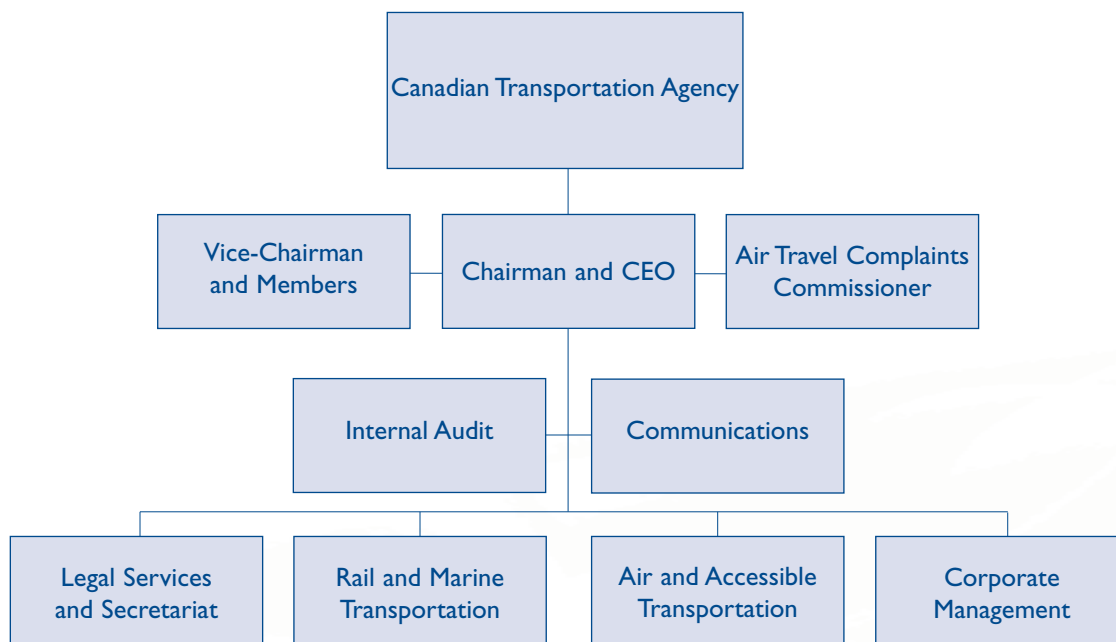
It represents the Agency before the courts, including the Federal Court of Appeal and the Supreme Court of Canada, when Agency decisions are submitted to the appeal process. Branch staff also assists with Agency meetings and hearings. The Secretary has the duty, under the *Canada Transportation Act*, of maintaining a record of any rule, order, decision and regulation of the Agency. The branch also plays a major role in developing and applying the Agency's procedures and regulations.

The **Chairman's Office** includes the Internal Auditor and the Communications Directorate. The Internal Auditor is responsible for providing objective assessments about the design and operation of management practices, control systems, and information, in keeping with modern comptrollership principles.

The Communications Directorate plays a proactive role in ensuring that Canadians

interested in transportation understand their rights and obligations along with the Agency's mandate under the *Canada Transportation Act*. It publishes brochures and reports, advertises, issues news releases, responds to information requests and operates the Agency's Web site; it co-ordinates participation at public events and trade shows with Members and staff to meet Canadians and answer their questions; and it plans and evaluates the Agency's communications activities. Because the Agency has diverse audiences with varying needs, the Communications Directorate provides information in many formats, including paper, electronic, braille and audiocassette.

The **Corporate Management Branch** supports the overall function of the Agency by providing corporate services related to human resources, strategic planning, finance, electronic information systems, records management and the library.



ACCESSIBILITY ADVISORY COMMITTEE

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

Representatives from the community of persons with disabilities and from the transportation industry and other interested parties are members of this committee.

REPRESENTATIVES FROM THE COMMUNITY OF PERSONS WITH DISABILITIES

Canadian Association for Community Living – J. Mahaffy

Canadian Association of the Deaf – K. R. Nichols

Canadian Association of Independent Living Centres – T. Walters & V. Miele

Canadian Council of the Blind – J. Rempel

Canadian Hard of Hearing Association – C. Cantlie

Canadian Hearing Society – L. McIntyre

Canadian National Institute for the Blind – C. Moore & J. McDonald

Canadian National Society of the Deaf/Blind – P. Leclair

Canadian Paraplegic Association – S. Little

Canadian Pensioners Concerned Incorporated – B. Black

Confederation des organismes provinciaux de personnes handicapées au Québec (COPHAN) – C. Serradori

Council of Canadians with Disabilities – P. Danforth

Centre quebécois de la déficience auditive – M. Bergevin

Guide Dog Users of Canada – J. Main

Institut Nazareth et Louis-Braille – P. Ferland

Keroul – G. Dery

Learning Disabilities Association of Canada – J. Devoe

National Federation of the Blind: Advocates for Equality – M. Cummings

Seniors' Voice – W. Coates

REPRESENTATIVES FROM THE TRANSPORTATION INDUSTRY

Air Canada – B. Racine

Association québécoise des transporteurs aériens inc. – B. Jenner

Air Transport Association of Canada – W. Everson

Railway Association of Canada – G. Gauthier

Canadian Airports Council – N. Raynor

Marine Atlantic – W. Harbin

VIA Rail Canada Inc. – J. Lemire & K. Coffen

OTHER INTERESTED PARTIES

Canadian Human Rights Commission – H. Goldberg

Government of Alberta – S. Wong

Human Resources Development Canada –
M. Regnaud

Transport Canada
Cabin Safety Standards – F. Wokes

Transportation Development Centre –
B. Jamieson-Smith

Accessible Programs – B. Nelson

Regulatory Standards – N. Vachon

HOW WE DO IT

THE FORMAL COMPLAINTS PROCESS

Once a complaint is filed with the Agency, a process to deal with it quickly, effectively and fairly begins. A panel of at least two Members considers the complaint; once all parties have filed their pleadings, Agency staff supplies any research or analysis required by Members who then consider the matter from perspectives including, but not limited to, legal, economic, operational and environmental, and issue a decision.

According to its general rules, upon receiving a complaint, the Agency ensures that each affected party has the opportunity to comment. In general, the Agency reviews the complaint, invites the party against whom the complaint is made to answer the complaint within 30 days, and then allows the complainant 10 days to reply to the other party's submission.

The Members consider all the evidence on file with the Agency, as well as the legislation, regulations and legal principles that are applicable. The Agency processes each complaint as quickly as possible. After the receipt of a complete application or complaint, the decision-making process must be completed

within 120 days unless the parties agree to an extension. Although most cases are resolved through written pleadings, Members may also hold formal hearings, usually in more complex cases.

THE MODIFIED HEARING

Modified hearings are an experimental approach developed by the Agency to help resolve disputes when a question or an issue cannot otherwise be resolved through a file hearing, and does not warrant a formal hearing. Although similar in process, a modified hearing is simpler than a formal hearing in that it takes place around a conference table. Members question witnesses directly and Agency resources needed to assist the Members are kept to a minimum. This modified process allows for a timely, less costly and less formal resolution of disputes while still maintaining the inherent benefit associated with a formal hearing.

Three complaints went to modified hearings in 2002. One case which was decided on October 31, 2002, involved an air carrier's refusal to transport because of unruly behaviour. Two other cases involved complaints about accessible transportation for persons with disabilities, involving seat reservations. One case was decided on December 21, 2002, and the other case has yet to be decided.

MEDIATION

The Agency offers complete mediation services for rail, marine and accessible transportation complaints. The Air Travel Complaints Commissioner and her staff also informally mediate complaints in an effort to find an acceptable resolution to disputes.



The Agency is committed to providing this service to enable parties to resolve disputes through a simple and effective process, which is quick, flexible and collaborative, rather than litigious. Mediation improves communication between parties – especially those who may have an ongoing relationship – and thus it can also help to create a balance between parties of differing strengths. The mediator and the disputing parties work together to develop solutions tailored to the specifics of a situation. This results in better understanding between parties and agreements that have high levels of satisfaction and commitment.

APPEALING AN AGENCY RULING

Should the parties involved in a proceeding not agree with a decision or an order, they have a right to appeal. Any decision or order may be appealed to the Federal Court of Appeal on a question of law or jurisdiction, within one month of the order or decision; and may be appealed to the Governor in Council at any time. In addition, any decision or order may be reviewed by the Agency if there has been a change in the facts or circumstances pertaining to the decision or order.

MODERN COMPTROLLERSHIP

In 2002, the Agency continued to implement Government of Canada initiatives described in Results for Canadians, a Treasury Board report tabled in Parliament in March 2000.

Modern comptrollership is a key priority of the

Government of Canada, intended to modernize management practices for the 21st century. Modern comptrollership emphasizes integrating financial information with performance measurement, vigorous stewardship of resources, risk management and open reporting of results. Efforts are aimed at enabling more appropriate choices that will lead to better service and better public policy.

Modern comptrollership is also a priority of the Agency. In 2002, the Agency assessed its situation, identified areas for improvement and prepared an action plan to introduce improvements. The next steps planned for 2003 are to: improve the allocation of internal resources to ensure consistent and optimal use; develop better performance measures and reporting of results both inside the Agency and to Parliament and Canadians; and develop a framework that integrates the concept of risk management throughout the Agency. As the Agency continues to implement this plan, it will further improve on the way it delivers its program and services to Canadians.

OFFICIAL LANGUAGES

In November, the Agency launched a Language of Work Initiative: A Challenge to Excellence, to create in each work unit a climate conducive to the use of both official languages. The Agency's Official Languages Committee developed a slogan: TOP Level in Official Languages, where "T" stands for Tolerance, "O" for Openness and "P" for Patience. A lexicon of bilingual words, expressions and phrases related to Agency

business has been developed with the help of employees.

PUBLIC SERVICE EMPLOYEE SURVEY

In December 2002, the Government of Canada released the results of the Public Service Employee Survey. This was the second time that the Public Service of Canada endeavoured to seek the opinion of all of its employees on a wide variety of workplace issues. The survey provided a tool to obtain employee input on organizational effectiveness, well-being and the overall climate within individual workplaces.

The 2002 results with respect to the Agency were very positive in many areas: 89 per cent of employees feel the Agency is a good place to work and 95 per cent are committed to its success; 93 per cent are satisfied with their current work arrangements; 90 per cent agree that they feel free to use the official language of their choice when they communicate with their immediate supervisor.

These examples represent encouraging results, which surpass significantly the average of the Public Service. Like employees throughout the Public Service, Agency employees noted a variety of challenges they face. In late 2002 and early 2003, discussions are being held to seek employees' views on how to improve the workplace, following which action plans will be developed to address concerns expressed in the survey.

GOVERNMENT ON-LINE

Another key priority of the Government of Canada and the Agency is to communicate with Canadians in the easiest, most accessible ways possible. In addition to implementing the new Communication Policy of the Government of Canada, the goal is to use information technology to provide citizen-centred and integrated

services to Canadians anytime, anywhere and in the official language of their choice.

The Agency adjusted its communications practices in 2002 to address requirements of the new Communications Policy of the Government of Canada that will safeguard Canadians' trust and confidence in the integrity and impartiality of the Public Service of Canada.

In 2002, the Agency continued to introduce improvements to its Web site to ensure that it is client-oriented and complies with the Government of Canada's Common Look and Feel Standards for Internet Web sites. These include accessibility standards and guidelines for persons with disabilities who use screen readers, voice-activated devices, etc.

In 2003 and in future years, the Agency will continue to implement changes with the goal of ensuring a client-oriented approach and equitable access to all material on the Agency's Web site (www.cta.gc.ca). The Agency will also develop a number of initiatives involving client consultation on service delivery, improved Web forms for complaints and applications, and progress reporting.

STATUTES AND REGULATIONS

The following are statutes and regulations enforced by the Canadian Transportation Agency.

THE AGENCY HAS PRIMARY RESPONSIBILITY FOR THE FOLLOWING LEGISLATION:

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

THE AGENCY SHARES RESPONSIBILITY FOR THE FOLLOWING LEGISLATION:

Access to Information Act R.S.C. 1985, c. A-1

Canada Marine Act S.C. 1998, c. 10

Canadian Environmental Assessment Act
S.C. 1992, c. 37

Civil Air Navigation Services Commercialization Act
S.C. 1996, c. 20

Coasting Trade Act S.C. 1992, c. 31

Energy Supplies Emergency Act R.S.C. 1985, c. E-9

Financial Administration Act R.S.C. 1985, c. F-11

Pilotage Act R.S.C. 1985, c. P-14

Privacy Act R.S.C. 1985, c. P-21

Railway Relocation and Crossing Act
R.S.C. 1985, c. R-4

Railway Safety Act R.S.C. 1985, c. 32
(4th Supp.)

Shipping Conferences Exemption Act
R.S.C. 1985, c. 17 (3rd Supp.)

**THE AGENCY HAS SOLE
RESPONSIBILITY FOR THE
ADMINISTRATION OF THE FOLLOWING
REGULATIONS, RULES AND OTHER
STATUTORY INSTRUMENTS:**

Air Transportation Regulations (SOR/88-58)

Canadian Transportation Agency Designated
Provisions Regulations (SOR/99-244)

National Transportation Agency General Rules
(SOR/88-23)

Personnel Training for the Assistance of
Persons with Disabilities Regulations
(SOR/94-42)

Railway Costing Regulations (SOR/80-310)

Railway Interswitching Regulations
(SOR/88-41)

Railway Third Party Liability Insurance
Coverage Regulations (SOR/96-337)

Railway Traffic and Passenger Tariffs
Regulations (SOR/96-338)

Railway Traffic Liability Regulations
(SOR/91-488)

Uniform Classification of Accounts and Related
Railway Records

Designated Provisions Regulations (SOC/99-244)

**THE AGENCY SHARES RESPONSIBILITY
FOR THE FOLLOWING REGULATIONS:**

Carriers and Transportation and Grain Handling
Undertakings Information Regulations (SOR/96-334)

Jacques-Cartier and Champlain Bridges Inc.
Regulations (SOR/98-568)

Seaway International Bridge Corporation Ltd.
Regulations (SOR/98-569)

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

Details of Maps, Plans, Profiles, Drawings,
Specifications and Books of Reference (General
Order E-1) (SOR/80-482)

Height of Wires of Telegraph and Telephone
Lines Regulations (General Order E-18)
(C.R.C., c. 1182)

Joint Use of Poles Regulations (General Order
E-12) (C.R.C., c. 1185)

Railway Grade Separations Regulations (General
Order E-5) (C.R.C., c. 1191)

Railway-Highway Crossing at Grade Regulations
(General Order E-4) (SOR/80-748)

Wire Crossings and Proximities Regulations
(General Order E-11) (C.R.C., c. 1195)