

Canadian  
Transportation  
Agency



Office  
des transports  
du Canada

# 100 YEARS *at the* HEART of TRANSPORTATION



## ANNUAL 2004 REPORT

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The Agency would like to thank the Canada  
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for the use of photo on cover CSTM/  
CN002828 Porter assists passengers  
with their luggage and Mr. Joel Rossol  
for his photo on page 77.



May 2005

The Honourable Jean-C. Lapierre, P.C., M.P.  
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 2004, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

Statistics from the Air Travel Complaints Commissioner's Office, which cover the period of January to December 2004, are also part of the Agency's 2004 Annual Report.

Yours sincerely,

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

Marian L. Robson  
Chairman

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# CHAIRMAN'S MESSAGE



The Canadian Transportation Agency prides itself on being a fair and independent quasi-judicial tribunal. Vested with powers of a Superior Court to exercise its jurisdiction, the Agency resolves disputes in Canada's transportation system, such as between shippers and railways; air travellers and airlines; and persons with disabilities and federally regulated passenger carriers. We get thousands of cases every year, big and small, each of them important to those affected.

This Annual Report on the Agency's activities in 2004 tells the story of how we carry on our work and assess the operation of our Act (the *Canada Transportation Act*).

In 2004, the Agency issued a total of 3,549 rulings, an increase of 12 per cent over 2003. These rulings were made up of 716 decisions, 565 orders, 1,797 permits, 69 final letter decisions and 402 interlocutory (interim) decisions. Of those, 3,039 rulings related to air transportation, 256 related to rail, 120 to marine and 134 to accessible transportation.



The Agency does this job that Parliament set out for it using modern business methods, including alternative dispute resolution (i.e. mediation), Internet-based complaints processing, and fast-track licence applications (for the coasting trade, for example). The Agency strives to remain in tune with the transportation industry and to function efficiently (see our Report on Plans and Priorities). It is, I submit, an effective, regionally focused, results-oriented instrument of modern governance, that is rich in history.

About that history, in 2004 the Agency marked a century of service to Canadians that began on February 1, 1904, when Parliament created the Board of Railway Commissioners, the first independent regulatory body of what was then Canada's Dominion government. The Agency published an historical perspective in 2004 called *100 Years at the Heart of Transportation* to mark the centennial and distributed it widely across the country.

*100 Years* chronicles the evolution of Canadian transportation, the Canadian Transportation Agency and its predecessors. The order of its chapters coincides with the order in which responsibility for the various modes of transport were added to the Agency's mandate, as does the order of the chapters in this 2004 Annual Report.

The Agency today, with jurisdiction over air, rail and marine matters and responsibility for removing undue obstacles to the mobility of persons with disabilities, tries to ensure fair and equal treatment by administering laws, regulations, voluntary codes of practice, educational programs and dispute resolution. The Agency's overriding concern, as it was for its predecessors, is balance and fairness in dealing with both the users and providers in the federally regulated transportation network.

But, the Agency today takes a different approach than its predecessors, more user-friendly, emphasizing consultation, communication and outreach. Mindful that we must remain independent and impartial, we nevertheless actively keep up to date about developments in the transportation industry.

## **RAIL TRANSPORTATION**

In 2004, a focus for the Agency in the rail sector was consultation regarding the shortfall in Western rail and port capacity to accommodate traffic that resulted from the explosion in trade with China, India and other parts of Asia.

In July, the Agency accepted an invitation from the Railway Association of Canada to tour the rail system between Vancouver and Calgary along with shippers and

other federal and provincial government officials. The trip was valuable in helping us appreciate the many issues facing railways in the movement of traffic through West Coast ports.

In August, we met in Washington with our US counterpart, the Surface Transportation Board, which has authority over rail and road matters. The Surface Transportation Board has similar concerns about West Coast congestion and system capacity, which have an impact on our overall economies. In October, staff joined 500 users of rail services and rail officials in Kansas City. They met at the invitation of the Association of American Railways to discuss capacity and the peak fall demand period.

I attended a meeting of the Western Transportation Advisory Council where key players involved in traffic movements through West Coast ports discussed rail and port capacity problems and considered solutions. At the invitation of the Canadian Wheat Board, Agency Members and staff toured grain facilities in Manitoba and Saskatchewan and met with officials of the Wheat Board and Canadian Grain Commission. We also toured grain facilities and listened to producers and shippers discuss the Prairie economy, producer-car loading, and grain-handling and transportation issues.

Still in Western Canada, Canadian National Railway's acquisition of BC Rail, the third largest railway in Canada, put that former provincial railway, with its 2,300 kilometres of track, under the Agency's jurisdiction. The Canadian Competition Tribunal, in response to concerns from shippers, made it a requirement of the BC Rail purchase that the Agency carry out a monitoring role and that it use the BC Rail transit times destined to connecting carriers via Vancouver to compare them with predetermined benchmarks and CN's own traffic to Vancouver.

To familiarize communities served by BC Rail with the *Canada Transportation Act*, senior staff and I travelled through the province and met representatives of the provincial government, municipalities, port authorities, shippers and railways.

## AIR TRANSPORTATION

In 2004, the Agency's Office of the Air Travel Complaints Commissioner received 1,100 complaints from consumers, which raised some 2,400 separate issues. This is a four per cent increase in the number of complaints over 2003. Complaints dealt with issues like flight disruptions; lost, damaged and delayed baggage; and ticketing problems.



Also in 2004, Agency staff maintained contact with Air Canada while the airline worked out its restructuring plan. A Stay Order issued by Ontario Superior Court Justice James Farley stipulated that no action could be taken against Air Canada or its affiliates until the airline emerged from creditor protection.

According to the *Canada Transportation Act*, the Agency must verify that domestic air carriers meet Canadian ownership and control requirements. In September, the Agency determined that the new Air Canada entity, ACE Aviation Holdings, and its subsidiaries, met the requirements for Canadian ownership and control. This decision followed an extensive review of the new entity's restructuring plan, including not only its financial arrangements, but its management and board structure. Air Canada's innovative restructuring plan involved a division of shares into two types – one for foreigners and one for Canadians – that ensures the value of foreign-owned shares will never exceed 25 per cent of the total shares outstanding, thus meeting the legislated requirement that Canadians own and control 75 per cent of the shares outstanding.

## **MARINE TRANSPORTATION**

The Agency made several improvements in its marine functions in 2004, including a more efficient system for dealing with

coasting trade applications. The Agency introduced an electronic processing system and set up a fast track for applications involving time-sensitive vessels and unforeseen circumstances.

The Agency handled its first complaint under the *Shipping Conferences Exemption Act, 1987*. It alleges unreasonable increases in the cost of shipping paper products to Latin American destinations and unreasonable reductions in service to these destinations.

In February, the Agency met in Victoria with the four pilotage authorities and made a presentation about its role and responsibilities regarding pilotage issues. On the East Coast, Agency Members and staff attended numerous events and meetings with parties involved in the offshore oil and gas exploration sector.

## **ACCESSIBLE TRANSPORTATION**

Air Canada emerged from creditor protection on September 30, 2004, when the Court-ordered Stay was lifted. In total, 116 accessibility complaints before the Agency were against Air Canada as of the lifting of the Stay. Following the Stay, the Agency issued 14 decisions that had been held because of the Stay. The Agency informed Air Canada that it was proceeding with 23 complaints regarding that carrier's policy and procedures for passengers



using medical oxygen, and five complaints regarding additional fares charged by the carrier to persons with disabilities.

In late December 2004, Air Canada wrote to the Agency and expressed its position that all such complaints were extinguished, which would mean the Agency would be unable to continue its investigations into those issues. The Agency disagrees with this interpretation and will request a ruling on the matter from Mr. Justice Farley in early 2005.

I am pleased to report that the Agency introduced a fourth voluntary code of practice in 2004 under its accessible transportation mandate. The “Communication Code” and its accompanying guide are two innovative products that resulted when the Agency brought together industry leaders and consumer groups for extensive consultations. For air, rail and ferry service providers, the Code is intended to remove communication barriers for persons with disabilities, thereby improving their ability to travel independently.

National Transportation Week was held in Ottawa in June 2004. It focused on accessible transportation. The Agency kicked off the week-long event with a panel discussion, which I moderated, titled “The Future of the Transportation Business in an Accessible World.”

In November 2004, following consultation with users and carriers, the Agency released accessibility guidelines for carriers operating aircraft with 29 and fewer seats. In our discussions, it became obvious that small aircraft require a more flexible approach than larger aircraft. The guidelines explain in practical terms how small operators can best accommodate travellers with specific needs.

## **MEDIATION PROGRAM**

During 2004, the Agency had a significant increase in the number of cases referred to mediation (39 in 2004; 29 in 2003; 20 in 2002), continuing a trend towards greater acceptance of alternative methods to resolve disputes. Parties find mediation speedy and less costly. With a 90 per cent settlement rate, four out of five participants indicated they were fully satisfied with the Agency’s mediation service.

## **AGENCY MEMBERS AND STAFF**

On September 30, 2004, Liette Lacroix Kenniff’s term as Air Travel Complaints Commissioner ended. Ms. Lacroix Kenniff made a significant contribution to the improvement of air passenger travel in Canada, and I want to express my sincere appreciation for her expertise and commitment during her two years with the Agency.

I also want to thank Michael A. Sutton, an Agency Member whose term ended at the beginning of 2004. Mr. Sutton, a Member since December 1997, lent his keen mind and invaluable insight to many Agency decisions. He made an enduring contribution to the Agency.

And I thank also our 260 hard-working and talented staff who, in facing some very challenging decisions and issues in 2004, delivered what I consider to be stellar service to Canadians.

As we look forward, I am pleased to welcome Baljinder S. Gill of Ottawa as our newest Agency Member. Mr. Gill's term began on April 26, 2004.



Marian L. Robson  
Chairman and Chief Executive Officer

# THE AGENCY TEAM

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## CHAPTER 1



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THE CANADIAN TRANSPORTATION AGENCY IS EMPOWERED UNDER THE CANADA *TRANSPORTATION ACT* TO HELP 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 JURISDICTION TO SETTLE DISPUTES AND TO 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 COMPLAINTS AND ISSUES RELATING TO AIR TRAVEL.

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## Who We Are

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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. As of December 31, 2004, there were seven permanent Members, including the Chairman, who is also the Agency's Chief Executive Officer, and the Vice-Chairman.

As cases are received at the Agency, the Chairman appoints panels of Members to

hear them. If a request for mediation is received, the Chairman is responsible for appointing mediators. Members exercise their quasi-judicial responsibilities by sitting on panels hearing the wide variety of matters that are before the Agency.

The Chairman, as CEO, oversees all aspects of the administration and operation of the Agency. She is required to play an active role in allocating resources (both financial and staff), responding to government priorities and improving the organizational effectiveness of the Agency. As CEO, she also chairs the Agency's Executive

# MEMBERS



**Marian L. Robson**  
Chairman and CEO  
Born in Saskatoon, SK  
Former port executive, railway manager and National Transportation Agency Member  
Appointed July 1, 1996



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



**Mary-Jane Bennett**  
Member  
Born in Saint-Boniface, MB  
Lawyer and active member of various boards and committees  
Appointed January 19, 1998



**Guy Delisle**  
Member  
Born in Alma, QC  
Lawyer and former senior legal counsel and temporary member of the National Energy Board  
Appointed January 8, 2002



**Baljinder S. Gill**  
Member  
Born in Ludhiana, India  
Former Member of the Ontario Highway Transport Board; former Chief of Facility Planning, Marine Technical and Support Services, Transport Canada  
Appointed April 26, 2004



**George Proud**  
Member  
Born in Charlottetown, PEI  
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  
Former Deputy Premier and Premier of Newfoundland and Labrador, as well as Minister of Industry, Trade and Rural Development  
Appointed December 16, 2002



**Liette Lacroix Kenniff**  
Air Travel Complaints Commissioner and Member  
Born in Montréal, QC  
Former general manager of the International In-Flight Service Management Organization, as well as manager with the International Air Transport Association and Air Canada  
Appointed October 1, 2002 - September 30, 2004

Committee and is responsible for setting the strategic direction and priorities of the organization.

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

## What We Do

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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, implement and administers international air agreements, and deals with appeals of Nav Canada user charges. This branch helps to protect the interests of the travelling public, shippers and Canadian air carriers by ensuring that carriers abide by the terms and conditions of carriage, fares, rates and charges set out in their published tariffs; that proposed fares, rates, charges and terms and conditions of carriage are clear, just and reasonable and not unduly discriminatory; and that they are consistent with Canadian legislation and regulations, and with the relevant bilateral agreements.

This branch also provides support to the Office of the Air Travel Complaints Commissioner, established in 2000, which handles air travel complaints related to air fares on non-competitive domestic routes from consumers. It attempts to informally resolve consumer complaints related to air travel. Where this is not possible and where the complaint relates to a possible failure to apply a carrier's tariff, the Agency may address the issue through its formal complaint adjudication process.

The branch helps to ensure that all modes of federally regulated transportation are accessible to persons with disabilities and deals with 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 infrastructure 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 in protecting the interests of Canadian marine vessel operators regarding applications to use foreign vessels in Canadian waters, by making recommendations to the Canada Revenue Agency on whether suitable Canadian vessels are available.

In respect to pilotage and ports, the Agency is authorized to determine, 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, including enforcement and cases of air travel complaints. 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 assists in the writing of decisions, administrative procedures, Agency meetings and hearings.

The Secretary has the duty, under the *Canada Transportation Act*, to maintain 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](#) provides administrative and managerial support to the Chairman, Vice-Chairman and Members. It also 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 an active role in ensuring that Canadians understand their rights and obligations, as well as the mandate of the Agency 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 and administration, security, information management and technology, and the library.

## How We Do It

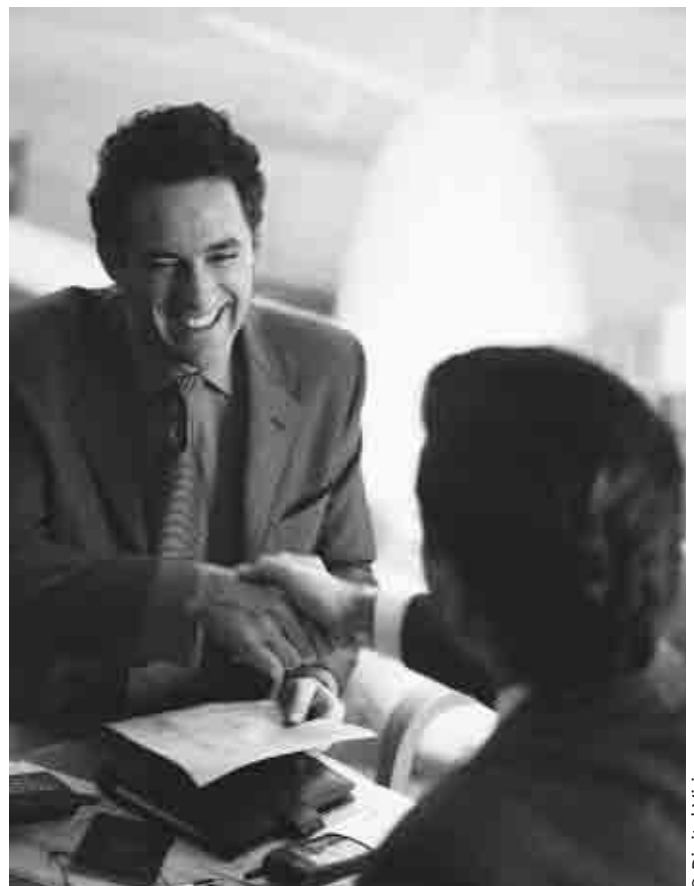
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### The Formal Hearing Process

When a complaint is filed with the Agency, a panel of at least two Members considers the complaint. According to its General Rules, the Agency ensures that each party in a complaint has the opportunity to file its submissions. Once all parties have filed their pleadings, Agency staff provides any research or analysis required by Members who then consider the matter from – but not limited to – legal, economic, operational and environmental perspectives, and then issue a decision. The process must be completed within 120 days unless the parties agree to an extension. Although most cases are resolved through file hearings with written pleadings, Members may hold oral hearings, usually in more complex cases.

### Mediation

Introduced in 2000 as an informal alternative to the formal adjudicative process, mediation is actively promoted by the Agency for disputes dealing with rail, marine and accessible transportation. Mediation is voluntary and informal, confidential and non-confrontational, allowing disputing parties to understand other perspectives, identify facts, check assumptions, recognize common ground and test possible solutions. The process allows disputing parties to develop creative solutions that may not be available through formal adjudication. An external evaluation of the mediation program was completed in 2004 with positive results.



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The Agency will continue to promote mediation as a valuable option in dispute resolution.

### **The Modified Hearing**

Modified hearings have been developed by the Agency to help resolve disputes when a question or an issue cannot be resolved through the formal hearing 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 staff needed to assist the Members is kept to a minimum. This modified process allows for a timely, less costly and less formal resolution of disputes while maintaining the benefits of a formal hearing.

### **Appealing an Agency Ruling**

Should the parties in a proceeding not agree with a decision or an order, they may seek leave to appeal to the Federal Court of Appeal on a question of law or jurisdiction, within one month of the order or decision or petition the Governor-in-Council at any time. Any decision or order may be reviewed by the Agency if there has been a change in the facts or circumstances pertaining to that decision or order.

### **Government On-Line**

A key priority of the Government of Canada and the Agency is to communicate with

Canadians in the easiest, most accessible ways possible. Besides implementing the Communication Policy of the Government of Canada, the goal is to use information technology to provide citizen-centred and integrated services to Canadians at any time, anywhere and in the official language of their choice.

In 2004, the Agency received 564 complaints (533 air travel complaints, 17 accessibility complaints, 5 pricing complaints and 9 tariffs complaints) via its on-line Web form on the Agency Web site.

Also in 2004, a total of 1,061 people were signed up for the subscription service offered on the site. This service alerts subscribers when new content is added to the site, such as general announcements, news releases, publications and decisions.

### **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 holding annual meetings, the Agency consults the Committee 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 - J. Jickels

Canadian Association of Independent Living Centres - 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 - F. Cutler

Canadian National Society of the Deaf/Blind - J. Sayer

Canadian Paraplegic Association - M. Styner

Canadian Pensioners Concerned Incorporated - B. Black

Confédération des organismes provinciaux de personnes handicapées au Québec (COPHAN) - C. Serradori

Council of Canadians with Disabilities - P. Danforth

Centre québécois de la déficience auditive - Y. Mantha

Guide Dog Users of Canada - J. Main

Institut Nazareth et Louis-Braille - P. Ferland

Kéroul - G. Déry

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

Seniors' Voice - W. Coates

## Representatives from the transportation industry

Air Canada - M. Hurter

Air Transport Association of Canada - W. Everson

Association québécoise des transporteurs aériens inc. - J. McKenna

Canadian Airports Council - S. London

Marine Atlantic - W. Harbin

Railway Association of Canada - G. Gauthier

VIA Rail Canada Inc. - K. Coffen

## Other interested parties

Canadian Human Rights Commission - K. Izzard

Government of Alberta - S. Wong

Human Resources Development Canada - M. Regnaud

## Transport Canada

Accessible Programs - B. Nelson

Cabin Safety Standards - C. Cudahy

Regulatory Standards - M. Khouzam

Transportation Development Centre - B. Marshall

# RAIL TRANSPORTATION

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## CHAPTER 2



ESTABLISHED IN 1904 AS THE BOARD OF RAILWAY COMMISSIONERS, THE AGENCY BEGAN AS AN INDEPENDENT REGULATORY BODY WITH AUTHORITY OVER THE COUNTRY'S RAILWAYS. THE BOARD'S POWERS HAVE GREATLY EVOLVED AND BEEN PASSED TO ITS SUCCESSORS OVER THE COURSE OF THE ORGANIZATION'S 100-YEAR HISTORY, AS RAILWAYS INCREASINGLY FACED COMPETITION FROM OTHER MODES OF TRANSPORTATION AND TOUGHER ECONOMIC REALITIES. ALTHOUGH CANADA'S RAILWAY LEGISLATION HAS BEEN TRANSFORMED BY TIME, THE AGENCY CONTINUES TO HAVE ECONOMIC AUTHORITY OVER RAILWAYS.

MORE SPECIFICALLY, THE AGENCY'S CURRENT MANDATE IN RAIL TRANSPORTATION RANGES FROM THE LICENSING AND APPROVAL OF NEW OPERATIONS TO THE RESOLUTION OF RATE AND SERVICE DISPUTES BETWEEN RAILWAYS AND SHIPPERS OR OTHER PARTIES, THE REGULATION OF INTERSWITCHING, THE ADMINISTRATION OF THE WESTERN GRAIN REVENUE CAP REGIME, AND OVERSEEING THE EVENTUAL DISCONTINUANCE OF SERVICE AND DISPOSAL OF ASSETS OF A RAILWAY LINE.

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## RAIL TRANSPORTATION

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The Canadian National Railway Company's acquisition of BC Rail, Canada's third largest railway with 2,300 kilometres of track, greatly increased the size and shape of the country's federally regulated railway system in 2004. The role of the Canadian Transportation Agency, as economic regulator of those railways under federal jurisdiction, expanded accordingly.

The Agency held a series of meetings throughout British Columbia in 2004, to inform interested parties of the consequences of BC Rail becoming part of

the federally regulated system and subject to the *Canada Transportation Act*.

The Canadian Competition Tribunal, in response to concerns from shippers, made it a requirement of the BC Rail purchase that the Agency carry out a monitoring role and that it use the BC Rail transit times destined to connecting carriers via Vancouver to compare them with predetermined benchmarks and CN's own traffic to Vancouver. The Agency will undertake this responsibility to monitor the transit times for CN to deliver railway cars along the former BC rail lines from northern British



Columbia to Vancouver interchanges, both when shippers are using only CN service to deliver their goods and when their loads are being switched to competing railways. The Agency is required to submit reports to CN, connecting carriers in Vancouver as well as the Competition Bureau on a regular basis.

In addition to its oversight role with respect to the acquisition of BC Rail by CN, the Agency's railway mandate was the focus of several other major developments during 2004, including:

- the enactment of amendments to the *Railway Interswitching Regulations*;
- the publication of both the *Rules of Procedure for the Conduct of Final Offer Arbitration* and the *Rules of Ethics for Prospective Arbitrators*; and
- the determination that, for the first time, the Canadian Pacific Railway had exceeded its revenue cap for the movement of Western grain during crop year 2003-04.

## Interswitching

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Amendments to the *Railway Interswitching Regulations*, which had been proposed by the Canadian Transportation Agency in 2003, came into force in the fall of 2004.

Subsection 128 (1) of the *Canada Transportation Act* stipulates that the Agency

may make regulations prescribing terms and conditions governing the inter-switching of rail traffic. According to the Act, any person can request a local railway to interswitch its traffic, at a rate provided for in the Regulations, to a connecting railway carrier if its point of origin or destination is within the interswitching limit of a 30-kilometre radius from an interchange. Subsection 128 (5) of the Act requires the Agency to review the Regulations as warranted, and also at a minimum of five-year intervals.

The amendments to the Regulations were prepared following a series of consultations with interested parties in the railway industry. Among the most significant changes is a reduction in interswitching rates which came into force on October 23. The other amendments to the Regulations came into force on September 23.

The Agency amended Section 8 of the Regulations, which was found to be at odds with the *Canada Transportation Act* by the Standing Joint Committee for the Scrutiny of Regulations (SJC). This amendment reflects the SJC's opinion that the statutory authority granted to the Agency by Section 128 of the Act extends to prescribing interswitching rates, not maximum rates. Section 8 was therefore revised to make it consistent with the current Act, by prescribing a specific interswitching rate for each distance zone and by deleting the reference to

interswitching rates being considered as maximum rates.

Other amendments to the Regulations were made to ensure that they accurately reflect the legislative changes to the interswitching provisions introduced with the repeal of the *National Transportation Act, 1987* that was replaced by the *Canada Transportation Act* in 1996.

## Level of Service

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In 2004, Wabush Mines Inc. filed a level-of-service complaint against the Quebec North Shore and Labrador Railway Company (QNSL), seeking an order directing the carrier to issue a tariff pursuant to Section 118 of the *Canada Transportation Act* and to maintain an adequate level of service between Wabush Lake and Arnaud Junction under Section 116 of the Act.

As part of its complaint, Wabush Mines Inc. also made requests for interim relief. Specifically, Wabush Mines Inc. was seeking:

- an interim order requiring QNSL to continue to haul its traffic from Wabush Lake Junction to Ross Bay Junction on a non-scheduled basis at the rate then charged by QNSL or any other rate the Canadian Transportation Agency determined to be fair and reasonable; and

- an interim order prohibiting QNSL from imposing the new proposed scheduled service between Ross Bay Junction and Arnaud Junction, and requiring QNSL to continue to haul its traffic when tendered at the rate then charged by QNSL or any other such rate that the Agency determined to be fair and reasonable.

The Agency granted Wabush Mines' requests for interim relief, as the Agency determined that Wabush met the three-part test to obtain such relief. Accordingly, the Agency ordered QNSL to continue to provide Wabush with the same non-scheduled railway service that it had always provided for the movement of its traffic between Wabush Lake Junction and Ross Bay Junction at a maximum rate specified by the Agency, and to continue to provide Wabush with the same non-scheduled railway service it had always provided for the movement of its traffic between Ross Bay Junction and Arnaud Junction at the maximum rates provided in QNSL's Tariff 2004-1.

The Agency will hear the case on its merits in 2005 and render its final decision thereafter.

Several level-of-service complaints against the Canadian Pacific Railway Company (CPR) were brought before the Agency by grain producers and producer groups

during 2004. The complaints dealt with disparities between the grain tonnage producers claimed they had loaded into the railcars and the unload weights credited to them by CPR at the destination terminals. One such complaint was resolved via the Agency's mediation program and another was the subject of an agreement between the parties before the Agency could render a decision. Five other such cases were still in mediation at year-end.

## Final Offer Arbitration

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When shippers and carriers are unable to resolve disputes on their own, they can apply to the Agency for final offer arbitration (FOA), which is a confidential method of settling a matter through an independent arbitrator or a panel of three arbitrators.

Prior to Agency referral of a case to an arbitrator, the Agency assures that the shipper's request for FOA is complete and that the shipper has notified the carrier of its intention to use FOA. The Agency may also assist the parties in selecting an arbitrator and may provide administrative, legal and technical advice to the arbitrator when requested.

Following a series of industry consultations in 2003, a set of *Rules of Procedure for the Conduct of Final Offer Arbitration* and *Rules of Ethics for Prospective Arbitrators*

was approved and published by the Agency in February 2004. Both sets of rules are available on the Agency's Web site, along with a list of arbitrators available for the arbitration process.

During 2004, the Agency received three requests for FOA. As this is a confidential process, the Agency cannot discuss the details of these cases. In two of the matters, the respective carriers filed applications pursuant to Section 162.1 of the *Canada Transportation Act* requesting an order that the matter not be referred to FOA or in the alternative, if the request was referred, that the arbitration be discontinued or the decision of the arbitrator be set aside. Of the three requests for FOA, all cases were ultimately referred to the arbitrators selected by the parties.

For the first time since the introduction of FOA in 1996, the Agency was asked in 2004 to provide technical expertise to aid in the arbitration process. Two such requests were made during the year.

Since the enactment of the *Canada Transportation Act* in 1996, the Agency has received more than 23 notices from shippers of their intention to submit their disputes to FOA. About half of those cases were withdrawn or settled before arbitration. Information on important rail disputes and the Agency's findings on FOA jurisdictional challenges can be found on its Web site.

## Certificates of Fitness

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The Agency issues a certificate 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.

One new certificate of fitness was issued in 2004 to the Kettle Falls International Railway LLC to operate a railway between British Columbia and the State of Washington. The certificate of fitness for CN was varied to reflect CN's agreement with the Province of British Columbia to lease and operate BC Rail, the third largest railway in Canada. The certificate of fitness for VIA Rail was also varied to reflect the addition of a new line as well as a change in the company's operations. In addition, the certificate of fitness for 2986250 Canada Inc. was varied to reflect its amalgamation with Sydney Coal Railway Inc. The new certificate now authorizes Sydney Coal Railway Inc. to operate the railway.

## Construction Approval

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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* (CEAA).

In 2004, the Agency received the project description required under the CEAA for the Geddis Locomotive Facility wherein CPR intends to construct a locomotive set-off facility and add a third mainline track on the Shuswap Subdivision near Pritchard, BC. The project is one of many designed to expand CPR's operational capacity between Calgary and Vancouver to help meet the increased demand for rail services, in particular the traffic to and from markets in China. As a first step, the Agency produced a scoping document setting out the criteria to be assessed in the environmental assessment of the project.

The Agency continued its screening of other projects such as the proposed relocation of part of the CPR Coutts Subdivision near Milk River, AB, and the St. Albert, AB, bypass of the CN Sangudo Subdivision. The Agency also continued its environmental monitoring of major construction proposals including: a CN intermodal terminal near Milton, ON; a rail link to Toronto's Pearson Airport; a rail relocation project at Front Street in downtown Toronto; a power line near

ACCESS FOR COTTAGERS – The Malachi Campers Association, a group of 17 cottagers on Lake Malachi in Northwestern Ontario, complained to the Agency that they required a crossing at the Redditt Subdivision on the Canadian National Railway line. All supplies for the 17 cottage owners must be brought in by boat and transported across the CN line to the cottagers' properties. An earlier crossing had been removed by CN. The Agency ordered CN to reinstate the crossing to allow the cottage owners proper access to their properties.

Sumas, BC; and the twinning of Highway 69 in Ontario. The Agency also continued its leadership of the interdepartmental screening committee, which it had formed to undertake the environmental assessment of the Detroit River Tunnel Partnership project of which CPR is a major partner.

The Agency made two environmental screening decisions in 2004, allowing the projects to proceed when assured that the applicant took measures deemed by the Agency to be appropriate to mitigate any significant adverse environmental impacts.

## Infrastructure Issues

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The Agency resolves disputes over railway rights of way, tracks, crossings, supporting facilities, protective devices and other physical aspects of a railway's operation.

In 2004, the Agency reached decisions in five disputes about road crossings of railways, three disputes over utility crossings, and four disputes about private railway crossings.

The Agency also received 88 agreements filed by parties who had conducted their own negotiations related to railway crossings.

The Agency may also issue decisions apportioning costs among railways and other parties for railway protective devices, such as crossing signals or fencing along rights of way. The Agency issued decisions in eight cases involving protective devices in 2004.

The Agency also completed 23 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 one government to another.

The Minister of Transport and the Province of Ontario had previously agreed that the federal railway crossing laws apply to railways under Ontario provincial jurisdiction, and that the Agency should administer those laws. In 2004, the Agency and the Province of British Columbia drafted a



similar agreement which, when signed, would authorize the Agency to administer railway crossing laws respecting British Columbia railways.

## Railway Charges for Crossing Maintenance and Construction

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As part of the Agency's responsibility for resolving disputes between federal railway companies and other interested parties, such as utility companies, road authorities and landowners, the Agency develops guidelines that provide a third-party assessment of rail costs and set a consistent, country-wide rate structure for work performed by railway companies.

In 2004, the Agency published a *Guide to Railway Charges for Crossing Maintenance and Construction*. This guide, which became effective January 1, 2004, is intended for use by Canadian federally regulated Class I railways when charging for construction or maintenance work performed at crossings, crossing warning systems or for any other crossing-related work, either agreed to by the parties or authorized by an order of the Agency.

## Transfer and Discontinuance

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Railways may rationalize their lines without regulatory approval if they follow the process prescribed in Division V, Part III of the *Canada Transportation Act*. The Agency may be asked to determine whether a railway company has complied with



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that process. Pursuant to Section 140(1) of the Act, a yard track, siding, spur or other track auxiliary to a railway line is exempt from the prescribed discontinuance process. As a result, the Agency may also be asked to determine whether a specific piece of track is subject to the prescribed process.

In 2004, the Agency was considering an application made by the Burlington Northern and Santa Fe Railway Company Limited to determine whether an unused piece of trackage, designated as the Burrard Inlet Barge Dock Spur in the City of Vancouver, constituted a yard track, siding, spur, or other track auxiliary to a railway line under subsection 140(2) of the Act. A decision on this matter is expected in 2005.

The Agency received notices of discontinuance for the following CPR subdivisions in Saskatchewan: Burstall Subdivision between mile 27.0 (near Burstall) and mile 70.2 (Fox Valley) and between mile



70.2 and mile 81.7 (Ingebright Lake); Arcola Subdivision between mile 61.32 (near Redvers) and mile 87.0 (near Carlyle). CN, for its part, did not discontinue any lines during the year.

No railway lines were transferred in 2004.

## Western Grain Revenue Caps and Revenue

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Under sections 150 and 151 of the *Canada Transportation Act*, the Agency must determine the maximum revenue entitlement (or revenue cap) and actual revenue for a prescribed railway company (currently CN and 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 30, 2004, the Agency ruled that CN's revenues for the movement of Western grain did not exceed its revenue cap and that CPR's revenues did exceed its revenue cap for the crop year 2003-2004. CN's grain revenue of \$320,783,912 was \$1,190,454 below its revenue cap of \$321,974,366, while CPR's Western grain revenue of \$309,918,659 was \$321,912 above its revenue cap of \$309,596,747. One Member of the three-Member panel dissented on one element of CPR's revenue

determination; however, she did agree with the other two panel Members that CPR had exceeded its revenue cap for 2003-2004.

2003-2004 was the Agency's fourth year for revenue cap determinations, and marked the first time a railway had exceeded the maximum revenue entitlement.

In April 2004, the Agency had announced a year-over-year decrease of 0.9 per cent in the Volume-Related Composite Price Index for the movement of Western grain for crop year 2004-2005. The index is an inflation factor to reflect CN's and CPR's price changes for railway labour, fuel, material and capital inputs. It is used with other inputs (volume and length of haul) to calculate the Western grain revenue caps.

## Grain Transportation Issues

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In 2004, Agency staff continued to assist Transport Canada in assessing the potential impact of the disposal of the Government of Canada's grain hopper car fleet on the grain revenue cap.

In April, Agency staff responded formally to a specific request by Transport Canada regarding the maintenance of the hopper cars. The department had asked for an estimate of the maintenance cost per car that would be embedded in the combined CN and CPR revenue caps for crop year

2003-04. The report prepared by Agency staff indicated an amount of \$4,329 per car. Transport Canada publicly released the report's executive summary as part of the department's due diligence process in considering options for the disposal of the Government of Canada's hopper car fleet.

In late fall, the department made a further request to the Agency for a determination of the actual maintenance cost-per-car incurred by the railways who use the Government of Canada's hopper cars. This determination is expected in early 2005.

In 2004, the Agency continued to assist Government of Canada departments in responding to the United States Trade Representative's petition to the World Trade Organization (WTO), under Article XXII of the *General Agreement on Tariffs*

*and Trade*, 1994, on the export of wheat by the Canadian Wheat Board (CWB) and Canada's treatment of imported grain. Agency staff provided advice and analysis concerning the revenue cap regime as part of the Canadian team in defence of the country's transportation and handling policies affecting the Western grain industry. The WTO ruling was made public in April 2004. With respect to the U.S. Trade Representative's allegations regarding the revenue cap policy, the WTO found that the revenue cap regime provides less favourable treatment to U.S.-grown grain imported into Canada as the policy is only applicable to grain grown or processed in Canada west of Thunder Bay.

## Cost of Capital

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In early 2004, the Agency approved separate cost of capital rates for CN and CPR. The annual rates 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. The Agency also determines rates for cost of capital for other railway costing requirements, including the development of interswitching costs and rates.

The cost of capital rates for CN and CPR, which will be used in calculating their respective revenue caps for crop year 2004-05, are 8.79 per cent and 8.50 per cent respectively. The cost of capital is the return expected and required from an investment in a firm's debt or equity.



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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 cost of equity, or the return that shareholders expect, involves an analysis of various financial models, risk assessment and other technical relationships.

In September 2003, the Agency began talks with CN, CPR and other interested parties on recurring issues raised by the railways regarding the Agency's estimate of cost of common equity rates. The main issues under review were the appropriateness of financial models to be used in estimating the cost of common equity and the source of relevant data as required inputs to the various models.

The Agency issued its decision in February 2004, stating that it would continue to assess the three market-driven models ascribed in previous decisions in its cost of equity appraisals. Regarding elements of the Capital Asset Pricing Model, the Agency will continue to assess short- and long-term bond rates during the month of January and monitor such rates for their reasonableness to determine risk-free rates. When calculating beta values, the Agency will consider a period of five years (when possible) of monthly or weekly data obtained from the Standard & Poors / Toronto

Stock Exchange Composite Index, and the Agency will continue to assess the market risk premium on a continuing basis, by use of a time period that has sufficient length to incorporate many business cycles, periods of low and high performance, periods of volatility and stability, as well as to reflect the impact of unusual events and significant changes in world events. The Agency will continue to assess Canadian data for its cost of equity estimations.

## Net Salvage Value Determinations

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Section 143 of the *Canada Transportation 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 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 not more than net salvage value of the line. Either the railway or government may ask the Agency to determine the net salvage value, at no cost. Governments may use the line for any purpose after taking possession. The Agency received no requests for net salvage value determinations in 2004.

## Regulatory Railway Costing

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The Agency maintains a railway costing model to estimate the railway operating costs for CN and CPR. The costing model is based on railway-submitted costing data, which are reviewed and approved by the Agency. The model is used in a variety of applications, such as adjudicating rail service and rate disputes; in setting interswitching rates under the *Railway Interswitching Regulations*; in determining overhead used for charges in the construction and the maintenance of railway crossing protection at railway crossings; and, in estimating the impact of possible changes in transportation policy as well as other related regulatory activities.

As part of the process of setting interswitching rates, the Agency makes visits to railway yards to review interswitching operations. Each year, the Agency visits different yards to ensure that the rates reflect the cost of interswitching traffic at all locations across Canada. In 2004, the Agency visited four rail yards in Ontario – Sault Ste. Marie, Sudbury, Thunder Bay and Toronto.

The Agency's assistance was requested by an arbitrator during a final offer arbitration proceeding to review the railway's cost of moving automobiles (both trucks and cars) from Vancouver to Toronto and to Montreal. The Agency's findings were provided to the arbitrator.

## Historical Price Indices

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The Agency develops indices to measure changes in prices of labour, fuel and material for CN and CPR. The Agency uses these prices to establish the maximum revenue cap for Western grain movement by CN and CPR. The indices, updated annually, are also used to develop railway costs when using more than one year of data.

## Mediation

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With four cases in progress at the beginning of the year and 15 new requests for mediation received during the course of the year, the Agency handled a total of 19 mediation cases regarding rail disputes in 2004. Three cases were resolved through mediation sessions. In seven cases the respondent was unwilling to mediate and nine cases were pending at year end.

The Agency's rail mediation initiative experienced some 'firsts' in 2004. A successfully mediated resolution to a level of service dispute between a shippers' group and a major carrier occurred, and the first request for mediation initiated by a major carrier was received. Telephone mediation was also used during the year, to the satisfaction of all parties who had requested its use.

In addition to ongoing outreach activities, the Agency took part in productive discussions with stakeholders involved in specific conflicts for which it was thought

the Agency's mediation process could be useful. Mediation sessions resulting from these discussions are scheduled and expected to take place early in 2005. It is hoped, as a result of these sessions, that resolutions will develop both for the individual disputes, as well as for systemic sources of chronic conflict.

## Communicating with Canadians

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In its continued commitment to inform and consult the railway industry and its users, the Agency carried out a wide variety of communication activities in 2004. Its primary focus was a communications strategy to inform interested parties of the Agency's mandate and potential impacts of the acquisition of BC Rail by the Canadian National Railway Company in British Columbia.

The Agency Chairman and senior staff conducted meetings with provincial and municipal officials, shippers and their associations, and other railway industry delegates as well as news media representatives to explain the consequences of the provincial railway coming under federal jurisdiction, specifically the *Canada Transportation Act*. Meetings took place in a variety of locations including Victoria, Vancouver, Prince George and Dawson Creek. The Agency also produced a one-page brochure highlighting the Agency's functions and created a dedicated Web sub-site for further information.

In 2004, the Agency responded to more than 376 inquiries and requests for information from various parties in the rail industry. Most of these queries were related to the existing provisions of the Act, namely, the competitive access provisions, such as level of service, interswitching and final offer arbitration, railway crossing agreements and disputes, certificates of fitness, transfer and discontinuance and the Western grain revenue cap.

Inquiries also came from grain shippers and from producers who load their own grain into railway cars. Their questions related to car supply, car maintenance and various aspects of railway service.

As mentioned in the Agency's 2003 Annual Report, the Agency was approached by the Canadian Grain Commission (CGC) regarding the provisions of the Act in relation to grain producers loading producer cars. In 2004, Agency staff was part of an advisory committee that assisted in the preparation of a *Best Practices Guide for Producer Car Loading*. The Guide was finalized in 2004 and should be released in 2005.

In December 2004, the Chairman, several Members and staff travelled to Winnipeg and Saskatoon to meet first-hand with CGC, CWB, West Central Road & Rail and N.M. Paterson and Sons Ltd. officials to learn more about transportation issues facing grain producers.



Formal consultations with respect to the Revenue Cap Inflation Index were held in 2004 with numerous organizations in Western Canada, including provincial governments, produce groups such as the Keystone Agricultural Producers and the Saskatchewan Pulse Growers, various pool grain and terminal operators and the CWB. There were also formal consultations regarding maintenance rates and charges for railway work at road/rail crossings for non-Class I railways and for railway noise and proximity issues. The Agency is participating in the joint Railway Association of Canada/ Federation of Canadian Municipalities venture to produce a framework to resolve noise and other proximity issues.

*A new Guide on Railway Charges for Crossing Maintenance and Construction* became effective in January 2004. It is available in print form or can be downloaded from the Agency's Web site.

The Agency continued to carry on information exchanges in 2004 with railway carriers and shippers' organizations, including the Railway Association of Canada (RAC) and the American Association of Railroads, the Canadian Fertilizer Institute, the Farmer Rail Car Coalition, the Western Transportation Advisory Council (WESTAC), the Canadian Industrial Transportation Association, the Coal Association of Canada, the Forest Products Association of Canada and various Vancouver port

operators. Among the major activities was a Vancouver-to-Calgary rail trip organized by RAC that allowed the Chairman and several Agency Members to exchange with representatives from the railways and some of their most important clients.

The Agency also met with its American counterparts in the Surface Transportation Board, the National Industrial Transportation League and the Federal Railroad Administration, and conferred with the Canadian Ambassador and staff in Washington, DC. The Agency provided information about its mandate and responsibilities, and explained current legislative and regulatory provisions for transportation services in Canada.

A number of formal presentations were made to a variety of audiences including the Northwest Corridor Development Association, the American Railway Development Association, the Canadian Conference on Coal and visiting railway delegations from China and Africa. Presentations were also received from CN, CPR and the CWB.

The Agency hosted its annual forum for members of the RAC meet Agency staff and representatives of other Government of Canada departments and agencies.

The Agency participated in seven municipal trade shows in Alberta, Saskatchewan, Manitoba, Ontario and Québec.



## **CASES BEFORE THE COURTS**

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*Federal Court of Appeal -  
Cases Pending in 2004*

### **Canadian National Railway Company v. Regional Municipality of York and the Canadian Transportation Agency**

Court File No. A-63-04

Appeal of Agency Decision No. 517-R-2003, dated September 10, 2003, regarding an application for a determination of the apportionment of costs for the reconstruction of an at-grade road crossing in the town of Richmond Hill, in the regional municipality of York, Ontario. On December 7, 2004, the Federal Court of Appeal dismissed the appeal with costs.

### **Canadian Pacific Railway Company v. Canadian Transportation Agency and Elk Valley Coal Corporation**

Court File No. A-546-04

Application for a judicial review, seeking a writ of prohibition to prevent the Agency from referring the submission of the Elk Valley Coal Corporation to arbitration for final offer arbitration of rates to be charged by Canadian Pacific Railway for movement of coal by rail. A preliminary request for an interim injunction was denied by the Federal Court of Appeal; the case will now be heard on its merits and ruled upon during 2005.

### **Canadian Pacific Railway Company v. Canadian Transportation Agency, Earl T. Mufford and Roy H. Mufford**

Court File No. 04-A-43

Application for leave to appeal Agency Decision No. 485-R-2004, dated September 14, 2004, relating to an application by Earl T. Mufford and Roy H. Mufford under Section 102 of the *Canada Transportation Act* for a private crossing across and over the Canadian Pacific Railway Company's right of way on the Page Subdivision, in the township of Langley, in British Columbia.

*Petitions to the Governor-in-Council -  
Cases Pending in 2004*

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

Petition to the Governor-in-Council regarding Agency Decision No. 103-R-2000, dated February 15, 2000, which dismissed the complaint of the Mayor of Stenen, Saskatchewan, against the Canadian National Railway Company for removing a siding.

# CANADA'S FEDERAL RAILWAY COMPANIES AS OF DECEMBER 31, 2004

Algoma Central Railway Inc.
Arnaud Railway Company
Burlington Northern and Santa Fe Railway Company, The (Burlington Northern (Manitoba) Ltd. and Burlington Northern and Santa Fe Manitoba, Inc.)
Canadian National Railway Company
Canadian Pacific Railway Company
Corporation of the City of Ottawa carrying on business as Capital Railway
Chemin de fer de la Matapédia et du Golfe Inc.
CSX Transportation Inc. (Lake Erie and Detroit River Railway Company Limited)
Eastern Maine Railway Company
Essex Terminal Railway Company
Ferroequus Railway Company Limited
Goderich-Exeter Railway Company Limited
Hudson Bay Railway Company
International Bridge and Terminal Company, The
Kelowna Pacific Railway Ltd.
Kettle Falls International Railway Company
Maine Central Railroad Company and Springfield Terminal Railway Company
Minnesota, Dakota & Western Railway Company
Montreal, Maine & Atlantic Railway Ltd. and the 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
Prairie Alliance for the Future Inc.
Quebec North Shore & Labrador Railway Company
RaiLink Canada Ltd.
St. Lawrence & Atlantic Railroad (Québec) Inc.
Sault Ste. Marie Bridge Company
Sydney Coal Railway Inc.
Toronto Terminals Railway Company Limited, The
Union Pacific Railroad Company
VIA Rail Canada Inc.
Wabush Lake Railway Company, Limited

# MARINE TRANSPORTATION

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## CHAPTER 3



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THE CANADIAN TRANSPORTATION AGENCY EXERCISES ITS MARINE MANDATE UNDER THE *COASTING TRADE ACT*, THE *CANADA MARINE ACT*, THE *PILOTAGE ACT* AND THE *SHIPPING CONFERENCES EXEMPTION ACT, 1987*. IN RESPONSE TO APPLICATIONS TO USE FOREIGN VESSELS IN CANADIAN WATERS, THE AGENCY MAKES RECOMMENDATIONS TO THE MINISTER OF NATIONAL REVENUE ON WHETHER SUITABLE CANADIAN VESSELS ARE AVAILABLE TO PERFORM THE ACTIVITY DESCRIBED IN THE APPLICATION.

WHEN THE ACTIVITY ENTAILS THE CARRIAGE OF PASSENGERS BY SHIP, THE AGENCY MUST DETERMINE THAT AN IDENTICAL OR SIMILAR ADEQUATE MARINE SERVICE IS NOT AVAILABLE. THE AGENCY ALSO HAS THE POWER TO DETERMINE, IN RESPONSE TO A COMPLAINT, WHETHER TARIFFS, TOLLS AND FEES ESTABLISHED BY A PORT AUTHORITY, THE ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION, THE FEDERAL BRIDGE CORPORATION AND PILOTAGE AUTHORITIES ARE UNJUST, UNREASONABLE, DISCRIMINATORY OR PREJUDICIAL TO THE PUBLIC INTEREST. FINALLY, THE AGENCY ADMINISTERS THE *SHIPPING CONFERENCES EXEMPTION ACT* AND EXAMINES COMPLAINTS OF UNREASONABLE INCREASES IN TRANSPORTATION COST OR UNREASONABLE REDUCTIONS IN SERVICE.

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## MARINE TRANSPORTATION

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The Canadian Transportation Agency is committed to ensuring the fair and efficient conduct of certain commercial marine activities in Canadian waters.

To that end, the Agency introduced some innovations in 2004 to improve the handling of coasting trade applications, including an electronic processing system and a fast-track procedure for applications involving time-sensitive unforeseen circumstances.

The Agency received the first complaint under the *Shipping Conferences Exemption Act*, carried out a pilotage tariff investigation in response to an objection, and provided assistance to other government departments on marine matters.

## Coasting Trade Act

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The *Coasting Trade Act* safeguards the interests of owners and operators of Canadian registered vessels, while offering the flexibility to allow access to the specialized vessels available in the

international fleet when there is no suitable Canadian vessel available to carry out a commercial activity in Canadian waters.

Pursuant to the *Coasting Trade Act*, the Minister of National Revenue will issue a licence for a foreign vessel to work in Canadian waters only if certain conditions are met and if the Agency has determined that there is no suitable Canadian ship or non-duty paid ship available to provide the service or perform the activity described in the application. If the activity entails the carriage of passengers, the Agency also must make a determination as to whether an adequate identical or similar marine service is available from an operator of Canadian vessels.

In 2004, the Agency received 136 applications. Of these, 131 were approved, two were denied, and three were withdrawn.

The new Coasting Trade Guidelines were in place for the first full year during 2004. The Guidelines are available in the Marine section of the Agency's Web site. They include information on how to complete coasting trade applications, and how operators and owners of Canadian vessels can file an objection. Information is also available about time frame requirements, the importance of providing adequate information to substantiate a position, and of the suitability, availability and identical or similar adequate marine service

elements that the Agency will consider, when applicable.

During the 2003 consultations that led to the implementation of the new Guidelines, a major concern expressed by the industry was the sensitive timing requirements sometimes provoked by unforeseen circumstances. Consequently, the Agency implemented shorter time frames for dealing with these applications in 2004. A total of 64 such applications were received. Of those, 36 were for large tankers to move crude oil on the East Coast. The 28 others were for smaller tankers to move petroleum products in Ontario and Québec, and a majority of those were dealt with in an urgent manner. The new procedure seems to meet the needs of the industry and leads to the issuance of a decision in one to four working days, depending on the type of application. This new process was developed in response to requests for a quick turnaround time (i.e., four working days on average) that would allow the industry to meet its scheduled loading windows.

During the 2004 season, the Agency received 11 applications for foreign seismic research and survey vessels to carry out activities on the East Coast of Canada. One application was denied, another was withdrawn by the applicant as the contract was awarded to someone else, and nine others were approved.

The processing of coasting trade applications within the Agency was modified during 2004 with the conversion to an electronic system for communicating with the industry. The receipt of the application and supporting material, the production of the notice and the mailing list of parties are now all handled and sent electronically to a company providing a fax broadcast service.

Late in 2003, the Agency had received an application to use a foreign drilling ship for exploratory drilling off the coast of Nova Scotia. Ocean Rig ASA filed an objection, offering the *Eirik Raude*, a semi-submersible drilling rig that was in the process of being registered in Canada. A preliminary motion was filed by the applicant requesting that the Agency dismiss the objection on the basis that the *Eirik Raude* was not a Canadian ship within the meaning of the *Coasting Trade Act*, and that the Agency's jurisdiction does not extend to determining whether a foreign vessel is suitable and available or whether it may become a Canadian ship at some date in the future. The Agency dismissed the motion in 2004, stating that the task of the Agency is not to determine whether a ship offered is Canadian, available and suitable at the time of the application for a coasting trade licence, but rather whether such a vessel meets the above requirements at the time the activity is to be performed. However, based on the evidence filed during the pleadings,

the Agency was unable to conclude that the *Eirik Raude* would be Canadian at the date of the activity described in the application. Accordingly, the Agency determined that there was no suitable Canadian vessel available.

## Pilotage Act

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According to 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 some Canadian waterways designated as compulsory for pilotage. Four pilotage authorities (Atlantic, Laurentian, Great Lakes and Pacific) are responsible for providing pilotage services in their respective regions and they set 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 proposals must be filed with the Agency within 30 days of its publication date. Once an objection has been filed, the Agency must carry out an investigation of the proposed tariff and after examining operational, financial and commercial considerations, the Agency must determine if the tariff is in the public interest.

On July 31, 2004, the Laurentian Pilotage Authority published a proposed tariff increase of 4 per cent. Objections to the tariff proposal were filed: one jointly by the Canadian Shipowners Association and the Chamber of Maritime Commerce; and



the second by the Shipping Federation of Canada. An intervention in support of the tariff proposal was filed by the Corporation des pilotes du Saint-Laurent Central. The Agency conducted an investigation of the tariff proposal and issued Decision No. 709-W-2004 on December 29, 2004. The Agency determined that the 4 per cent tariff increase was not prejudicial to the public interest but that a new docking fee to be charged by the Laurentian Pilotage Authority at the St. Lambert Lock near Montréal was prejudicial to the public interest and could not be implemented. One Panel Member dissented and recommended that the proposed tariff increase of 4 percent be reduced by the portion representing productivity payments to the District 1 pilot corporation as, in the Member's view, such payments were prejudicial to the public interest.

The Atlantic Pilotage Authority published a tariff amendment on September 25, 2004, for tariff increases varying between 5 and 8 per cent for five ports. No objections were filed against the tariff proposal.

The Great Lakes Pilotage Authority published a tariff on April 10, 2004, for a 7 per cent increase applicable to all areas. On May 10, 2004, the Hamilton Port Authority filed a letter stating that it objected to the tariff proposal and that it intended to file reasons for its objection. The Agency ruled that the submission was not an objec-

tion in accordance with the *Pilotage Act*, which requires that an objection must include the reasons for the objection, so there was no requirement for the Agency to conduct an investigation.

The Pacific Pilotage Authority published a tariff amendment on August 21, 2004, for an average tariff increase of 3.5 per cent. No objections were filed with the Agency against this tariff proposal.

## Canada Marine Act

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The *Canada Marine Act* governs the independent Canadian port authorities at 19 major ports across the country, the St. Lawrence Seaway and other public port facilities managed by the Government of Canada.

The port authorities manage port operations, which include shipping, navigation, transportation of passengers and goods, handling and storage of goods, as well as the federal property where the port is situated. They also set fees for the use of port facilities and various transportation services. Objections to the port fees may be filed with the Agency. No complaints were filed in 2004.

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 also can be filed with the Agency. In 2004, the Agency received no complaints.

The Federal Bridge Corporation manages several major bridges and transportation facilities that cross 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. These two corporations must file their tariffs with the Agency and the tariffs are subject to investigation upon complaint. No complaints were filed in 2004.

## Shipping Conferences Exemption Act, 1987

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The Agency administers the *Shipping Conferences Exemption Act, 1987*, 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 the provisions of the Act and file specific documents such as conference agreements, service contracts, notices of tariff increases and surcharges with the Agency.

Under the Act, 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. On October 25, 2004, the first complaint ever lodged under this provision was filed by Pangea Logistics Inc. of Vancouver, on behalf of its client NorskeCanada, against the Canadian Pacific/Latin America Freight Association, alleging unreasonable increases in the cost of shipping paper products to Latin American destinations and unreasonable reductions in service to these destinations. Compania Chilena de Navegacion Inter-oceanica S.A., Hamburg-Sudamericanische Dampfschiffahrtsgesellschaft and Maruba s.c.a. Empresa de Navegacion Maritima S.A. are the member lines of the Association. The Agency began an investigation of the complaint and it will be completed in 2005.

## Communicating with Canadians

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The Agency maintains frequent contact with the marine industry through consultations and presentations outlining its marine mandate, and by attending marine conferences, functions and workshops. The Agency regularly attends 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 Ship Operators Association, the four pilotage authorities and organizations representing pilots.

## Assistance to Other Government Departments Canadian Coast Guard

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In March 2004, the Agency accepted a request from the Minister of Fisheries and Oceans to provide assistance in resolving a dispute between a Canadian shipping company, Transport Nanuk Inc., and the Canadian Coast Guard over the application of marine services fees. The Agency was to report to the Minister within 90 days. The Agency requested submissions from each party, examined the arguments presented as well as the

schedule of marine services fees and presented a recommendation to the Minister in June 2004.

## CASES BEFORE THE COURTS

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*Federal Court Trial Division -  
Cases Pending in 2004*

### **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 rescinded Agency Decision Nos. 73-W-2000, dated February 4, 2000, and LET-W-98-2000, dated April 7, 2000. The hearing has been adjourned.



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# AIR TRANSPORTATION

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## CHAPTER 4



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THE AGENCY ISSUES LICENCES AND CHARTER PERMITS TO PUBLICLY-AVAILABLE 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 CARRIERS ABIDE BY THE TERMS AND CONDITIONS OF CARRIAGE, FARES, RATES AND CHARGES SET OUT IN THEIR PUBLISHED TARIFFS; THAT PROPOSED FARES, RATES, CHARGES AND TERMS AND CONDITIONS OF CARRIAGE ARE CLEAR, JUST AND REASONABLE AND NOT UNDULY DISCRIMINATORY; AND THAT THEY ARE CONSISTENT WITH CANADIAN LEGISLATION AND REGULATIONS, AND WITH THE RELEVANT BILATERAL AGREEMENTS.

THE AGENCY ALSO HANDLES COMPLAINTS RELATED TO AIR FARES ON NON-COMPETITIVE DOMESTIC ROUTES. THROUGH THE OFFICE OF THE AIR TRAVEL COMPLAINTS COMMISSIONER, IT ATTEMPTS TO INFORMALLY RESOLVE CONSUMER COMPLAINTS RELATED TO AIR TRAVEL. WHERE THIS IS NOT POSSIBLE AND WHERE THE COMPLAINT RELATES TO A POSSIBLE FAILURE TO APPLY A CARRIER'S TARIFF, THE AGENCY MAY ADDRESS THE ISSUE THROUGH ITS FORMAL COMPLAINT ADJUDICATION PROCESS.

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## AIR TRANSPORTATION

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The Canadian air travel industry began a slow economic recovery in 2004, finally starting to shake off the anxiety that had plagued air transportation since September 11, 2001, followed by the outbreak of SARS in 2003 and the continuing conflict in Iraq. Although rising fuel prices, insurance rates and other associated costs continued to exert financial pressures on air carriers, passenger travel was on the rebound.

Throughout the year, the level of domestic competition continued to escalate between the key players, that is, Air Canada, WestJet, Jetsgo and Canjet, as carriers expanded their routes and offered discounts and other travel incentives.

Air Canada, the country's largest air carrier, which had been under court protection from its creditors since April 1, 2003, emerged under a new restructured holding company, ACE Aviation Holdings, on September 30, 2004.



An important issue that the Agency addressed during the year was the restructuring of Air Canada, in terms of evaluating the Canadian ownership and control requirements of the new entity, issuing modified licences and reactivating complaints that had been put on hold while a court-imposed Stay Order was in effect.

### Air Canada and the Companies' Creditors Arrangement Act

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On April 1, 2003, Air Canada and certain of its affiliates, including Jazz and Zip, were granted protection from their creditors under the *Companies' Creditors Arrangement Act* by way of a Stay Order issued by the Ontario Superior Court of Justice staying all proceedings involving Air Canada and its affiliates. That Order, initially in effect until June 30, 2003, was later extended on many occasions. It removed Air Canada, Jazz and Zip from regulatory oversight until the company restructured and emerged from creditor protection on September 30, 2004. As long as the Stay Order remained in effect, the Agency and the Air Travel Complaints Commissioner's Office were able to carry out only limited investigations of complaints concerning Air Canada and its affiliates.

Under the court-approved terms of Air Canada's emergence from creditor protection, all claims of a financial nature

arising out of incidents that occurred before April 1, 2003, were extinguished. As a result, 89 air travel complaint files were closed by a letter advising the complainants why their complaints were not being pursued. In addition, the Agency issued one decision in which it was unable to order corrective action by Air Canada. Complaints against Air Canada resulting from incidents that arose after April 1, 2003, are being pursued in the normal manner.

On December 23 and 30, 2004, Air Canada filed submissions with the Agency regarding certain complaints, setting out its position that claimants who have filed applications regarding an incident that occurred on or before April 1, 2003, are deemed to have forever released all claims, causes of action, and liabilities against Air Canada, Jazz or Zip and, as such, the applications should be closed and not allowed to be pursued. The Agency disagrees with Air Canada and, at year end, it was assessing this submission.

### Air Travel Complaints Commissioner's Office

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The Air Travel Complaints Commissioner's program was introduced in July 2000 to protect the interests of the travelling public. Under the program, written air travel complaints that have not been resolved by an air carrier to the satisfaction of the consumer are reviewed and attempts are made to resolve them in an informal manner.

REFUND SOUGHT FOR STOLEN TICKET — During a visit to Taiwan in January 2002, a traveller's return airline tickets for travel - on China Airlines from Taiwan to Vancouver and on Air Canada from Vancouver to Ottawa - were stolen. China Airlines charged the traveller \$50 and put him on a flight to San Francisco without reissuing him a ticket. In San Francisco, the traveller was obliged to purchase a new Air Canada ticket for the flight back to Ottawa.

The traveller asked his travel agent to complete a "Lost Ticket" form and submit it to the airlines to recover the cost of the replacement Air Canada ticket. However, the travel agent died before the claim was filed, and the documentation was misplaced. Having failed to obtain a refund on his own, the traveller filed a formal complaint with the Air Travel Complaints Commissioner's Office, which advised China Airlines that it had failed to respect the terms and conditions of carriage in its tariff. Subsequently, a cheque for \$1,929.50 was issued to the traveller.

Complaints that are received which have not previously been brought to the air carrier's attention are referred to as Level I complaints. Level II complaints are those in which the complainant has dealt with the carrier, but remains unsatisfied by the resolution offered.

In 2004, the Commissioner's Office received 1,105 complaints which raised 2,443 issues. In most cases, these complaints were resolved one way or another using an informal complaint resolution process. However, in 11 cases, the Commissioner's Office was unable to effect what it considered to be a reasonable resolution to a complaint. These complaints were transferred to the Agency for resolution through its formal quasi-judicial process.

On September 30, 2004, the appointment of Liette Lacroix Kenniff as Canada's second Air Travel Complaints Commissioner expired. At year end, a replacement had not been announced by the Minister of Transport. Although temporary funding was made available from Transport Canada for the first five years of the program, including for 2005-2006, funding had still not been secured for future years. Agency resources have been allocated to this program. However, given the Agency's limited financial resources and the legislative requirement to deliver on other mandates, permanent funding is essential for the Agency to continue to provide this consumer protection service to Canadians.

The Air Travel Complaints Commissioner provides a semi-annual report to the

Governor-in-Council, through the Minister of Transport, outlining the number and nature of complaints received, the manner in which the Commissioner dealt with them, the carriers involved and any systemic problems detected. The latest report issued by the Commissioner was on October 27, 2004. Another report was issued earlier in the year, on May 12, 2004. All reports are available on the Agency's Web site at: [www.cta.gc.ca](http://www.cta.gc.ca).

The following is a breakdown of complaints received in 2004, involving the five most frequently named Canadian carriers and complaints involving foreign carriers.

### Carriers Involved in Complaints Received in 2004

	Total	%
Air Canada*	484	43.8
Jetsgo	159	14.4
Skyservice	110	10.0
Air Transat	78	7.1
WestJet	12	1.1
Other Canadian airlines	56	5.1
Foreign airlines	206	18.6
<b>Total**</b>	<b>1,105</b>	<b>100</b>

\* Air Canada includes its affiliates.

\*\* Concerning workload, 297 of the 1,105 complaints originally dealt with as Level I subsequently had to be dealt with again as Level II. Though not reported separately by the Agency's database, this represents 1,402 complaints, a 10 per cent increase in workload over 2003.

### Most Common Types of Complaint Issues Received in 2004

	Jan.-Jun.	Jul.-Dec.	Total	%
Quality of service	518	414	932	38.1
Flight disruptions	253	174	427	17.5
Baggage	186	142	328	13.4
Ticketing	105	113	218	9.0
Frequent Flyer Program	31	108	139	5.7
Other	209	190	399	16.3
<b>Total</b>	<b>1,302</b>	<b>1,141</b>	<b>2,443</b>	<b>100.0</b>

### Tariffs

Air carriers operating a publicly available air service in Canada are required to publish a tariff, setting out their terms and conditions of carriage, fares, rates and charges. These tariffs must be made 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 are required to file only their general terms and conditions of carriage. Upon application, the Agency may also grant exemptions from the filing requirement for international charter rates.

Agency staff reviews international tariffs and amendments to ensure they are

consistent with Canadian law and the applicable bilateral agreements. In 2004, the Agency received 17,593 tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs on statutory notice. In addition, the Agency received 7,560 special requests to amend tariffs on other than statutory notice. Ninety-five per cent of the tariff submissions were received and processed electronically, thus accelerating the filing process and giving airlines increased flexibility.

In 2004, Agency staff responded to 62 inquiries; successfully resolved four inter-carrier disputes; referred 27 tariff applications to Agency Members for a formal decision; and completed 11 investigations, three relating to allegations that a carrier had failed to respect its tariff and eight regarding allegations that a carrier's tariff was unjust or unreasonable.

Some of the key tariff decisions in 2004 were: the determination that a carrier's responsibility for lost baggage did not terminate until the carrier delivers the baggage to the passenger; support for a carrier's right to impose restrictions on the use of discounted airline tickets; and that a carrier cannot establish terms and conditions of carriage that absolve it from any responsibility for difficulties that travellers experience as a result of a decision to advance flight times or when lengthy flight delays are encountered.

## Domestic Baggage Liability Complaints

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The Agency scheduled a public hearing in September 2004, based on separate complaints filed by three individuals. The hearing was intended to determine if Jetsgo's domestic tariff provision limiting its liability for lost, damaged or delayed baggage to \$250 was reasonable. In each case, the complainant alleged that the settlement offered by Jetsgo was insufficient and that the carrier's maximum liability of \$250 as set out in its domestic tariff was unreasonable. Since the three cases were similar, the Agency decided to combine proceedings.

The Agency's authority to investigate allegations that an air carrier's domestic tariff is unreasonable can only be exercised on the basis of a complaint. In this case, all three complainants withdrew their complaints after Jetsgo negotiated a private settlement with each of them. In the absence of a subsisting complaint, the Agency lost its ability to investigate the issue and the hearing was cancelled.

## Reimbursement for Taxes and Surcharges

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On August 25, 2003, an air traveller cancelled a ticket he had purchased from Jetsgo for travel on September 13, 2003, between Ottawa and Toronto. The purchase price of the ticket was \$167.02, only \$38 of which was the base fare. The remaining

amount included an airport improvement fee, an air travellers security charge, a Nav Canada charge, a fuel surcharge and a sales tax.

Jetsgo applied a cancellation fee of \$25, and told the traveller that the balance of the value of the cancelled ticket could be applied to future travel. Jetsgo subsequently denied the traveller's request for a refund of the additional charges on the basis that the fare in question was non-refundable. While the traveller acknowledged that the amount he paid for the base fare was non-refundable, he submitted that Jetsgo had wrongfully withheld numerous taxes, fees and security charges that should not have been applied since he had not travelled.

The Agency noted in its decision that Jetsgo's domestic tariff did not refer to "ticket" but rather, stated that the purchased "fare" was non-refundable. Based on the definition of "fare" contained in Jetsgo's tariff, the Agency determined that a "fare" was a more restrictive term than a "ticket" and should not be interpreted as including charges, fees and taxes that

are applied to any purchase. The Agency concluded that, by refusing to refund the non-fare portion of the ticket, Jetsgo had not applied the terms or conditions of carriage in its domestic tariff, which was contrary to the *Air Transportation Regulations* and directed Jetsgo to reim-

burse the traveller \$115.86, representing the difference between the non-fare portion of the ticket and a reimbursement the traveller had earlier received directly from the Canada Revenue Agency for the air travellers security charge.

## Travel Way Ruling Upheld

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In June 2004, the Federal Court of Appeal upheld an April 2003 Agency decision that ordered KLM and Northwest Airlines to take corrective measures after they had refused to honour tickets bought in October 2002 through Travel Way, a travel agency that allegedly did not remit the funds it had collected to the air carriers.

The Agency had ordered the carriers to transport the ticket holders, at no additional charge, to their original destinations within one year of the date of the Agency's decision or to reimburse the cost of the tickets. The Agency had also ordered the airlines to pay compensation for expenses incurred by people who had been adversely affected by the failure of the carriers to apply the specific provisions of their tariffs.

The Agency investigation into tickets sold by Travel Way for travel on Lufthansa, which had also refused to accept tickets sold by the travel agency and which had been put on hold, was reactivated in 2004 following the court's decision on the KLM/ Northwest Airlines appeal. Lufthansa subsequently indicated that it was prepared



to settle with passengers on the same terms as the Agency's Northwest/KLM decision.

In 2003, Air Canada advised the Agency that it was reviewing its position on its refusal to accept Travel Way tickets. However, Air Canada was placed under court-sanctioned creditor protection on April 1, 2003, and the matter was placed on hold. When the Stay Order was lifted on September 30, 2004, the Agency was prepared to resume its investigation into this matter, but the Ontario Superior Court of Justice imposed a restriction on claims against Air Canada arising from incidents that occurred before April 1, 2003. Where such claims had a financial impact on the company, the court held that they were to be extinguished. Therefore, since all 79 claims against Air Canada regarding Travel Way fell within the scope of the court order, the Agency was unable to pursue its investigation.

## The Montreal Convention - Air Carrier Liability on International Routes

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The *Montreal Convention*, which entered into force on November 4, 2003, consolidates and modernizes the rules of the previous liability regime, the *Warsaw Convention* of 1929 and its associated documents. By December 31, 2004, the *Montreal Convention* had been ratified by 57 countries, including Canada. Signatories include most of Canada's

important air travel destinations, such as the United States, countries within the European Union and Japan.

In Canada, the *Montreal Convention* is incorporated into domestic law by the *Carriage by Air Act*. It provides for unlimited liability for damages in the case of death or injury to passengers arising out of accidents during international air carriage; it simplifies ticketing requirements; it provides for electronic documentation; and it establishes a new jurisdiction that will allow most passengers to take legal action for damages in their own country, as long as the carrier in question is operating to and from that country.

For lost, damaged or delayed baggage for international travel, the *Montreal Convention* limits an air carrier's liability to approximately \$2,000 per passenger. Under the *Warsaw Convention*, this liability had been limited to \$33 per kilogram of checked baggage. As many carriers are limiting checked baggage weight to between 20 and 30 kilograms, under the *Warsaw Convention*, maximum carrier liability for lost, damaged or delayed baggage would usually have been between \$660 and \$990.

Considerable efforts were made during the course of the year by Agency staff to ensure that carriers amended their tariffs, where applicable, to reflect the terms of the *Montreal Convention*.



## Domestic Airline Pricing

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Upon complaint, the Agency may conduct an investigation and order certain remedial action against an air carrier if it determines that passenger fares or cargo rates published or offered on non-competitive airline routes within Canada are unreasonable or that the range of fares or rates offered on these routes is inadequate. The Agency had a temporary authority to conduct such investigations on its own motion until July 5, 2004.

As a result of the Air Canada Stay Order and the ensuing termination of the Agency's own motion authority, the Agency was unable to confirm, through its own investigation, the findings reported in 2002 and 2003 by an independent aviation consulting firm that fares published by Air Canada on five non-competitive routes in Western Canada and eight non-competitive routes in Eastern Canada were possibly unreasonable.

Following the emergence of Air Canada from creditor protection on September 30, 2004, the Agency concluded investigations of two pricing complaints against the carrier regarding allegedly unreasonable fares offered on two different non-competitive routes within the country. In both cases, the Agency found that the fare in question was not unreasonable and that the range of fares was not inadequate.

## Surcharges

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In 2004, the Agency considered 49 applications relating to surcharges for fuel, insurance and security, resulting in 20 related rulings or determinations. As in previous years, the Agency expressed concerns that surcharges limit a consumer's ability to compare advertised air fares, because the advertised price does not usually disclose the true price at the time of purchase. The Agency continued to encourage carriers to incorporate extra charges into their air fares and avoid surcharges. The Agency maintains that surcharges should only be used as a temporary measure to respond to unforeseen and unavoidable increases in carrier costs. The Agency will continue to monitor this situation in 2005.

## Enforcement

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To ensure compliance with Canadian law, Agency enforcement staff located across the country conduct periodic inspections of Canadian-based licensees and of passenger terminals that fall under the Agency's purview. Staff also investigate allegations that companies and individuals are operating in contravention of the *Canada Transportation Act* and related regulations. Sanctions for non-compliance range from the assessment of an administrative monetary penalty, through cease and desist orders and formal reprimands,

OPERATING WITHOUT VALID AUTHORITY NETS \$20,000 PENALTY — During the summer of 2004, a licensee from Alberta decided to set up and operate a scheduled service in Ontario. This licensee, while not owning any aircraft directly, utilized the aircraft and crews of two specific licensees to provide its service. This new service commenced on May 25, 2004, between Buttonville Airport near Toronto and Ottawa International Airport.

However, this licensee failed to respect the terms of its Canadian aviation document and utilized the aircraft and crew of a carrier that was not approved on its Canadian aviation document, thereby violating the *Canada Transportation Act*. An investigation resulted in an administrative monetary penalty of \$20,000 being paid for this contravention. Due to economic and competitive conditions, this licensee has since ceased all operations in Ontario and returned to Alberta.

up to and including licence suspension or cancellation.

The Administrative Monetary Penalties Program provides for a formal warning for a first offence, giving air carriers an opportunity to take corrective action, except in the case of carriers that fly without a licence, insurance or an appropriate aviation document. A subsequent contravention of the same provision of the Act or regulations is subject to a monetary penalty ranging from \$5,000 to \$25,000.

In 2004, the Agency completed 231 on-site inspections of Canadian-based air carriers and 26 passenger terminal operators. The Agency also conducted 34 investigations of carriers or individuals suspected of

operating illegal air services in Canada, and identified 16 contraventions. The Agency issued eight warnings, one of which was appealed, and six notices of violation to air carriers operating publicly available air services without holding a valid licence or a valid Canadian aviation document in respect of the service operated. Of the 70 informal warnings issued to carriers for minor contraventions, ten were issued after periodic facilities inspections.

## Licensing

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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. In 2004, the Agency processed 1,177 air-licensing activities, which 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 commercial air services as a Canadian air carrier, it must prove that it is Canadian-owned and controlled. Also, if a Canadian applicant proposes to use medium-sized or large passenger aircraft, it must meet certain financial requirements.

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).

Of the 166 applications for new licences received in 2004, 12 were denied, 15 were withdrawn and 139 resulted in a licence being issued. Of those, ten licences were

### Air Carriers by Nationality

	Carriers holding Agency licences as of December 31, 2003	Carriers holding Agency licences as of December 31, 2004
Canadian	849	837
U.S.	706	704
Other	114	121

### Licence Authorities Held by Nationality

Services	Canadian					United States	Other	Total
	Aircraft type							
	Small	Medium	Large	All cargo	Total			
Domestic	811	18	14	33	876			876
Non-scheduled international	384	16	14	24	438	694	97	1,229
Scheduled international	13	30	92	5	140	48	66	254
Total December 31, 2004*								2,359

\*For comparison, the total on December 31, 2003, was 2,373.

issued to the following four Canadian applicants for the operation of an air service using large aircraft (seating capacity of at least 90 passengers):

- Air Transat: licence for scheduled international service between Canada and Greece.
- Air Canada: licences for scheduled international service between Canada and Vietnam, Canada and Colombia, Canada and the Netherland Antilles, and Canada and Israel.

- Cargojet Airways: domestic, non-scheduled and scheduled international service.
- Zoom Airlines: licence for scheduled international service between Canada and France and the addition of the route Ottawa / Puerto Vallarta, Mexico to its scheduled international licence.

The Agency also granted 16 exemptions to Section 59 of the *Canada Transportation Act*, which prohibits selling services prior to holding a licence.

## Air Licensing Activities

	Completed in 2003	Completed in 2004
Applications for:		
New licences	185	166
Amendment of licences	61	67
Suspensions	200	242
Cancellations	56	67
Reinstatements	55	59
Exemptions/rulings	146	181
Other	6	2
Agency initiated:		
Suspensions	204	231
Cancellations	119	88
Reinstatements	76	74
<b>Total</b>	<b>1,108</b>	<b>1,177</b>

## Charters

An international charter air service is a non-scheduled international service operated under a contractual arrangement between an air carrier and a charterer. Carriers holding a licence for a non-scheduled international service must get an Agency program permit or an authorization to operate charter flights from Canada to a foreign country. For certain types of charter flights, carriers must obtain financial guarantees from charterers to protect consumers' advance payments.

Sometimes, carriers are asked to provide a flight outside the Agency's normal working hours. Because Agency authorization is needed before flight departure, the Agency operates an emergency telephone service. In 2004, the Agency handled 432 emergency situations, 155 of them requiring approval by Agency Members.

The Agency is proposing amendments to the *Air Transportation Regulations* to reflect the *International Passenger Charter Air Services Policy* and the *International All-Cargo Charter Air Services Policy*. These amendments would reduce the number of international charter types from ten to four: passenger resalable charters, passenger non-resalable charters, all-cargo charters and foreign-originating charters. They would also allow foreign carriers to operate charters under the same conditions as Canadian carriers, provided that the foreign carriers' countries treat Canadian carriers in a similar manner. It is expected that the proposed amendments will be published in Part I of the *Canada Gazette* in 2005 and that comments will be solicited.

### Charter Permits Issued

	2003	2004
Passengers non-resalable entity charters*	752	569
Cargo non-resalable entity charters*	324	382
Passengers resalable*	1,180	1,550
United States originating	812	1,138
<b>Total</b>	<b>3,068</b>	<b>3,639</b>

Additional statistics

Exemptions granted to the charter regulations	989	1,014
Amendments to charter permits	451	796

\* Canadian and foreign originating

Until the amendments come into effect, the Agency will continue to exempt air carriers from compliance with certain provisions of the existing regulations that conflict with the new policies. In 2004, the Agency granted 11 such exemptions.

### Canadian Ownership and Control

To be considered Canadian owned and controlled, an air carrier must be incorporated in Canada; at least 75 per cent of its voting interests must be owned and controlled by Canadians; and it must be controlled in fact by Canadians.

In 2004, the Agency completed 97 reviews to verify that Canadian applicants proposing to operate or licensees already operating domestic or international air services met Canadian ownership requirements. Seven reviews involved major investigations because the companies had complex ownership structures, or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant. The Agency denied one application because the applicant failed to establish that it was Canadian.

Regarding the reorganization of Air Canada, the Agency carefully examined information and documentation about the new corporate structure of the company as well as the capital reorganization. In a decision dated September 3, 2004, the Agency determined that it was

satisfied that the new entity, ACE Aviation Holdings, and its subsidiary air carriers would meet the Canadian ownership and control requirements, upon emergence from creditor protection under the *Companies' Creditors Arrangement Act* on September 30, 2004. The Agency issued reasons for its determination on September 29, 2004.

Late in the year, the Agency also commenced a review of the proposed restructuring of the publicly traded share capital of Transat A.T., which wholly owns the air carrier Air Transat, to determine whether Transat and Air Transat would continue to qualify as Canadian within the meaning of the *Canada Transportation Act*.

## Financial Fitness

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Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet financial requirements according to the *Canada Transportation Act* and 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 minimizes disruptions in service and protects consumers. In 2004, the Agency completed four such financial fitness reviews.



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## Agreements

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The Agency participates in negotiating air transport agreements, along with officials from Transport Canada and International Trade Canada. Negotiations include discussions about the cities that may be served, the capacity that may be offered and pricing rules. Once an agreement is established, the Agency, as a designated aeronautical authority for Canada, administers the provisions related to economic licensing and regulation within its jurisdiction.

In 2004, Canada had 75 bilateral air agreements and arrangements which provide the legal basis for regulating international air services with other governments and establish traffic rights for each country.



During the year, Agency staff participated in 14 negotiations with 12 countries and territories. These included formal negotiations with delegations from the Russian Federation (twice), South Africa, Japan, Colombia (twice) and India, and conclusion of negotiations by correspondence with Israel, Singapore, Brazil, Barbados, St. Lucia, St. Kitts and Trinidad and Tobago. Agency staff also participated at informal bilateral consultation meetings with nine foreign countries during the year.

Increasing competitiveness among Canadian air carriers, high fuel and other costs, and a revitalized Air Canada emerging from court protection were all factors that encouraged air carriers to seek new international markets in 2004. Although some opportunities were opened by negotiating new rights under bilateral air agreements, the Agency also helped air carriers to expand their opportunities by authorizing them to code share, that is, to sell transportation under their own names on flights of other air carriers; by granting permissions to operate extra flights; and by considering temporary extra-bilateral authorities to operate services not provided for under bilateral air agreements or arrangements.

In 2004, the Agency addressed 104 applications relating to bilateral air agreements and arrangements of which 60 concerned code sharing or the leasing of aircraft with flight crews. Of the total number of appli-

cations addressed, 35 dealt with applications for extra-bilateral authorities involving such matters as code sharing, the provision of fifth-freedom services and the provision of air services to specific cities.

## Discontinuance or Reduction of Services

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Under Section 64 of the *Canada Transportation Act*, 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 reduce capacity on the route by 50 per cent or more.

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 for which the notice period is 30 days (an air carrier may ask the Agency to reduce the notice periods). The *Canada*

*Transportation Act* also requires that any air carrier wishing 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 that the air service be reinstated for up to 60 days. However, a licensee that has given proper notice cannot be prevented from discontinuing or reducing air service. In 2004, the Agency received 12 applications for reductions or exemptions to the notice requirements for discontinuance of air services. Of those, two applications were withdrawn.

Two licensees advised the Agency of discontinuation of services after they had ceased their operations. Letters were dispatched to these licensees, informing them of their obligations under the *Canada Transportation Act* and stating that the Agency could not act on a request for an exemption when the licensee had already ceased operation. The licensees were instructed that should written complaints be filed with the Agency, they would be processed. However, no complaints were filed in these cases.

The Agency received 16 complaints regarding discontinuance of services, one of



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which was subsequently withdrawn. Because Section 64 of the *Canada Transportation Act* did not apply, all complainants received a letter from the Agency explaining the notice of discontinuance provisions.

## Nav Canada Charges

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The Agency is the appeal tribunal for Nav Canada charges. On February 11, 2004, Nav Canada, which provides air navigation services across Canada, filed a notice proposing to remove the airport surface detective equipment charge at the Lester B. Pearson International Airport, in Toronto, effective May 1, 2004. Users were given until April 12, 2004, to discuss the notice of revised service charges with Nav Canada. On April 19, 2004, Nav Canada filed an

announcement of revised service charges, reflecting the elimination of the airport surface detective equipment charge at the airport.

On May 12, 2004, Nav Canada filed a notice with the Agency proposing an average 7.9 per cent increase in its service charges, effective September 1, 2004. Users were given until July 12, 2004, to discuss the notice of revised service charges with Nav Canada. On July 19, 2004, Nav Canada filed an announcement of revised service charges, reflecting the same increase.

In both cases, there was a 30-day period to appeal to the Agency. By the end of the year, the Agency had received one submission, but it determined that it did not have jurisdiction over it since the time

for making an appeal to the Agency had expired.

## Communicating with Canadians

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The Canadian Transportation Agency's call centre answered 9,137 calls in 2004. A total of 27,774 copies of the *Fly Smart* booklet were distributed through the call centre and trade shows during 2004. The 50-page booklet, with advice for air travellers, is available on the Agency's Web site ([www.cta.gc.ca](http://www.cta.gc.ca)).

The Agency had 189 contacts with news media regarding air matters in 2004. Seven news releases and one background story were provided on major air issues that the Agency dealt with during the year.



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## **CASES BEFORE THE COURTS**

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*Federal Court of Appeal -  
Appeal Dismissed in 2004*

### **Northwest Airlines and KLM Airlines v. Canadian Transportation Agency**

Court File No. A-407-03

Appeal of Agency Decision No. 232-A-2003, dated April 29, 2003, which directed Northwest Airlines and KLM Airlines to take certain corrective measures following the air carriers' refusal to honour tickets issued by Travel Way. On June 23, 2004, the Federal Court of Appeal dismissed the appeal.

*Federal Court of Appeal -  
Appeals Discontinued in 2004*

### **KLM Airlines v. Canadian Transportation Agency and Ladan Raei**

Court File No. A-515-03

Appeal of Agency Decision No. LET-C-A-107-2003, dated May 8, 2003, and the Order made in Agency Decision No. LET-C-A-110-2003, dated May 9, 2003, as well as Order No. 2003-C-A-305, dated May 22, 2003, regarding a complaint arising out of KLM Airlines' refusal to transport Ms. Raei. On December 30, 2003, the appellant filed its Notice of Discontinuance with the Federal Court of Appeal. Under cover of letter dated

February 3, 2004, the Agency received a copy of the Notice of Discontinuance in this matter.

### **Air Transat v. Canadian Transportation Agency**

Court File No. 04-A-09

Application for leave to appeal Agency Decision No. 28-A-2004 dated January 16, 2004, relating to an application by Air Transat for an exemption from Subsection 115(1) of the *Air Transportation Regulations* to file with the Agency a new international scheduled services tariff on less than statutory notice. On May 6, 2004, the applicant filed its Notice of Discontinuance with the Federal Court of Appeal.

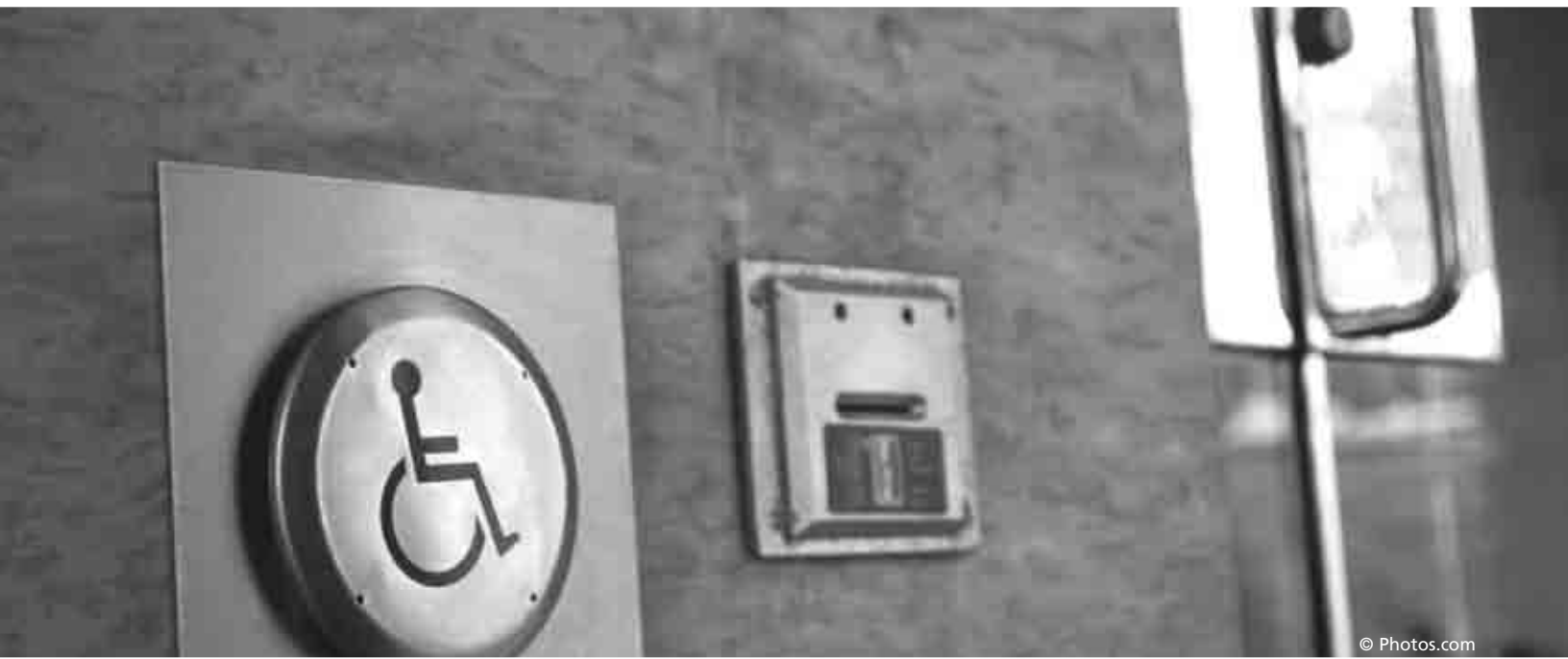


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# ACCESSIBLE TRANSPORTATION

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## CHAPTER 5



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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, WHICH INCLUDES AIR, RAIL AND FERRY OPERATIONS, AS WELL AS INTER-PROVINCIAL BUS TRANSPORTATION.

THE AGENCY SEEKS TO REMOVE UNDUE OBSTACLES BY PROMULGATING REGULATIONS, DEVELOPING CODES OF PRACTICE, COMMUNICATING WITH THE TRANSPORTATION INDUSTRY AND THE COMMUNITY OF PERSONS WITH DISABILITIES, RESOLVING INDIVIDUAL ACCESSIBILITY-RELATED COMPLAINTS AND BY ORDERING CORRECTIVE MEASURES, IF REQUIRED.

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## ACCESSIBLE TRANSPORTATION

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The Agency made some major strides in 2004 toward providing greater accessibility in Canada's federal transportation system for persons with disabilities.

Notable events:

- A new code of practice on *Removing Communication Barriers for Travellers with Disabilities* was released in June. The Communication Code, the fourth developed by the Agency, will apply to air, rail and ferry transportation service providers. It sets out criteria for improving communications and access to information for travellers with disabilities. At the same time, the Agency released a guide to help carriers to implement the new Code.
- The *Reservation Checklist*, a guide to help travel agents to assess and document the needs of travellers with disabilities, was updated after the Agency ruled on a complaint in which an air traveller with an intellectual disability was stranded in an airport overnight. The Agency's finding was that the situation had occurred largely because of a travel agent's poor communications with the air carrier.
- The Agency released accessibility guidelines for carriers operating aircraft with fewer than 29 seats to provide advice to carriers on how they can better serve the needs of persons with disabilities when travelling on small aircraft.
- National Transportation Week, a non-profit organization that promotes the importance of transportation in Canada's economic and social development, focussed on accessible transportation in 2004. The week-long event was



kicked off with a panel discussion on “The Future of the Transportation Business in an Accessible World”, which was organized by the Canadian Transportation Agency and moderated by Agency Chairman Marian Robson.

## Resolving Accessibility Disputes and Addressing Concerns

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The resolution of an accessibility dispute can have a far-reaching impact. It can change a carrier’s policies and procedures to benefit future travellers, and it can send a message to other service providers in the transportation industry about what the Agency sees as an undue obstacle.

The Agency works to resolve accessibility disputes and to address concerns in three ways: – by facilitation, mediation and complaint adjudication.

### Facilitation

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A traveller with a disability may have accessibility concerns in the early stages of planning a trip or when making a reservation. Agency staff worked in 2004 to alert carriers to travellers’ concerns and to suggest ways to address them. The Agency facilitated the resolution of travel problems by taking early action to avert or alleviate situations that might have caused obstacles to the mobility of persons with disabilities. In some situations, persons with disabilities withdrew their complaints

because, with the help of Agency staff, their concerns were addressed and remedied by the carrier to their satisfaction.

### Mediation

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For the third year, in 2004, mediation was offered as an option for settling disputes in accessible transportation for concerns, such as the use of boarding equipment, availability of prearranged wheelchair service, advance boarding and availability of preassigned seating.

Of 29 cases that were considered for mediation in 2004, three were resolved during pre-mediation discussions and four resulted in mediation sessions. Three sessions resulted in full settlement, and subsequently formal complaints were withdrawn and the files were closed. One case was partially settled during a mediation session and returned to the Agency’s formal process for completion. In the 22 remaining cases, 18 cases are pending, with sessions scheduled for early in 2005. The remaining four cases were returned to the Agency’s formal adjudication process as one mediation request had been withdrawn and parties declined to participate in the voluntary program in three other cases.

Interest in mediation as a method of solving disputes continued to grow between users and providers of transportation services in 2004. The Agency found that a number of service providers demonstrated a positive,

cooperative and collaborative approach toward the program. The Agency will continue to encourage mediation for accessibility disputes in 2005.

## Complaint Adjudication

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Under the *Canada Transportation Act*, a complaint can be filed with the Agency where it is perceived that there has been an undue obstacle to the mobility of a person with a disability within the federal transportation network.

Under Subsection 172(1) of the Act, the Agency considers a complaint using a three-step process to determine:

- whether the person has a disability for the purposes of the Act;
- whether there was an obstacle (i.e. an impediment) to the mobility of the person; and
- whether the obstacle was undue (i.e. not justified, taking into consideration the interests of persons with disabilities and those of the transportation service provider).

If the Agency finds that there is an undue obstacle to the mobility of a person with a disability, it can order corrective action. The Agency has broad powers to impose measures, which include purchasing or modifying equipment, changing or

developing a policy or procedure, training of staff and changing a training program. If a person with a disability has incurred expenses directly related to the obstacle, the Agency can also order the transportation service provider to reimburse the person.

The Agency determined in 2004, with respect to an application filed by John Benjamin, a person who is legally blind and uses a white cane, that the lack of assistance provided to him by VIA Rail Canada Inc. at various instances during his round trip between Ottawa and the city of Québec via Montréal, on October 6 and on October 10, 2003, constituted an undue obstacle to his mobility. The Agency directed VIA to take several corrective measures (see vignette VIA passenger needed assistance, page 67).

Access to taxi, limousine and bus services at Canadian airports is an important aspect in ensuring that travellers have access to seamless travel in the federal transportation network. In response to a ground transportation services complaint at the Vancouver International Airport by a traveller who is blind and uses a service animal, the Agency found that the Vancouver Airport Authority's (VAA) lack of policies and procedures when providing ground transportation to persons with disabilities, including the lack of training provided to these service

THE AGENCY RECEIVED A CALL from the niece of a woman who uses a wheelchair and who had travelled to Ottawa from Atlanta, Georgia, on a Delta Connections flight (a plane with 50 passenger seats). On arrival, the woman who cannot stand without aid, was told there was no hydraulic lift available at the Ottawa Macdonald-Cartier International Airport (a hydraulic lift was used in Atlanta to help the woman board the flight). In Ottawa, the woman was carried on a boarding chair down the steps of the aircraft onto the tarmac. She had not been told in advance that this is how she would be deplaned and she was embarrassed and uneasy about the ability of ground-handlers to carry her.

The Agency contacted the Ottawa Airport and also spoke several times to the woman's niece in an effort to facilitate an easier return flight to Atlanta. The Agency arranged for the ground-handling company to speak to the niece to discuss a satisfactory solution. The ground-handling company acknowledged that it did have a boarding lift device, and that it would be used for the woman's embarkation at Ottawa. The traveller was very appreciative of the help from Ottawa Airport staff and the Agency in this situation.

providers, constituted undue obstacles to the traveller's mobility. Among other things, the VAA was required to develop ground transportation policies and procedures for persons with disabilities and to provide the Agency with a copy of its newly developed training program for contractors, consultants and service providers who interact with the public. The Agency also wrote to all national and regional airports encouraging them to examine how contracted ground transportation services are provided so that they are accessible to persons with disabilities.

In November 2004, the Agency issued a decision on a complaint filed on behalf of a person with an intellectual disability who requires assistance when travelling alone. The man's mother made arrangements through a travel agent for him to make a return trip for the Christmas holidays from Williams Lake, BC, to Lethbridge, AB, via Vancouver and Calgary on an Air Canada flight. The mother advised the travel agent of the man's disability and made arrangements, through the travel agent, for the man to be met with a wheelchair and escorted between airport gates

for his connecting flights. Because of a breakdown in communication at the time of reservation, the services ordered from Air Canada did not meet the traveller's needs. The man, who got off the plane in Vancouver, spent a frightening night alone in the terminal when his connecting flight was delayed by bad weather.

The Agency found in its decision that the difficulties experienced by the traveller were predominantly the result of a lack of communication by the travel agent at reservation time regarding the nature of his disability, the type of service he required, and a lack of knowledge of Air Canada's Adult Unaccompanied Minor Service. While recognizing that this lack of communication contributed to an extremely unfortunate travel experience, the Agency does not have jurisdiction over travel agents.

Although the Agency did not find Air Canada to be at fault, it urged the carrier and, in particular, travel agents who relay information between passengers with disabilities and carriers, to be aware of the specific nature of travellers' disabilities and their travel-related needs, as well as carriers' practices, policies and services, so that carriers can accommodate a specific disability and avoid similar situations. The Agency decision highlights the importance of clear communication among persons booking flights, travel agents and carriers.

Recognizing the vital role that travel agents play in ensuring accessibility to the federal transportation network, the Agency provides them with an easy-to-use *Reservation Checklist* to document the specific needs of travellers with disabilities. The checklist, first issued in 2001 and reissued in 2003, was revised in 2004 and mailed out to the Canadian travel industry following the issuance of the Agency's decision in the case of the stranded traveller. The scope of the checklist was expanded to all modes of transportation within the Agency's federal jurisdiction, including air, rail, and marine.

Both the *Accessibility Complaint Guide* and the checklist are available on the Agency's Web site at [www.cta.gc.ca](http://www.cta.gc.ca).

Anyone wishing to obtain a hard copy or multiple format should contact the Agency.  
Telephone: (819) 997-6828  
or 1-888-222-2592  
TTY: 1-800-669-5575  
E-mail: [cta.comment@cta-otc.gc.ca](mailto:cta.comment@cta-otc.gc.ca)

### Council of Canadians with Disabilities v. VIA Rail Canada Inc.

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On October 29, 2004, the Agency issued a decision which stemmed from a complaint filed by the Council of Canadians with Disabilities (CCD) against VIA on December 4, 2000. The CCD had raised 46 different concerns about a new fleet

of Renaissance cars purchased by VIA in 2000, primarily relating to the accessibility of the cars for persons in wheelchairs.

The Agency had ordered VIA to remove 14 undue obstacles to the mobility of persons with disabilities. VIA had 60 days from the October decision to submit plans to implement the modifications, including a proposed schedule. VIA was also required to submit detailed plans from an accessibility perspective and to obtain the Agency's written approval before implementing the measures. After reviewing the information, the Agency would determine whether further action would be required.

VIA sought leave to appeal the Agency's October decision, in addition to an earlier preliminary decision, with the Federal Court of Appeal. The Court heard the appeal on November 22 and 23, 2004. At year-end, the Agency awaited the Federal Court of Appeal's decision.

## Agency Cases on Hold

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Outstanding in 2004, the Agency had several complaints that raise significant issues for the community of persons with disabilities. There were three cases involving persons who are obese, 15 applications from persons who have allergies, 24 applications from persons who require medical oxygen, and six complaints regarding additional fares and charges in domestic air travel for persons with disabilities

who require additional seating for either themselves or for their attendants.

The Agency was unable to move forward with 116 accessibility-related cases because of the Stay Order that had been imposed by the Ontario Superior Court of Justice on April 1, 2003, after Air Canada and its affiliates, including Jazz and Zip were granted protection from creditors under the *Companies' Creditors Arrangement Act* (the CCAA). The Stay Order stipulated that no action could be taken regarding Air Canada or its affiliates without their agreement. Further action on these cases could not proceed until the Stay Order was lifted on October 1, 2004.

That Order, initially in effect until June 30, 2003, was later extended on many occasions. It removed Air Canada, Jazz and Zip from regulatory and legislative jurisdiction until the company restructured and emerged from court protection on September 30, 2004, under a holding company called ACE Aviation Holdings. As long as the Stay Order remained in effect, the Agency was unable to carry out any activities relating to complaints or investigations involving Air Canada and its affiliates.

Following the lifting of the Stay, the Agency proceeded to issue 14 decisions having to do with cases that had been held because of the Stay. In addition, by letters dated October 1, 2004, Agency



staff informed parties that, as part of the completion of Air Canada's restructuring, on August 23, 2004, the Ontario Superior Court of Justice issued an Order pursuant to the CCAA (the Sanction Order) which lifted the Stay Order as of October 1, 2004 and, in light of this, the Agency was in a position to resume its complaint adjudication process. The Sanction Order extinguished all claims against the assets of Air Canada which arose on or before April 1, 2003.

There were 23 complaints before the Agency in 2004, regarding Air Canada's policy and procedures for the use of medical oxygen, as well as two complaints involving medical oxygen issues with My Travel Airways Limited and British Airways. The Agency also received a complaint against WestJet regarding its policy on medical oxygen as it concerns international travel. The complaints regarding Air Canada's oxygen policy had been put on hold as a result of the Stay Order, but work on the cases resumed after Air Canada emerged from creditors' protection.

By decision dated December 13, 2004, the Agency joined the applications in respect of Air Canada and WestJet given that, among other matters, the Agency could benefit from a broader perspective on the issues raised. Further, the Agency, by decision dated December 16, 2004, ruled that persons who require that

medical oxygen be available to them in order to travel by air are persons with disabilities for the purposes of Part V of the Act regardless of where a person falls within the spectrum of persons who require medical oxygen (from on a continuous basis to an as-needed basis).

Further, in the December 16, 2004, decision the Agency advised that it would issue a decision early in 2005 setting out its analysis of the facts and positions of parties and its obstacle determinations. Finally, the Agency advised that it would complete its investigation of the applications by convening an oral hearing in order to gather further information both from the respondents and from expert witnesses. The respondents with an opportunity to present and test evidence regarding the undueness of the obstacles and the appropriateness of any corrective measures that the Agency may deem appropriate should it find undue obstacles to exist.

Of the cases involving additional fares and related charges (including air travel security charges and airport improvement fees that may be levied more than once) for persons with disabilities who require additional seating for either themselves or for their personal-care attendants, there were four complaints in the domestic air industry regarding Air Canada and one complaint involving Air Canada, Jazz, WestJet, Her Majesty the Queen in Right of Canada (Minister of National Revenue),



Gander International Airport Authority and the Air Transport Association of Canada. Because of the Stay Order regarding Air Canada, these cases were put on hold. The Agency had decided to adjourn a case involving a foreign air carrier until it had issued decisions on the domestic air carrier complaints. After the Stay Order was lifted, the Agency resumed work on the domestic air complaints.

At the same time, the cases involving obesity and allergies had been put on hold because of an appeal by Linda McKay-Panos. That appeal also was subject to the Stay Order because of Air Canada's involvement in the case.

Ms. McKay-Panos had filed a complaint with the Agency against Air Canada, concerning the seating accommodation provided to her and the carrier's policy of charging passengers for additional seating required because of their obesity. The Agency had dismissed Ms. McKay-Panos' application against Air Canada in October 2002. The Agency had 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. Ms. McKay-Panos appealed the Agency's decision to the Federal Court of Appeal.

On November 26, the Federal Court of Appeal reactivated the appeal and set

December 31, 2004, as the final date for Ms. McKay-Panos to file documents in respect of her appeal. The Court also gave the Council of Canadians with Disabilities intervener status in the case. Respondents to the case were given until January 31, 2005, to file their submissions with the Court.

The Agency also had determined in another decision that an allergy, per se, is not a disability for the purposes of Part V of the Act. The Agency had found, however, that there may be individuals who have a disability for the purposes of Part V of the Act, which can be attributed to their allergies. Since the issues raised in the allergy-related applications were similar to those in the appeal by Ms. McKay-Panos, the Agency adjourned 14 of these cases, pending the completion of Ms. McKay-Panos' appeal. Subsequently, the 15th allergy-related application was similarly adjourned by the Agency.

On December 23 and 30, 2004, Air Canada filed submissions regarding certain complaints, including those concerning its medical oxygen policy, setting out its position that claimants who filed applications on or before April 1, 2003 or applications regarding an incident that occurred on or before April 1, 2003 are deemed to have forever released all claims, causes of action, and liabilities against Air Canada, Jazz or Zip and, as such, the applications should be closed and not

allowed to be pursued. The Agency was of the view that Air Canada's position was incorrect and took immediate action to have the issue resolved by bringing it forward to the Ontario Superior Court for an interpretation of the Sanction Order as to whether the applications are extinguished. The Agency's efforts in this matter continued in 2005.

## Complaint Statistics

During 2004, 52 accessibility-related complaints were received by the Agency. Thirty-six decisions were issued, some dealing with applications received prior to January 1, 2004, and others dealing with applications received during 2004. Of these decisions, 26 resolved new complaints and nine determined whether corrective measures ordered by the Agency in previous decisions had been implemented. In addition, the Agency issued a decision in respect of an application for a review of an Agency decision and 98 procedural and other interlocutory decisions in letter format regarding matters still under consideration by the Agency. Fifteen complaints were withdrawn, two were closed as a result of incomplete pleadings and four were successfully resolved through mediation. The Agency also facilitated the resolution of concerns prior to travel and three cases were transferred to Air Travel Complaints because they did not raise accessibility issues.

## Accessibility Complaint Issues 2004

Communications-carrier	8
Communications-terminal	1
Conditions of acceptance <sup>1</sup>	4
Equipment accessibility	2
Fare	1
Other	1
Personnel	1
Relaying passenger needs	2
Seating	13
Service issues <sup>2</sup>	22
<b>TOTAL ISSUES<sup>3</sup></b>	<b>55</b>

- <sup>1</sup> Conditions of acceptance cover such matters as reservation policies and acceptance of mobility aids/service animals.
- <sup>2</sup> Service issues cover assistance (boarding/ deboarding, within the terminal etc.) and mobility aids (assembling/ disassembling, delays).
- <sup>3</sup> The total number of complaint issues is greater than the number of complaints because a complaint may raise more than one issue, e.g. a complaint might include issues about seating, service and personnel difficulties.

VIA PASSENGER NEEDED ASSISTANCE – A person who is legally blind and uses a white cane made reservations with VIA Rail on October 2, 2003. At the time, he informed VIA’s ticket agent of his disability and of the assistance that he would require. The passenger’s ticket contained specific service codes. The passenger travelled with VIA from Ottawa to the city of Québec via Montréal and returned to Ottawa four days later. In Ottawa, the accommodations provided by VIA met the passenger’s needs.

Thereafter, despite numerous requests for assistance at each station, no assistance was provided. He did not receive pre-boarding assistance in Montréal and, upon detraining in the city of Québec, he did not receive help to locate the baggage area or collect his luggage. On the return trip, no pre-boarding assistance was provided in the city of Québec. Upon arrival in Montréal, no assistance was provided in detraining, locating the baggage area, collecting his luggage, reboarding or finding his seat. Neither was detraining assistance provided in Ottawa. The Agency found that the level of assistance provided by VIA to the passenger at various instances during his round trip constituted an undue obstacle to his mobility. Among other things, the Agency required VIA to create and implement service request codes to denote specific services requested by persons with disabilities, particularly regarding boarding assistance at all stations, assistance with detraining, as well as during connections. The Agency also required VIA to incorporate the incident in its training program and to provide refresher training to VIA personnel, including those on duty on the dates this incident occurred.

## Regulatory Work

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The Agency has in place two sets of regulations to eliminate undue obstacles to the mobility of persons with disabilities. They are Part VII of the *Air Transportation Regulations - Concerning the 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.

For advice on accessibility issues, the Agency consults its Accessibility Advisory Committee, made up of representatives

from the community of persons with disabilities, the transportation industry and other interested parties. The Agency consults the Committee on all of its regulatory projects, seeking opinions and advice on issues of importance to the community of persons with disabilities and on services provided by the industry to persons with disabilities. From time to time, the Agency creates working groups, drawn from the community of persons with disabilities, the transportation industry and other interested parties including members of its Committee, to assist the Agency on specific projects.

As the Agency marked 100 years at the heart of transportation in Canada in 2004, it awarded a centennial certificate of appreciation to members of its Committee in recognition of their work and in gratitude for their dedication and continued collaboration to achieve inclusive transportation services for all.

## Travelling on Small Aircraft

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The Agency decided in 2004 not to extend the scope of Part VII of the *Air Transportation Regulations* beyond aircraft with 30 passengers and more. The Agency had earlier considered including aircraft with fewer than 29 seats, but concluded that very few commercial aircraft with 20 to 29 passenger seats operate in Canada at this time. Members of the Agency's

Accessibility Advisory Committee were consulted on this matter.

As an alternative to extending the scope of the regulations, the Agency developed guidelines for minimum accessibility services that should be provided on aircraft with 20 to 29 passenger seats. At the Air Transport Association of Canada's annual general meeting and trade show in 2004, the Agency released the guidelines for accommodating passengers with disabilities on small aircraft.

The guidelines include information on what to discuss with persons with disabilities at the time of reservation, carriage of various aids and service animals, what to do if a person's mobility aid is damaged or lost, and tips on how to improve communication with persons with disabilities.

Following a joint research project with the Transportation Development Centre of Transport Canada, a report called *Boarding Small Regional Aircraft* was released in 2003. In 2004, the report was discussed at the Agency's meeting with the Accessibility Advisory Committee as part of its consultations regarding the guidelines for small aircraft. In 2005, the Agency will look at ways to encourage carriers to consider more compatible combinations of mechanical boarding devices, and boarding and transfer chairs.

## Codes of Practice

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In June 2004, the Agency released a new code of practice, Removing Communication Barriers for Travellers with Disabilities (Communication Code) and an accompanying guide during National Transportation Week.

The new Communication Code includes a set of criteria for improving communications and access to information for travellers with disabilities and applies to air, rail and ferry terminals and carriers. The accompanying guide was primarily designed to assist the transportation industry in implementing the Communication Code. However, it is also a valuable tool to transportation service providers not covered by this Code. The guide explains the recommendations in the Code for changes to signage, public announcements, Web sites, automated kiosks, public telephones and information monitors. Although these documents focus on the information needs of travellers with disabilities, they are expected to benefit all travellers.

With the new Communication Code, the Agency has now developed four codes of practice to make the federal transportation network more accessible to persons with disabilities.

They are:

- Aircraft Accessibility for Persons with Disabilities (Air Code);
- Passenger Rail Car Accessibility and Terms and Conditions of Carriage by Rail of Persons with Disabilities (Rail Code);
- Ferry Accessibility for Persons with Disabilities (Ferry Code); and
- Removing Communication Barriers for Travellers with Disabilities (Communication Code).

The codes of practice reflect the Government of Canada's policy to pursue voluntary approaches rather than using regulations as the Agency works to eliminate undue obstacles in the federal transportation network. The codes are developed in consultation with associations of and for persons with disabilities, senior citizens, manufacturers, carriers and service providers.

When transportation service providers comply with the Agency's regulations, codes and guidelines, they ensure greater access to the federal transportation system for persons with disabilities and also work toward uniform levels of service for these travellers across Canada.

## Monitoring the Codes of Practice

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To assess the level of industry compliance with the Agency's codes of practice, the Agency conducts regular surveys. In 2004, the Agency developed a questionnaire for monitoring compliance with the new Communication Code and distributed the questionnaire to carriers and terminal operators subject to the Code. Agency staff also visited several terminals and held conference calls with several other terminals and carriers subject to the Communication Code to assist them in filling out their monitoring questionnaire. The Agency will continue this work in 2005, with a view to releasing a report on the results of monitoring the Communication Code. Copies of the monitoring reports for the other codes (Rail, Ferry and Air) are available by contacting the Agency.

In 2004, the Agency's field investigators continued to verify information submitted by carriers in monitoring surveys of the codes of practice. Carriers provide written reports on their measures to meet the code requirements. This self-reporting is verified through on-site visits by Agency investigators. The visits provide carriers with an opportunity to exchange information and get guidance that will help them implement accessibility improvements more quickly. Personal contact between Agency staff and the carriers also helps to underline the importance of

awareness and vigilance in improving service to customers with disabilities.

The Agency will continue to conduct periodic surveys to monitor improvements in accessibility. Transportation service providers are encouraged to continue to improve their fleet, facilities and operations. They should assess themselves regularly against the requirements of the codes, remembering that all new equipment or changes to facilities or operations should meet or exceed the codes' accessibility criteria.

## Terminal Accessibility

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In 2004, the Agency began a project to study terminal accessibility. Preliminary research included a study of codes of practice and standards in Canada and foreign jurisdictions. The Agency visited six transportation terminals (one rail terminal, one ferry terminal and four airports) to identify best practices in barrier-free design to assist in developing a terminal accessibility standard. The Agency also consulted members of its Accessibility Advisory Committee on this issue. Work on this project will continue in 2005.

## Travelling With Service Animals

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The Agency continued its collaboration with Transport Canada which began in



2003 to examine the challenges associated with travelling with service animals, including space and seating requirements and relieving areas for the animals. The Transport Canada program included a workshop to which animal trainers and animal owners were invited. A report was released in 2004 and the Agency undertook a review of the findings. Those findings will be analysed in conjunction with the Agency's current work on terminal accessibility.

### Canadian Standards Association's Barrier-Free Design Standard and Dispensing Machine Standard

In 2004, the Agency continued to participate on the Canadian Standards Association's (CSA) Technical Subcommittee on Accessible Design for Self-Service Interactive Devices (i.e. dispensing machines). The standard will establish requirements to make interactive machines accessible to persons with varying physical, sensory and cognitive disabilities. The Agency also continued to work with the CSA on harmonizing the Accessible Design for the Built Environment Standard (B651), formerly known as the Barrier-Free Design (B651), with the International Standards Organization's standards on accessibility. Both of these projects will continue in 2005.

## Security

The Agency continues to respond to the growing emphasis on air transportation passenger security. Persons with disabilities need to be able to pass through the new security measures in an accessible and dignified way.

In 2004, the Agency continued to work with the Canadian Air Transport Security Authority (CATSA) to promote accessibility in new security screening programs. The Agency and CATSA signed a memorandum of understanding in 2004 to facilitate the monitoring of security screeners' training in conformity with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. A preliminary report was provided by Agency staff to CATSA on the training activities for screening passengers with disabilities. Agency staff will continue to work with CATSA personnel to clarify certain aspects of their training, which is the first step in the monitoring process.

### Promoting Effective Training and Awareness

As new service providers enter the marketplace and existing carriers expand their operations, the training of personnel to provide assistance to customers with disabilities is especially important. In 2004,

Agency staff worked with air carriers to ensure that training needs were addressed.

In one instance, during a routine visit to Harmony Airways, a newly-licensed scheduled carrier, an Agency field investigator was able to assist in establishing training records as required by the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

The Regulations require carriers to ensure that their employees and contractors are properly trained to assist travellers with disabilities. Agency staff carries out regular inspections to ensure the Regulations are followed. Agency staff also provides information and advice to carriers to help them educate their personnel.

In 2004, Agency staff worked with Transport Canada to help develop a new training package for transportation service providers, called *Travel the Accessible Route*.

The Agency has renewed efforts to familiarize carriers and terminal operators with the need to maintain a uniform level of basic services to travellers with disabilities. The Web sites of service providers are examined to identify inconsistencies with Agency standards, and also for inconsistencies between service providers' domestic tariffs and terms and conditions on their Web sites.

Trans-border and international tariffs are now routinely vetted before airline proposals for new or modified terms and conditions of carriage are accepted by the Agency. Terms and conditions governing the provision of services to passengers with disabilities are carefully scrutinized by the Agency and changes are recommended where required.

Although domestic tariffs no longer need to be filed with the Agency, they are routinely requested and reviewed to ensure that service commitments to customers with disabilities are reflected in these documents.

The Agency initiated work on modernizing the disability-related provisions in its domestic sample tariff in 2004. The domestic sample tariff, which in large part reflects the requirements of the *Air Transportation Regulations – Concerning the Terms and Conditions of Carriage of Persons with Disabilities*, was developed by the Agency in order to provide smaller carriers that had not developed their own tariff with sample terms and conditions of carriage, typically contained in larger carriers' tariffs. The initiative will examine, among other things, the possibility of incorporating some of the provisions from the newly released accessibility guidelines for small aircraft in the sample tariff. This work will continue in 2005.

In 2004, the Agency included a paragraph about its accessibility mandate in the covering letter sent to all recipients of new air licences. The paragraph alerts new entrants into the market of the Agency's role and responsibilities in removing undue obstacles to persons with disabilities in the federal transportation network. It is hoped that this initiative will be informative for new air licence holders so that they will begin their passenger services in an inclusive way with amenities to facilitate use by persons with disabilities.

The Agency also introduced an outreach program in 2004 to engage service providers in a discussion of travel services for persons with disabilities. These meetings are designed to enhance awareness of regulations, codes of practice, decisions issued by the Agency, and advisories sent to the transportation industry in an effort to achieve uniform levels of service for persons with disabilities. The program also reviews Agency services such as facilitation, mediation and formal complaint adjudication. Provisions for passengers with disabilities portrayed on company Web sites and tariff provisions are discussed in detail. In 2004, meetings were held with a number of carriers including Zoom Airlines, Skyservice Airlines, Air Canada, WestJet and Jetsgo. These meetings will continue in 2005 as they have a positive impact on service provision to passengers with disabilities.

## Communicating with Canadians

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

Numerous inquiries were received from the news media on accessibility issues and Agency decisions in 2004. This resulted in a variety of articles published in major Canadian dailies, weeklies and periodicals as well as broadcasts on radio and television stations. Two news releases, three backgrounders and two media advisories were issued across the country on accessibility issues, notably on the *Communication Code of Practice*.

In 2004, the Agency continued to focus efforts on enhancing communication between persons with disabilities, travel agents, tour operators and carriers to ensure that the necessary services are identified at the time of reservation and communicated to the carrier.

A presentation, called the Art of Travel Facilitation, was made to the Travel Law Day Symposium in 2004. Copies of the Agency's *Reservation Checklist* used by reservation agents to document the travel needs of persons with disabilities, were distributed to participants.

In 2004, the Agency offered assistance to the Canadian Institute of Travel Consultants, which was updating its travel agent certification training materials.

The Agency participated in exhibits at four travel-industry shows in various Canadian cities.

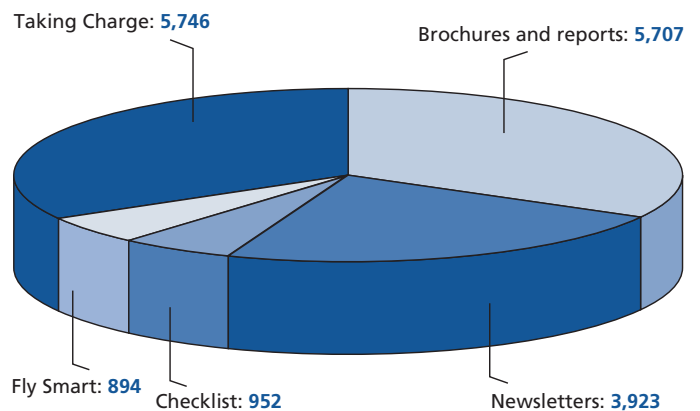
The Agency also made presentations at 20 seminars for interested travellers with disabilities. The Agency continued to promote uniform service standards for Canadians with disabilities travelling abroad. The Agency presented at such events as the International Association of Assistance Dog Partners 10th Anniversary Conference in Vancouver, the 7th Annual Canadian Airports Council's Airport Management Conference on the subject of innovation and Canada's airports, and at a Service to Special Needs Passengers workshop for the Air Transport Association of Canada.

In 2004, the Agency was an exhibitor at such events as the Disabled Peoples' International World Summit 2004, in Winnipeg; the AccessAbility Show at the Ottawa Super Ex; Marine Atlantic's Open House and Advisory Committee meeting in North Sydney, NS; the National Educational Association of Disabled Students (NEADS) national conference in Ottawa; and the Air Transportation Association of Canada annual conference in Vancouver.

The Agency participated in the 10th International Conference on Mobility and Transport for Elderly and Disabled People (TRANSED) in Hamamatsu, Japan. The Agency presented three papers. One of the papers, called *The Tapestry of Inclusion*, which was written by Chris Stark, Manager of Monitoring, Liaison and Mediation, and Gavin Currie, Director General of the Air and Accessible Transportation Branch, was selected as the best paper of the conference. The authors received a certificate of achievement at the closing ceremonies.

Nearly 500 kits promoting the next TRANSED conference, to be held in Montréal in 2007, were distributed at the conference in Japan to participants from 35 countries. The Agency is part of the steering committee to plan the event. Information about the conference is available on the Transport Canada Web site at [www.tc.gc.ca](http://www.tc.gc.ca)

### Accessibility Information Distributed During 2004



In 2004, the theme for National Transportation Week was accessible transportation. The Agency kicked off the event in Ottawa with a panel discussion on “The Future of the Transportation Business in an Accessible World.” The panel discussion, moderated by Agency Chairman Marian Robson, highlighted innovations in accessible transportation services and their importance for all Canadians.

## **CASES BEFORE THE COURTS**

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### *Federal Court of Appeal - Cases Pending in 2004*

#### **Linda McKay-Panos v. Air Canada and the Canadian Transportation Agency**

Court File No. A-100-03

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

Appeal stayed by order of the Ontario Superior Court of Justice, dated April 1, 2003, made pursuant to the *Companies' Creditors Arrangement Act* regarding Air Canada. The Stay was lifted on September 30, 2004. On November 26, 2004 the Federal Court reactivated the appeal and set December 31, 2004, as the final date for Ms. McKay-Panos to file documents in her appeal. The Court also gave the Council of Canadians with

Disabilities intervener status. Respondents to the case were given until January 31, 2005, to file submissions with the Court.

#### **VIA Rail Inc. v. Council of Canadians with Disabilities**

Court File No. A-238-04

Appeal of Agency Decision Nos. 175-AT-R-2003 and 620-AT-R-2003 wherein the Agency determined that certain aspects of VIA Rail Inc.'s Renaissance passenger rail cars posed undue obstacles to the mobility of persons with disabilities and ordered corrective measures. The Court heard the appeal on November 22 and 23, 2004. At year-end, the Court's decision on the appeal was pending.



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# ASSESSMENT OF THE ACT

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## CHAPTER 6



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IT IS THE RESPONSIBILITY OF THE CANADIAN TRANSPORTATION AGENCY TO SUBMIT AN ANNUAL ASSESSMENT OF THE CANADA TRANSPORTATION ACT.

IN 2000 AND 2001, THE CANADA TRANSPORTATION ACT REVIEW PANEL CONDUCTED A STATUTORY REVIEW OF THE ACT. IN 2001, THE MINISTER OF TRANSPORT INITIATED A BLUEPRINT EXERCISE TO ESTABLISH A FRAMEWORK FOR TRANSPORTATION POLICY FOR THE FUTURE. AS A RESULT OF THESE TWO INITIATIVES, BILL C-26, AN ACT TO AMEND THE CANADA TRANSPORTATION ACT, WAS TABLED IN PARLIAMENT IN FEBRUARY 2003. THE BILL DIED ON THE ORDER PAPER. THE MINISTER OF TRANSPORT INDICATED LATE IN 2004 THAT IT WAS HIS INTENTION TO INTRODUCE A NEW BILL TO AMEND THE CANADA TRANSPORTATION ACT, WHICH WOULD INCORPORATE ELEMENTS OF BILL C-26 FOR WHICH THERE WAS CONSENSUS FOR CHANGE.

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## RAIL TRANSPORTATION

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Since the inception of the *Canada Transportation Act* in 1996, the Agency has raised a number of concerns about the operation of the rail provisions in the Act. These concerns, details of which can be found in earlier Annual Reports, include the provisions governing interswitching, competitive line rates, the final offer arbitration process, certificates of fitness, railway line construction, and transfer and discontinuance.

### Noise, Vibration and Pollution

For a number of years, the Agency assumed jurisdiction for the resolution of disputes

concerning noise, vibration and pollution caused by day-to-day railway operations. In 2000, a decision of the Federal Court of Appeal determined that the *Canada Transportation Act* does not grant jurisdiction in this respect to the Agency. Subsequently, Bill C-26 included a provision to allow the Agency to address railway noise issues by providing the authority to publish guidelines and to order any reasonable changes in railway construction or operations to keep noise to a minimum. In the absence of the reintroduction and passage of legislative amendments, the Agency is unable to resolve noise, vibration and pollution disputes involving railway operations and can only assist when parties agree to mediation.

## Final Offer Arbitration

The current final offer arbitration (FOA) provisions are available to shippers for resolving disputes respecting rates or conditions related to the movement of goods. The Agency has received representations that FOA's limitation to rates or conditions related to the movement of goods means that some carrier charges, such as demurrage charges imposed when a shipper does not promptly unload a rail car, are not subject to any dispute resolution mechanism. Similarly, some rail charges are assessed to third parties, who may not meet the definition of a shipper.

The *Canada Transportation Act* neither restricts an FOA request to a dispute involving a single shipper, nor specifically allows a group of shippers to initiate the FOA process. Some shippers have discussed with the Agency the possibility of requesting a group FOA, but consider the lack of specific authority to do so a potential obstacle. Amending the FOA provisions to specifically permit group FOAs would eliminate the obstacle.

## AIR TRANSPORTATION

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### Domestic Pricing

The wording of Subsection 66(3) of the *Canada Transportation Act* has led to problems for the Agency in obtaining relevant information needed to make

determinations regarding allegations of unreasonable pricing on non-competitive routes, and has unduly restricted the Agency's ability to consider certain factors in reaching its conclusions on pricing investigations.

The Agency should be able to consider whatever information it deems relevant in order to make a complete assessment of a complaint and should be able to compel a carrier to produce any information that the Agency considers relevant. Minor amendments to Subsection 66(3) would remedy this situation.

The Agency had a temporary authority under Subsection 66(7) of the Act to require that, on specified routes, carriers keep it informed of amendments to their tariffs and provide tariff-related information to the Agency on request. This authority was terminated on July 5, 2004, when Subsection 66(6), which gave the Agency the authority to make findings about unreasonable pricing on non-competitive routes within Canada on its own motion, ceased to have effect. The termination of this temporary authority under subsection 66(7) could make it difficult for the Agency to obtain information needed to make its determinations. This would be remedied if the reference to Subsection 66(6) was removed from Subsection 66(7).

## Domestic Tariffs

At present, it is only upon complaint that the Agency can make a finding that a carrier has applied an unreasonable or unduly discriminatory term or condition of carriage on its domestic routes. In international markets, the Agency may make such a finding on its own motion.

The travelling public, travel agents and carriers are often unwilling to file a formal complaint with the Agency because of the time involved, potential expense or the fear that a complaint could jeopardize commercial relationships. There have also been instances where, in the absence of a complaint, the Agency has been unable to prevent a carrier from taking potentially unreasonable action. This problem could be remedied if the Agency were given own-motion authority in this area.

## Advertising Air Fares

The Agency continues to be concerned that advertised air fares often represent only a fraction of the total cost of air travel. Fuel and insurance surcharges, airport improvement fees, the air travellers' security charge, and applicable taxes, which are all part of the cost of a ticket, are often not included in the advertised price. In 2004, a number of advertisements displayed only the one-

way or "each-way" fare while, in the fine print, it was noted that only return travel could be purchased. Although such pricing practices do not contravene Canada's *Competition Act*, requiring greater transparency in advertising air fares would help consumers to understand the true price of a ticket and compare prices between carriers.

## Tariff Information on Ticket Web Sites

Airline tariffs contain important information for passengers, including the terms and conditions of carriage. The *Canada Transportation Act* requires domestic air carriers to make a copy of their tariffs available for public inspection at their business offices. The *Air Transportation Regulations* require international carriers to post a sign in their business offices indicating that their tariffs are available for inspection. International carriers are also required to keep a copy of their tariffs for public inspection in their business offices or where tickets are sold (except travel agencies).

The Agency is concerned that there is no legislative requirement that the terms and conditions of carriage be made available to the public on the airlines' Internet sites. Most Canadian carriers do not allow access to tariffs on-line, despite the increasing importance of Internet sales. An amendment to the Act requiring carriers selling

air transportation on the Internet to give electronic access to their tariffs would improve consumer protection.

### Notice of Discontinuance and Reduction of Service

Section 64 of the Act sets out public notice requirements prior to an air carrier discontinuing or reducing certain domestic air services. These provisions capture air services such as seasonal and lodge operators, that generally provide a unique service that regularly starts up and shuts down based on seasonal demand. Although the Agency may exempt air carriers from compliance with the provisions, it would be desirable to exclude these type of seasonal operations from notice requirements.

A licensee may apply to the Agency for a reduced public notice period. In assessing

such applications under Subsection 64(3), one of the factors the Agency will consider, is whether the licensee has complied with Subsection 64(1.2), which states that a licensee shall, as soon as practicable after giving notice, provide an opportunity for elected officials of the municipal or local government of the community of the point or points, as the case may be, to meet and discuss with the licensee the impact of the proposed discontinuance or reduction. There is an inconsistency between the requirements under these provisions, insofar as a licensee would not have yet given notice when making its application for a reduced notice period. Currently, the Agency addresses this by making the requirement to notify officials a condition of the formal order when the Agency grants an air carrier's request for a reduction of the notice period. Minor amendments to these provisions would remedy this situation.



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# STATUTES AND REGULATIONS

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## **ANNEX**



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# ANNEX - STATUTES AND REGULATIONS

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

The Agency has primary responsibility for the following legislation:

<i>Canada Transportation Act</i>	S.C. 1996, c. 10
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The Agency shares responsibility for the following legislation:

<i>Access to Information Act</i>	R.S.C. 1985, c. A-1
<i>Canada Marine Act</i>	S.C. 1998, c. 10
<i>Canadian Environmental Assessment Act</i>	S.C. 1992, c. 37
<i>Civil Air Navigation Services Commercialization Act</i>	S.C. 1996, c. 20
<i>Coasting Trade Act</i>	S.C. 1992, c. 31
<i>Energy Supplies Emergency Act</i>	R.S.C. 1985, c. E-9
<i>Financial Administration Act</i>	R.S.C. 1985, c. F-11
<i>Official Languages Act</i>	R.S.C. 1985, c. 31 (4th Supp.)
<i>Pilotage Act</i>	R.S.C. 1985, c. P-14
<i>Privacy Act</i>	R.S.C. 1985, c. P-21
<i>Public Service Employment Act</i>	R.S.C. 1985, c. P-33
<i>Public Service Staff Relations Act</i>	R.S.C. 1985, c. P-35
<i>Railway Relocation and Crossing Act</i>	R.S.C. 1985, c. R-4
<i>Railway Safety Act</i>	R.S.C. 1985, c. 32 (4th Supp.)
<i>Shipping Conferences Exemption Act, 1987</i>	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*

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)*

*The 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 Regulations (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).*