



Canadian Transportation Agency

# Annual Report



2000

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For more information about the Canadian Transportation Agency  
please call: (819) 997-0344 or toll free (888) 222-2592

Correspondence may be addressed to:

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



May 2001

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

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour of presenting to you the annual report of the Agency for the year 2000, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

The Air Travel Complaints Commissioner's 1st report, which was tabled in the House of Commons in the Spring 2001, is included in the Agency's 2000 annual report by reference. For the readers' convenience certain parts are specifically mentioned within this document.

A handwritten signature in black ink, appearing to read "Marian L. Robson".

Marian L. Robson  
Chairman

Encl.

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# Chairman's Message

**D**URING ITS FOURTH FULL YEAR OF OPERATION, THE CANADIAN TRANSPORTATION Agency had many successes and encountered many challenges in the evolving Canadian transportation environment. We continued to work closely with transportation providers and users to help maintain and improve Canada's transportation system.

The Agency makes decisions on a wide range of economic matters involving federally regulated air, rail and marine transportation. It also works to foster accessible transportation, and helps parties resolve certain transportation rate and service complaints.

While adjudication and regulation will always be important, the Agency also sees great value in trying to resolve problems before they become formal disputes and affect the efficient functioning of the transportation system. So the Agency also focuses on mediation and consultation. These mechanisms have helped transportation users and providers resolve matters efficiently and cost effectively, without resorting to the courts.

Last year, with the passage of Bill C-26, the federal government conferred on the Agency a number of new responsibilities designed to enhance and expand the Agency's role in protecting Canadian air travellers. This also created the position of Air Travel Complaints Commissioner, acting within the Agency. This action has given Canadians a central place where they can voice their unresolved air travel complaints against air carriers.

This annual report outlines the Agency's activities in 2000, and looks ahead at the issues we expect to deal with in the future. As required by the *Canada Transportation Act*, the report also provides the Agency's assessment of the operation of the Act.

As the Agency heads into 2001, we will continue to listen closely to the views of transportation providers and users, soliciting feedback through surveys, newsletters, toll-free telephone lines, the Internet and other means. I believe that the Agency will continue to play a valuable role in maintaining an efficient, accessible transportation system across Canada in these constantly changing times.

Marian L. Robson

# Executive Summary

**T**HE CANADIAN TRANSPORTATION AGENCY IS AN INDEPENDENT, QUASI-JUDICIAL administrative tribunal that makes decisions on a wide range of matters affecting Canadian air, rail and marine transportation.

Among other activities, the Agency issues licences to air carriers and certificates of fitness to railways; acts as the aeronautical authority for Canada on matters related to the economic regulation of air carriers; and orders the removal of undue obstacles to the mobility of persons with disabilities within the federally regulated transportation network. The Agency recognizes that market forces should prevail and so it regulates only when fair and reasonable service does not result.

Under subsection 42(1) of the *Canada Transportation Act*, the Agency must report annually on its activities. Chapter 1 of this report fully describes the Agency's activities in 2000, which included the following:

- issuing 1,307 formal decisions and orders;
- conducting the Air Travel Accessibility Survey to gather reliable statistical data on the accessibility of air travel in Canada;
- completing its first monitoring survey on compliance with the Air Code;
- taking on new responsibilities to protect Canadian air travellers as a result of the passage of Bill C-26;
- working with the newly appointed Air Travel Complaints Commissioner;
- continuing to review the comprehensive restructuring plans of Air Canada and Canadian Airlines;
- investigating two complaints that fees set by port authorities were unjustly discriminatory (one of the port authorities disputed the Agency's authority in this area and petitioned the Governor in Council, who rescinded the Agency's interlocutory decision on jurisdiction; and one of the complainants has appealed to the Federal Court);
- taking on new responsibilities related to Canada's rail industry as a result of the passage of Bill C-34; and
- launching its Mediation Pilot Project to give parties an additional tool for resolving disputes.

Subsection 42(2) of the Act requires the Agency to assess the operation of the Act. Chapter 2 of this report summarizes the difficulties the Agency has encountered in administering the Act. These include the following concerns:

- that the application of section 59 of the Act, which prohibits a company from accepting bookings and selling transportation before it receives a licence for a new air service, is too broad;

- that section 64, which requires an air carrier to notify affected communities when it proposes to reduce or discontinue air services to a Canadian point, imposes an unnecessary burden on seasonal operators and others;
- that the lack of timely operating statistics for individual carriers makes it difficult for the Air Travel Complaints Commissioner to make meaningful comparisons;
- that the process for determining whether final offer arbitration is applicable to a dispute may expose carriers to needless costs;
- that railways may structure a transfer so that it falls under the jurisdiction — federal or provincial — that provides the greatest benefits;
- that railways and governments are unclear on their rights and obligations when a rail line cannot be transferred in accordance with an agreement; and
- that the Act may need to be amended to provide an appropriate mechanism for dealing with disputes about noise, vibration and pollution caused by day-to-day railway operations.

As well as reviewing the past year, this annual report also outlines the Agency's plans for the future. Discussed in Chapter 3, these activities include the following:

- conducting public consultations on the proposed code of practice on the communication of information in the federal transportation network;
- conducting public consultations on the proposed extension of Part VII of the *Air Transportation Regulations* to small aircraft with 20 to 29 passenger seats;
- releasing a checklist to help transportation service providers meet the needs of persons with disabilities travelling by air;
- collecting the benchmark data needed to monitor the implementation of the Code of Practice for Passenger Rail Car Accessibility and Terms and Conditions of Carriage of Persons with Disabilities;
- continuing to work on resolving issues related to the accessibility of Canada's transportation system to persons who are obese;
- investigating possible anomalies in carrier pricing practices;
- monitoring domestic airfares more extensively;
- addressing air rage;
- helping develop and implement a new policy to allow the government to negotiate bilateral agreements with a broader exchange of rights and less regulation;
- adjusting to amendments to the *Shipping Conferences Exemption Act*;
- making the Agency's first revenue cap determination for CN and CP rail movements of western grain; and
- adapting to a number of Federal Court judgments related to the rail and marine modes.



Chapter 4 of this report describes the organizational structure of the Agency, including its complaints process, mission and values. It outlines the relationships among the Agency's four branches — the Air and Accessible Transportation Branch, Rail and Marine Branch, Legal Services and Secretariat Branch, and Corporate Management Branch — and the Chairman's Office. This chapter also lists the Agency's Members.

Chapter 5 describes various 2000 court cases related to the Agency. These include Federal Court of Appeal cases decided, discontinued or pending; Federal Court — Trial Division cases discontinued or pending; and petitions to the Governor in Council decided or pending.

Finally, Chapter 6 provides statistics on Agency activities. It also lists legislation for which the Agency is responsible, the Agency's codes of practice and federal railway companies that hold certificates of fitness from the Agency.

# Chapter 1

## The Year in Review

**I**N 2000, THE CANADIAN TRANSPORTATION AGENCY FINISHED ITS FOURTH FULL year of operations. It fine tuned its role as a transportation regulator and further developed its education and consultation functions, which complement its work as an administrative tribunal. By working closely with the people who provide and use transportation in this country, the Agency believes it can more effectively administer the *Canada Transportation Act*.

This year, the Agency continued to seek new ways to resolve complaints and disputes efficiently. In particular, it piloted a mediation process that may make it simpler for parties to resolve disputes outside formal agency processes. And the creation of the new office of the Air Travel Complaints Commissioner provides another avenue for handling disputes in the rapidly evolving Canadian aviation industry.

The Agency's activities fall into four broad categories: accessibility to transportation services for people with disabilities; marine transportation, primarily concerning the domestic and international transportation of freight, and pilotage matters; rail transportation, mainly concerning domestic and international freight transportation; and air transportation, domestic and international, involving passengers and cargo. During 2000, the Agency issued 1,307 formal decisions and orders as follows: 55 decisions dealt with accessibility issues within all modes of transport, 898 were related to air transportation, 284 to rail transportation, and 70 to marine transportation. This chapter outlines the Agency's activities in 2000 in these four categories.

### Accessibility for Persons with Disabilities

Eliminating undue obstacles to the mobility of Canadians with disabilities in the federal transportation network — a core element of the Agency's mandate — continued to be one of the Agency's busiest areas of activity in 2000. The Agency removes undue obstacles in two ways: on a systemic basis by developing codes of practice and regulations, and on a case-by-case basis by resolving individual complaints.

The Agency develops regulations and codes of practice, with the assistance of its Accessibility Advisory Committee, by balancing the needs of persons with disabilities for accessible transportation services with the ability of industry to deliver accessible services. The Agency's Accessibility Advisory Committee consists of representatives from the community of persons with disabilities, the transportation industry, and other interested parties.

## Regulations

The Agency has two existing sets of regulations related to persons with disabilities: the *Personnel Training for the Assistance of Persons with Disabilities Regulations* and Part VII of the *Air Transportation Regulations — Terms and Conditions of Carriage of Persons with Disabilities*. The Agency continued its work on the nature and extent of services that carriers can offer persons with disabilities travelling on small aircraft (29 or fewer passenger seats) to determine which provisions of Part VII of the *Air Transportation Regulations* — which currently apply to aircraft of 30 passenger seats or more — could also apply to small aircraft.

During 2000, the Agency analyzed comments it received from carriers operating small aircraft. The Agency then drafted proposed modifications to Part VII of the *Air Transportation Regulations* and met with its Advisory Committee to review the proposed modifications and accessibility guidelines. The Agency will consult with the public on this project with a view to having the regulations amended.

## Codes of Practice

The Agency has developed three codes of practice (air, rail and ferry) for federally regulated domestic public transportation systems in Canada.

The Agency has now decided to address various communication issues in the federal transportation network more systematically by developing a new code of practice: the Code of Practice on the Communication of Information (the Communications Code). The purpose of the Communications Code is to ensure the communication of transportation-related information to persons with disabilities travelling by air, rail or ferry. While the Communications Code will focus on the information needs of travellers with disabilities, it is expected that it will benefit all travellers.

In October 2000, the Agency discussed a first draft of the Communications Code with its Advisory Committee. At year-end, the Agency was awaiting written comments from the Advisory Committee members on the draft. The Agency will analyze the comments and amend the draft so that it can be used in further public consultations.

## Current Research Initiatives: Air Travel Accessibility Survey

During 2000, the Agency conducted the Air Travel Accessibility Survey. The goal of the survey was to gather reliable statistical data on the accessibility of air travel in Canada, and to learn more about achievements in accessible transportation and remaining obstacles to the mobility of persons with disabilities. This survey is the first comprehensive national survey of accessibility in the air transportation network. Between May and August 2000, Agency representatives distributed 4,231 surveys to travellers with disabilities and to seniors in the Halifax, Montreal, Ottawa, Toronto, Calgary and Vancouver airports. The Agency collected 1,716 responses, for a response rate of more than 40%. This high response rate and the low sampling error ( $\pm 3\%$ ) mean that the statistical results are very reliable.

## Some of the Survey Results

### Who responded

Of the 1,716 responses, 1,120 (65%) came from persons with a disability, and 448 of these respondents had multiple disabilities. People over the age of 65 made up 81% of respondents with disabilities. **Note: Although a total of 1,120 persons with disabilities responded to the survey, the number of respondents varies for each question since some respondents did not answer all questions.**

The survey included people with all types of disabilities (mobility impairments, deafness, hearing impairments, blindness, low vision, agility impairment, respiratory and cardiac conditions, and learning disabilities). Individuals with mobility impairments were by far the largest number of travellers represented in the study (63%), followed by travellers who are hard of hearing (31%).

### Purpose of trip

- 666 (61%) respondents with disabilities were visiting family or friends;
- 248 (23%) were vacationing;
- 67 (6%) were travelling on business; and
- 27 (2%) were travelling for medical reasons.

Of the travellers with disabilities surveyed, 584 (51%) said they do not travel more often simply because they have no need to do so. Of the 536 other respondents, 373 (70%) identified cost as a limiting factor; 62 (12%) said they were anxious about how their needs would be met; 28 (5%) blamed inadequate service in the past; and 9 (2%) blamed inadequate equipment in the past.

### Accessibility in airports

- 894 respondents (88%) had little difficulty getting from the entrance to the check-in counter;
- 807 respondents (88%) found flight information monitors easy to read;
- 312 respondents (32%) had problems understanding public address announcements;
- 974 respondents (94%) found signs at airports accessible;
- 96 respondents (15%) found the help desk difficult to access, and
- 124 respondents (14%) found the baggage retrieval area difficult to access.

### Carrier services and equipment

- 441 respondents (44%) with disabilities requested extra additional services from the air carriers to accommodate their needs; 19% said that the relay of travel requirements between the booking agent and the check-in staff had been poor;
- 91% indicated that the assistance provided by check-in staff met their needs;
- 273 respondents (24%) requested a particular seat to accommodate their needs; 24% of the seating requests were not fulfilled;
- 156 respondents (15%) said in-flight information was not clear;
- the level of dissatisfaction with this assistance reached 12% for those who needed assistance to get to the general public area and 13% for those who needed assistance to get to a representative of another airline; and
- 722 respondents (92%) were satisfied with the degree to which their needs were met by the carrier and 728 respondents (92%) were satisfied with the extent to which staff had been sensitive to their needs.

Although 92% of the respondents said they were satisfied with the degree to which their needs were met, respondents also identified problems. They noted service delivery issues, carrier- and terminal-related communication issues, and seating arrangements as some of the most frequent problems that persons with disabilities encounter while travelling by air. Interestingly, the most common disability-related complaints filed with the Agency for all modes of transportation in 2000 related to the same issues.

While the results of the survey are generally encouraging in terms of travellers with disabilities who travel by air in Canada without encountering obstacles to their mobility, the survey does highlight where more work is needed to improve services, equipment and facilities to better respond to the needs of air travellers with disabilities. The Agency will use the survey's statistics to set goals and priorities for further improving air transportation in Canada. This survey will also help transportation service providers respond to the needs of this segment of travellers, and will give organizations of and for persons with disabilities an overview of the obstacles their members encounter when travelling by air. The Agency is currently finalizing the survey results.

## Boarding Devices

The Agency continued its joint research project with Transport Canada's Transportation Development Centre on boarding devices used by Canadian airport authorities and air carriers. In November 2000, the partners held a discussion group with persons with mobility impairments to solicit opinions on criteria used to evaluate current boarding technologies. Once the research project is completed, the Agency will use the information to determine whether standards are needed for the provision of boarding devices in Canada.

## Monitoring

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

Before a code comes into force, the Agency establishes benchmark data on air carriers' accessibility. This enables the Agency to measure improvements in accessibility by comparing the data collected after a code comes into force against the benchmark data. The Agency gathered benchmark data from air carriers in 1997.

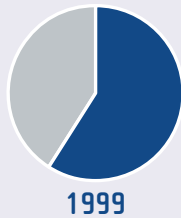
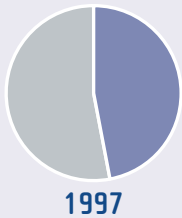
On January 1, 1999, most of the provisions of the Code of Practice: Aircraft Accessibility for Persons with Disabilities (the Air Code) came into effect. The Air Code's washroom requirements will become effective on January 1, 2002.

The Agency finished its first monitoring survey in 2000. The report highlights areas of compliance with provisions of the Air Code, as well as areas requiring additional attention. Many Canadian carriers have implemented features that were relatively expensive or difficult to install (such as movable aisle armrests and

on-board wheelchairs) or that were not required until 2002 (e.g. several washroom criteria). Improvements related to features that should have been easy and inexpensive to install (such as colour contrasting strips and appropriate signage) were not as great as expected. The overall results for the fleet showed a decrease in compliance with many of these criteria. The largest aircraft had the most accessibility features installed and the smallest aircraft had the least.

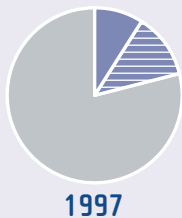
The Agency is currently working with the industry to ensure compliance with all accessibility criteria in the Air Code by January 2002. Should the voluntary approach not bring about the expected results, the Agency will consider making regulations to remove undue obstacles to the mobility of persons with disabilities. The Agency will do its next follow-up monitoring of the Air Code in 2002, when all the accessibility criteria for washrooms become effective.

## Monitoring Survey Results



### On-Board Wheelchair

The total number of aircraft that carried an on-board wheelchair increased to 271 (59%) in 1999, up from 194 aircraft (47%) in 1997.



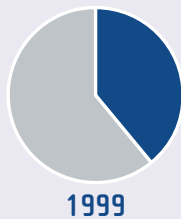
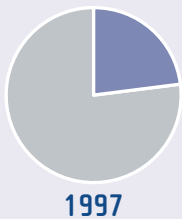
### Signage

All categories of aircraft (small, medium and large-sized) showed a decrease in compliance with the various signage criteria:

4% of the entire fleet in 1999 was in compliance with requirements for braille signage, down from 9% in 1997; and

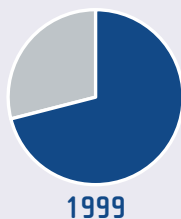
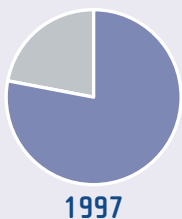
9% of the entire fleet complied with requirements for tactile row markers, down from 12% in 1997.

■ Braille  
▨ Tactile Row Marker



### 50% Movable Aisle Armrests

There was a significant increase in this area, to 181 aircraft in 1999 (39% of the entire fleet) from 98 aircraft in 1997 (23%).



### Supplemental Passenger Briefing Cards in Large Print and Braille

These cards were available on 78% of all aircraft in 1999, an increase from 71% in 1997.

**Note:** In 1997, 16 carriers operated a total of 410 aircraft with 30 or more passenger seats. In 1999, the Agency received submissions from 17 carriers operating 461 aircraft.

## Communicating with Canadians: Persons with Disabilities

The Agency fosters dialogue among organizations representing persons with disabilities, government departments and transportation industry representatives. A key example is the Agency's *Moving Ahead* newsletter, which highlights advances in accessible transportation.

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

The Agency has produced a booklet called *Taking Charge of the Air Travel Experience: A Guide for Persons with Disabilities*. The booklet provides useful information on accessible features and services available to people with disabilities who are travelling by air, and offers tips to help them plan air travel. The Agency has distributed more than 40,000 copies of the guide.

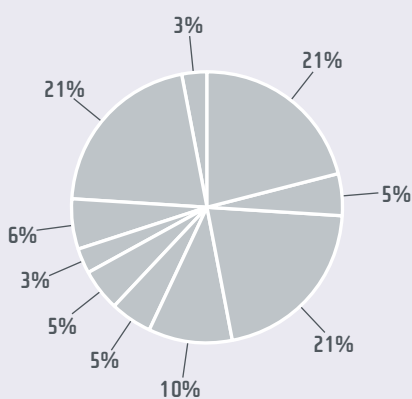
Travel tips in the guide include the following:

- ask for confirmation in writing of all services to be provided;
- self-identify if you have a disability;
- ask questions about the interior layout of the aircraft; and
- keep documents and medication within easy reach.

The Agency is building on the great success of this initiative by preparing a checklist to help ensure that transportation service providers meet the needs of persons with disabilities who are travelling by air. The checklist is designed to help travel agents make travel arrangements for their customers. It lists the services air carriers should provide, such as helping passengers with disabilities get to the boarding gate; providing specific seating to accommodate a disability; and transporting mobility aids free of charge. The checklist is intended to be a companion document to the air travel guide for both the industry and travellers with disabilities. The Agency will release the checklist in 2001.

In addition, since transportation and tourism are linked, the Agency has been involved in several activities to make it easier for tourists with disabilities to travel to and from Canada. In 2000, these included the 2000 World Congress for Travellers with Disabilities and the Mature, sponsored by the Society for the Advancement of Travel for the Handicapped; an awareness session for representatives from Caribbean and Central American nations, organized by the Florida–Caribbean Cruise Association; and the International Institute of Peace through Tourism in Jordan. The Agency also participated as an ex-officio member on an American committee that developed accessibility guidelines for some 10,000 newly constructed and altered passenger vessels in the United States.

### Accessibility Complaints Resolved In 2000 (%)



Seating Accommodation	21%
Relaying Information on Travellers' Specific Needs	5%
Service Issues	21%
Equipment Accessibility	10%
Terminal Accessibility	5%
Personnel Awareness	5%
Conditions of Acceptance	3%
Communication Issues: Terminal-related (e.g. TTYs, P.A. Systems)	6%
Communication Issues: Carrier-related (e.g. TTY lines, alternative formats)	21%
Miscellaneous	3%

Under the *Canada Transportation Act*, the Agency can investigate complaints filed by, or on behalf of, persons with disabilities to determine whether they face undue obstacles while travelling. Should the Agency find that this is the case, it can order corrective measures or compensation for certain expenses the person with a disability may have incurred.

In recent years, the number of complaints filed with the Agency has gradually increased, from 17 in 1996 to 87 in 2000. During the year 2000, the Agency resolved 47 complaints filed in either 2000 or 1999 (14 of which were dismissed by the Agency because there was insufficient information). The Agency issued a further 26 decisions as a result of follow up actions required by earlier Agency decisions, some involving complaints filed in prior years.

#### Air Travel by Persons Who Are Obese

In November 1997, the Agency received a complaint against an air carrier regarding the fare that the air carrier charged to accommodate the additional seating needs of a passenger who is obese. Following its preliminary review of the complaint, the Agency found that any decision rendered in this matter may have a significant impact on the federal transportation network. As a result, the Agency consulted more widely with Canadian industry and with other interested persons, including organizations representing persons with disabilities. It appointed an inquiry officer to study the matter further.

From the inquiry officer's April 1999 interim report, the Agency noted that the question of whether obesity is a disability is highly controversial; that the question has not been answered conclusively, either in Canada or internationally; and that no advocacy organization has emerged to argue the position that obesity is a disability. The inquiry officer collected a substantial amount of information about obesity. However, the Agency did not adopt the inquiry officer's interim



report because it determined that the report is inconclusive and the conclusions and recommendations contained in were not adequately supported by the report.

The Agency identified a preliminary jurisdictional issue to be determined — that is, whether obesity is a disability for purposes of the accessibility provisions of Part V of the Act. The Agency therefore opened written pleadings in October 2000, asking the complainant and the air carrier to comment on this preliminary issue. At year-end, the pleadings into the jurisdictional issue were ongoing. The Agency plans to hold an oral hearing on this matter.

## **Examples of Issues That Have Triggered Complaints**

### **Telephone-teletype devices (TTYs)**

A TTY is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening. A TTY is required at both ends of the conversation in order to communicate.

Complaints have led the Agency to conclude that the availability of TTYs may be a systemic problem. Complainants raised the following issues: Are there an adequate number of TTYs in airport terminals? And should ground transportation service providers at airports be required to make themselves accessible via TTY services?

Other TTY-related issues that arose in 2000 included carriers' failure to provide TTY service, and carriers' failure to promote their TTY numbers as widely as they promote their regular numbers in media such as advertisements, timetables and websites. Carriers and service providers undertook corrective measures that the Agency ordered.

The Agency will discuss these issues during consultations with industry and community representatives and other interested parties, while developing a Code of Practice on the Communication of Information.

### **Seating**

Seating issues continued to form part of many complaints the Agency reviewed and investigated. One such complaint involved the seating assignment that Royal Aviation Inc. provided to a person who needed a seat with extra leg room due to his disability. The person was not assigned such a seat. When a customer identifies a need for a seat to accommodate a disability, such as a seat with extra leg room, the carrier should give priority to that customer over someone who prefers such a seat but does not require one. The Agency found that Royal's failure to assign to the complainant, at the time of booking, a seat with extra leg room constituted an undue obstacle. Consequently, Royal was required to issue a bulletin to remind its reservation agents of Royal's aircraft seating configurations, and to amend its seating policy.

### **Accessible Washrooms**

The Agency received a complaint about the inaccessibility of the washroom facilities in the domestic flights area of the aeroquay at Montreal International

Airport (Dorval). The traveller, who uses a wheelchair, attempted to use a washroom that a pictograph identified as accessible. The traveller was unable to use this facility because the doors of the toilet stalls were not wide enough to accommodate a wheelchair.

The Agency indicated that accessible washrooms in airports are essential facilities that should be available in all public and secure areas and clearly identified. While there were accessible washrooms in all areas of Dorval airport except the domestic flights area of the aeroquay, the Agency found that the lack of accessible washrooms in that area constituted an undue obstacle for travellers who need accessible washrooms. The airport was required to renovate the accessible washroom facilities in the domestic flights area.

## **Ground Transportation**

A person who uses an electric wheelchair filed a complaint about accessible ground transportation service at the Fredericton Airport. Because he could not reserve with either of the two companies that provide accessible ground transportation, he cancelled his trip.

The Agency recognized the integral role that accessible ground transportation plays in ensuring that travellers have seamless access to the federal transportation network. While travellers have several options when travelling to airports, ground transportation services for travellers leaving airports are often restricted by exclusive contracts between service providers and airport operators. The Agency found that there was an undue obstacle in that the airport operator failed to ensure that its contractors had procedures and policies in place to effectively provide the accessible ground transportation services outlined in the contract. The Agency ordered the airport to report on what it had done to prevent a recurrence of the situation and the ground transportation company was instructed to issue a bulletin to its employees and to its subcontractors summarizing this incident.

## **Self-determination**

The Agency investigated a complaint about Air Canada's refusal to allow a person with limited mobility due to arthritis to travel unattended on a flight operated on behalf of United Air Lines, Inc. from Montreal to Washington. In an effort to give the traveller easy access to the onboard washroom, an Air Canada flight attendant offered the traveller a seat at the back of the cabin. The traveller declined as "she was unable to use the washroom by herself." The flight attendant determined that the traveller was non-ambulatory and non-self-reliant, and could not travel unattended. Despite her protests and insistence that she could travel alone, the attendant insisted that she deplane. The next day, a family member travelled from Washington to accompany her.

The Agency found that the flight attendant's failure to accept the traveller's self-determination of the assistance, if any, she needed during her travel

constituted an undue obstacle. It disrupted her travel plans and inconvenienced her family. The flight attendant should have talked with the traveller to ensure that she could travel unattended and did not require extraordinary services. Air Canada was required to report on the corrective measures it has taken to make its employees aware of this incident; to submit the training records of the flight attendant who interacted with the traveller; and to reimburse all of the out-of-pocket expenses of her family member.

## Air Transportation

The Agency is the licensing authority for publicly available air services. As well, it is the aeronautical authority for Canada on matters related to the economic regulations of air carriers, participates in negotiations with other countries and administers international agreements. Traditionally, its five main areas of responsibility related to air transportation were licensing, financial evaluation, administration of international agreements, tariffs and enforcement. However, on July 5, 2000, with the passage of Bill C-26, Parliament conferred on the Agency a number of new responsibilities designed to enhance and expand the Agency's role in protecting Canadian air travellers.

These new and expanded responsibilities include the following authorities:

- to review, upon complaint, all fares, rates and charges on domestic air carrier routes where there is no or limited competition, and to determine their reasonableness or adequacy;
- to monitor, for two years, air carrier pricing on routes where there is no or limited competition, to ensure that travellers on such routes are treated similarly to travellers on comparable competitive routes;
- to ensure that air carriers apply the terms and conditions of carriage set out in their domestic tariffs (a parallel provision already existed for air carriers operating internationally);
- to order carriers to provide compensation for out-of-pocket expenses when the Agency determines that air carriers have not respected their published terms and conditions of carriage; and
- to determine, upon complaint, whether air carriers' terms and conditions of domestic carriage are unreasonable and unduly discriminatory, and to order corrective action if they are. (Again, this complements an existing provision for air carriers operating internationally.)

The new legislation also created the position of the Air Travel Complaints Commissioner, who deals with unresolved air travel complaints for which no remedy exists.

In addition, the legislation extended the notice period for air carriers intending to reduce or withdraw their services to communities that have limited access to air services, and gave the Agency the ability to determine whether proposed takeovers or mergers will affect the Canadian status of an air carrier.

These legislative changes were designed to maintain the government's policy of allowing market forces to encourage a healthy and responsive air transportation system, while fostering the growth of smaller Canadian carriers. In addition, the legislation aims to ensure that Canadian air travellers can get their legitimate travel complaints resolved fairly.

## **Air Carrier Licensing**

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

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

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

If the Agency determines that a licensee ceases to meet the requirements to hold its licence, the Agency must suspend or cancel the licence. The Agency may also suspend or cancel a licence if the licensee asks it to do so. Air carriers conducting seasonal operations to hunting and fishing lodges most often make such requests.

## **Canadian Ownership and Control**

In 2000, the Agency completed 142 reviews to verify that Canadian applicants proposing to operate or operating domestic or international air services met Canadian ownership requirements. Of the 142 reviews, 11 involved major investigations because the companies had complex ownership structures, or the companies had minority shareholders or business associates who were not Canadian and who might have exercised control over the applicant. Of those complex investigations, one was a review of the Canadian ownership status of Canada 3000 Airlines following its initial public share offering. The Agency had to be satisfied that adequate monitoring and control measures were in place to ensure that Canada 3000 Airlines remains Canadian, as defined in the Act. The Agency also reviewed the licence applications of IMP Group Limited, doing business as CanJet Airlines, as one of the air carriers providing competitive discount services to Canadians. The Agency also conducted a comprehensive review of the Canadian status of Air Canada in the context of airline restructuring. The Agency denied one application because the applicant failed to prove that it was Canadian, as defined in the Act.

## Financial Fitness

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet certain financial requirements stipulated in the Act and in the *Air Transportation Regulations*. These requirements are designed to ensure that applicants are financially fit when they start operations and have a reasonable chance of success. The requirements also help minimize disruptions in service and protect consumers. In 2000, the Agency reviewed one such application to determine whether the applicant had enough liquid funds to cover all start-up costs, and all operating and overhead costs for a 90-day period. The requirements were met by the applicant and the applied for licences were issued.

## Discontinuance of or Reduction in Domestic Air Services

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

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

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

In 2000, the Agency and its staff addressed 29 matters related to the notice requirements of section 64 of the Act, which governs discontinuance of air services. Of these, nine involved complaints about the discontinuance or reduction in a domestic air service. In addressing these cases, it was determined whether the notice requirements of section 64 of the Act applied and, if so, whether the air carriers concerned had complied with them.

With respect to the nine complaints, in one case the Agency determined that the provisions of section 64 applied, however, the Agency dismissed the

## Restructuring of the Canadian Airline Industry

complaint because the air carrier had already been granted an exemption from the provisions of section 64. In five other cases, it was determined that section 64 of the Act did not apply and these were either dismissed or referred to the Air Travel Complaints Commissioner. Additionally, two complaints were withdrawn and one complaint was ongoing as of December 31, 2000.

With respect to the other matters which did not involve complaints, it was determined in fifteen cases that the provisions of section 64 applied; however, of these cases, one was dismissed by the Agency. In six cases it was determined that the provisions did not apply.

In addition, in eight cases the Agency allowed a reduced notice period ranging from five to 30 days; in four cases, it varied the prescribed form of notice; and in seven cases, it granted exemptions from the provisions of section 64.

In 2000, consumers submitted nine complaints using the discontinuance complaint form that were not in fact related to section 64 issues. The Agency turned those complaints over to the office of the Air Travel Complaints Commissioner.

The restructuring of the Canadian airline industry that began in 1999 continued into 2000.

During 2000, the Agency continued to review the comprehensive restructuring plans of Air Canada and Canadian Airlines, including the Air Canada offer to purchase an aggregate of 6,875,000 of its publicly traded common shares and Class A non-voting common shares at a price of \$16 per share, and significant agreements Air Canada entered into with several entities. The Agency reviewed Air Canada's agreements with UAL Corporation; its subsidiary, United Air Lines Inc.; and Deutsche Lufthansa AG. Like Air Canada, these companies are members of the Star Alliance, which several airlines formed to integrate their networks, among other goals. The Agency also reviewed Air Canada's agreements with the Canadian Imperial Bank of Commerce and the Caisse de dépôt et placement du Québec.

Given the importance and magnitude of these agreements, the Agency also reviewed the Canadian status of Air Canada. It examined the transactions or intended transactions pertaining to these agreements to determine what impact, if any, they would have on Air Canada's Canadian status.

After examining all of the relevant evidence, the Agency concluded that non-Canadians did not exercise control in fact over the affairs of Air Canada as a result of the Air Canada offer and related transactions, including transactions with Lufthansa and UAL. The shareholders who own Air Canada's publicly traded common shares, and the directors these shareholders appoint, continue to control Air Canada in fact. Air Canada also continues to administer an adequate share ownership constraint system, which ensures that Canadians hold at least

75% of the voting shares at all times. These shares carry the majority of votes that can be exercised at shareholders' meetings. The Agency has also examined the composition of Air Canada's board of directors and notes that most of its directors are Canadian.

As part of the restructuring, the operations of Air Canada's regional air carriers (Air Nova Inc., Air Ontario Inc., Air B.C. Ltd. and Canadian Regional Airlines (1998) Ltd.) were transferred to Air Canada Regional Inc., an Air Canada subsidiary incorporated on October 6, 2000. It does business as Air Nova, Air Alliance, Air Ontario, Air B.C. and Canadian Regional. This transfer of operations, which was done through a series of amalgamations, was completed on January 1, 2001. Domestic air services formerly operated by Air Canada's regional air carriers will be continued by Air Canada Regional Inc.

Additionally, on January 1, 2001, Air Canada and Canadian Airlines International Ltd. were amalgamated. Effective this same date, following an application by Air Canada, the Agency cancelled certain licences that Canadian Airlines held and transferred others to Air Canada.

## Domestic Pricing

Under Bill C-26, which amended the *Canada Transportation Act*, the Agency was given new responsibilities related to domestic pricing in markets with no, or limited competition. The amended legislation came into effect on July 5, 2000. Under it, if the Agency finds — either on complaint or through its own monitoring — that a fare, which applies to passengers, or rate, which applies to cargo, offered on a route in Canada served by only one carrier is unreasonable, it may order the carrier to reduce the fare or rate or to refund people who were overcharged, if practicable. The Agency may also take action if it determines, either on complaint or through its own monitoring, that an inadequate range of fares or rates has been offered. For example, a carrier cannot charge passengers significantly more for transportation on a non-competitive route than for transportation on a similar competitive route.

Between July 5, 2000 and December 31, 2000, the Agency received 36 complaints about domestic air carrier pricing. Seven of these were subsequently withdrawn. The Agency began investigating the remaining complaints, but concluded only four of these investigations by year-end. All four of the concluded cases involved routes that the Agency determined to be competitive, so the Agency dismissed these complaints because they did not fall within the scope of the revised Act. The Agency expects to render its first decision on pricing on a non-competitive route early in 2001.

After Bill C-26 was passed, the Agency began monitoring fares offered by carriers on routes where there is no or limited competition to determine whether they were broadly comparable in level and range to those on similar competitive routes. This program has identified some possible anomalies in carrier pricing practices, which the Agency will investigate further in 2001.

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

## Bill C-26

The Agency participated in parliamentary hearings into airline restructuring and Bill C-26. With Bill C-26 coming into effect and the subsequent appointment of the Air Travel Complaints Commissioner, the Agency began to accept complaints from consumers under the new legislation on July 5, 2000.

The main duties of the Commissioner are as follows:

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

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

To help Canadians understand the role of the Commissioner and the Agency's new responsibilities, the Agency established an air travel complaints website ([www.cta.gc.ca](http://www.cta.gc.ca)) and a toll-free telephone information line (888-222-2592, TTY 800-669-5575), attended meetings with travel agents and air carriers, spoke before representatives of municipalities and participated in travel trade shows.

The Commissioner's observations and a description of the operation of the complaints function are found in the Air Travel Complaints Commissioner's 1st report to the Minister of Transportation, which was tabled in the House of Commons in the Spring 2001 and is available via the Agency's website [www.cta.gc.ca](http://www.cta.gc.ca). The Commissioner's report forms part of the Agency's annual report.



## Consumer Complaints

The Agency has traditionally played an important but low-key role in resolving air travel complaints. In 1998, it helped to resolve 143 complaints from travellers experiencing difficulties with their air carriers. In 1999, the number of complaints increased significantly to 165. The number of consumer complaints continued to increase in the first six months of 2000; the Agency received 241 between January 1 and June 30.

After Bill C-26 was passed on July 5, 2000, the number of air travel complaints increased substantially. The Agency received 1,248 complaints between July 5 and December 31.

*“The restructuring of the Canadian airline industry has come at a price, and many consumers caught in the middle felt that they were the ones paying the largest chunk of it.”* Air Travel Complaints Commissioner’s 1st report

Air travellers’ complaints in 2000 dealt with a wide range of subjects, some of which fell within the Agency’s regulatory purview and some of which came under the Commissioner’s jurisdiction. To quote again from the Commissioner’s 1st report:

*“To avoid confusion and to make it easier for consumers already frustrated by their air travel experiences, the Agency recommends that all [unresolved] air travel complaints be sent to the Commissioner...”*

*“Rather than set up two separate organizational structures to deal with the different types of complaints, it was decided that for operational purposes the Commissioner would be supported mainly by personnel from the [Agency’s] Tariffs, Complaints and Enforcement Directorate.”*

To deal with the influx of complaints and to support the Commissioner, the Agency established the Complaints Investigations Division within the Tariffs, Complaints and Enforcement Directorate. This unit consists of five complaints officers, five complaints investigators and a manager.

During 2000, the Agency received 1,509 complaints from air travellers. These ranged from complaints about the qualities of meals, long line-ups, lost luggage and flight delays to requests from persons accused of unruly behaviour for a review of the penalty imposed by the carrier. Most of these complaints were handled through the Commissioner’s informal complaint resolution process. (For a full description of this process, see *The Report of the Air Travel Complaints Commissioner*.) Most of the complaints contained elements that fell within the Agency’s jurisdiction. The issue was usually whether the carrier had respected its own rules, as set out in its published tariff under terms and conditions of carriage. The Agency makes every effort to resolve these complaints informally, but this is not always possible. In such cases, the complaint is referred to a panel of Agency Members for a formal decision. In 2000, there were three such referrals.

*A carrier refused a claim for a number of CDs and CD-ROMs missing from a passenger's luggage. The company's tariff states that "the Carrier shall not be liable for the loss, damage, or delay in delivery of fragile or perishable articles, money, jewellery, silverware, negotiable papers, securities, or other valuables." Therefore, the carrier argued, it was not liable for the missing CDs and CD-ROMs, since they should be included in the category "other valuables." The Agency concluded that the carrier "has contravened paragraph 107(1)(n) of the Air Transportation Regulations because its domestic tariff does not clearly state the carrier's policy with respect to... exclusions from liability respecting goods."*

*A frustrated flyer complained to the Agency about a flight delay in Toronto, a lengthy line-up at the check-in counter in Florida and difficulties in obtaining pre-selected seats, which had been paid for in advance. The Agency determined that the charge relating to seat pre-selection was not specified in the carrier's tariff and that this contravened subsection 110(5) of the Air Transportation Regulations. The carrier refunded the money in question.*

*A family of four's connecting intra-Italy flight to Rome was late. As a result, they were denied boarding on their flight from Rome to Canada on the grounds that they arrived at check-in less than 90 minutes before departure. They returned to Canada later the same day, on a different flight and routing. The carrier also credited 25,000 points to the family's frequent flyer account. The complainants stated that the carrier had acted improperly in denying them a place on the original aircraft. While pointing out that the check-in time posted in the carrier's tariff was 30 minutes before departure, not the 90 minutes claimed, the Agency concluded that in the absence of further evidence indicating the exact time at which the complainants presented themselves to the check-in agent, the carrier had complied with the terms and conditions of its tariff. Accordingly, the Agency dismissed the complaint.*

A number of other consumer complaints dealt with tariff-related compensation issues, such as compensation for lost luggage, denied boarding, flight delays and unused airline tickets. The Agency was able to resolve most of these complaints to customers' satisfaction using the informal complaints system. However, it appeared at year-end that several of these complaints would be referred to a panel of Agency Members early in 2001 to determine whether the carrier had applied its tariff properly.

A carrier can refuse to transport passengers on the basis of their alleged unruly behaviour on board an aircraft. Some passengers had asked the Agency to relieve

them from the carrier's sanctions or to overturn the carrier's determination that the passenger acted inappropriately. Before Bill C-26 was passed on July 5, 2000, the Agency's authority in such cases in respect to domestic flights was limited to determining whether the carrier acted in accordance with its tariff and whether the published tariff was clear. After July 5, the Agency could also determine whether a carrier's tariff provisions on unruly conduct were unreasonable or unduly discriminatory. However, by the end of the calendar year, this latter provision had not been put to the test.

In 2000, the Agency rendered decisions on three complaints related to a carrier's refusal to transport a passenger due to alleged unruly behaviour. In two instances, the Agency determined that the carrier had acted in accordance with its tariff and dismissed the complaint. In the third case, the carrier advised that it would not accept a passenger's reservation because the passenger was a member of a particular environmental organization. The Agency determined that the carrier had not acted in accordance with its tariff. Because the carrier said it will allow any member of an environmental organization to travel on its flights in the future, the Agency simply required the carrier to respect the terms and conditions of its domestic scheduled tariff at all times by not imposing conditions not specified in that tariff.

At year-end, the Agency was actively investigating four other unruly passenger complaints.

## International Charters

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

Charter permits specify time frames within which a flight may operate. Sometimes, carriers are asked to provide a flight at a time outside the Agency's normal hours of operation and they require the Agency's authorization before the flight can depart. The Agency operates a telephone service for such emergency situations occurring outside its normal business hours. In 2000, the Agency dealt with 372 such situations; 128 of them required contact with Agency Members. (See Chapter 6: Annual Statistics, Charters Division, 1999 vs. 2000.)

On April 4, 2000, the Minister of Transport announced the new International Passenger Charter Air Services Policy. The objectives of the policy are to enhance

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

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

In 2000, the Agency continued to use the flexibility in its exemption powers to implement the new cargo policy. It granted 50 exemptions from the provisions of the *Air Transportation Regulations* that prohibit parties from chartering an aircraft to someone who obtains payment at a toll per unit. The policy also allowed the Agency to grant special authority to foreign air carriers for Canadian- and foreign-originating entity cargo charter flights to or from a third country, commonly referred to as fifth-freedom flights. The Agency dealt with 153 applications for Canadian-originating fifth-freedom cargo charters and with 122 applications for foreign-originating fifth-freedom cargo charters.

At present, the Agency is amending the *Air Transportation Regulations* to reflect the two new charter policies. In the interim, the Agency has granted 29 general exemptions from those provisions of the *Air Transportation Regulations* that conflict with the International All-Cargo Charter Air Services Policy or with the International Passenger Charter Air Services Policy.

## NAV Canada Charges

On June 1, 2000 and October 1, 2000, NAV Canada filed a notice of revised service charges for air navigation services with the Agency, under section 36 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, c. 20. These revised charges took effect on September 1, 2000 and January 1, 2001, respectively. In both cases, NAV Canada temporarily reduced its service charges, largely due to increasing air traffic revenues and to company-wide cost reduction initiatives. Although parties could appeal these charges to the Agency for a period of 30 days, the Agency received no appeals.

## Agreements

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

The Agency administers and implements bilateral air agreements, and participates in bilateral negotiations led by Canada's Chief Air Negotiator and include officials from the Agency, Transport Canada and the Department of Foreign Affairs and International Trade. Negotiations cover matters such as points served, capacity and pricing regulation. In these negotiations, the Agency contributes expertise related to implementation of air agreements, operation of air services, charter matters and airline commercial agreements (matters such as code sharing).

Canada currently has 73 bilateral air agreements or arrangements. In 2000, staff participated in negotiations with 11 countries: the People's Republic of China (by correspondence), Hong Kong, Japan, Singapore, Australia, New Zealand (by correspondence), Russia, Israel, Austria, Iceland and the United States. Canada achieved improved arrangements for air links to and from Canada — including, in some cases, additional capacity entitlements and code-sharing services for Canadian carriers — with the People's Republic of China, Hong Kong, Japan, Australia, New Zealand and Austria.

In the case of the People's Republic of China, Air Canada was permitted to begin service to Shanghai following negotiations by correspondence.

Negotiations with the United States resulted in a new Canada-U.S. Preclearance Agreement. The agreement updates the framework for providing preclearance services, which are currently available at seven airports in Canada, and lists criteria for considering other sites in Canada and the United States. It also provides for in-transit preclearance facilities for passengers travelling to the United States from a third country. Such facilities are already in place at Vancouver airport and are planned for Toronto, Montreal (Dorval) and Calgary. Preclearance services improve connection times for passengers, and enhance the competitiveness of both airports and air carriers.

The Agency also processed 88 applications relating to bilateral air agreements and commercial arrangements between air carriers. Extra-bilateral applications require interdepartmental consultation and, in most cases, consultation with potentially affected Canadian industries, particularly airlines and airports. When the Agency grants extra-bilateral authority, it does so on a temporary basis. Several extra-bilateral requests processed in 2000 are noteworthy.

Although Canada and Singapore were unable to forge a bilateral air transport agreement during October 2000 negotiations, the Agency approved extra-bilaterally applications by Air Canada and Singapore Airlines to provide extensive code-share services during the 2000–2001 International Air Transport Association winter season.

In July 2000, Martinair Holland N.V. requested extra-bilateral authority to operate a scheduled service to Toronto, Calgary, Edmonton and Vancouver. Martinair had essentially been offering this proposed service on a non-scheduled basis, but it requested the authority to operate on a scheduled basis. The Agency

granted Martinair the authority it requested for the 2001 International Air Transport Association summer season.

The new International Passenger Charter Air Services Policy announced by the Minister in April, highlighted the importance of reciprocity in the international charter market. A Canadian carrier was facing numerous administrative delays in the processing of its request for a foreign approval of a charter program for combined Canadian and foreign origin charter passengers. On June 28 the Canadian carrier filed a formal complaint in which it sought Agency action pursuant to section 22 of the *Air Transportation Regulations*. On July 13, the Agency informed the carrier of that country that action could be taken to impose reciprocal limitations on its programs to/from Canada. The Canadian carrier received the necessary foreign approvals July 21, and subsequently, the Agency found that action was unnecessary.

## Tariffs

Air transportation tariffs set out a carrier's terms and conditions of carriage and its fares, rates and charges. All air carriers operating to, from or within Canada must publish a tariff for their air service and make it available to the public on request. Carriers operating international air services to and from Canada must file these tariffs with the Agency. However, by bilateral agreement, carriers operating air services between Canada and the United States (transborder air services) and between Canada and Germany do not need to file their fares, rates and charges with the Agency, although they must make them available to the Agency on request. Carriers do not need to file tariffs for their domestic air services with the Agency, but they must make them available to any person upon request.

The Agency reviews international tariffs when they are filed or revised to verify that they are consistent with Canadian law, government policy and applicable bilateral agreements. In 2000, Agency staff reviewed 13,267 electronic and 2,307 paper tariff submissions.

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

In 2000, the Agency processed 7,772 special permission applications. It also addressed 49 complaints from carriers about the pricing or practices of other carriers. Most of these complaints concerned efforts by fifth- and sixth-freedom carriers to exert price leadership on third- and fourth-freedom routes, contrary to the terms of the applicable bilateral agreement. In all but one instance, following Agency intervention, the complaint was resolved to the complainant's satisfaction. One complaint had not been resolved by the end of the calendar year.

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

The Agency received 18 consumer complaints after July 5, 2000, the date on which the Act was amended to allow the Agency to consider complaints about carriers' terms and conditions of domestic carriage. The complaints related to such issues as limits of liability for lost or damaged articles in baggage; terms of eligibility for discounted bereavement fares; and carriers' prohibitions against back-to-back ticketing. There were also complaints about air carrier pricing on international routes. At year-end, all of these investigations were ongoing, largely because one party to the complaint had repeatedly requested extensions and the other party had agreed.

The Agency issued a very important decision on a consumer-related matter in 2000: Decision 472-A-2000. The Canadian Standard Travel Agent Registry had filed a complaint about certain fare construction and ticketing practices, including the "pricing unit concept" adopted by the International Air Transport Association and its member carriers. In this decision the Agency stated that, regarding fare construction rules applicable to transportation between Canada and a foreign point, it would not normally accept tariff filings that may discriminate against Canadians on the basis of their nationality or residency, and that may prevent Canadians from enjoying the benefits of lower fares. The Agency also found that certain elements of the pricing unit concept were unreasonable because they would deprive consumers of the benefit of cheaper fares when a combination of fares yielded lower fares than those applying to through fares. Accordingly, the Agency concluded that it would not normally accept tariff filings of fares applicable to transportation between Canada and a foreign point that:

- restrict the advertising of such fares to countries other than Canada;
- limit the sale or availability of such fares to people other than Canadian residents; or
- prevent travellers from purchasing a combination of fares that undercuts a through fare.

In 2000, the Agency received 14,153 individual tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs; approximately 85% of these submissions arrived electronically. Accepting tariff submissions from air carriers electronically increases the Agency's productivity and gives airlines flexibility.

## Enforcement

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

In 2000, the Agency completed 267 on-site inspections of Canadian-based air carriers and passenger terminal operators and identified 123 infractions. It also completed 29 investigations of carriers or individuals suspected of operating illegal air services in Canada, identifying a number of infractions.

## Administrative Monetary Penalties Program

After extensive consultations, the Agency introduced administrative monetary penalties in late 1999. This program allows the Agency to better tailor sanctions to the nature of the violation.

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

During 2000, designated enforcement officers issued 18 warnings. The Agency received only two applications for review in relation to these warnings; one of these applications was subsequently withdrawn. In the other case, upon formal review, the Agency upheld the warning issued by the designated enforcement officer.

Also during 2000, the Agency issued four notices of violation in relation to alleged violations of the Act. In each instance, the alleged offender did not pay the penalty assessed within the time frame established. In keeping with the legislation, the Agency referred these matters to the Civil Aviation Tribunal to be considered at a hearing. One alleged offender paid the assessed penalty before the related hearing began. At year-end, three notices of violation remained to be heard by the Tribunal.

## Marine Transportation Pilotage Act

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



New tariff regulations came into effect without opposition during 2000, but a proposed tariff published by the Laurentian Pilotage Authority on September 16, 2000 was opposed by the Canadian Shipowners Association, Cargill Limited, Les Silos Port-Cartier and the Canadian Wheat Board. The Shipping Federation, La Corporation des pilotes du Bas Saint-Laurent, La Corporation des pilotes du Saint-Laurent Central and the Chamber of Maritime Commerce requested intervenor status. As part of its investigation, the Agency decided to hold hearings in Montreal between January 10 and 12, 2001. It will issue its decision in early 2001.

On December 30, 2000, the Pacific Pilotage Authority published a tariff proposal in Part I of the *Canada Gazette*. The Chamber of Shipping of British Columbia filed an objection to the tariff proposal in January 2001. The Agency investigation of this tariff proposal is underway and the Agency has scheduled a hearing in Vancouver for April 9 to 11, 2001 as part of its investigation.

### ***Coasting Trade Act***

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

During 2000, the Agency received 110 coasting trade applications. Seven of these were subsequently withdrawn, 96 were favourable to a foreign vessel importation, four were not and three files were closed because the applicant was not Canadian and did not provide the name of an agent to deal with the application.

### ***Shipping Conferences Exemption Act***

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

In response to a request from the representative of a conference, the Agency now allows electronic filing.

### ***Canada Marine Act***

Under the *Canada Marine Act*, the Agency has a mandate to investigate complaints that fees set by port authorities and the St. Lawrence Seaway Management Corporation are unjustly discriminatory. The Agency has a related mandate to investigate complaints that fees set by the International Bridge Corporation and the Jacques-Cartier and Champlain Bridge Corporation are unjustly discriminatory. The Agency did not receive any complaints regarding seaway or bridge fees during 2000.

## Ports

During the year, the Agency investigated a complaint filed in December 1999 by Halterm Limited alleging that the 900% increase in facility leasing fees set by the Halifax Port Authority was unjustly discriminatory, because it subjected Halterm to an undue or unreasonable disadvantage.

The Halifax Port Authority sought a determination in these proceedings that the Agency had no jurisdiction to consider the matter. On February 4, 2000, the Agency issued its decision dismissing the jurisdictional objection, and the Halifax Port Authority sought leave to appeal that decision to the Federal Court of Appeal. The Federal Court denied that request on April 19, 2000. After a number of extensions in the pleadings, the Agency proceeded with its investigation into the complaint. A hearing was scheduled for June 12, 2000, in Halifax.

On March 15, 2000, Westshore Terminals Ltd. filed a complaint with the Agency, seeking a determination that the basic rent charges and the tonnage charges imposed by the Vancouver Port Authority were unjustly discriminatory; that the charges paid by Westshore were unjustifiably out of proportion to those of its competitor, and of other operators of major facilities within the port; and that Westshore was subject to an undue disadvantage. On April 7, 2000, the Agency ruled that it would investigate the complaint. Later, it tentatively scheduled a public hearing to start in Vancouver on August 21, 2000.

However, on May 15, 2000, the Vancouver Port Authority brought a petition before the Governor in Council to rescind the Agency's decisions to proceed with investigations regarding both Halterm's and Westshore's complaints. On June 9, 2000, the Privy Council rescinded the Agency's determinations in both cases. Westshore made subsequent representations to the Agency, but on July 20, 2000, in accordance with the Governor in Council's decision, the Agency ruled that it was unable to hear Westshore's or Halterm's complaints. Westshore was granted leave to appeal the Agency's decision to the Federal Court of Appeal, and the matter is scheduled to be heard in Vancouver in May 2001.

## Mediation

In response to a government-wide initiative supported by Justice Canada — the Agency officially launched its Mediation Pilot Project in the Rail and Marine Branch on June 2, 2000, at the National Transportation Week Annual Conference in Windsor, Ontario. The Mediation Pilot Project is designed to give parties an additional dispute resolution tool to complement the Agency's traditional hearing process. In its 1999 annual report, the Agency committed itself to helping parties resolve their disputes through a system that was simpler, more responsive and less litigious than existing systems.

The Agency believes that, in certain cases, mediation is a more appropriate way to resolve disputes than traditional procedures, because it is often simpler and faster. Mediation also helps improve the lines of communication between parties, especially those who have an ongoing relationship. In addition to these benefits, parties usually have high levels of commitment to a mediated

agreement, since they are jointly involved in crafting a solution that meets their specific needs.

For the pilot phase, the Agency developed a mediation system in collaboration with Agency clients (through the Alternative Dispute Resolution Advisory Committee), mediation practitioners, and other tribunals and agencies that already offer mediation services.

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

To promote the new program to various parties, the Agency prepared and extensively distributed a brochure called *Resolving Disputes through Mediation*. An electronic version is posted on the Agency's website, along with relevant forms and information. In addition to producing the brochure, the Agency held information sessions with provincial governments, municipalities, shippers, railway companies and other interested parties, and presented information on the pilot project at various meetings.

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

The pilot project was initially implemented for one year to test the system design and the applicability of mediation in various types of rail transportation disputes. The Agency subsequently extended the pilot project to June 30, 2002 to allow more time to fully assess the impact and benefits of mediation, and to inform parties about mediation.

## Rail Transportation Bill C-34

On August 1, 2000, the government passed Bill C-34, which amended the *Canada Transportation Act* as its response to the reviews of Canada's grain transportation and handling system undertaken by Judge Willard Estey and Mr. Arthur Kroeger. The amendments are intended to reform and improve the grain transportation system. The Bill contains a number of provisions which directly affect the mandate of the Agency and will be referred to throughout the Rail Transportation section.

Bill C-34 replaces the regulation of maximum rates for the movement of grain with the regulation of maximum revenues that the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CP) may earn for the movement of grain. In addition, tariff rates for single car movements of grain originating on branch lines will not be allowed to exceed main line tariff rates for similar movements by more than 3%.

In relation to transfers and discontinuance, Bill C-34 provides for longer notice and negotiation periods when a railway company plans to discontinue service on a line and to provide remedies if parties do not negotiate the transfer of a line in good faith. Now, when railway companies discontinue service on a grain-dependent branch line, they must provide annual compensation (equal to \$10,000 per mile) to local municipalities for three years.

Regarding level of service complaints, Bill C-34 amended the Act by including specific provisions applying to grain-dependent branch lines. If the Agency determines that a railway carrier has breached its level of service obligations, it may order the company to add the portion of line under complaint to its three-year plan and to indicate that it intends to take steps to cease operating the line. This notice would give a short line railway or government the opportunity to purchase the line and continue operating it. Bill C-34 also gives the Agency the power to grant running rights to another railway company in relation to a level of service complaint, if the Agency believes that a carrier has breached its level of service obligations. However, this provision extends only to service on a grain-dependent branch line.

## **Rail Infrastructure**

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

## **Certificates of Fitness and Construction Approval**

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

In 2000, in addition to monitoring existing certificates, the Agency issued new certificates to the Kelowna Pacific Railway Ltd. in British Columbia, and to the Capital Railway for construction related to a proposed light rail commuter service in the National Capital Region. The Agency also varied the certificate of the Ottawa Central Railway. At year-end, the Agency was considering an application for a certificate of fitness from the Agence métropolitaine de transport for its commuter rail service, which operates primarily over the trackage of CN and CP in the Montreal area. A complete list of railways that have received federal certificates of fitness can be found in Chapter 6 and on the Agency's website at [www.cta.gc.ca](http://www.cta.gc.ca).

Subject to certain exclusions, the Agency must also approve the location of any new railway line, including main lines, branch lines, sidings, spurs, yard tracks or other auxiliary trackage. During 2000, Agency approval was required for CP's construction of the Scotford Spur north of Edmonton. Other applications

to construct railway lines across the lines of other railways remain on hold pending negotiations between the parties.

## Infrastructure Disputes

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

In 2000, the Agency, through its decisions and orders, reached decisions with respect to 66 disputes concerning road crossings of railways, 14 disputes concerning utility crossings of railways and two disputes concerning private crossings of railways. In addition, the Agency received 111 agreements filed by parties who had conducted their own successful negotiations related to railway crossings. The Agency also issued three decisions related to apportioning costs among railways and other parties for railway protective devices, such as crossing signals. A Federal Court of Appeal decision upheld the Agency's jurisdiction to apportion costs for disputed railway works, whether those works are proposed or already constructed.

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

The Agency continues to consult with railways, municipal associations and Transport Canada to update the content, format and level of rates in a new *Guide for Railway Charges for Construction and Maintenance of Road Crossings*, formerly known as the Schedule "A" Directives. Parties associated with such work can use this guide to help resolve disputes.

During the year, the Agency also determined non-safety-related disputes arising from railway operations, primarily those associated with noise, vibration, pollution or drainage problems. The Agency tried to resolve such disputes without resorting to contested legal proceedings, but it issued orders or decisions when necessary. In 2000, the Agency ruled on 10 complaints, helped resolve eight others and monitored compliance with four existing Agency orders.

However, late in the year, the Federal Court of Appeal ruled that the Agency did not, under existing legislation, have the mandate to investigate complaints about any effects stemming from day-to-day operations of railways. While the government considers the effect of this ruling, the Agency will offer what assistance it can, including mediation and facilitation, to help parties resolve not only the eight cases still before the Agency at year-end but also any new noise, smoke, vibration or similar problems.

When the Agency receives an infrastructure application related to railway construction, it must assess the potential environmental impacts of the proposal under the *Canadian Environmental Assessment Act*. In 2000, the Agency made 15 environmental screening decisions. It allowed the projects to proceed, once it

was assured that the applicants' compliance with measures the Agency deemed appropriate would mitigate any significant adverse environmental impacts. The Agency is also actively involved in the review of the *Canadian Environmental Assessment Act* as it relates to amended and soon-to-be amended transportation legislation.

During the year, the Agency also completed 185 reviews of existing orders or decisions, primarily relating to road crossings, where relevant facts or circumstances had changed. In most cases, legal responsibility for roads and road crossings had been transferred from provincial governments to municipal governments, so the parties under the orders or decisions had to be changed.

Finally, under an agreement with the Province of Ontario, the Agency applies federal railway crossing laws to railways under Ontario provincial jurisdiction, when required. In 2000, the Agency issued two orders affecting Ontario provincial short line railways. The Agency can enter into such agreements with other provinces.

## Transfer and Discontinuance

Railways may rationalize their lines without regulatory approval if they follow a process prescribed in the Act, as amended in 2000 by Bill C-34. In 2000, the Agency received 14 notices that railways had discontinued railway lines (including spurs) totalling 288.3 kilometres using this process. In addition, the Agency is aware of three transfers of railway lines to federal or provincial entities totalling 745.2 kilometres of track.

Under the Act, railways need not follow the prescribed process when rationalizing auxiliary trackage, such as sidings, spurs and yard tracks. In response to one application and one complaint, the Agency made two determinations as to whether specific pieces of track fit into this category.

The Agency may also be asked to determine whether a railway company has complied with the transfer and discontinuance process set out in the Act. In this regard, the Agency issued four decisions on lines in Yukon and Manitoba. In the first, the Agency ruled that the British Yukon Railway had complied with the abandonment process of the *National Transportation Act, 1987* and with the transfer and discontinuance process of the Act when it transferred a portion of the White Pass & Yukon Route Railway to the Government of Yukon and the City of Whitehorse. In the other three decisions, based on complaints by the rural municipalities of Minitonas, Ethelbert, Mountain, Dauphin and the Village of Ethelbert in Manitoba, the Agency ruled that CN had complied with the provisions of the Act when concluding negotiations with the Village of Ethelbert to transfer the CN Cowan Subdivision. CN's obligations related to the line had ceased when it gave notice of discontinuance to the Agency, even though discussions regarding the possible transfer of the line continued after CN gave notice.

The CN Cowan Subdivision will be one of the first subdivisions that is subject to the new \$10,000-per-mile compensation provision in the Act brought about by the passage of Bill C-34. Bill C-34 also dealt with the potential segmentation of branch lines by ensuring that a railway that discontinues a portion of a grain-dependent branch line must continue to operate the remainder of the branch line for three years, unless the Minister determines that such operation would not be in the public interest.

## **Rail Service and Rate Complaints**

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

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

The Agency also administers the final offer arbitration process.

## **Final Offer Arbitration**

Bill C-34 improved the final offer arbitration process by making it more efficient in terms of expediency. Parties now have access to an arbitrator or a three-person panel, who can make decisions using a summary 30-day process if the Agency determines that a shipper's final offer involves freight charges of less than \$750,000. If freight charges exceed \$750,000, the arbitrator has 60 days to render a decision, unless the parties agree otherwise. Further, some shippers and carriers had indicated in previous years that the arbitrators had insufficient knowledge to deal with transportation matters. Each arbitrator on the Agency's list now includes their areas of expertise with an explanation of the nature of that expertise. The Agency also revised its final offer arbitration publications to conform with Bill C-34. Electronic versions of these Agency publications are available on the Agency's website [www.cta.gc.ca](http://www.cta.gc.ca).

During 2000, only one application for final offer arbitration was received by the Agency. The legislation allows parties to a final offer arbitration to maintain their confidentiality and as a result the Agency can only discuss cases in general terms. With respect to this final offer arbitration, the Agency determined that the final offer arbitration was not a matter that could be properly referred to arbitration as the matters requested to be arbitrated were included in an existing binding contract between the parties.

In 2000, the Agency dealt with an awarding of costs application; complaints from producers with respect to producer car loading sites; and level of service complaints.

### **Gordon Moffat**

The Agency considered an application by Gordon Moffat, a Newfoundland shipper, for an award of costs resulting from his participation in the proceedings leading to the Agency's decisions LET-R-337-1997 and No. 300-R-1999. The Agency awarded Mr. Moffat these costs. In October, the Agency issued Taxation of Bill of Costs No. 2000-178-R-2000 TAX, in which Mr. Moffat was awarded specific costs, to be paid by CN.

### **Producer Car Complaints**

Throughout 2000, grain shippers expressed concerns to the Agency about railway companies' abandonment of sidings and the related impact on grain farmers' access to producer car sites. In each instance, the Agency advised the parties of their rights and explained the Agency's responsibilities to adjudicate rate, service and competitive access complaints. Agency staff encouraged the parties to resolve disputes informally when appropriate.

In June 2000, five primary grain producers filed a complaint alleging that CN had not complied with the obligations prescribed by the Act when it discontinued service on the railway lines on the Cowan Subdivision in Manitoba. In Decision No. 647-R-2000, the Agency concluded that CN had provided adequate notice of discontinuance and the complaint was dismissed.

In October 2000, in response to grain producer concerns, the Agency asked CN and CP to maintain current lists of producer car loading sites and interchange points. Both railways informed the Agency that they have published complete lists that are also available on their websites.

### **Village of Stenen, Saskatchewan**

In October 1999, the Mayor of Stenen, Saskatchewan — on behalf of the Village of Stenen and the Committee to Save the Stenen Elevator — asked the Agency to order CN to immediately restore the siding in Stenen to an operational mode. After investigating the complaint, the Agency issued Decision No. 103-R-2000 on February 15, 2000. It found that CN had not breached its common carrier obligations to provide adequate and suitable accommodation for receiving and delivering traffic.

The Agency found that the siding was subject to a private agreement between CN and a third party, the Saskatchewan Wheat Pool. As the evidence showed that CN owned the siding and leased it to the Pool, CN's service obligations at Stenen were limited to traffic offered for carriage by the Saskatchewan Wheat Pool.

On June 25, 2000, the Mayor filed an application for a review of Agency Decision 103-R-2000, alleging that new facts had come to light and new circumstances had occurred since the Agency issued its decision. The applicant argued



that the Agency's decision was based almost entirely on incorrect information about the Saskatchewan Wheat Pool's lease of the Stenen siding and the adequacy of CN's proposed alternative loading site. The Agency found that there had been no change in the facts or circumstances.

### **Legislative Changes Affecting Western Grain Rate Development**

On April 26, 2000, the Agency fulfilled its requirement under section 149 of the Act by establishing rates for the movement of western grain for crop year 2000–2001. However, these rates did not take effect because amendments to the Act, which introduced a new rail rate regulatory regime for western grain, subsequently received parliamentary approval. As of August 1, 2000, the Agency no longer establishes maximum rates for the movement of western grain.

However, CN and CP's revenues must not exceed a certain revenue entitlement, referred to as the "revenue cap." The Agency determines eligible revenues related to monitoring and ensuring compliance with the cap. Under the new revenue cap provision, the average maximum allowable freight revenue for crop year 2000–2001, on a system-wide basis from both CN and CP, is established to be approximately \$27 per tonne, or about \$6 less per tonne than the revenue would have been without the grain reform legislation.

### **Railway Company Revenues, Revenue Caps and Compliance**

Beginning with crop year 2000–2001, the Agency must determine the actual grain revenue and revenue caps for CN and CP. It must make these determinations by December 31 following the crop year just ended on July 31. The Agency determines the grain revenue caps using both base year and actual crop year information.

In November 2000, the Agency began consultations with the grain industry to determine grain revenue and eligible reductions. The Agency will make these determinations for crop year 2000–2001 by December 31, 2001. If the Agency determines that a railway has exceeded its revenue cap for the crop year, the railway must repay the excess amount and any penalty. The Governor in Council makes regulations governing such repayments and penalties.

### **Cost of Capital**

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

The Agency annually approves cost of capital rates that it uses to determine interswitching rates and other railway costs. With the implementation of Bill C-34, the Agency will approve a cost of capital rate that it will use to develop

the volume-related composite price index, which will be used to determine the railway revenue cap for the movement of western grain.

Until 2000, the Agency had insufficient market data to calculate a unique cost of capital rate for CN. The Agency needs at least five years of information and market observations to calculate an accurate cost of capital rate. Since the legislation regarding grain transportation has changed and since five years have passed since CN became a publicly traded company, the Agency decided to calculate a distinct cost of capital rate for CN for the 2001–2002 crop year. The Agency will determine this rate in early 2001.

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

## **Net Salvage Value Determinations**

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

As mentioned previously, Bill C-34 changed the transfer and discontinuance provisions of the Act. These changes included expanding access to net salvage value determinations to parties involved in commercial negotiations for the continued operation of a railway line. This new provision also allows the Agency to adjust the net salvage value to reflect the cost of replacing assets that a railway company has previously removed from the railway line in order to reduce traffic. To date, the Agency has not received any such applications.

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

## **Specific Powers**

The Agency has also been granted the power of an arbitrator under Manitoba legislation in certain disputes about the net salvage value of railway lines under provincial jurisdiction. These provisions are designed to give citizens and governments increased access to regulatory relief when it is needed.

## **CN Cudworth Subdivision**

After CN applied for a net salvage value determination of its Cudworth Subdivision in Saskatchewan, several rural municipalities asked the Agency to render a preliminary ruling that this net salvage value determination exclude the value of assets funded under various branch line rehabilitation agreements. The

Agency, after examining the request, decided to conduct a public hearing. In early 2000, the Agency decided that rehabilitation assets are to be included in net salvage value determinations (Decision No. 33-R-2000).

Before valuing the railway line, the Agency had to decide whether reclamation bylaws affect the asset values subject to a net salvage value determination.

After considering the parties' arguments and the comments it received, the Agency found that the reclamation bylaws referred to by the rural municipalities should not be factored into the Agency determination of the net salvage value of the Cudworth Subdivision (Decision No. 445-R-2000). Two of the five Members on the panel provided a dissenting opinion, stating that the impact of some of the bylaws should be included.

### CN Arborfield Subdivision

The Agency issued an interim decision on the net salvage value of CN's Arborfield Subdivision in September 1999. In its decision, the Agency found that CN had not provided adequate information on donated assets and on the extent of contamination on the right-of-way. Information on donated assets could have affected the amount of assets included; pending the outcome of the Agency's hearing on this matter, and the extent of contamination could have affected the value of land. Without this information, the Agency could not finalize its determination of net salvage value. CN subsequently submitted an affidavit regarding donated assets and environmental contamination. After reviewing the information, the Agency issued its final decision in March 2000 and determined that the net salvage value did not have to be adjusted for these factors.

### Railway Costing

The Agency collects railway costing data and develops railway costs, which it uses in its regulatory costing model to cost Class I freight operations. It updates the costs annually, based on input from CN and CP. As part of its ongoing efforts to address its clients' concerns about regulatory burden, the Agency has done a major analysis, has consulted parties and is adjusting its costing model to reduce reporting requirements for CN and CP.

The Agency currently uses its costing model when adjudicating rail service and rate disputes, setting interswitching rates, reviewing Schedule A overhead costs and carrying out other rate regulatory activities.

### Interswitching

In accordance with subsection 128(1) of the Act, the Agency has made *Regulations Respecting the Interswitching of Rail Traffic*. These regulations prescribe the rates for interswitching rail traffic in four different zones within 30 km.

In determining an interswitching rate, the Agency considers the average variable costs of all movements of traffic subject to the rate. The rate must not be less than the variable costs of moving the traffic, as determined by the Agency.

The Agency annually reviews interswitching operations to determine whether changes in the interswitching rates are required. It did not change these rates in 2000.

### **Historical Price Indices**

The Agency develops price indices for CN and CP to determine the level of changes in prices of railway inputs. The Agency uses these as part of the process for establishing the revenue cap for CN and CP for the movement of western grain, as well as in regulatory costing.

### **Railway Subsidy Payments**

The Agency received the last subsidy claim in 1999 and issued the final payment in 2000. This completes the subsidy program.

### **Communicating with Canadians: Rail and Marine**

The Agency continued communicating with members of the rail industry on numerous occasions in 2000. This included meeting with or making presentations to CN, CP, the Hudson Bay Railway Company and the Ottawa Light Rail Company. Municipal associations ranged from the Union des Municipalités du Québec (Quebec City) in the east, through the Ontario Small Urban Municipalities (Belleville), the Association of Municipalities of Ontario (Toronto), the Rural Ontario Municipal Association (Toronto), the Ontario Good Roads Association (Toronto) and the Federation of Canadian Municipalities (London) in Ontario, to the Association of Manitoba Municipalities (Winnipeg) and the Alberta Association of Municipal Districts and Counties (Edmonton) in the west.

At numerous transportation functions, Agency staff and Members made presentations on a broad variety of topics. These included final offer arbitration, infrastructure matters, transfer and discontinuance, and mediation services and the general role of the Agency.

- Northwest Corridor Development Corporation, Grande Prairie — Presentation by the Chairman
- North American Fertilizer Transportation Conference, Tuscon — Presentation by the Chairman
- Canadian Fertilizer Institute, Whistler — Presentation by Staff
- Canadian Council of Forest Industries, Whistler — Presentation by Staff
- Canadian Acoustical Association, Quebec City — Presentation by Staff
- The Railway Safety Federal/Provincial Committee, Saskatoon — Presentation by Staff
- The City of Pembroke, Pembroke — Presentation by Staff

The Agency also attended annual trade shows and meetings, including such events as:

- Canadian Transportation Research Forum, Charlottetown
- Westac's Transportation and Innovation Cost Savings Conference, Vancouver

- Association of Canadian Port Authorities Conference, Charlottetown
- Onshore/Offshore Technical Association Conference and Trade Show, Halifax
- Newfoundland Offshore Petroleum Conference, St. John's
- Transportation Association of Canada, Edmonton
- Saskatchewan Association of Rural Municipalities, Ottawa

Staff also continued to explain the Agency's responsibilities in western grain. The Agency held industry consultations in Winnipeg in March 2000 on the development of the western grain rate scale. In November, it released another industry consultation report, which solicited views on the items and factors to be included in railway revenue under the new railway revenue cap regime for western grain movements. After Bill C-34 was implemented on August 1, 2000, amending the Act, staff prepared and distributed two new brochures: one explaining the Agency's responsibilities under the new revenue cap regime, and one highlighting the changes to the transfer and discontinuance process brought about by Bill C-34.

In 2000, Agency staff made two separate presentations to international delegations from China and another presentation to a South African delegation. In these, staff explained the Agency's responsibilities related to railway costing, financial analysis, the regulatory regime for western grain rail movements, railway infrastructure and shipper complaints.

In total, Agency staff handled hundreds of requests for information on various subjects, including railway level of service obligations, final offer arbitration, the legislative review of the Act, interswitching, producer car loading sites, demurrage, certificates of fitness, railway crossing disputes, and transfer and discontinuance of railway lines. In addition, when appropriate, staff used these opportunities to explain the Agency's new mediation services. The Agency also received numerous calls about its railway costing work and Bill C-34 analysis as these related to the recent Estey/Kroeger reviews of the western grain handling and transportation system.

## Chapter 2

### Assessment of the Operation of the Act

EVERY YEAR, THE AGENCY ASSESSES THE OPERATION OF THE *CANADA Transportation Act*, as directed by subsection 42 (2), and summarizes the issues it has encountered in administering the Act in its annual report. These assessments are based on the Agency's experience with the Act and on comments from transportation providers and users.

#### Air Transportation

While no major difficulties related to the Act's air transportation provisions arose in 2000, minor issues did emerge.

#### Advertising and Sale of New Air Services [Section 59]

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

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

The Agency has successfully dealt with the broad scope of section 59 by using its powers to exempt carriers from the section's application where compliance is unnecessary, undesirable or impractical. However, this was not the intent of the consumer protection measure set out in the 1994 International Air Transportation Policy which refers to a prohibition only for "New Canadian International Charter Entrants."

#### Notice of Discontinuance and Reduction of Services [Section 64]

The amendments to the Act that came into effect on July 5, 2000 broadened the scope of section 64. An air carrier is now required to notify affected communities that it proposes to reduce or discontinue air services to a Canadian point in three situations:

- when a carrier's proposal to discontinue service would result in only one or no carriers serving a point;
- when a carrier's proposal to reduce the frequency of a service to less than one flight per week would result in only one or no carriers serving that point at least once per week; or

- when a carrier's proposal to discontinue a year-round, non-stop, scheduled air service between two Canadian points would reduce seating capacity by 50% or more on that route.

If one of these situations arises, the carrier must give the communities affected 120 days notice before the date it proposes to discontinue or reduce a service. Carriers that have served a point for less than one year are required to give 30 days notice. A carrier may ask the Agency to reduce the notice period.

The carrier must publish its notice in the largest circulation newspaper serving the community affected by the change in air services. The carrier must also send the notice to the federal Minister of Transport, to the Minister of Transport in the provinces or territories affected, and to the Agency.

If a licensee fails to comply with section 64, section 65 allows the Agency to direct that carrier to reinstate service, but only following a written complaint and only where it is practicable for the carrier to do so. When financial distress causes an air carrier to terminate all operations, it would be difficult for the Agency to find that it is practicable for the licensee to resume services.

Section 64 applies to all domestic air services, regardless of the nature of the service. For example, seasonal and lodge operators, as well as certain charter operators who operate to a point temporarily, are subject to the notice requirement. The Agency has been able to deal with these situations by using its powers to exempt carriers where compliance is unnecessary, undesirable or impractical. However, consideration should be given to specifying in the Act that this provision applies only to those air carriers who have operated for a minimum of six months. This change would exclude seasonal operators and would allow air carriers to enter markets temporarily.

## Air Travel Complaints Commissioner

Recent changes to the *Canada Transportation Act* created the position of Air Travel Complaints Commissioner and established the requirement that the Commissioner report at least semi-annually, on amongst other matters, the number and nature of complaints received, the names of the carriers against whom the complaints were made and any systemic problems observed.

The lack of timely operating statistics on an individual carrier basis which is also consistent between carriers makes it difficult to compare their relative success in meeting passenger expectations. It also makes it more difficult to compare a carrier's relative performance in one period over the next. Requiring more timely statistical reporting would help strengthen the Commissioner's report and make it more relevant to air travellers when they make their choice among several air carriers. It will allow the Commissioner to better assess the complaints received and quite importantly, allow him to assess relative carrier success in addressing systemic issues that he had earlier identified.

## Rail Transportation Final Offer Arbitration

In July 2000, Bill C-34 amended the *Canada Transportation Act* regarding final offer arbitration in several ways. Carriers and shippers must now submit their final offers to the Agency simultaneously. Within five days of receiving the final offers, the Agency must refer the matter to the arbitrator or a panel of three arbitrators. Unless the parties agree to a different time frame, arbitration must be completed within 60 days, or 30 days for disputes involving freight charges of less than \$750,000.

Many applications for final offer arbitration have raised jurisdictional or procedural questions which require an Agency decision. Bill C-34 permits the Agency, if the shipper agrees, to rule on the availability of final offer arbitration **before** referring the matter for arbitration. Should the shipper not agree, the arbitration proceeds at the same time the Agency is ruling on the jurisdictional or procedural questions and a decision may be rendered. If the Agency determines that the matter was not a matter eligible for final offer arbitration, the arbitrator's decision can be set aside. If the arbitrator's decision is pending, the process may continue, subject to terms or conditions set by the Agency. Since the Agency may determine whether final offer arbitration is applicable to a dispute while the arbitration is actually taking place, some parties are concerned that they may be compelled to help pay for proceedings that may later be deemed at least partly invalid.

To help parties avoid filing ineligible submissions, the Agency has published a summary of its decisions on procedural challenges on its website. Feedback from shippers and carriers shows that parties have referred to this summary before submitting or challenging final offer arbitration submissions.

## Certificates of Fitness

The Agency issues certificates of fitness to parties intending to construct or operate a railway under federal jurisdiction, once it determines that adequate liability insurance is in place. In the past, parties wanted to know what factors the Agency considered when determining which railways fell within the federal domain, so the Agency agreed to include such factors in any decision granting or denying a certificate. However, concerns have been raised about railways' freedom to structure their organizations to either embrace or avoid federal jurisdiction. The sometimes substantial differences between the rights and obligations of railways and shippers under federal jurisdiction, versus those under provincial jurisdiction, can give parties incentives to structure a transfer so that it falls under the jurisdiction that provides the greatest benefits. Furthermore, some have suggested that the Agency should have the power to review the documents pertaining to a transfer of a rail line from a main line carrier to a short line carrier (under Division V, Part III) to ensure that the new short line railway is operating under the proper jurisdiction, that shippers and consumers have all the rights accruing to them, and that adequate liability insurance protects shippers and consumers.



## Railway Line Construction

In previous annual reports, the Agency discussed the following issues raised by municipalities, landowners and others directly or potentially affected by railway construction projects:

- The Agency has the authority to consider the reasonableness of the location of a new rail line but does not have the authority to consider the actual need for the new rail line.
- Construction approval does not include railway facilities other than railway lines (such as stations, wharves and depots) and therefore the environmental impact of such projects may not be assessed.
- No construction approval of a railway line is required if the construction is within the existing right of way or within 100 metres of the centre line of an existing railway line for a distance of no more than 3 kilometres. Major railway projects (such as intermodal terminals) can therefore be exempt from an environmental assessment when they are constructed within those limits.

## Transfer and Discontinuance of Railway Lines

Also in previous annual reports, the Agency reported some concerns about the transfer and discontinuance provisions in the Act as reported by shippers, governments, railways and others in surveys, submissions, conferences and meetings. Bill C-34 addressed some of these questions, but parties are still concerned about the following issues:

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

In 2000, some additional concerns have been raised about the operation of these provisions. First, there is no provision for regulatory oversight of transfer agreements, so it may be for parties to do the following:

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

- In the case of leases, to determine whether the terms of the lease constitute a valid transfer as contemplated by the Act or who — the lessee or the lessor — is the proper operating authority on that line.
- To determine the regulatory consequences of the termination of a lease by either party.
- To determine the future jurisdiction of a line and any other consequences of a lease expiring.

In the provisions concerning a commercial transfer of a railway line (following an advertisement of the availability of a line), the Act provides guidance in a situation where a transfer cannot be completed in accordance with an agreement between a railway company and an interested party. However, the Act does not provide similar guidance when a transfer cannot be completed in accordance with an agreement between a railway company and a government (following the offer of the line to all governments). Neither the railway nor the interested government know what their rights or obligations are in such a scenario.

Some concerns have also been raised primarily by western Canada municipalities and associations about the new provisions in Bill C-34. These concerns include the following:

- A 12-month period, during which a line must remain in a railway company's three-year plan before steps can be taken to discontinue it, was introduced to give parties more time to consider their options for that line. But, if a government or community-based group expresses interest in that line, the railway must immediately terminate the 12-month period. However, this also reduces the 12-month period for all parties, including those who may need the extra time to evaluate their options.
- A new provision allows either party to a commercial negotiation for the transfer of a railway line (under section 143), to ask the Agency, at that party's cost, to make a net salvage value determination of the railway line. The parties may then use such a value to assist them in their negotiations. In these cases, if the Agency determines that a railway has removed infrastructure in order to reduce traffic on the line, it may reduce the net salvage value of the line by the cost of replacing such infrastructure. However, when a government body and a railway cannot agree on the net salvage value of a line to be transferred (under section 145), the Agency does not have the same authority to reduce the net salvage value of the railway line by the cost of replacing any infrastructure it believes the railway has removed to reduce traffic.

Under subsection 95(2) of the Act, the Agency has investigated and ruled on numerous disputes about noise, vibration and pollution caused by day-to-day railway operations. On December 7, 2000, the Federal Court of Appeal ruled that existing legislation did not give the Agency jurisdiction to conduct such

## Noise, Vibration and Pollution

investigations. This ruling emphasized that, under federal transportation legislation, only one dispute resolution mechanism — the civil courts — is open to parties who may be affected by railway operations. The Agency is working with the *Canada Transportation Act* Review Panel, Transport Canada, the Railway Association of Canada and the Federation of Canadian Municipalities to find an interim mechanism for dealing with such concerns while the government considers its legislative options.

### Process of Assessment of the *Canada Transportation Act*

The operation of the *Canada Transportation Act* is assessed by the Agency on an annual basis, and issues encountered in administering the Act are summarized in its annual report. Subsection 53(1) of the *Canada Transportation Act* requires the Minister of Transport, no later than four years after the date of the Act coming into force, to appoint one or more persons to carry out a comprehensive review of the operation of the *Canada Transportation Act*.

### The *Canada Transportation Act* Review Panel

In July 2000, the Minister of Transport appointed a Panel to conduct a comprehensive review of the *Canada Transportation Act*. Section 53 calls for a comprehensive review, to be completed by July 1, 2001, of the operation of this Act. The Panel conducting the review shall assess whether the legislation provides Canadians with an efficient, effective, flexible and affordable transportation system, and, where necessary or desirable, recommend amendments to the National Transportation Policy set out in section 5 and the legislation of any other Act of Parliament for which the Minister of Transport is responsible that pertains to the economic regulation of a mode of transportation and transportation activities under the legislative authority of Parliament.

#### *Issues Requiring Special Attention from the Review Panel*

Competitive Rail Access Provisions — The Review Panel shall consider proposals for enhancing competition in the railway sector, including enhanced running rights, regional railways and other access concepts. These concepts need to be assessed in the broader context of increasing North American integration and ensuring cost-effective service for shippers over the long term. The Review Panel shall submit an interim report on access issues to the Minister of Transport by December 31, 2000 and a final report on the operation of the Act in 2001, which may affect certain areas of the Agency.

The following issues shall be considered in connection with any other matters dealt with by the Review Panel:

- a) the overall effectiveness of the current legislative and regulatory framework in sustaining the high levels of capital expenditures required to enhance productivity and promote innovation

- b) the extent to which the current framework supports the efforts of Canadian transportation players to adapt to the new e-business environment and to meet global logistics requirements
- c) the extent to which the current framework is appropriate for dealing with the public policy issues that may arise from newly emerging industry structures
- d) the extent to which the current framework provides the government with the necessary powers to support sustainable development objectives
- e) the advisability of specific measures designed to preserve urban rail corridors for future mass transit use in the rail line abandonment process
- f) whether the Canadian Transportation Agency should have the powers to set “maximum” as opposed to “actual” interswitching rates. (This matter has been raised by the Standing Joint Committee for the Scrutiny of Regulations.)

For more information on the *Canada Transportation Act* Review Panel, please contact them at:

Canada Transportation Act Review

P.O. Box 1118, Station B

Ottawa, Ontario K1P 5R2

Tel: (613) 993-4743 Fax: (613) 993-7837

Website: [www.reviewcta-examenltc.gc.ca](http://www.reviewcta-examenltc.gc.ca)

E-mail: [info@reviewcta-examenltc.gc.ca](mailto:info@reviewcta-examenltc.gc.ca)

### The Agency's Activities with the Review Panel

As part of the Review Process, the Agency was invited to make presentations to the Review Panel on two occasions. Agency staff briefed the *Canada Transportation Act* Review Panel Members on a variety of topics including; the competitive access provisions: regional railroads; Certificates of Fitness and jurisdictional issues related to them; the transfer and discontinuance process; marine issues; mergers and acquisitions; and air matters, including accessible transportation.

The Agency also provided the Review Panel Members with copies of the Agency's annual reports from 1996 to 1999; a document which compared Canadian regulatory provisions with that of its U.S. counterpart, the Surface Transportation Board; and copies of Agency brochures and publications on the various matters that the Agency regulates in its day-to-day operations.

# Chapter 3

## What's Ahead

### Accessibility for Persons with Disabilities

**I**N 2001, THE AGENCY WILL CONTINUE TO EVOLVE TO SERVE CANADA'S RAPIDLY changing transportation sector. The statutory review of the Act may alter the Agency's responsibilities, as may several decisions expected from the Federal Court.

The Agency has surveyed air travellers with disabilities to get a clearer picture of how well the system responds to their needs. The survey identified areas where passengers were satisfied. For example, most respondents found each of the airport facilities mentioned to be accessible. As well, 92% were satisfied with the way their needs were met by the carriers and with staff's sensitivity to their needs. The survey also highlighted areas where the Agency, the industry and people with disabilities must continue to work together to improve services, equipment and facilities to better respond to the needs of people with disabilities travelling by air. For example, respondents said communication of information at airports and provision of accessible seating on aircraft could be improved. The Agency is currently finalizing the survey results. A report of these findings, to be released in 2001, will help the Agency set goals and priorities for further improving the accessibility of air travel in Canada.

In 2001, the Agency will conduct two public consultations. One will focus on the proposed Code of Practice on the Communication of Information in the federal transportation network. This code will address issues that persons with sensory and cognitive disabilities face when they travel by air, rail or extra-provincial ferry, such as the adequacy of telephone teletypes for the deaf (TTYs) in terminals. The second consultation will focus on the proposed changes of Part VII of the *Air Transportation Regulations* to include small aircraft with 20 to 29 passenger seats. Part VII of the *Air Transportation Regulations* addresses the type of services that air carriers must offer to travellers with disabilities. The Agency has finished gathering data from specific segments of the industry and has consulted with its Accessibility Advisory Committee on these two broad issues. It will now consult further with the industry, the community of persons with disabilities and other interested parties.

Also in 2001, the Agency will do the following:

- Release a checklist to help transportation service providers meet the needs of persons with disabilities travelling by air.

- Study the results of a joint Agency and Transportation Development Centre research project, which will help the Agency determine whether standards are needed for the provision of boarding devices in Canada.
- Continue to actively promote accessible transportation at several major international gatherings — a Member and the Director General will present papers at *Transed 2001: Towards Safety, Independence and Security* (Warsaw, Poland, July 2–5) and the Director, Accessible Transportation Directorate, will speak at the Inclusion by Design: Planning the Barrier-Free World conference (Montreal, June 1–5).
- Collect the benchmark data needed to monitor the implementation of the Code of Practice for Passenger Rail Car Accessibility and Terms and Conditions of Carriage of Persons with Disabilities.

The Agency will also continue to work to determine whether obesity is a disability for the purpose of Part V of the *Canada Transportation Act*. The Agency plans to hold an oral hearing in 2001 to hear and test further evidence from interested parties.

## Air Transportation

The Agency is anticipating an increased level of activities in the consumer, tariffs and pricing complaints area. It is planning to monitor domestic airfares more extensively, under subsection 66(6) of the *Canadian Transportation Act*. In addition, the Agency expects to issue a number of decisions involving complaints about domestic pricing under subsection 66(1) and complaints involving the reasonableness of tariff provisions under subsection 67.2(1) of the Act with respect to domestic carriage, and section 111 of the *Air Transportation Regulations* with regard to international carriage. Some of the tariff complaints involve significant matters affecting air travellers — for example, the reasonableness of the current maximum amount of compensation paid for lost or damaged baggage, and issues of compensation related to denied boarding due to carrier overbooking.

In 2001, the Agency will address the matter of air rage, specifically a carrier's right to deny transportation to passengers who pose or may pose a threat to themselves, other passengers, crew or the aircraft. To protect passengers from possible arbitrary action by an air carrier, a carrier's tariff, which contains the carrier's terms and conditions of carriage, must clearly set out a system of graduated sanctions to be taken against unruly passengers, with the sanctions imposed being consistent with the severity of the incident. This is particularly important in cases where an air carrier permanently refuses to carry an unruly passenger. The Agency expects that this decision will affect the whole Canadian air carrier industry and that it may help clarify the rights and obligations of passengers and air carriers in similar cases in the future.

As a result of the changes to the Act in Bill C-26, 2000 was a year of transition and adjustment to the Agency's new and modified responsibilities. Temporary measures and staff deployed from elsewhere in the Agency were put in place to deal with the sudden increase in workload and to develop new policies, practices and procedures for dealing with consumer, pricing and tariff complaints. The Agency expects 2001 to be a year of consolidation and confirmation. Based on the experience the Agency has gained, it will finalize its policies, practices and procedures.

The Act requires the Air Travel Complaints Commissioner to issue a report at least semi-annually. The Commissioner will issue two reports in 2001 which will report on the Agency's consumer complaints activities in detail. In these reports, the Commissioner will provide statistics, identify systemic issues and, as appropriate, issue recommendations designed to improve air travel for consumers. His 1st report was tabled in March and the 2nd report will likely be tabled in the fall.

The Agency continues to revise the *Air Transportation Regulations* so that it can implement the April 4, 2000 policy on international charter passenger air services (the International Charter Policy) and the May 29, 1998 policy on international all-cargo charter air services (the All-Cargo Policy). The Agency is also proposing amendments to various other provisions of the *Air Transportation Regulations*, such as provisions related to tariffs and liability insurance. Pre-consultations on the proposed amendments began in December 2000. In response to comments received during these pre-consultations, Agency staff plan to meet with several interested parties to discuss the proposed amendments. All amendments will be published in Part I of the *Canada Gazette*.

Until the proposed amendments are promulgated into regulations, the Agency will continue to exempt air carriers from provisions of the existing Regulations that conflict with the new charter policies.

The proposed amendments to the *Air Transportation Regulations* will reduce the number of international charter types to four: passenger resaleable charters, passenger non-resaleable charters, all-cargo charters and foreign-originating charters. The provisions governing transborder charters have been incorporated into those governing international charters, so both types of charters are now regulated in the same manner. Also, consistent with the International Charter Policy, foreign carriers are not subject to more onerous conditions than those imposed on Canadian charter carriers, provided the foreign country treats Canadian carriers the same way.

Following a commitment by the Minister to review Canada's international air policy, Transport Canada released a consultation document in February 2001 for stakeholder review and comment. The new policy, which will guide the government's strategy for negotiating bilateral air agreements, will likely lead to a

broader exchange of rights and less regulation. This new policy is expected to be announced in summer 2001 and to come into effect at the end of October 2001. The Agency will be involved in developing the new policy. In addition, the Agency expects to help implement the new policy, which will seek to balance the needs of airlines, airports, communities and consumers.

## Marine Transportation

In 2001, the Minister of Transport is expected to introduce a bill that will modernize legislation governing shipping and navigation and that will amend the *Shipping Conferences Exemption Act*. Upon implementation of any amendments, the Agency will need to revise its *Guidelines Respecting the Filing of Documents and Other Requirements*, after consulting with participants. As well, the new bill is expected to contain a provision requiring the Minister to review, on complaint, the reasonableness of the fees set by emergency response organizations. The Minister may appoint a person to assist in this review, and the Agency may be asked to assist in such reviews.

Under the *Pilotage Act*, pilotage authorities must publish their tariff proposals in Part I of the *Canada Gazette*. Parties then have 30 days to file objections to the proposal with the Agency. If the Agency receives any objections, it conducts investigations.

In 2001, the Agency will complete its investigation of the Laurentian Pilotage Authority tariff proposal that was published on September 16, 2000. In addition, the Pacific Pilotage Authority published a tariff proposal on December 30, 2000. Various marine industry intervenors on the West Coast informed the Agency that they planned to file objections to the proposal. If they do, the Agency will carry out its first investigation of a pilotage tariff proposal on the West Coast since the Pacific Pilotage Authority was created in 1972.

In 2001, the Agency will also carry out several activities related to the *Coasting Trade Act*. It will update the guideline document entitled *Notice to Persons Seeking Licences*. Agency staff will conduct extensive consultations with the industry to address Canadian operators' concerns about vague and undefined coasting trade applications. Agency staff will also hold discussions with relevant parties regarding the application process for the temporary importation of a foreign vessel.

## Mediation

The Agency will continue its mediation pilot project in the rail and marine modes until June 30, 2002. This will allow the Agency to meaningfully evaluate the costs and benefits of running a permanent mediation service to resolve disputes. The Agency will be actively promoting mediation as an alternative to adjudication processes.



## Rail Transportation

In 2000, Parliament passed Bill C-34, which amended the Act. The Agency will adapt to its amended responsibilities, which include determining commercial net salvage value, and resolving disputes about the transfer and discontinuance process for railway lines. By the end of 2001, the Agency will also make its first revenue cap determinations for CN and CP movements of western grain, following consultations with farmers, shippers, railways and governments.

Also in 2000, the Federal Court of Appeal ruled that the Agency did not have jurisdiction under subsection 95(2) of the Act to investigate complaints about noise, smoke and vibration stemming from day-to-day railway operations. While the government examines its legislative options for a replacement to subsection 95(2), the Agency will work closely with the railways, the Railway Association of Canada, the Federation of Canadian Municipalities and Transport Canada to find an appropriate interim mechanism for resolving such complaints. The Agency will also consult with these parties to update its *Guide for Railway Charges for Construction and Maintenance of Railway Crossings* used by CN and CP, and to assess the feasibility of a similar document that Canadian short-line railways could use when charging municipalities for work the railways perform at railway crossings.

In 2001, the Agency expects to issue two decisions that may have implications for short-line, industrial or commuter railway operations. In the first, the Agency must consider the legal jurisdiction for urban commuter lines operating primarily over the lines of a federal railway. In the second, the Agency must examine, from a jurisdictional perspective, the functional integration between provincial and federal railways owned by the same company.

The Agency will also consider two applications for running rights in 2001. Ferroequis Railway Company Limited and the Hudson Bay Railway Company both filed applications with the Agency to run over various subdivisions of the Canadian National Railway Company in Manitoba, Saskatchewan, Alberta, and British Columbia. While the predecessor to the Agency, the National Transportation Agency, dealt with four applications for running rights throughout its existence, these are the first two applications filed under the current legislation. In assessing these applications, the Agency may grant the right and make any order and impose any conditions on either railway company, having regard to the public interest.

As in other years, the Agency will continue in 2001 to note the potential effects of changes in the rail industry, such as takeovers, mergers and short line consolidation.

## Agency Management

In 2001, the Agency will continue to participate in government-wide initiatives — such as the modernization of comptrollership, the Financial Information Strategy, staffing reform, Government On-Line and the Service Improvement

Initiative — that form part of the Government of Canada's modern management framework. This framework was illustrated in the report *Results for Canadians*, tabled by the President of the Treasury Board in March 2000. These initiatives are linked to objectives in the Agency's 2000 Strategic Plan.

An important objective of that plan is to have employees recognize the Agency as a workplace of choice. The Agency will continue to follow up on the concerns employees raised during the Public Service employee survey. It has developed an action plan to address such issues as workload and resources, training and development, staffing and classification, official languages and work processes. The Agency is also taking steps to prepare for the large number of retirements anticipated over the next decade. In addition, the Agency — which already complies with the requirements of the *Employment Equity Act* — will build on the positive results of a recent Canadian Human Rights Commission audit as it continues to diversify its workforce. Another important focus for the Agency will be continued staff development, to ensure the Agency's workforce has the skills to meet future challenges and demands.

The Agency will continue to increase and improve its use of information technology, in line with Government On-Line. On April 1, 2001, the Agency will implement accrual accounting, complying with Financial Information Strategy. The Agency will also continue work relating to the implementation of the Universal Classification System and will begin work relating to the Service Improvement Initiative.

In addition, the Agency is focusing more attention on helping its employees work in their preferred official language. To this end, it has created an internal consultative committee on official languages that will advise and support managers.

## Federal Court

A number of Federal Court decisions expected in 2001 will be of significant interest to the Agency. These judgments are expected to determine, among other issues:

- Whether land reclamation costs should be factored into the Agency's determination of net salvage value for purposes of transferring or discontinuing the operation of a railway line.
- Whether the rail portion of an intermodal through rate is eligible for final offer arbitration.
- The degree to which the railway rate regulation referenced in term 32(2) of the 1949 Terms of Union of Newfoundland with Canada continues to apply in the current environment.
- Whether the Governor in Council has the jurisdiction to make a legal determination — namely, whether port charges are fixed fees under subsection 49(1) of the *Canada Marine Act*.

# Chapter 4

## Organization

CANADA'S TRANSPORTATION INDUSTRY IS CONTINUALLY CHANGING. IN THE rail industry, deregulation and rail plant rationalization have dramatically altered the landscape: railways are trying to shed their money-losing lines, communities are fighting to preserve local service and short-line railways are growing. In the air sector, volumes are increasing and new international alliances are emerging. In the marine mode, new structures for managing ports and international competition are evolving. And finally, new technologies are gradually allowing service providers in all modes to make their vehicles and infrastructure even more accessible to persons with disabilities.

In response, the mechanisms for regulating the transportation industry are changing too. The Agency is always seeking new, flexible and forward-thinking ways to adapt to its current mandate and carry out its duties effectively.

The Agency is a quasi-judicial tribunal. With its Chairman as Chief Executive Officer, the Agency consists of a Vice-Chairman, up to five other full-time Members appointed by the Governor in Council and up to three part-time Members appointed by the Minister. Members, as the legal embodiment of the Agency, are economic regulators who make decisions on a wide range of matters affecting the economics of federal transportation modes.

The Agency's mandate extends to issuing licences to air carriers and certificates of fitness to rail carriers, and resolving disputes about various transportation rate and service matters. The Agency is also the aeronautical authority for Canada on matters related to the economic regulation of air carriers, participating in negotiations with other countries and administering international agreements. In addition, the Agency can also order parties to remove undue obstacles to the mobility of persons with disabilities in the federally regulated transportation network.

### Complaints Process

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

The Agency has taken steps to help shippers, carriers, travellers, municipalities and others affected by federal transportation to fully understand the Agency's roles and responsibilities, and their rights under the Act. The Agency's communications and consultation activities are an important facet of this work. The Agency also asks for and listens to opinions on regulatory changes that will affect the transportation industry.

Where appropriate, the Agency encourages parties to resolve disputes informally. The Agency's focus on consultation and facilitation has helped transportation users and providers resolve matters efficiently without resorting to the courts.

## Structure

The Agency comprises of the Chairman's Office and four branches: the Air and Accessible Transportation Branch, the Rail and Marine Branch, the Legal Services and Secretariat Branch, and the Corporate Management Branch. The branches support and advise Agency Members.

The Air and Accessible Transportation Branch implements Agency decisions and orders to license Canadian and foreign air carriers, enforce licensing requirements and issue charter permits. It also helps negotiate and implement international air agreements, and administers international air tariffs. This branch handles general consumer complaints related to air travel, as well as specific consumer complaints concerning the prices air carriers offer on domestic routes that have limited or no competition. It also supports the Agency to ensure that all modes of federally regulated transportation are accessible to persons with disabilities and helps resolve accessibility complaints.

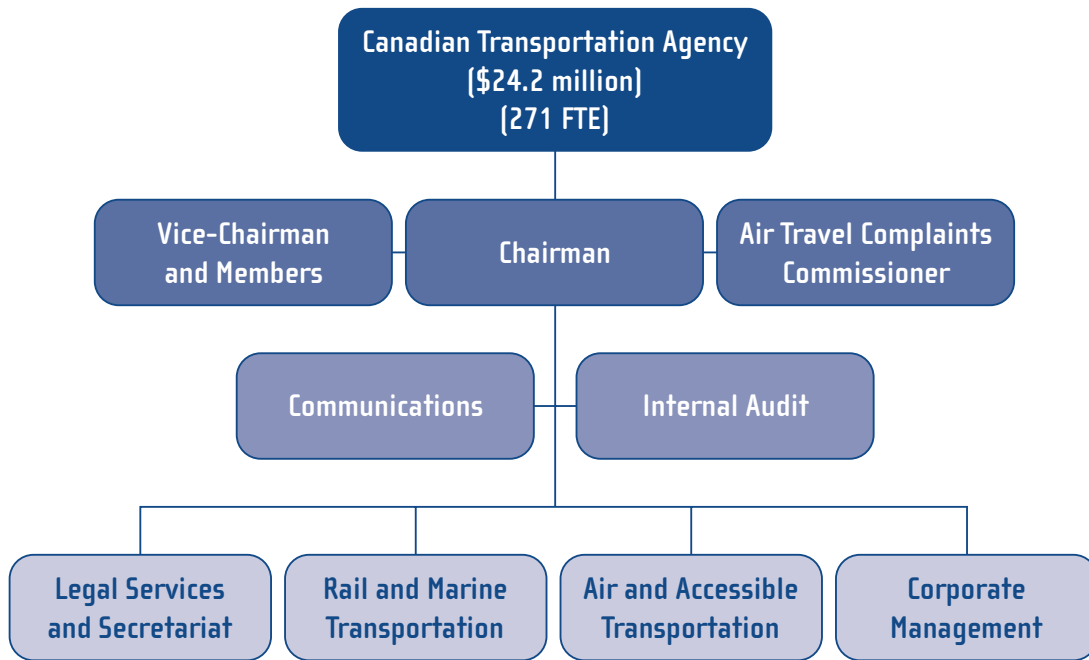
The Rail and Marine Branch deals with rate and service complaints arising in the rail and marine industries, as well as disputes between railways and other parties over railway infrastructure matters. It also issues certificates of fitness for the proposed construction and operation of railways. As well, it helps the Agency determine regulated railway interswitching rates and the railway revenue cap for grain movements; helps develop costing standards and regulations; and audits railway accounting and statistics-generating systems, as required.

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

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

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

The Agency employs approximately 271 people and is based in Hull, Quebec.



## Mission

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

## Values

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

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

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



**Marian L. Robson**



**Gilles Dufault**

**Vice-Chairman**  
Montreal, Quebec  
Former Via Rail executive and  
management consultant  
Appointed January 19, 1998  
as a Member; appointed Vice-  
Chairman in August 2000

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



**Richard Cashin**



**Mary-Jane Bennett**

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

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



**Keith Penner**



**George Proud**

**Member**  
Ottawa, Ontario  
Former Member of Parliament  
for Hillsborough and former  
Member of the Legislative  
Assembly of PEI  
Appointed January 8, 2001

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



**Michael A. Sutton**



**Bruce Hood**

**Air Travel Complaints  
Commissioner and Member**  
Town of Erin, Ontario  
Former National Hockey League  
referee and travel agency  
owner/operator  
Appointed August 1, 2000

# Chapter 5

## Cases Before the Court

### Federal Court of Appeal Cases Decided

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

Federal Court of Appeal

Court File No.: A-507-96

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

By judgment of the Federal Court of Appeal dated October 10, 2000, the appeal was allowed. The Federal Court of Appeal ordered that the decision of the National Transportation Agency with respect to section 13-D of *VIA's Special and Joint Passenger Tariff 1* be set aside and the matter be referred back to a differently constituted panel of the Agency to conduct a new inquiry with respect to the tariff.

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

Federal Court of Appeal

Court File No.: A-649-98

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

The appeal was dismissed by the Federal Court of Appeal on September 26, 2000.

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

Federal Court of Appeal  
Court File No.: A-537-99

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

This case was heard simultaneously with Federal Court file numbers A-729-99 and A-741-99. By judgment dated December 7, 2000, the appeal was allowed. The Federal Court of Appeal found that the Agency has no jurisdiction to deal with complaints concerning noise, smoke and vibrations resulting from duly authorized railway operations.

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

Federal Court of Appeal  
Court File No.: A-531-99

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

The appeal was dismissed by the Federal Court of Appeal on December 18, 2000.

***Canadian National Railway Company v. Randy and Sue Taylor***

Federal Court of Appeal  
Court File No.: A-729-99

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

This case was heard simultaneously with Federal Court file numbers A-537-99 and A-741-99. By judgment dated December 7, 2000, the appeal was allowed. The Federal Court of Appeal found that the Agency has no jurisdiction to deal with complaints concerning noise, smoke and vibrations resulting from duly authorized railway operations.



***Norfolk Southern Railway Company v. Randy and Sue Taylor***

Federal Court of Appeal

Court File No.: A-741-99

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

This case was heard simultaneously with Federal Court file numbers A-537-99 and A-729-99. By judgment dated December 7, 2000, the appeal was allowed. The Federal Court of Appeal found that the Agency has no jurisdiction to deal with complaints concerning noise, smoke and vibrations resulting from duly authorized railway operations.

***The Privacy Commissioner of Canada v. Canada Labour Relations Board\****

Federal Court of Appeal

Court File No.: A-685-96

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

The appeal was dismissed by the Federal Court of Appeal on May 9, 2000.

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

***Halifax Port Authority v. Halterm Limited***

Federal Court of Appeal

Court File No.: 00-A-8

Application for leave to appeal Agency Decision No. 73-W-2000 dated February 4, 2000 regarding an application by Halterm Limited pursuant to section 52 of the *Canada Marine Act* for a determination by the Agency that the Halifax Port Authority has acted contrary to section 50 of the *Canada Marine Act* and requiring that the Halifax Port Authority act in accordance with section 49 of the *Canada Marine Act* and regarding a preliminary motion by the Halifax Port Authority with respect to the Agency's jurisdiction to consider Halterm Limited's application under section 52 of the *Canada Marine Act*.

The application for leave to appeal was dismissed by the Federal Court of Appeal on April 19, 2000.

## Cases Discontinued

### *Algoma Central Railway Inc. v. Canadian Transportation Agency and Steve Robinson*

Federal Court of Appeal

Court File No.: A-271-00

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

Notice of Discontinuance filed in the Federal Court of Appeal on July 12, 2000.

## Cases Pending

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

Federal Court of Appeal

Court File No.: A-385-98

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

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

Federal Court of Appeal

Court File No.: A-613-99

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

### *Algoma Central Railway Inc. v. Canadian Transportation Agency and Steve Robinson*

Federal Court of Appeal

Court File No.: A-517-00

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

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

Federal Court of Appeal

Court File No.: 00-A-35

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

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

Federal Court of Appeal

Court File No.: A-625-00

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

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

Federal Court of Appeal

Court File No.: A-505-00

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

**Federal Court —  
Trial Division  
Cases Discontinued**

***Halterm Limited v. Minister of Transport, Vancouver Port Authority and Halifax Port Authority***

Federal Court — Trial Division

Court File No.: T-1085-00

Application for judicial review of the matter of the Minister of Transport's recommendation to the Governor in Council in respect of Order-in-Council P.C. 2000-889 dated June 9, 2000 rescinding Canadian Transportation Agency Decision No. 73-W-2000 dated February 4, 2000 and LET-W-98-2000 dated April 7, 2000.

Notice of Discontinuance filed in the Federal Court — Trial Division on September 28, 2000.

## Cases Pending

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

Federal Court — Trial Division

Court File No.: T-1103-00

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

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

Federal Court — Trial Division

Court File No.: T-1997-00

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

## Petitions to the Governor in Council Cases Decided

### *Vancouver Port Authority v. Canadian Transportation Agency*

Petition to the Governor in Council relating to Agency Decision Nos. 73-W-2000 dated February 4, 2000 and LET-W-98-2000 dated April 7, 2000. In Decision No. 73-W-2000, the Agency determined that it had jurisdiction to consider an application by Halterm Limited pursuant to section 52 of the *Canada Marine Act* for a determination by the Agency that the Halifax Port Authority had acted contrary to section 50 of the *Canada Marine Act*. In Decision No. LET-W-98-2000, the Agency determined that it had jurisdiction to consider an application by Westshore Terminals Limited pursuant to section 52 of the *Canada Marine Act* and section 26 of the *Canada Transportation Act* for a finding that the Vancouver Port Authority had acted contrary to sections 49 and 50 of the *Canada Marine Act*.

By Order-in-Council P.C. 2000-889 dated June 9, 2000, Her Excellency the Governor General in Council rescinded Agency Decision Nos. 73-W-2000 dated February 4, 2000 and LET-W-98-2000 dated April 7, 2000.

***Georgina Sasvari v. Canadian Transportation Agency***

Petition to the Governor in Council relating to Agency Decision No. 266-AT-A-1999 issued in connection with a complaint by Ms. Georgina Sasvari respecting Air Transat's refusal to carry Ms. Sasvari's service dog in the aircraft passenger cabin on a flight between Toronto, Ontario and St. Maarten, Dutch West Indies.

By Order-in-Council P.C. 2000-1321 dated August 23, 2000, Her Excellency the Governor General in Council declined to vary or rescind Agency Decision No. 266-AT-A-1999 dated May 25, 1999.

**Cases Pending**

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

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

# Chapter 6

## Other Information

THIS CHAPTER PROVIDES THE FOLLOWING: STATISTICS FOR SOME OF THE Agency's activities, a list of legislation the Agency has responsibility for, the Codes of Practice, and federal railway companies that the Agency has issued certificates of fitness to.

### Statistics

#### Air Carriers, by Nationality

	Carriers holding Agency licences, as of December 31, 1999	Carriers holding Agency licences, as of December 31, 2000	Carriers with National Transportation Agency* licences yet to be replaced, as of December 31, 2000
Canadian	878	884	—
United States	769	763	1
Other Foreign	108	108	1

\* The National Transportation Agency was the predecessor of the Canadian Transportation Agency.

#### Licence Authorities Held, by Nationality

Services	Canadian					United States	Other	Total
	Aircraft type							
	Small	Medium	Large	All cargo	Total			
Domestic	860	22	13	33	928	—	—	—
Non-scheduled international	427	20	11	25	483	756	85	—
Scheduled international	13	28	74	5	120	49	59	—
Total December 31, 2000*	1,300	70	98	63	1,531	805	144	2,480

\* For comparison, the total in December 31, 1999 was 2,469.

## Air Licensing Activities

		Completed in 1999	Completed in 2000
Applications for	New licences	165	189
	Amendment of licences	168	170
	Suspensions	189	178
	Cancellations	72	92
	Reinstatements	69	53
	Exemptions/rulings*	50	112
	Other Foreign	—	3
Agency-initiated	Suspensions	117	128
	Cancellations	93	91
	Reinstatements	60	27
<b>Total</b>		<b>983</b>	<b>1,043</b>

\* The increase in the number of these cases over 1999 relates primarily to issues pertaining to the notification requirements of section 64 of the Act.

## Annual Statistics, Charters Division, 1999 vs. 2000

Charter permits issued	1999	2000
Passengers non-resaleable (includes entity passenger and transborder passenger non-resaleable charters)	237	253
Cargo non-resaleable (includes entity cargo/livestock and transborder goods charters)	333	331
Passengers resaleable, which includes the following:		
• common purpose charters		
• combination of advance booking charters and inclusive tours charters		
• inclusive tours charters		
• advance booking charters	1,159	1,101
<b>Additional statistics</b>		
Exemptions granted to the <i>Charter Regulations</i>	1,123	928
Amendments to approved charter programs	436	390

## Accessible Transportation Information Statistics, 2000

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Each day, the Agency provides practical advice on accessible transportation to both the public and industry in response to telephone and Internet inquiries, written requests for information, and invitations to participate in conferences and trade shows. These are the figures for 2000.

<i>Air Travel Guides</i> distributed	8,717
Accessibility brochures distributed	6,595
Newsletters distributed	17,481
General inquiries and accessibility-related calls received over the Internet or on the toll-free lines	3,086
Public presentations given	17
Exhibits (accessibility) displays made available	10
Advertisements placed	19

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## All Carriers, Complaints and Breakdown of Issues

The Air Travel Complaints Commissioner received a total of 3,515 issues of complaint in 16 different categories during the reporting period. This exceeds the total number of complainants for the simple reason that few consumers list only one air travel complaint at a time. One letter, for example, listed nine separate issues that required individual attention.

Issues: July 5, 2000 to December 31, 2000

CANADIAN CARRIERS	Allergies	Baggage	Cargo	Charges	Denial of boarding	Fares	Frequent flyer program	Quality of service	Reservations	Safety	Schedules	Smoking	Tickets	Unknown	Unaccompanied minors	Unruly passengers	Total issues	Total complaints
Air Canada	4	243	19	11	54	127	95	1,016	77	32	409		106	4	8	6	2,211	769
Air Inuit		1	2			2		1									6	2
Air Labrador									1								1	1
Air Montreal								1		1			1				3	1
Air Transat		21	3	1	6	1		92	5	25	42		7				203	69
Aviation Skyservice		4			3			18	1	2	10			1	1		40	11
Calm Air		2				1		1			1						5	3
Canada 3000 Airlines		13	1	6	8			72	3	11	29		8			1	152	53
Central Mountain Air					1			1									2	1
First Air		1				2		1									4	3
Interprovincial Airlines		1						4			1						6	2
Royal Airlines		3		2	2	1		49	4	9	22		4		1	3	100	30
WestJet Airlines				1		1		1			1					2	6	2
30,000 Island Air													1				1	1
Air Canada's affiliates																		
Air B.C.		2			1			4			2						9	3
Air Nova		6			2			11	1		10						30	10
Air Ontario		3						16		1	7						27	7
Canadian Airlines International		42	2		13	9	24	159	12	3	77		10	2	1	2	356	128
Canadian Regional		2			2	1		10	1	1	9						26	10
<b>Total</b>	<b>4</b>	<b>344</b>	<b>27</b>	<b>21</b>	<b>92</b>	<b>145</b>	<b>119</b>	<b>1,457</b>	<b>105</b>	<b>85</b>	<b>620</b>		<b>137</b>	<b>7</b>	<b>11</b>	<b>14</b>	<b>3,188</b>	<b>1,106</b>

FOREIGN CARRIERS	Allergies	Baggage	Cargo	Charges	Denial of boarding	Fares	Frequent flyer program	Quality of service	Reservations	Safety	Schedules	Smoking	Tickets	Unknown	Unaccompanied minors	Unruly passengers	Total issues	Total complaints
Aeroflot (Russian International Airlines)					1			2									3	1
Air Afrique		2															2	2
Air China		1															1	1
Air France		3	1	1	2			8			2						17	6
Air Pacific						1											1	1
Alaska Airlines		1															1	1
Alitalia		7			2			9		1	3		2				24	9
American Airlines		7			3			11	1		21		2				45	16
British Airways		1		1	1	2		8	1				1				15	6
British Midland Airways		2						4									6	2
BWIA International Airways													3				3	2
Ceske Aerolinie (Czech Airlines)		1						2									3	1
China Southern Airlines								2			1						3	1
Nationale de Transports Aériens Royal Air Maroc		2						1			1						4	3
Continental Airlines		1						2		1	2		1				7	1
Corsair		1											1				2	2
Cubana de Aviacion					2	1		3			1	2					9	4
Delta Air Lines								4			2		1				7	1
Finnair		2						4									6	2
Iberia Air Lines of Spain													1				1	1
Japan Airlines										1							1	1
KLM Royal Dutch Airlines		2		1	2	1		6	1		1		1				15	7
Korean Air Lines				1					1				3				5	2
LACSA		12			2			17									31	11
Lufthansa German Airlines		5					1	10	1	2	2		1				22	9
Mesa Airlines											1						1	1
Mexicana Airlines								4		1	2						7	1
No specific carrier identified		2		2	2	2	2	8		5	1		2	4			30	22
Northwest Airlines		2									2		1				5	3
Olympic Airways		1						3	1		2		1				8	4
Pakistan International Airlines								6	1	2	1		1				11	3
Royal Jordanian Airlines					1								1				2	1
Sabena Belgian World Airlines								1									1	1
TACA Airlines		5						2					1				8	4
Thai Airways								1		1					1		3	1
United Air Lines		2						3		1	1						7	3
USAir					1			4			3		2				10	5
<b>Total</b>	<b>0</b>	<b>62</b>	<b>1</b>	<b>6</b>	<b>19</b>	<b>7</b>	<b>3</b>	<b>125</b>	<b>7</b>	<b>15</b>	<b>49</b>	<b>2</b>	<b>26</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>327</b>	<b>142</b>
<b>Grand Total</b>	<b>4</b>	<b>406</b>	<b>28</b>	<b>27</b>	<b>111</b>	<b>152</b>	<b>122</b>	<b>1,582</b>	<b>112</b>	<b>100</b>	<b>669</b>	<b>2</b>	<b>163</b>	<b>11</b>	<b>12</b>	<b>14</b>	<b>3,515</b>	<b>1,248</b>

## Rail Complaints:

### Comparison of Dispute Resolution and Competitive Access Applications Received

<i>National Transportation Act, 1987</i>				
January 1, 1988 to June 30, 1996				
Provisions	Number of cases	Decided	Pending	Withdrawn or settled
Competitive line rate	6*	5	—	1
Extended interswitching	10	3	—	7
Interswitching rates	7	7	—	—
Level of service	19	13	—	6
Final offer arbitration	9	2	—	7
Public interest**	12	9	—	3
Running Rights***	4	—	—	2

<i>Canada Transportation Act</i>				
July 1, 1996 to December 31, 2000				
Provisions	Number of cases	Decided	Pending	Withdrawn or settled
Competitive line rate	—	—	—	—
Extended interswitching	—	—	—	—
Interswitching rates	—	—	—	—
Level of service	21	15	2	4
Final offer arbitration	14	6	0	8
Public interest**	N/A	N/A	N/A	N/A
Running Rights	—	—	—	—

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

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

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

## Statutes and Regulations

The Agency has primary responsibility for the following legislation:

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

The Agency shares responsibility to Parliament for the following legislation:

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

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

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

The Agency shares responsibility to Parliament for the following regulations:

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

The Agency, in consultation with Transport Canada, has proposed revoking the following engineering regulations:

*Details of Maps, Plans, Profiles, Drawings, Specifications and Books of Reference (General Order E-1)*

*Height of Wires of Telegraph and Telephone Lines Regulations (General Order E-18)*

*Joint Use of Poles Regulations (General Order E-12)*

*Pipe Crossings Under Railways Regulations (General Order E-10)*

*Railway Grade Separations Regulations (General Order E-5)*

*Railway-Highway Crossing at Grade Regulations (General Order E-4)*

*Wire Crossings and Proximities Regulations (General Order E-11)*

## Codes of Practice

The Agency develops regulations and codes of practice by weighing both the needs of persons with disabilities for accessible transportation services and the ability of industry to deliver accessible services. So far, it has developed the following codes.

**Code of Practice for Ferry Accessibility for Persons with Disabilities:** This code addresses the physical accessibility of marine transportation equipment used by persons with disabilities.

**Code of Practice for Aircraft Accessibility for Persons with Disabilities:** This code addresses the physical accessibility of air transportation equipment used by persons with disabilities.

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

## Canada's Federal Railway Companies, as of December 31, 2000

The Agency has issued certificates of fitness to the following companies:

Algoma Central Railway Inc.

Arnaud Railway Company

Bangor and Aroostook Railroad Company

Burlington Northern and Santa Fe Railway Company

Canadian American Railroad Company

Canadian National Railway Company

Canadian Pacific Railway Company

Cape Breton Development Corporation (carrying on business as Devco Railway)

Capital Railway

Chemin de fer de la Matapédia et du Golfe Inc.

CSX Transportation Inc.

Eastern Maine Railway Company

Essex Terminal Railway Company

Ferroequis Railway Company Ltd.

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

# Appendix

## Agency Accessibility Advisory Committee and Working Group Participants

**T**HE AGENCY'S ACCESSIBILITY ADVISORY COMMITTEE AND WORKING GROUP participants help the Agency develop regulations, codes of practice and industry guidelines on accessibility. In addition to meeting annually with the Committee, the Agency consults it regularly for all of its regulatory projects.

### *Agency's Accessibility Advisory Committee*

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

### *Representatives from the community of persons with disabilities*

Canadian Association for Community Living — C. Laurin-Bowie

Canadian Association of the Deaf — K. R. Nichols

Canadian Association of Independent Living Centres — H. Cullihall

Canadian Council of the Blind — J. Rempel

Canadian Hard of Hearing Association — C. Cantlie

Canadian Hearing Society — K. Armour

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

Canadian National Society of the Deaf/Blind — Penny Leclaire

Canadian Paraplegic Association — E. Boyd

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

Council of Canadians with Disabilities — P. Danforth

Centre québécois de la déficience auditive — Y. Mantha

Guide Dog Users of Canada — V. Collicott & D. Yale

Institut Nazareth et Louis-Braille — P. Ferland

Kéroul — G. Déry

Learning Disabilities Association of Canada — B. McBride

National Federation of the Blind: Advocates for Equality — R. Marion

One Voice Seniors — W. Coates

*Representatives from the transportation industry*

Air Canada — E. Arcand

Air Transport Association of Canada — W. Everson

Canadian Airports Council — N. Raynor

Marine Atlantic — B. Harbidge

VIA Rail Canada Inc. — K. Coffen

*Other interested parties*

Canadian Human Rights Commission — H. Goldberg

Government of Newfoundland and Labrador — S. Appleby

Human Resources Development Canada — M. Regnaud

Transport Canada

Cabin Safety Standards — J. Hardcastle

Transportation Development Centre — B. Smith

Accessible Programs — B. Brown

Policy Integration and Corporate Issues — G. Blanchard

Regulatory Standards — M. Khouzam