



Canadian
Transportation
Agency

Office
des transports
du Canada

2005 Annual Report



© Minister of Public Works and Government
Services Canada, 2006

Printed and bound in Canada

ISBN 0-662-69365-5
Catalogue No. TT1-2005

Available in multiple formats.

This report and other Canadian Transportation
Agency publications are available on the Web
site at www.cta.gc.ca.

For more information about the Canadian
Transportation Agency please call:
(819) 997-0344 or toll free 1-888-222-2582;
TTY 1-800-669-5575.

Correspondence may be addressed to:

Canadian Transportation Agency
Ottawa, ON K1A 0N9

Member photos: William P. McElligott.



May 2006

The Honourable Lawrence Cannon, P.C., M.P.
Minister of Transport, Infrastructure and Communities
Transport Canada Building – Place de Ville
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour of presenting to you the Annual Report of the Agency for the year 2005, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,

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

Marian L. Robson
Chairman and Chief Executive Officer

Contents

Message from the Chairman	1
Summary	5
Accessible Transportation	8
Air Transportation	
Air Travel Complaints Program	24
Rail Transportation	44
Marine Transportation	58
The Agency Team	64
Assessment of the Act	72
Annex – Statutes and Regulations	78

Message from the Chairman



While the history of the Agency and its predecessors dates back to 1904, the Canadian Transportation Agency in its present form, will celebrate its 10th anniversary on July 1, 2006. And, at that time, my term as Chairman and Chief Executive Officer will come to a close. The last ten years have been particularly full of exciting developments and challenges, for both the industry and the Agency. I have been with the Agency since July of 1996 and so, while this report reviews the Agency's operations for the past year, I would also like to reflect on some of the highlights of the past decade.

Although the Agency is a quasi-judicial tribunal and is responsible for regulating the federal transportation system, it does not carry out its work in isolation. Agency staff and Members place a high priority on communicating with Canadians across the country. They have met with countless individuals and organizations in all parts of this country in order to answer questions, provide information and above all, to put a face on the public service.

In addition to numerous presentations, speeches and meetings, the Agency has held consultations with industry and clients on a wide variety of subjects and issues ranging

from the process for applying for a coasting trade exemption to the final offer arbitration process. It has also established annual consultations on various issues including the development of the Revenue Cap for Western Grain movements and on accessible transportation with its Accessibility Advisory Committee.

Communicating with Canadians has been absolutely essential for the Agency to keep up to date with the rapid changes in the transportation industry and to ensure that its knowledge and expertise is current. The Agency has always demonstrated a commitment to interacting with its clients, and will continue to be user friendly and citizen-focused into the future.

Over the past ten years, the Agency has utilized technology to allow it to be more responsive and accessible to Canadians. The Agency's Web site, in a fully accessible HTML format, offers on-line forms and publications, a subscription service for new content and general announcements and an email function. There is both a toll-free and teletype (TTY) line for ease of access. Of particular note is the availability of Agency information in multiple formats for persons with disabilities. I am proud of the efforts made in this regard to ensure that the Agency reaches all Canadians.

Continuous improvement is a hallmark of successful organizations including the Agency. Throughout the past ten years, the Agency has consistently reviewed its processes in order to make them more efficient and responsive. One of the best examples of this innovation is found in the use of mediation. In order to resolve disputes

more efficiently and effectively, the Agency began using mediation in 2002 as a pilot project in the Rail and Marine Branch. Since that time, mediation has evolved into a fully integrated tool in resolving disputes in all modes of transportation. This approach has allowed Agency mediators to work with parties in reaching settlements efficiently and in a cost-effective manner. The mediation process boasts an impressive rate of success and client satisfaction.

A further innovation in resolving disputes more efficiently arose through the creation of the Office of the Air Travel Complaints Commissioner in 2000. Although no Commissioner has been in place since October 2004, the informal resolution of air tariff and service complaints through the intervention of Agency staff continues to help citizens resolve complaints with domestic and international carriers far more efficiently than they could have using the formal Agency process. It is my hope that this program will continue to provide a valuable service to Canadians.

As proud as I am with the innovative approaches to regulation and the commitment to client relations, I am also just as proud of the quasi-judicial and regulatory work that the Agency Members and staff have carried out over the past ten years. The Agency has established numerous precedents in various areas. It has issued major decisions on level of service for rail transportation in the Canadian Wheat Board and Naber Seed cases. It has made important determinations, for example, on running rights, on the value of discontinued railway lines, on marine pilotage fees, airline restructuring and ownership and NAVCanada

fees. With respect to accessible transportation, the Agency has made significant rulings on whether or not obesity and allergies are disabilities, on the accessibility of VIA Rail's newest cars and on the provision of medical oxygen by air carriers.

In a shift from the regulatory regime to that of voluntary compliance, the Agency has developed Codes of Practice in consultation with the community of persons with disabilities, the transportation industry and government. The Codes identify best practices in the provision of transportation services and standards to better serve persons with disabilities and seniors when they travel. To date, there are Codes of Practice which apply to air, rail and ferry passenger service providers. In 2004, the Agency released a Communications Code to provide standards for how transportation providers communicate with travellers with disabilities. The Agency is currently working on a Passenger Terminal Accessibility Code.

The Agency's day-to-day work has also made a significant impact on the transportation system and on businesses and individuals connected to it in Canada and across the globe. In issuing countless air and rail licenses and permits, it has ensured that hundreds of thousands of travellers got to their destinations and millions of dollars of merchandise got to market. Through its participation in the negotiation of international air agreements, the Agency has been involved in the liberalization of air services worldwide, with markets for Canadian carriers and travellers expanding significantly as a result.

Looking back over the past ten years, I can attest to the difference the Agency has made in the federal transportation network. The system is more accessible to persons with disabilities. There are more meaningful consultations and communications between the Agency, users of transportation services and transportation providers. There is less regulatory burden on the system. The Agency has responded to legislative and other changes in its environment to ensure that the transportation system continues to function efficiently and effectively.

The Agency continues to be looked to, now possibly more than ever, for its expertise and knowledge of the transportation industry. Over the past decade, the Agency has participated in numerous special projects, reviews and initiatives. In 1999, at the request of the Minister of Transport, a panel of Members and staff undertook an extensive review of marine pilotage. The report and recommendations, including pilotage risk management methodology, were accepted by the Minister and has been implemented. Agency expertise was also provided to the *Canada Transportation Act Review Panel* in its review of the legislation in 2000 as well as the Estey and Kroeger reviews of grain handling and transportation. Agency staff have been called upon by Transport Canada and Foreign Affairs to provide assistance on complex and sensitive issues such as trade disputes before the World Trade Organization and the U.S. Department of Commerce, productivity gains made by railway companies and the sale of government-owned hopper cars.



Over the past decade, the Agency has also made a significant contribution to the public service and in particular in advancing the unique issues facing small agencies. I have particularly enjoyed my involvement over the years as a member of the Heads of Agencies Steering Committee and in advancing tribunal member training. The Agency has consistently been recognized by central agencies for numerous best practices in response to government initiatives involving human resources and public sector management practices.

While there has been considerable progress over the past decade, there are still challenges that face the transportation industry and its customers. The Agency will continue to be called upon to address issues such as competitiveness, infrastructure capacity, accessibility, the environment, and so on. It will also need to address the challenge posed by the uncertainty surrounding funding for

Agency programs as well as the looming retirement of many of our seasoned staff.

In the coming years, the Agency will continue to be called upon to face these challenges, make important decisions, innovate and communicate. It will succeed in doing so in large part due to the strength of its people. The ability, commitment and dedication of Agency staff and Members have left an indelible impression on me and on the transportation sector. I do not believe there is another organization where you can find a group of people with such knowledge, expertise and desire to serve the public as at the Agency. It has been my good fortune to work with them all. Canadians should be proud to have these people at their service.

As I conclude this chapter of my career, I would like to say that it has been a privilege and an honour to serve as Chairman of the Agency. The past ten years have seen rapid, systemic changes in the transportation sector and it has been exciting and challenging to fulfill my role in such a dynamic environment. I wish the Agency continued success in the future as it works to achieve an efficient, economic and accessible transportation network.

Marian L. Robson
Chairman and Chief Executive Officer

Summary

The Canadian Transportation Agency is an independent quasi-judicial tribunal that makes decisions on a wide range of matters affecting Canadian transportation.

In 2005, the Agency issued a total of 3,804 rulings, which included 750 decisions, 705 orders, 1,892 permits, 61 final letter decisions and 396 interlocutory decisions. Of those rulings, 3,239 related to air, 249 related to rail, 131 to marine and 185 to accessible transportation.

As required under subsection 42(1) of the *Canada Transportation Act*, the Agency submits an Annual Report of its activities to Parliament. In this Annual Report, the Agency's activities are summarized in four chapters that correspond to each area under its mandate: Accessible, Air, Rail and Marine Transportation. Each chapter describes the Agency's regulatory and administrative responsibilities in that area, and outlines major rulings and initiatives undertaken in 2005. Agency rulings that have been appealed to higher courts are listed at the end of each chapter.

Notable events in the Accessible Transportation chapter include:

– The Agency issued preliminary findings regarding a complaint from a traveller who has difficulty walking and who used Air Canada's on-line reservation system to book travel. The Agency found that the carrier's on-line system presented an undue obstacle to the traveller's mobility. The Agency also found that Air

Canada's lack of boarding assistance at Winnipeg airport and its failure to inform the traveller that a smaller aircraft with no loading bridge would be used for his Winnipeg-Denver flight constituted undue obstacles to his mobility. A final decision will be issued in 2006.

– On December 13, the Agency issued findings in response to 25 complaints against Air Canada and one against WestJet regarding their policies and procedures on the use of medical oxygen on board aircraft. The Agency found that obstacles do exist to persons with disabilities who require medical oxygen aboard Air Canada and WestJet flights. The Agency's next steps will be to convene an oral hearing to consider the undueness of the obstacles and the appropriateness of any corrective measures.

– The Agency held two oral hearings regarding complaints about domestic fares and charges for persons with disabilities who require additional seating for themselves or for their personal care attendants. Those named in the complaints are Air Canada, Air Canada Jazz, WestJet, the Gander International Airport Authority and the Air Transport Association of Canada. During a five-day hearing in May and a one-day hearing in October, the Agency collected information from the Council of Canadians with Disabilities, Air Canada and WestJet to determine the undueness of obstacles to the mobility of persons with disabilities. The case will continue in 2006.

– The Agency looked at ways to encourage carriers to consider more compatible combinations of mechanical boarding devices and boarding and transfer chairs. As such, it issued an advisory to Canadian operators of Metroliner and Beechcraft 1900 aircraft on how they can provide better service to passengers who use wheelchairs.

– Work continued on the Passenger Terminal Code, which will be the Agency's fifth voluntary Code of Practice. The Agency held meetings with industry and consumer representatives to discuss terminal accessibility issues. It also consulted its Accessibility Advisory Committee on a first draft of the Passenger Terminal Code.

Highlights in the Agency's Air Transportation chapter include:

– A total of 1,337 new complaints were received by the Agency's Air Travel Complaints Program in 2005, an increase of 19.4 per cent over the 1,117 received in 2004. The complaints dealt with 3,475 issues in 2005 as compared to 2,500 in 2004 (an increase of 39 per cent). The top four issues raised by air travellers were quality of service, flight disruptions, baggage and ticketing. In general, travellers expressed higher satisfaction with the resolution of complaints by the Air Travel Complaints Program in 2005 than they had in 2004. The satisfaction rate was 97.6 per cent in 2005 (compared to 96.0 per cent in 2004) when a Level I file (complaint in the initial stage) was closed, and 62.1 per cent in 2005 (compared to 53.5 per cent in 2004) for files closed at Level II (after an investigation).

– When Jetsgo ceased operations on March 11, Agency staff took immediate action to assist travellers with referral information and advice. A record 133,804 calls were made to the Agency's call centre in the first 12-hour period after Jetsgo's announcement, the highest number of calls ever made to a single government office in one working day. The

Agency also responded in writing to nearly 800 individuals who filed complaints in the next month.

– On December 30, the Agency issued a cease and desist order to British Airways after the carrier committed several contraventions of the bilateral air agreement signed between Canada and the United Kingdom, as well as against Canada's *Air Transportation Regulations*. The contraventions involved filing fares on less than statutory notice, and issuing tariff revisions and charges that had been rejected by the Agency.

– On June 21, the Agency issued a cease and desist order to Akwaaba Airlines & Tours and Ahenfo Airlines, telling them to stop advertising and selling flights between Toronto and Accra, Ghana, without a proper licence. It also issued a news release to alert travellers who might have bought tickets from the carriers. All ticket holders who contacted the Agency received refunds from the carriers. The Agency also assisted the U.S. Department of Transportation in its investigation.

– At year end, the Agency was reviewing Air Canada's application for a licence to operate a domestic service using all-cargo aircraft and crew provided by other carriers (a wet lease arrangement). In response to the application, another air carrier had alleged that Air Canada had offered and sold the service before obtaining a licence, contrary to section 59 of the *Canada Transportation Act*. The Agency will make a decision on the matter in early 2006.

Highlights from the Rail Transportation chapter are:

– The Agency issued its first two quarterly reports that compared the Canadian National (CN) Railway's transit times with benchmark BC Rail times from five zones in Northern B.C. to the Vancouver area. The reports are part of the Agency's new monitoring responsibilities resulting from the acquisition of BC Rail by CN.

The reports were sent to CN, connecting carriers in Vancouver and to the federal Competition Bureau.

- The Agency and the Province of British Columbia proposed an agreement that would authorize the Agency to apply federal railway crossing laws to railways in British Columbia that are under provincial jurisdiction. This proposal follows the signing of a similar agreement between the Minister of Transport and the Province of Ontario.
- On December 30, the Agency ruled that CN's revenues (\$305,788,835) for the movement of Western grain in 2004–2005 exceeded its revenue cap (\$305,670,121) by \$118,714. This marked the second year that a railway had exceeded its maximum revenue entitlement in the five years the Agency has been making revenue cap determinations.
- Agency staff continued to work with Transport Canada to assess the impact on the grain revenue cap of the disposal of the Government of Canada's grain hopper car fleet. Transport Canada had asked the Agency to develop a methodology to adjust the railway revenue caps if the fleet was transferred to the Farmer Rail Car Coalition. The Agency found that the transfer would result in a slight (0.4 per cent) decrease in the railway revenue caps for 2006–2007. A lease-purchase agreement-in-principle was signed between the Government of Canada and the Farmer Rail Car Coalition on November 24.

In the Marine Transportation chapter, the main issues are:

- After an investigation and a two-day hearing in Montréal, the Agency decided a tariff increase proposed by the Laurentian Pilotage Authority (LPA) was not in the public interest. At the end of the year, the Agency was investigating a new LPA tariff increase proposal. The Agency also was investigating a surcharge

tariff proposal by the Great Lakes Pilotage Authority after an objection was filed.

- The Agency dismissed a complaint regarding port fees set by the St. John's Port Authority in Newfoundland and Labrador. Adventure Tours Inc., a tour boat operator, had complained that the per-passenger fee charged to tour boat operators was unjustly discriminatory, unfair and posed undue hardship.
- At the end of the year, the Agency was investigating 53 complaints against the Nanaimo Port Authority in British Columbia. The complaints alleged that the port authority had instituted an unjustly discriminatory per-passenger fee on March 1, 2005, which varied from \$0.15 per BC Ferries passenger, to \$0.85 per Fast Ferry passenger, to \$1.50 per float plane passenger.
- In a continuing effort to improve service and turnaround times, the Agency unveiled a revised Canadian Vessel Information System on its Web site. The system contains lists of Canadian registered vessels operating in Canadian waters according to type and area of service. The information is compiled from the Agency's database, which is used to carry out the Agency's mandate under the *Coasting Trade Act*.

The Agency Team chapter

This chapter describes how the Agency works and the functions of the Agency's directorates. There is also a list of the Agency's Members and of the Accessibility Advisory Committee members. The chapter explains the Agency's formal and modified hearing process, mediation and the government on-line initiative.

Assessment of the Act chapter

This chapter details the concerns encountered by the Agency in administering the *Canada Transportation Act* in 2005.

The acts and regulations for which the Agency bears responsibility are listed in the Annex.

CHAPTER

1 Accessible Transportation



Resolving accessibility disputes and addressing concerns

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

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

Facilitation

A traveller with a disability may have accessibility concerns when planning a trip or making a reservation. In 2005, Agency staff worked diligently to alert carriers to travellers' concerns and to suggest ways to address them. In response to inquiries, the Agency facilitated the resolution of travel problems by taking early action to avert or alleviate situations that might have caused obstacles to the mobility of persons with disabilities and remedy situations before a formal complaint is filed. In some situations, persons with disabilities withdrew their complaints because, with the help of Agency staff, their concerns were subsequently addressed and remedied by the transportation service provider to their satisfaction.

Complaint withdrawn

A married couple in their late 80s who have difficulty walking booked an Air Canada executive-class flight from Toronto to Fort Lauderdale. Wheelchair transfer assistance was requested for the wife and wheelchair assistance for the husband. They were unable to check in at the Executive Class Desk. Wheelchair assistance was also problematic.

As a result of facilitation by Agency staff, Air Canada said a bulletin would be issued to the customer service employees at Toronto's Pearson Airport and that a briefing would be given at the beginning of each shift for five consecutive days. The briefing would remind customer service employees that any passenger who has purchased an executive-class ticket and who requires wheelchair assistance has the choice to check in at the Executive Class check-in counter or the Special Assistance Desk. The bulletin and briefing would refer to this particular experience. The couple withdrew their complaint when Agency staff confirmed receipt of the bulletin and relayed its contents.

Traveller left alone

An 85-year-old traveller expressed concerns after being left unattended in Vancouver Airport's departure area. An employee of Central Mountain Air had provided the traveller with wheelchair assistance to a waiting area, but then left the traveller unattended. The traveller had to request assistance from fellow passengers to get to the departure gate when the Central Mountain Air employee failed to return.

After speaking to the passenger to clarify his needs, Agency personnel spoke to company officials who expressed regret and advised that they would be reviewing their procedures with management and gate agents involved. They also said they would arrange to visit the passenger in Williams Lake to discuss his concerns and resolve his issues. Following this meeting, a letter was sent to the passenger and copied to the Agency, both apologizing to the passenger and then confirming that Central Mountain Air had changed procedures in Vancouver.

Mediation

Mediation continued to be offered as an option for settling accessible transportation disputes. Issues brought to mediation related to air and rail travel for persons with mobility, vision, hearing and intellectual disabilities, and requiring the use of continuous oxygen service. Parties opting for mediation included several major air and rail carriers, two major Canadian airport authorities and private citizens.

There were 18 cases in progress at the beginning of the year and 10 new requests for mediation were received during the course of the year. Of these 28 cases, eight were resolved during pre-mediation discussions; one case was withdrawn by the complainant; and 14 resulted in mediation sessions. Five cases remained outstanding at the end of 2005. Ten sessions resulted in full settlement and, subsequently, formal

complaints were withdrawn and the files were closed. Four cases were partially settled through mediation and unresolved matters were returned to the Agency's formal process.

Interest in mediation as a method of solving disputes continued to grow among users and providers of transportation services in 2005. The Agency found that an increasing number of service providers demonstrated a positive, cooperative and collaborative approach toward the program. The Agency will continue to encourage mediation for accessibility disputes in 2006.

Complaint adjudication

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

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

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

If the Agency finds that there is an undue obstacle to the mobility of a person with a disability, it can order corrective action. The Agency has broad powers to impose measures, which include purchasing or modifying equipment, changing or developing a policy or procedure, training staff and changing a training program. If a person with a disability has incurred expenses directly related to the obstacle, the Agency can also order the transportation service provider to reimburse the person.

Air Canada's on-line reservation system and boarding assistance at Winnipeg Airport

In response to a complaint by a person who has difficulty walking and climbing stairs and who made an on-line booking, the Agency made preliminary findings that Air Canada's on-line reservation system constituted an undue obstacle to the applicant's mobility and to other persons with disabilities, in general, who use on-line reservation systems. The Agency also made a preliminary finding that the lack of assistance provided by Air Canada to the traveller at the Winnipeg airport to board his flight and Air Canada's failure to

inform him that a smaller aircraft with no loading bridge would be used for his Winnipeg-Denver flight constituted undue obstacles to his mobility. Air Canada was therefore required to provide specific evidence and related arguments to show cause to the Agency why these obstacles are not undue.

Among other things, Air Canada was required to provide a detailed report with supporting documentation setting out the implications of modifying its on-line reservation system to remedy the obstacles. At year-end, Air Canada made submissions regarding modifications it made to its on-line reservation system in December 2005 and its plans to make further changes to its on-line system. Subsequent to year-end, the Agency required further information from Air Canada regarding possible modifications to its current reservation system to be implemented over a three-year period beginning in 2006 and that the Agency will issue a further decision with respect to the preliminary undueness.

TTY applications concerning foreign carriers and ferry operators

The Agency had before it a number of TTY (teletype) applications against foreign carriers and foreign ferry operators. These were adjourned pending the release of the Communications Code of Practice (published in 2004) and consultations with foreign carriers and ferry operators who operate to and from Canada. The Agency wanted to gather sufficient information prior to determining what constituted an appropriate level of service with respect to communications for the community of persons with hearing impairments.

In one such application against British Airways, the Agency in a decision in July

2005, found that the absence of TTY access to British Airways' Canadian reservation system constituted an undue obstacle to the applicant and to persons who are deaf or hard of hearing. The Agency required British Airways to install a TTY and provide the Agency with a written confirmation that the TTY service is operational; and include the TTY number on its Web site, in all advertisements and in all future publications providing information about the air carrier that is otherwise available to the general public.

Carriage of mobility aids on Air Canada small regional jets

On January 4, 2005, a complaint from a person who uses a motorized wheelchair and the Council of Canadians with Disabilities (CCD) was received against Air Canada regarding the carrier's inability to carry the motorized wheelchair in its cargo hold; Air Canada's procedures for assessing and confirming whether it can transport the mobility aids of persons with disabilities on its aircraft; and the inaccessibility of the smaller Canadian Regional Jet (CRJ) aircraft on the Ottawa-Winnipeg route.

The applicants also raised the broad issue of the replacement of larger aircraft with smaller aircraft on routes throughout Canada. The Agency noted that it has long recognized the specific accessibility problems of using small aircraft as an increasing number of Canadian communities are served now only by small aircraft.

However, consistent with a previous 2003 decision, the Agency noted that it was not inclined to interfere with the general internal commercial operations of transportation service providers to the extent of indicating the transportation equipment that they must use. It also noted that carriers use specific

aircraft on specific routes for a variety of complex, internal, commercial and economic reasons, including aircraft capacity and demand. The Agency stated that carriers are entitled to deploy their fleet to meet the requirements of the specific market of a given region.

The Agency reaffirmed its opinion and this matter was not considered in this 2005 decision.

The Agency determined as well that the inaccessibility of the CRJ aircraft on the Ottawa-Winnipeg route constituted an obstacle to the traveller's mobility; however, the obstacle was not undue. The Agency noted that once it was determined that the traveller's mobility aid could not be transported on Air Canada's CRJ, the applicant and his attendant were upgraded to executive-class seats and travelled on another flight connecting in Toronto. While the Agency acknowledged that, in order for the applicant to travel with the minimal number of transfers between his wheelchair and passenger seat, he requires a direct flight, the applicant was accommodated within Air Canada's transportation network on an indirect flight departing within the same time frame as his originally-scheduled flight.

The Agency also noted Air Canada's position that no other measure could have been taken at the time. The applicant and CCD disagreed with Air Canada's position and explained that once a carrier determines that a person with a disability cannot be accommodated on certain aircraft, with advance notice given, the carrier should substitute a larger aircraft that would be able to accommodate that person. However, the Agency stated that Air Canada, like other carriers, is entitled to deploy its aircraft to meet market demand as it sees fit.

The Agency determined that Air Canada's procedures for assessing and confirming whether it can transport the mobility aids of persons with disabilities on its aircraft constituted an undue obstacle to the applicant's mobility and to the mobility of persons with disabilities who use mobility aids in general. The Agency directed Air Canada to take the following measures:

- provide the Agency with a copy of Air Canada's procedures that have been put in place for assessing and confirming whether it can transport the mobility aids of persons with disabilities on its aircraft;
- provide the Agency with a copy of a memo sent to its MEDA Desk (the section in Air Canada that deals with medical cases/ persons with disabilities specific requests) and its call centre agents advising them of the importance of verifying with passengers using mobility aids travelling on smaller aircraft whether or not the mobility aid will fit through the aircraft cargo door, based on the maximum size of mobility aids that may be carried; and
- provide the Agency with a copy of a communiqué that will be sent to all travel agents advising them of the importance of the above.

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

VIA sought leave to appeal two Agency decisions (March and October 2003) involving the accessibility of VIA's Renaissance cars. In March 2005, the Federal Court of Appeal rendered its decision in this matter. In short, the Court allowed VIA's appeal, set aside the Agency's preliminary and final decisions, and referred the complaint back to the Agency for

reconsideration. This original complaint was filed by CCD against VIA on December 4, 2000. CCD raised 46 different concerns about a new fleet of Renaissance cars purchased by VIA in 2000, primarily relating to the accessibility of the cars for persons using wheelchairs.

The Agency had ordered VIA to remove 14 undue obstacles to the mobility of persons with disabilities. VIA had 60 days from the October 2003 decision to submit plans to implement the modifications necessary to remove the undue obstacles, including a proposed schedule. VIA was also required to submit detailed plans from an accessibility perspective and to obtain the Agency's written approval before implementing the measures.

In April 2005, CCD sought leave to appeal to the Supreme Court of Canada regarding this matter. On November 17, 2005, the Supreme Court granted CCD's application and the case is expected to be heard in May 2006.

Agency cases on hold

As noted in the 2004 Annual Report, the Agency had several applications that raise significant issues for the community of persons with disabilities that were on hold as of December 31, 2004. There were three cases involving persons who are obese, 15 applications from persons who have allergies, 24 applications from persons who require medical oxygen, and six applications regarding fares and charges in domestic air travel for persons with disabilities who require additional seating for either themselves or for their attendants. As discussed in the next section, the status of these files in 2005 was affected by Air Canada's emergence from court ordered protection in the fall of 2004.

Air Canada files affected by the April 1, 2003, Stay Order

The Ontario Superior Court of Justice issued a Stay Order on April 1, 2003, regarding Air Canada and its affiliates under subsection 11(3) of the *Companies' Creditors Arrangement Act*. The Stay Order had the effect of stopping all proceedings against Air Canada before the Agency and remained in effect until September 30, 2004, when Air Canada emerged from creditor's protection.

As part of the completion of Air Canada's restructuring, on August 23, 2004, the Ontario Superior Court of Justice issued an Order pursuant to the *Companies' Creditors Arrangement Act* which lifted the Stay Order as of October 1, and extinguished all claims against the assets of Air Canada which arose on or before April 1, 2003 (the Sanction Order). Once the Stay Order had been lifted, the Agency issued 14 decisions on cases held in abeyance because of the Order.

On December 23 and 30, 2004, and January 6, 2005, Air Canada filed submissions stating its position that all accessible transportation applications before the Agency against Air Canada and its subsidiaries in relation to incidents which occurred on or before April 1, 2003, (the affected applications) are extinguished by the Sanction Order.

The Agency disagreed with Air Canada's position and, in January 2005, indicated it had taken action to have the issue resolved by the Ontario Superior Court as expeditiously as possible, by seeking an interpretation of the Sanction Order as to whether the affected applications are extinguished, as argued by Air Canada. In the meantime, Air Canada requested that the Agency stay all affected applications pending the outcome of this matter which the Agency granted given its

intention to seek an interpretation of the Sanction Order.

The Agency subsequently determined the best way to deal with the affected applications was to proceed with its consideration of the applications and, as such, on June 30, 2005, it withdrew its motion before the Ontario Superior Court for an interpretation of the Sanction Order. Consequently, the Agency lifted the stay of all of the affected applications previously put on hold.

Oral hearing planned on the use of medical oxygen

In 2005, the Agency continued with its investigation of 26 grouped applications, 25 against Air Canada and one against WestJet, involving the carriers' policies and procedures for the use of medical oxygen. The Agency's investigation into the issues regarding medical oxygen followed its determination in December 2004 that persons who require that medical oxygen be available to them when travelling by air are persons with disabilities for the purposes of Part V of the Act regardless of where a person falls within the spectrum of persons who require medical oxygen (from on a continuous basis to an as-needed basis).

During the fall of 2005, the Agency sought clarification from Air Canada regarding its policies and procedures in various respects and, in a December 13th decision, the Agency determined the existence of obstacles to persons with disabilities who require medical oxygen onboard Air Canada and WestJet aircraft. The Agency found, regarding the complaints against Air Canada, that the following constitute obstacles to the mobility of persons with disabilities who require medical oxygen when travelling by air:

- the non-provision of medical oxygen by Air Canada prior to boarding, during connections, stopovers and upon arrival at the final destination; and, Air Canada's failure to ensure the availability of a portable oxygen tank dedicated to persons who use oxygen in order to permit them to use the on-board washroom;
- Air Canada's policy: (1) that requires that persons request its medical oxygen service as well as portable onboard oxygen service in advance of travel; (2) that requires a Fitness for Travel Form be completed by the physician of persons who use oxygen, including the related cost and the level of information to be disclosed; (3) on fees charged for oxygen service; and (4) of not providing humidifiers on request to persons who use medical oxygen on all of its flights;
- Air Canada's policies and procedures regarding the placement of the oxygen tank under the seat in front of the passenger, which encroaches in the person's floor space; and
- the level of service that Air Canada provides and, specifically, the reliability of the carrier's oxygen service.

The Agency found that three other issues raised by applicants against Air Canada did not constitute obstacles to their mobility.

Regarding the WestJet complaint, the Agency found WestJet's refusal to transport persons with disabilities who require medical oxygen on international and transborder flights constitutes an obstacle to their mobility.

As next steps, the Agency will convene an oral hearing to gather further information from the respondents and expert witnesses. The respondents will also have an opportunity

to present and test evidence regarding the undueness of any obstacles that may be found and the appropriateness of any corrective measures that the Agency may consider.

Oral hearing underway to examine fares and charges for persons requiring additional seating to accommodate their disabilities

In 2005, the Agency continued investigating applications involving domestic fares for persons with disabilities who require additional seating for themselves or for their personal-care attendants as they apply to Air Canada, Air Canada Jazz, WestJet, the Gander International Airport Authority and the Air Transport Association of Canada. The Agency decided to adjourn a case involving a foreign air carrier until it addresses the matter with respect to the domestic applications.

In February 2005, the Agency determined that the most expeditious way to gather the evidence it needed to thoroughly and accurately assess the potential undueness of any obstacles posed by the additional fares and charges would be to convene an oral hearing to gather further information from the applicants, respondents and expert witnesses. The oral hearing would also provide an opportunity to the respondents to present and test evidence regarding the undueness of any obstacles and the appropriateness of any corrective measures that the Agency may consider.

The Agency held the first phase of this oral hearing in Toronto from May 30 to June 3, 2005, where it gathered facts, information and preliminary evidence from the applicants and air carrier respondents regarding the

possible undueness of obstacles arising from fares and charges required by persons who require additional seating to accommodate their disabilities.

The Agency also convened a one-day oral hearing on October 14, 2005, to gather further evidence from the parties and in order to ascertain the degree to which evidence sought by applicants from the respondent carriers may be necessary and relevant to its consideration of the matters before it.

The second stage of the oral hearing will be held in 2006.

Obesity and allergies

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

Ms. McKay-Panos had filed an application with the Agency against Air Canada, concerning the seating accommodation provided to her and the carrier's policy of charging passengers for additional seating required because of their obesity. The Agency had dismissed Ms. McKay-Panos' application against Air Canada in October 2002. The Agency had found that although Ms. McKay-Panos might have health problems, impairments, limitations or restrictions caused by obesity, she does not have a disability for the purposes of the accessibility provisions of Part V of the Act. Ms. McKay-Panos appealed the Agency's decision to the Federal Court of Appeal.

The Federal Court reactivated the case and, on December 15, it was heard in Edmonton. The Panel Federal Court reserved its decision, which is expected in 2006.

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

Complaint statistics

During 2005, 51 accessibility-related applications were received by the Agency. Forty-three decisions were issued, some dealing with applications received prior to January 1, 2005, and others dealing with applications received during 2005. Of these decisions, 26 resolved new applications and 15 determined whether corrective measures ordered by the Agency in previous decisions had been implemented. In addition, the Agency issued two decisions in respect of an application for a review of an Agency decision and 141 procedural and other interlocutory decisions regarding matters still under consideration by the Agency, two of which set out preliminary findings of the Agency and required respondents to answer a direction to show cause. The Agency also rendered its decision setting out its obstacle finding in respect of the oxygen applications. Nine applications were withdrawn, three were closed as a result of incomplete pleadings, three were closed as a result of the dispute being resolved informally between the parties and 18 were successfully resolved through mediation. The Agency also facilitated the resolution of concerns prior to travel and



three cases were transferred to Air Travel Complaints because they did not raise accessibility issues.

Regulatory work and the Advisory Committee

The Agency has in place two sets of regulations to eliminate undue obstacles to the mobility of persons with disabilities. These are Part VII of the *Air Transportation Regulations* concerning the terms and conditions of carriage of persons with disabilities, promulgated on January 1, 1994; and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*, promulgated on January 26, 1995.

For advice on accessibility issues, the Agency consults its Accessibility Advisory Committee, made up of representatives from the community of persons with disabilities, the transportation industry and other interested parties (see the Agency Team section, page 64).

The Canadian Air Transport Security Authority (CATSA), the Canadian Standards Association, a travel consultant specializing in travel

for persons with disabilities and WestJet were added to the Committee in 2005. The respective areas of expertise of these new permanent members will enhance the work of the Committee on present and future projects on accessible transportation.

From time to time, specific expertise is needed to focus on the work at hand. Therefore, representatives of the Charlottetown, Toronto and Winnipeg airport authorities were invited to attend meetings with the Advisory Committee while the Code of Practice on Passenger Terminal Accessibility is being developed. These new temporary members bring to the Advisory Committee their expertise in terms of airport infrastructure and front line operation, and will provide a valuable contribution to the development of the Code.

Boarding small aircraft

In 2005, the Agency looked at ways to encourage carriers to consider more compatible combinations of mechanical boarding devices, and boarding and transfer chairs.

The Agency issued an Advisory to Canadian operators of Metroliner and Beechcraft 1900 aircraft identified in a study entitled *Boarding Small Regional Aircraft* conducted for the Transportation Development Centre of Transport Canada as having compatibility challenges with certain types of boarding and transfer devices. The Advisory provides operational advice to these operators when providing service to passengers with disabilities who use wheelchairs.

The Advisory highlighted a unique and successful boarding device and procedure developed by Bearskin Airlines used when providing boarding and transfer assistance onto its Metroliner aircraft. It is available on the Agency's Web site.

Monitoring the Codes of Practice

The Agency has developed four Codes of Practice to make the federal transportation network more accessible to persons with disabilities. They are:

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

The Codes of Practice reflect the Government of Canada's policy of pursuing voluntary approaches rather than using regulations. The Codes are developed in consultation with associations of and for persons with disabilities, senior citizens, manufacturers, carriers and service providers.

To assess the level of industry compliance with the Agency's Codes of Practice, the Agency conducts regular surveys. Carriers and terminal operators provide written reports on their measures to meet the Code requirements. This self-reporting is verified through on-site visits by Agency investigators. These provide transportation service providers with an opportunity to exchange information and get guidance that will help them implement accessibility improvements more quickly.

Monitoring of the Communication Code

In 2004, the Agency launched the Code of Practice *Removing Communication Barriers for*

Travellers with Disabilities and the accompanying resource guide. In 2004, the Agency also developed a questionnaire to over 100 carriers and terminal operators subject to the Code to collect benchmark data.

In 2005, the Agency spent considerable time meeting with transportation service providers to explain the Communication Code, and facilitate its implementation. It issued a bulletin containing relevant information to those subject to the Code about accessible design standards, TTYs in public pay phone installations and training for accessible Web site design.

The Agency also assisted service providers in drafting their multiple format policies, as required by the Code of Practice. The objective of this policy is to provide passengers with disabilities formats that complement or replace conventional print or video products used for the dissemination of public travel-related information.

Monitoring of the Communications Code will continue during 2006 as the number of terminals and carriers subject to the Code is four times greater than those three other Codes of Practice (Rail, Ferry and Air) released by the Agency combined. The Agency will present the results to its Advisory Committee at the next general meeting and the questionnaire will be redistributed in 2007, when the Code comes into effect, to measure progress.

Passenger terminal accessibility

During 2005, the Agency continued its work on terminal accessibility by holding meetings with industry and consumer representatives in preparation for a first round of consultation. The Agency then consulted its Accessibility Advisory Committee on a first draft of the

Passenger Terminal Code in the fall of 2005. Work on this project will continue in 2006. In addition to further consultations on this Code, the Agency will develop an accompanying guide which will include practical information to assist transportation service providers in implementing the new Code.

Consumer survey

During 2005, the Agency initiated work on a Travellers' Trip Questionnaire which will enable travellers with disabilities to document their experiences so the Agency can learn first-hand from service recipients what worked well and what did not. The results will be a key tool in determining next steps for Agency work in accessible transportation. This survey is expected to be launched in 2006.

Canadian Standards Association's Dispensing Machine Standard and the Accessible Design for the Built Environment Standard

In 2005, the Agency continued to participate on the Canadian Standards Association's Technical Subcommittee on Accessible Design for Self-Service Interactive Devices (i.e. dispensing machines). The standard will establish requirements to make interactive machines such as express check-in kiosks and ticket dispensing machines accessible to persons with varying physical, sensory and cognitive disabilities. This standard will be released in 2006. The Agency also continued to work with the Canadian Standards Association on harmonizing the Accessible Design for the Built Environment Standard (B651), formerly known as the Barrier-Free Design (B651) with the International Standards Organization's standards on

accessibility. Work with the Canadian Standards Association will continue in 2006.

Promoting effective training and awareness

In 2005, Agency staff worked with air carriers to ensure that training needs were addressed within the changing realities of the contemporary passenger air industry in Canada.

The Personnel Training Regulations require carriers and terminal operators in the air, rail and marine industries to ensure that their employees and contractors are properly trained to assist travellers with disabilities. Agency staff carries out regular inspections to ensure the Regulations are followed. Agency staff also provides information and advice to carriers to help them educate their personnel.

Agency Investigators and Accessible Transportation staff reviewed, for example, the training programs of Innu Mikun, Provincial Airlines, Cooperative de transport maritime et aérien, Windsor Airport, Hamilton Airport, North Bay Airport, and Swanberg Air.

As part of its work in the field, Agency personnel conducted a training inspection and accessibility review at the Calgary Airport. Staff examined many innovative accessibility features, including a designated dog run for service animals and a loading bridge levelling mechanism which ensures that aircraft entrances are always at the same height as the jet-way to facilitate level entry boarding. The Calgary Airport has received an accessibility award from the community and its work will be featured in a 2006 edition of the Accessible Transportation Directorate newsletter *Moving Ahead*.

The Agency also continued, in 2005, to respond to the growing emphasis on security measures for air travellers since persons with

disabilities need to be able to pass through the new security system in an accessible and dignified way. As such, work continued with the Canadian Air Transport Security Authority (CATSA) to promote accessibility in new security screening programs.

After signing a memorandum of understanding in 2004, the Agency and CATSA began to monitor security screeners' sensitivity training activities in conformity with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. Agency staff reviewed a report prepared by CATSA on its disability sensitivity training activities and provided recommendations where appropriate. Agency staff made visits to several CATSA sites and continued to provide assistance so that a framework for monitoring CATSA's compliance with the Personnel Training Regulations, that meets the needs of CATSA and the Agency, can be implemented. In 2005, CATSA began to roll out a newly developed sensitivity module in its training program designed to enhance customer service for passengers with disabilities.

In 2005, Agency staff worked with Transport Canada to help develop a new training package for transportation service providers, called Travel the Accessible Route. A video and work book are being produced.

The Agency familiarizes carriers and terminal operators with the need to maintain a uniform level of basic services to travellers with disabilities and it monitors Web sites of service providers to identify inconsistencies with Agency standards and for inconsistencies between service providers' domestic tariffs and terms and conditions on their Web sites. Although domestic tariffs no longer need to be filed with the Agency, it routinely requests and reviews them to ensure that

service commitments to customers with disabilities are reflected.

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

The Agency continued working on modernizing the disability-related provisions in its domestic sample tariff in 2005. The domestic sample tariff, which in large part reflects the requirements of the *Air Transportation Regulations* concerning the Terms and Conditions of Carriage of Persons with Disabilities, was developed by the Agency to provide smaller carriers that had not developed their own tariff with sample terms and conditions of carriage, typically contained in larger carriers' tariffs. Work is underway to incorporate some of the provisions from the newly-released Accessibility Guidelines for Small Aircraft in the sample tariff. This work will continue in 2006. In addition, the Accessibility Guidelines for Small Aircraft will now be sent to new carriers operating aircraft with 29 seats or fewer. These guidelines will complement the material already provided to larger passenger service providers.

The Agency vigorously pursued an outreach program in 2005 to engage service providers in a discussion of travel services for persons with disabilities to enhance awareness of regulations, Codes of Practice, decisions issued by the Agency, and advisories sent to the transportation industry. In 2005, consultations were held with specific carriers including Air Transat, Harmony Airways, Skyservice Airline, Air Canada and WestJet.

This work includes Agency personnel assisting airport contractors, such as airport hotels and rental car companies, as they respond to the efforts of carriers and airport authorities to ensure that the travel experience is seamless.

Agency personnel addressed questions from other professional organizations. For example, Agency staff responded to an inquiry from the British Columbia Veterinary Medical Association about certification of service animals to be allowed to travel on public transportation to promote consistency and understanding for the travelling public. This information was subsequently circulated to veterinarians in the province.

CanJet has incorporated accessible transportation features on its Web site to make it possible for passengers with disabilities to identify service needs at the time of reservation. This initiative will give the carrier timely information that will enable CanJet to respond in real time to the disability-related service needs of customers during their

journey. This airline continues to use Agency publications in its training program and, during this reporting period, material on accessible transportation was sent for distribution to participants in a course for new reservation agents at CanJet's call centre in Bathurst, New Brunswick.

Zoom Airlines sought help with information and arrangements for accepting a reservation from a person with a cochlear implant for travel. At the request of Singapore Airlines, Agency personnel provided guidance and training in the use of a TTY for the hearing impaired at its Canadian reservation office.

As Sunwing Airlines prepared to commence operations, Agency staff met with carrier officials and made a presentation on training while providing advice on specific service issues. Working with service providers developing their services prior to rolling them out provides a unique opportunity to incorporate disability amenities as a key foundation of passenger services. This proactive work will continue in 2006.

Briefing to WestJet

WestJet provided an opportunity for Agency staff to conduct an information session to more than 20 key personnel responsible for developing procedures and company guest service policies. During the two-day presentation, information was distributed as part of the review of all Codes of Practice and regulations as well as key decisions, the Reservation Checklist, Agency and Transport Canada circulars on Passenger Seating Requirements, Passenger's Luggage (wheelchairs, batteries) and Provision of Individual Safety Briefings relating to the carriage of persons with disabilities. Subsequently, detailed written responses were prepared to address specific operational questions from participants.

Communicating with Canadians

Canadians continued to be informed of accessibility issues and Agency decisions in 2005 through news media coverage. Articles were published in major Canadian dailies, weeklies and periodicals as well as broadcasts on radio and television stations.

In 2005, the Agency continued to focus efforts on enhancing communication between persons with disabilities, travel agents, tour operators and carriers to ensure that the necessary services are identified at the time of reservation and communicated to the carrier.

At conference organizers' request, the Agency addressed the industry legal community at the Paterson MacDougall Aviation Law Day Conference in Toronto on the subject of communicating with passengers with disabilities and other regulatory matters. Agency personnel promoted its Reservation Checklist as a practical tool for ensuring that persons' accessibility needs are documented and communicated to carriers, regardless of the mode of travel.

As part of the Canadian Airports Council annual meeting, the Agency Chairman participated in a panel discussion on the impact of government policy, legislation and economic regulations on our airports.

The Agency also participated at transportation-related events such as September 14–16 Colloque sur le transport adapté au Québec, Bromont; Airports Council International and PAWS National Dog Guide Conference, Vancouver. It exhibited at such events as People in Motion, Toronto; Canadian Hard of Hearing Association Natural Sounds Conference, Kelowna; and Alliance for Equality of Blind Canadians Conference, Ottawa.

The Agency's award-winning paper "The Tapestry of Inclusion", first delivered at the 10th International Conference on Mobility and Transport for Elderly and Disabled People (TRANSED) in Japan, was delivered at the Transportation Research Board's annual meeting in Washington, DC.

The Agency is an active participant in the efforts to organize the 11th TRANSED Conference being hosted by Transport Canada in Montréal in 2007. The Agency will co-chair this event and play an active role in showcasing Canadian accomplishments in accessible transportation to transportation professionals and consumers from around the world. Information about the conference is available at www.tc.gc.ca/transed2007.

The Agency contributed to the federal report on disability: "Advancing the Inclusion of Seniors with Disabilities: A Government of Canada Report" and the newly revised "Guide to Persons with Disabilities" to be delivered to homes across Canada in 2006.

The Agency also appeared before the Parliamentary Subcommittee on the Status of Persons with Disabilities of the Standing Committee on Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities. It discussed current issues before the Agency and answered a variety of questions of concern to Committee members and their constituents.

Accessibility information in the form of brochures and reports distributed:



Cases before the courts

Federal Court of Appeal – Appeals Granted in 2005

VIA Rail Inc. v. Council of Canadians with Disabilities

Court File No. A-238-04

Appeal of Agency Decision
Nos. 175-AT-R-2003 and 620-AT-R-2003
wherein the Agency determined that certain
aspects of VIA Rail Inc.'s Renaissance
passenger rail cars posed undue obstacles to
the mobility of persons with disabilities and
ordered corrective measures. By judgment
dated March 2, 2005, the appeal was
allowed.

Supreme Court of Canada – Cases Pending in 2005

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

Court File No. 30909

Appeal of Federal Court of Appeal judgment
dated March 2, 2005, relating to the appeal
of Agency Decision Nos. 175-AT-R-2003 and
620-AT-R-2003 wherein the Agency
determined that certain aspects of VIA Rail
Inc.'s Renaissance passenger rail cars posed
undue obstacles to the mobility of persons
with disabilities and ordered corrective
measures. Leave to appeal was granted by
the Supreme Court of Canada.

Federal Court of Appeal – Cases Pending in 2005

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

Court File No. A-100-03

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

VIA Rail Canada Inc. v. Meenu Sikand and the Canadian Transportation Agency

Court File No. A-277-05

Appeal of Agency Decision
No. 115-AT-R-2005 dated March 3,
2005/Order T-582-05 of the Federal Court
regarding VIA's meal distribution policy.

CHAPTER

2

Air Transportation



Air Travel Complaints

On February 23, 2005, Finance Minister Ralph Goodale announced, in connection with the Canadian Government's Budget, that the position of Air Travel Complaints Commissioner would be eliminated, but that the Canadian Transportation Agency would retain responsibility for the Air Travel Complaints Program. However, Bill C-44, which would have effected this change, died on the Order Paper when the election was called on November 29, 2005.

Complaint types

Level I: Dissatisfied customer complains to the Air Travel Complaints Program without writing to the carrier first.

Level II: Dissatisfied customer complains to the Air Travel Complaints Program after a carrier fails to respond to a complaint or if the customer is not satisfied with the response received from the carrier.

In 2005, 1,337 new complaints were received by the Air Travel Complaints Program. This represents an increase of 19.4 per cent over the 1,117 received in 2004. Not all complaints received at Level I are resolved at that level; some are raised to Level II for an in-depth informal investigation. As well, some complaints are received directly at Level II. In 2005, 211 of the 685 complaints received at Level I were not resolved to the satisfaction of the complainants. At their request, this resulted in the initiation of full investigations at Level II. On the other hand, 652 complaints were sent directly to Level II for investigation. Although every attempt is made to resolve complaints in an informal manner, some are referred to the Agency for resolution through

its formal quasi-judicial process. In 2005, there were seven such cases.

Complaints about Canadian air carriers

There were 663 complaints filed against Air Canada in 2005 as compared to 448 received in 2004, an increase of 48.0 per cent. This may be explained by the fact that Air Canada was no longer under court protection from its creditors in 2005, as it had emerged under a new, restructured holding company, ACE Aviation Holdings, on September 30, 2004.

The total number of complaints filed against other Canadian carriers was 362. Of particular note are the number of complaints received concerning Air Transat, Skyservice and WestJet. Complaints against Air Transat dropped from a total of 72 complaints in 2004 to 66 in 2005. Complaints against Skyservice also dropped from a total of 90 in 2004 to 51 in 2005. On the other hand, complaints about WestJet increased from 12 in 2004 to 22 in 2005.

Note: Statistics in all tables in the "Air Travel Complaints" section may vary slightly from the previous reporting period due to the dynamic nature of the database which tracks complaints according to their current status.

Complaints about Canadian carriers in 2005

	Jan. 1 to June 30	July 1 to Dec. 31	Total
Air Canada (including Jazz)	330	333	663
Air Transat	38	28	66
Skyservice	31	20	51
Zoom	12	19	31
WestJet	9	13	22
Canjet	4	7	11
Other*	155	26	181
Total	579	446	1,025

* Includes totals for Jetsgo which ceased operations on March 11, 2005.

Note: Multiple air carrier complaints are counted for each carrier involved.

A missed flight refund

A married couple obtained their boarding passes at the Air Transat check-in counter for their Toronto to Fort Lauderdale flight and then proceeded through U.S. Customs and Immigration. Immediately after they completed the formalities, an Air Transat agent informed them that they were too late to board their flight. Because the next flight was three days later, they opted to purchase two one-way tickets on American Airlines at a total cost of \$453.58. When they complained to Air Transat, their request for a refund was denied. They then asked the Air Travel Complaints Program to intervene on their behalf.

Agency staff demonstrated to Air Transat that the couple had complied with its tariff provisions when they checked in more than 45 minutes prior to departure. As a result, Air Transat refunded them the cost of the American Airlines tickets totalling \$453.58.

Complaints about foreign air carriers

The number of complaints received concerning foreign air carriers increased by 21.0 per cent, from 195 in 2004 to 236 in 2005.

Complaints about foreign carriers in 2005

	Jan. 1 to June 30	July 1 to Dec. 31	Total
British Airways	9	13	22
KLM	8	6	14
Air France	6	7	13
BWIA	10	3	13
American Airlines	5	6	11
Cubana	6	5	11
Lufthansa	8	3	11
Royal Air Maroc	5	4	9
United	4	4	8
US Airways	5	2	7
America West	4	2	6
Cathay Pacific	4	2	6
Other	51	54	105
Total	125	111	236

Note: Multiple air carrier complaints are counted for each carrier involved.

Compensation for a lost bag

A woman travelled with her infant from Montréal to Marrakech, Morocco, via Casablanca, on Royal Air Maroc. When she arrived at her destination, her luggage was missing. She spent much of her vacation travelling back and forth from her hotel to the airport to retrieve her bag, but was unsuccessful.

She complained to Royal Air Maroc seeking compensation. Royal Air Maroc agreed to provide US\$640 in compensation for her lost baggage (the Warsaw Convention limit) and also offered a goodwill gesture of US\$200 for the inconvenience. The complainant was seeking CAN\$3,000 in compensation and asked the Air Travel Complaints Program to intervene on her behalf.

Agency staff told Royal Air Maroc that international baggage claim limits under the Montreal Convention applied in this complaint, and not the Warsaw Convention. As a result, Royal Air Maroc changed its US\$640 compensation to CAN\$1,900.

Types of complaint issues received in 2005

The Air Travel Complaints Program received complaints that dealt with 3,475 issues in 2005 as compared to 2,500 in 2004 (39.0 per cent increase). The top four issues raised by the travelling public were quality of service, flight disruptions, baggage and ticketing. The total number of complaints, in all four cases, exceeded the numbers received during the previous year. Quality of service issues, which comprise 44.0 per cent of the total number of issues, increased to a

total of 1,529 from 962 in 2004, representing a 58.9 per cent increase. During the same period, complaints concerning flight disruptions, representing 17.2 per cent of the total number of issues, increased to 597 from 446, an increase of 33.9 per cent. Similarly, baggage issues, comprising 15.4 per cent of issues, increased to 536 from 336, an increase of 59.5 per cent while ticketing issues, representing 6.6 per cent of the total number of issues, increased 2.7 per cent to 230 from 224.

Complaint issues – All carriers in 2005

	Jan. 1 to June 30	July 1 to Dec. 31	Total
Quality of service	827	702	1,529
Flight disruptions	371	226	597
Baggage	305	231	536
Ticketing	130	100	230
Reservations	71	63	134
Safety	60	56	116
Denied boarding	39	53	92
Refusal to transport	45	34	79
Frequent Flyer Program	42	35	77
Other	52	33	85
Total	1,942	1,533	3,475

Satisfaction level

The satisfaction rate of those complainants who were fully or partially satisfied after the closure of their file at Level I was 97.6 per cent in 2005 as compared to 96.0 per cent in 2004, and was 62.1 per cent in 2005 compared to 53.5 per cent in 2004 for files closed at Level II.



Hurricane victims finally compensated

A couple with two small children were on vacation in Grenada and were stranded when their Zoom return flight was cancelled because of Hurricane Ivan. They found themselves in an emergency situation, without adequate food, clean water or other necessities. They returned to Toronto, via Barbados, at their own expense because they were unable to wait for Zoom and were unsure when the carrier would return for them.

When the couple tried to obtain a refund from Zoom for the Air Canada tickets they had purchased, they were told that the carrier was not responsible since the flight cancellation was due to a “force majeure” event – an event that cannot reasonably be anticipated or controlled. The carrier said that they should have waited for Zoom to transport them out of Grenada. After sending a letter to Zoom and receiving no response, the woman sought assistance from the Agency’s Air Travel Complaints Program.

After program staff intervened, Zoom gave the complainant a cheque for \$1,268, the full refund of the Zoom tickets.

Air Canada Stay Order

The Agency was unable to deal with air travel complaints against Air Canada between April 1, 2003, and October 1, 2004, because of a Stay Order issued by the Ontario Superior Court of Justice. The Order stipulated that no action could be taken regarding Air Canada or its affiliates without their agreement.

The air carrier subsequently filed letters with the Agency on December 23 and 30, 2004, and on January 6, 2005, stating its position that all complaints against Air Canada and its subsidiaries where the incident occurred on or before April 1, 2003, were extinguished because of a separate Sanction Order made by the Ontario Superior Court on August 23, 2004. The Agency disagreed and filed a motion on February 14, 2005, with the Ontario Superior Court seeking a ruling that the Sanction Order did not extinguish those complaints. For a time, the Agency did not

proceed with the disputed cases. On June 30, 2005, it decided not to pursue its motion on the Sanction Order before the Ontario Superior Court of Justice and to continue considering the affected applications.

Jetsgo

The Canadian Transportation Agency, like everyone else, was caught by surprise when Jetsgo announced its decision to cease operations on March 11, 2005. As a result of Jetsgo’s announcement, numerous articles and reports in the news media across Canada and elsewhere suggested that consumers contact the Agency for information and advice.

Although there was little the Agency could do to help stranded travellers on that date, it took immediate action to provide timely advice to Jetsgo ticket holders about their options, rights and recourse, and to refer them to the appropriate organizations for immediate help. The Agency issued a news

release and posted a special Jetsgo page on its Web site, which was updated regularly. The number of call centre employees was more than tripled to answer questions from Jetsgo ticket holders. Staff also responded in writing, either by letter or by e-mail, to nearly 800 individuals who had filed complaints with the Agency in the month following Jetsgo's cessation of operations. As well, the Agency took steps to ensure that priority was given to air carriers seeking charter permits to provide alternate transportation to Jetsgo's stranded charter passengers.

A Jetsgo passenger made this comment regarding the Agency's assistance: "Thanks very much for your timely reply. It helped us out a lot when no one else seemed to care. I never even heard of the Canadian Transportation Agency before and I'm very appreciative of your guidance. Mentioning the Agency really made (them) more attentive."

Call centre rings in record numbers

A total of 133,804 calls were made to the Agency's call centre in a 12-hour period on March 11, 2005, the day Jetsgo ceased operation, setting a new record for the number of calls to a single government organization in one day. (Not included in that number were another 4,000 calls made before the call centre opened that morning.)

Tariffs

Air carriers operating a publicly-available air service in Canada are required to publish a tariff, setting out their terms and conditions of carriage, fares, rates and charges. These tariffs must be made available to the public on request. Air carriers operating international services to and from Canada must file their

tariffs with the Agency. Two exceptions are carriers operating between Canada and the United States, and between Canada and Germany, which are required to file only their general terms and conditions of carriage. Upon application, the Agency may also grant exemptions from the filing requirement for international charter rates.

Agency staff reviews international tariffs and amendments to ensure they are consistent with Canadian law and the applicable bilateral agreements. In 2005, the Agency received 19,622 tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs on statutory notice. In addition, the Agency received 8,090 special requests to amend tariffs on other than statutory notice. Ninety-eight per cent of the tariff submissions were received and processed electronically, thus accelerating the filing process and giving airlines increased flexibility.

In 2005, Agency staff responded to 36 inquiries; successfully resolved seven inter-carrier disputes; referred 32 tariff applications to Agency Members for a formal decision; and completed 22 investigations, nine relating to allegations that a carrier had failed to respect its tariff and 13 regarding allegations that a carrier's tariff was unjust or unreasonable.

Third carrier to honour Travel Way tickets

On January 12, 2005, Lufthansa became the third air carrier directed by the Agency to take corrective measures after it refused to transport persons presenting valid tickets issued by Travel Way Services, a former travel agency located in the Toronto area that had



allegedly not remitted funds it had collected to the carriers.

On April 29, 2003, the Agency directed KLM and Northwest Airlines to take corrective measures after determining that, by failing to honour tickets issued by Travel Way, both carriers had not applied their respective tariffs. On June 23, 2004, the Federal Court of Appeal dismissed an appeal by KLM and Northwest of the Agency decision.

The Agency reactivated its investigation regarding Lufthansa tickets sold by Travel Way after the Federal Court dismissed the KLM/Northwest Airlines appeal. Lufthansa subsequently indicated it was prepared to settle with passengers on the same terms as the Agency's KLM/Northwest decision.

Lufthansa was directed to provide one of the two following options to ticket holders, unless the carrier could clearly demonstrate that passengers knowingly engaged in fraudulent activities relating to the issuance of the Travel Way tickets:

- transportation, at no additional charge, to the destinations set out in the original tickets issued by Travel Way within one year of the date of the Agency Order, and upon presentation of the original tickets; or
- a reimbursement for the tickets.

The Agency further directed Lufthansa to pay compensation for any expense incurred by a person as a result of the carrier's failure to apply the specific provisions of its tariff.

Refund ordered for unused tickets

On June 22, 2005, the Agency directed Lufthansa to take corrective measures because it failed to comply with its tariff when it refused to refund tickets purchased through a travel agency that had unexpectedly closed.

The Agency ordered Lufthansa to pay a total of \$13,455 to nine people who bought tickets through Ideal Tours in Vancouver, unless the carrier could clearly demonstrate to the Agency that specific ticket holders had engaged in fraudulent activities relating to the issuance of the tickets.

The Agency also directed the air carrier to pay compensation for any expense incurred by a person as a result of the carrier's failure to apply the specific provisions of its tariff.

In determining the appropriate corrective measures to be taken, the Agency stated that "an overriding consideration ... is an air carrier's obligation to oversee and control the sale of its tickets, and to ensure that persons purchasing tickets in good faith not be penalized because of the failure by the carrier to properly manage its ticket distribution network."

Lufthansa tickets were obtained through Ideal Tours in January 2003 by an individual acting on behalf of 16 persons travelling between Vancouver and Jeddah, Saudi Arabia. Ideal Tours is alleged to have failed to forward the money paid for these tickets to Skylink and WorldPlus, the travel wholesalers that actually had issued the tickets.

Seven members of the group travelled as planned, but the other nine were unable to do so because of Saudi Arabian visa restrictions. The individual sought refunds from Ideal Tours for the nine unused tickets, but found that the travel agency had closed. He then sought compensation from Lufthansa. Lufthansa rejected the claim, stating that Ideal Tours was not at the time acting as its agent and had no authority to issue tickets or to act in any other way on Lufthansa's behalf.

The Agency found, after completing its investigation, that the Ideal Tours' tickets were valid because they were issued not by Ideal Tours, but by authorized intermediary agents. The Agency observed that Lufthansa had considered the tickets valid when it had allowed some of the party to travel.

Lufthansa had subsequently applied for leave to appeal with the Federal Court of Appeal, which was granted. Proceedings before the Court are expected in 2006.

Free baggage allowance

On December 23, 2005, the Agency issued a decision rejecting a complaint filed against Air Canada regarding its reduction of the free baggage allowance from 70 lbs to 50 lbs. The Agency had to determine whether this new term and condition was "unreasonable", "unduly discriminatory" or "unjustly discriminatory". The complainant submitted that the reduced weight limit may cause a hardship for some business travellers who travel with samples, equipment, etc. Given that Air Canada's reduced allowance applies to all passengers purchasing Economy Class Fares, the Agency found no evidence of discrimination.

The Agency was of the opinion that, generally, air carriers should have the flexibility to price their services as they see fit, subject to

legislative or regulatory constraints. The Agency felt that Air Canada's reduction in the free baggage allowance was a legitimate means for the carrier to offset increased costs of operation, while applying a free allowance that still accommodates many travellers.

British Airways

On December 30, 2005, the Agency issued a cease and desist order to British Airways after the air carrier contravened on numerous occasions the terms of the bilateral air agreement signed between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland, as well as the Canadian *Air Transportation Regulations*. British Airways was ordered to:

- cease and desist from filing fares on less than statutory notice unless the Agency had previously agreed to it;
- cease and desist from offering or charging tolls that had been rejected by the Agency; and
- remove all tariff revisions that had been rejected by the Agency.

In its order, the Agency said that "British Airways' contraventions of the [Canadian] *Air Transportation Regulations* disrespect the rules agreed upon in various bilateral agreements with respect to the filing of tariffs, thereby undermining the competitive forces in place for all carriers, giving British Airways a competitive advantage."

As aeronautical authority for Canada, it is within the Agency's mandate to ensure that the terms of the various air transport agreements are respected by the air carriers. The Agency's action is to ensure that, to the extent possible, air carriers are allowed to

compete equally and fairly, to the ultimate benefit of consumers.

Canadian ownership and control

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

In 2005, the Agency completed 94 reviews to verify that Canadian applicants proposing to operate, or licensees already operating, domestic or international air services met Canadian ownership requirements. Seven reviews involved major investigations because the companies had complex ownership structures, or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant. The Agency denied four applicants on the basis that they would not be Canadian.

Late in 2004, Transat A.T., which wholly owns the air carrier Air Transat, proposed to restructure its share capital. Transat A.T. had requested that the Agency make a determination as to whether its proposal would allow Air Transat to continue to meet the Canadian ownership and control requirements as defined in subsection 55(1) of the *Canada Transportation Act*. The proposed restructuring of its share capital would mean that the vote attached to each variable voting share, to be held by non-Canadians, would, in appropriate circumstances, carry a fraction of one vote to ensure that Canadians would always exercise at least 75 per cent of all votes cast at meetings of shareholders. The Agency issued a decision on January 20, 2005, stating that the proposed restructuring

of the share capital of Transat A.T. would continue to meet the Canadian ownership and control requirements as defined in the *Canada Transportation Act*.

On May 9, 2005, the Agency received a proposal from WestJet Airlines, which wholly owns the air carrier WestJet, to restructure its share capital. WestJet Airlines' share capital restructuring would be similar to the restructurings of the parent companies of Air Canada and Air Transat, which the Agency approved on September 3, 2004, and January 20, 2005, respectively. The Agency issued a decision on August 4, 2005, stating that WestJet Airlines and WestJet would continue to meet the Canadian ownership and control requirements as defined in the *Canada Transportation Act*.

Financial fitness

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet financial requirements according to the *Canada Transportation Act* and the *Air Transportation Regulations*. Applicants must prove they have enough liquid funds to cover all start-up, operating and overhead costs for 90 days. These requirements are designed to ensure that applicants are financially fit and have a reasonable chance of success, which minimizes disruptions in service and protects consumers. In 2005, the Agency completed three such financial fitness reviews.

Enforcement

To ensure compliance with Canadian law, the Agency's enforcement staff across the country conducts periodic inspections of Canadian-based licensees and of passenger terminals that fall under the Agency's purview. Agency staff also investigates allegations that companies and individuals are operating in

contravention of the *Canada Transportation Act* and related regulations. Sanctions for non-compliance range from the assessment of an administrative monetary penalty, through cease and desist orders and formal reprimands, up to and including licence suspension or cancellation.

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

In 2005, the Agency initiated 236 on-site inspections of Canadian-based air carriers and 36 inspections of passenger terminal operators. The Agency also conducted 15 investigations of carriers or individuals suspected of operating illegal air services in Canada, and identified seven contraventions. The Agency issued seven warnings, none of which was appealed, and seven notices of violation to air carriers operating publicly available air services without holding a valid licence or a valid Canadian aviation document. Of the 64 informal warnings issued for minor contraventions, 51 were issued to air carriers and 13 to passenger terminal operators.

Consumer alert issued about unlicensed airline

On June 21, 2005, the Canadian Transportation Agency issued a cease and desist order to Akwaaba Airlines & Tours and Ahenfo Airlines to stop advertising and selling air transportation services between Toronto and Accra, Ghana, without proper authorization for the flights in question. The airlines had no licence from the Agency, therefore no authority to operate an air service to or from Canada.

After a query from the public, the Agency immediately launched an investigation, taking swift action to protect the public interest, with cooperation from the Travel Industry Council of Ontario (TICO), the Peel Regional Police, and the U.S. Department of Transportation.

The Agency issued a news release to alert travellers about Akwaaba Airlines, explained the cease and desist order, and invited anyone who had paid Akwaaba Airlines for transportation to contact the Agency.

Within a few days, Akwaaba Airlines provided a full refund to each Canadian who had contacted the Agency. Agency staff also received inquiries from U.S. citizens who had purchased tickets from Akwaaba and had read about the Agency's cease and desist order on its Web site. Agency staff assisted the U.S. Department of Transportation in the conduct of its investigation.

Surcharges

The Agency continued to be concerned in 2005 that the use of surcharges limits a consumer's ability to compare air fares, because the advertised price does not usually disclose the true price at the time of purchase. The Agency maintains that surcharges should be used only as a temporary measure to respond to unforeseen and unavoidable increases in carrier costs. Through its decisions, the Agency has continued to urge air carriers to incorporate extra charges into their air fares.

In 2005, the fluctuating price of fuel led the Agency to accept a need for fuel surcharges in the short term, specifically until March 31, 2006. The Agency will review the situation as needed.

In addition, Air Canada reacted to rising fuel costs by introducing a number of new measures including:

- changing the way pets can be carried by air. Now, pets must be carried as cargo if the combined weight of pet and kennel exceeds 70 lbs. Previously, they would have accompanied the passenger as baggage; and
- reducing the free baggage allowance and increasing fees for overweight luggage and extra bags. WestJet later followed Air Canada's lead.

In 2005, various air carriers also proposed applying insurance surcharges to recover higher insurance costs. The Agency was not persuaded that higher insurance costs represented an unforeseen and unavoidable increase in carrier costs. The Agency stayed the proposed surcharges pending an investigation and required carriers to explain

the surcharges. All carriers subsequently withdrew the surcharge proposals.

The Agency examined the matter of security surcharges following a complaint by the Canadian Standard Travel Agent Registry. The Registry alleged that it was unreasonable for Northwest Airlines and KLM to continue to impose a security surcharge of \$12.50 on passengers departing from Canadian airports (except those travelling to or from the United States), despite the fact that, as of April 1, 2002, the Government of Canada had assumed responsibility for the management, implementation and costs of airport security services, and that the Air Travellers Security Charge applies to all ticket sales in Canada.

As a result of its investigation, the Agency found it unreasonable for the carriers not to have placed an expiry date on the security surcharges and that they were in contravention of the Agency's requirement that surcharges be a temporary measure.

The Agency also found that the carriers did not provide substantive evidence to demonstrate why costs associated with security should not be reflected in base fare levels, rather than in surcharges. In response to the Agency's investigation, KLM and Northwest withdrew their security surcharges and other carriers followed suit.

Pricing

Upon complaint, the Agency may conduct an investigation and order certain remedial action against an air carrier if it determines that passenger fares or cargo rates published or offered on non-competitive airline routes within Canada are unreasonable or that the range of fares or rates offered on these routes is inadequate.

In 2005, the Agency concluded an investigation of an airline pricing complaint regarding an allegedly unreasonable fare offered by an air carrier on a non-competitive route within the country. The Agency found that the specific fare in question was not unreasonable, and that the range of fares offered on the route was not inadequate when compared to the fares offered by the carrier on similar, competitive domestic services.

Licensing

The Agency licenses Canadian air carriers to transport passengers or cargo within Canada. It also licenses Canadian and foreign applicants to operate scheduled and non-scheduled

(charter) international air services to and from Canada. In 2005, the Agency processed 1,369 air licensing activities, which included applications for new licences, suspensions, cancellations and reinstatements.

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

Air carriers holding Agency licenses by nationality

	as of December 31, 2004	as of December 31, 2005
Canadian	837	814
U.S.	704	691
Other	121	128

Licence authorities held by nationality

Services	Canadian				Total	United States	Other	Total
	Small	Medium	Large	All-cargo				
Domestic	792	18	15	32	857			857
Non-scheduled international	358	17	15	24	414	681	101	1,196
Scheduled international	15	30	94	16	155	48	68	271
Total December 31, 2005*								2,324

**For comparison, the total on December 31, 2004, was 2,359.*

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



Air licensing activities

	Completed in 2004	Completed in 2005
Applications for:		
New licences	166	200
Amendment of licences	67	98
Suspensions	242	202
Cancellations	67	67
Reinstatements	59	36
Exemptions/rulings	181	193
Other	2	4
Agency initiated:		
Suspensions	231	315
Cancellations	88	125
Reinstatements	74	122
Total	1,177	1,362

Of the 200 applications for new licences received in 2005, 30 were denied, 14 were withdrawn and 156 resulted in a licence being issued. Of those, nine licences were issued to the following six Canadian applicants for the operation of an air service using large aircraft (seating capacity of at least 90 passengers):

- Air Transat: licences for scheduled international services between Canada and Greece.
- Air Canada: licence for scheduled international services between Canada and Israel.
- Flair Airlines: licences for domestic and non-scheduled international services.
- Canjet Airlines: licence for scheduled international services between Canada and the Dominican Republic.
- Skyservice: licence for scheduled international services between Canada and Russia.

- Sunwing Airlines: licences for domestic and non-scheduled international services.

The Agency denied the following licence applications as they did not meet the requirements of the *Canada Transportation Act*:

- Air Canada: licence for scheduled international services between Canada and Lebanon.
- Canadian Airlines Alliance: licences for domestic and non-scheduled international services.
- Jetsgo: licence for scheduled international services between Canada and the Dominican Republic.
- Platinum Jet Air: licences for domestic, non-scheduled international, and scheduled international services between Canada and the United States.

The Agency also granted 21 exemptions to section 59 of the *Canada Transportation Act*, which prohibits selling services prior to holding a licence.

Air Canada – domestic all-cargo licence

In June 2005, Air Canada applied for a licence to operate a domestic service using all-cargo aircraft. It also applied for permission to use aircraft and flight crews, commonly called a “wet lease”, provided by World Airways and by Gemini Air Cargo. During pleadings concerning the wet lease applications, Cargojet alleged that Air Canada had offered and sold domestic all-cargo services in Canada before obtaining a licence, contrary to section 59 of the *Canada Transportation Act*. Following further inquiries, an investigation was initiated by the Agency

and a report was presented to the Agency Panel on November 1, 2005, with Air Canada being provided an opportunity to comment. At year end, the Agency was reviewing and analysing Air Canada’s comments before rendering a decision on the airline’s licence application.

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 authorization to operate charter flights from Canada to a foreign country. For certain types of charter flights, carriers must obtain financial guarantees to protect advance payments by the charter customer.

Sometimes, carriers are asked on short notice to provide a flight outside the Agency’s normal working hours. Because Agency authorization is needed before the flight departure, the Agency operates a 24-hour emergency telephone service. In 2005, the Agency handled 523 emergency situations, 145 of them requiring approval by Agency Members.

Charter permits issued (Canadian and foreign originating)

	2004	2005
Passengers non-resaleable entity charters	113	146
Cargo non-resaleable entity charters	216	301
Passengers resaleable	1,482	1,478
Total	1,811	1,925
Additional statistics		
Exemptions granted to the charter regulations	1,014	1,222
Amendments to charter permits	796	680

Note: The format of the “Charter permits issued” and “Charter flight notifications” tables has been modified from the format used in the 2004 Annual Report in order to better illustrate the nature of the charter types.

Charter flight notifications

	2004	2005
Transborder charters:		
Canadian originating (non-resaleable passenger)	556*	315
Canadian originating (cargo)	188*	152
United States originating (passenger)	626	432
United States originating (cargo)	512	548
Foreign originating (passenger)	175	161
Foreign originating (cargo)	6	6
Total	2,063	1,614

* Restated to include post-facto flight notifications received after the publication of the 2004 Annual Report.

Agreements

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

In 2005, Canada had 75 bilateral air agreements and arrangements, which provide the legal basis for regulating international air services with other governments, and establish traffic rights for each country. During the year, Agency staff participated in negotiations with nine countries. These included successful negotiations with Guyana to establish a new agreement; with the United States, China, India and Greece to expand the opportunities for carriers to operate more frequent services to additional points; and the conclusion of negotiations by correspondence with Israel and Singapore.

Canada and the United States negotiated amendments to the agreement signed by the two countries in 1995. The changes, which are scheduled to come into effect on September 1, 2006, further liberalize one of the largest air transportation markets in the world. Potential benefits for Canada include: greater access for Canadian passenger and cargo carriers to the U.S. market with the ability to integrate services to the United States with those to third countries; increased pricing flexibility for Canadian and U.S. carriers; more options for Canadian airports to attract U.S. carriers; and more options for shippers and consumers.

A new agreement with China provides for a three fold increase in permitted passenger and cargo flights to be operated by more airlines between more city pairs and under more flexible conditions. Expanding air service to China gives Canadians and Canadian business new opportunities to increase their presence in this dynamic market. The agreement also contains strong aviation safety and security provisions.

Agreement was reached with India to expand capacity to be sold and points to be served by Indian and Canadian air carriers. Access to additional points in India for Canadian air carriers and to points in Canada for Indian air carriers, to be served with own aircraft or through code-sharing with other air carriers, coupled with a substantial increase in the flights to be permitted, is the first step in further expansion of services for a rapidly growing market.

The bilateral air agreement with Greece was amended. The amendments quadrupled capacity for direct flights between Canada and Greece, expanded route and code share opportunities, liberalized the regime for regulating tariffs, and increased the number of carriers that can be designated for scheduled service for each country from one to two.

The new bilateral air agreement with Guyana will allow scheduled air services to be operated between Canada and Guyana, potentially resulting in enhanced transportation options for air travellers and shippers. Prior to this agreement, air services between Canada and Guyana could operate on a charter basis only.

Although some opportunities were opened by negotiating new rights under bilateral air agreements, air carriers further expanded their opportunities through code share

arrangements, that is, by one air carrier selling transportation under its own name on flights operated by other air carriers. In other cases, air carriers sought Agency approval to be able to lease aircraft with flight crew from other air carriers. In 2005, Air Canada began operating international all-cargo services using aircraft with flight crew provided by the U.S. air carriers World Airways and Gemini Air Cargo.

In addition to approving marketing arrangements, the Agency provides competitive opportunities by granting permission to operate extra flights and by considering temporary extra-bilateral authorities to operate services not provided for under bilateral air agreements or arrangements. An example of these is the authority granted for a Canadian airline and a Colombian airline to operate scheduled services between Canada and Colombia although there is no bilateral agreement in place. Similarly, Asiana Airlines and Korean Air Lines were again granted extra-bilateral authority to operate additional all-cargo services between points in Canada and Korea.

In 2005, the Agency addressed 115 applications relating to bilateral air agreements and arrangements, 61 of which concerned code sharing or the leasing of aircraft with flight crews. Of the total number of applications addressed, 45 dealt with applications for extra-bilateral authorities involving such matters as code sharing, the provision of fifth-freedom services, extra capacity and the provision of air services to specific cities.

Communicating with Canadians

The Canadian Transportation Agency participates in major events and conferences related to air transportation as they provide excellent opportunities to meet and exchange views with key stakeholders involved in aviation around the country. Some of the most important events in which the Agency took part in 2005 included: the “Open Skies Forum” put together by the Canadian Airports Council in February in Ottawa; the Annual Canadian Aviation Safety Seminar which took place in April in Vancouver; and the conference organized by the Air Transport Association of Canada in November in Montreal.



From time to time, Agency representatives are invited to make presentations to various audiences concerning the Agency's role and mandate. Marian L. Robson, the Chairman and Chief Executive Officer of the Agency, made one such presentation in April to the Air Law section of the BC Branch of the Canadian Bar Association in Vancouver; and another one, as a panelist, at the Canadian Airports Council's annual management conference in November in Ottawa. Gavin Currie, Director General, Air and Accessible Transportation Branch, gave a paper and participated in a panel discussion at the American Bar Association Forum on Air and Space Law in October in Montréal. David Western, Director of Tariffs, Complaints and Enforcement, spoke about the Agency and its Air Travel Complaints Program at the Travel Law Day Conference that took place in November in Toronto.

During 2005, the Agency's call centre answered 9,148 calls and distributed 15,669 copies of the *Fly Smart* booklet. A revised edition of *Fly Smart* will be issued early in 2006. This free pocket-size booklet offers useful hints about air travel on topics such as air fares, reservations, ticketing, baggage, delays and cancellations, as well as security and safety. It is available on the Agency's Web site (www.cta.gc.ca).

Finally, the Agency had 270 contacts with news media regarding air matters in 2005, an increase of 42.9 per cent from 2004. Six news releases were issued on major air matters that the Agency dealt with during the year.

Cases before the courts

Federal Court of Appeal – Case pending in 2005

Lufthansa German Airlines v. Canadian Transportation Agency and Mohammed Omar Satari

Court File No. A-658-05

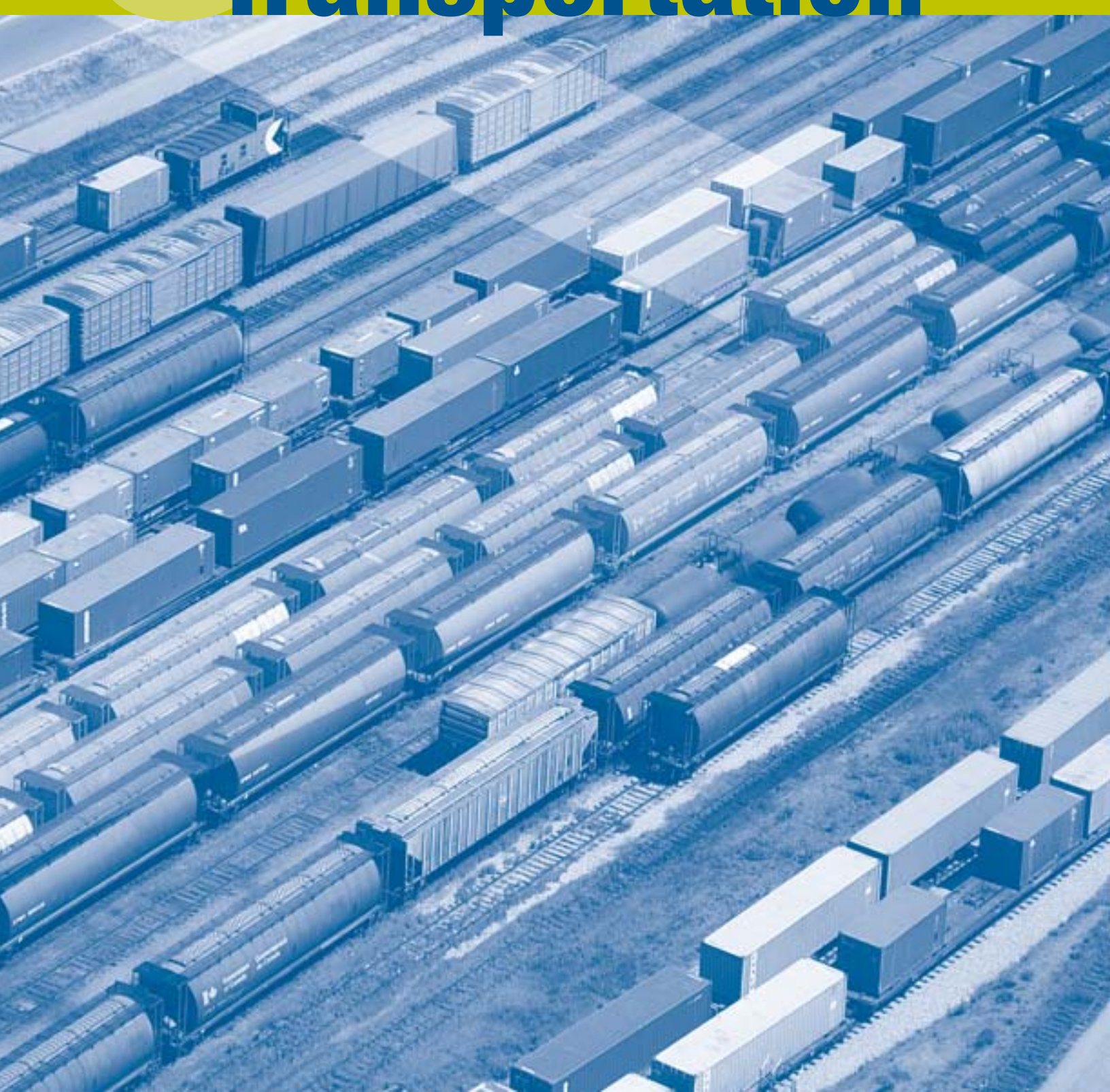
Appeal of Agency Decision No. 388-C-A-2005 dated June 22, 2005, in the matter of a complaint filed by Mohammed Omar Satari concerning the refusal by Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines) to refund certain tickets issued for travel between points in Canada and points outside Canada. Leave to appeal was granted by the Federal Court of Appeal.



CHAPTER

3

Rail Transportation



Transit time agreement

The Canadian Transportation Agency's role as economic regulator of railways under federal jurisdiction expanded considerably in 2005 with the Canadian National Railway Company (CN)'s acquisition of BC Rail in the previous year. The purchase of BC Rail, the third largest railway in Canada with 2,300 kilometres of track, increased the size of the federal railway system, and gave the Agency a new monitoring responsibility.

In response to concerns from shippers, the Competition Tribunal, in approving the deal, set a requirement that the Agency monitor the transit times for CN to deliver railway cars along the former BC Rail lines from northern British Columbia to Vancouver interchanges, when shippers are using only CN service to deliver their goods and when their loads are being switched to competing railways. The Agency must carry out comparative analyses of CN transit times and benchmark BC Rail times from five zones in Northern BC to the Vancouver area and it must submit reports on a regular basis to CN, connecting carriers in Vancouver and to the Competition Bureau. In 2005, the Agency issued its first Transit Time Report covering the first two quarters.

Interswitching

Subsection 128(1) of the *Canada Transportation Act* stipulates that the Agency may make regulations prescribing terms and conditions governing the interswitching of rail traffic. According to the Act, any person can request a local railway to interswitch its traffic, at a rate provided for in the *Railway Interswitching Regulations*, to a connecting railway carrier if its point of origin or destination is within the interswitching limit of a 30-kilometre radius from an interchange. Subsection 128(5) of the Act requires the

Agency to review the Regulations as warranted, and also at a minimum of five-year intervals.

The Agency made several amendments to the Regulations which came into force in 2004. The most significant of these was a reduction in interswitching rates. The Agency also amended section 8 of the Regulations, which was found to be at odds with the *Canada Transportation Act* by the Standing Joint Committee for the Scrutiny of Regulations (SJC). The SJC is of the opinion that the statutory authority granted to the Agency by section 128 of the Act extends to prescribing interswitching rates, not maximum rates. Section 8 was therefore revised to make it consistent with the current Act by prescribing a specific interswitching rate for each distance zone and by deleting the reference to interswitching rates being considered as maximum rates.

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

In 2005, the Agency reviewed the changes to interswitching costs for the railways and determined that no changes were necessary to the existing interswitching rates. The Agency continued to consult with interested parties on issues such as the car block sizes and the contribution to fixed costs.

Level of service

No new level-of-service complaints were filed with the Canadian Transportation Agency in 2005. However, the Agency did see the resolution of several complaints from the previous year.

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

As part of its complaint, Wabush also made requests for interim relief. Specifically, Wabush sought:

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

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

During 2005, Wabush and QNSL reached an agreement and Wabush subsequently withdrew the level-of-service complaint against the QNSL.

Several level-of-service complaints against the Canadian Pacific Railway Company (CPR) were brought before the Agency by grain producers and producer groups during 2004. The complaints dealt with disparities between what the grain tonnage producers claimed they had loaded into the railcars and the unload weights credited to them by CPR at the destination terminals. These complaints were successfully resolved through the Agency's mediation program in 2005.

Final offer arbitration

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

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

In 2005, the Agency was considering an application for arbitration which had been made in 2004. However, before the Agency decision was issued, the parties involved announced that they had reached a settlement in their dispute.

In a joint news release, CPR and Fording Canadian Coal Trust announced on April 5, 2005, that CPR and Elk Valley Coal

Corporation had reached a five-year agreement for the transportation of metallurgical coal from all of Elk Valley Coal's mines in southeast British Columbia to Vancouver area ports for export.

In addition, the parties reported that they had resolved a number of other operational and commercial issues. CPR and Elk Valley Coal announced they had agreed to discontinue all legal and regulatory proceedings relating to their previous contract dispute over the transportation of coal from Elk Valley Coal's five coal mines in southeast British Columbia to Vancouver area ports for export.

During 2005, the Agency received one request for FOA. While FOA cases before the Agency are traditionally confidential, this case was disclosed to the media by the parties themselves. The case, involving the movement of coal between the Western Canadian Coal Corp. and CN, was referred to an arbitrator selected by the parties and the arbitrator's decision was later issued. Following the issuance of the arbitrator's decision, CN on October 5 filed an application for judicial review of the arbitrator's ruling with the Federal Court of Canada on the basis that the FOA process in the *Canada Transportation Act* is contrary to provisions of the 1960 *Bill of Rights**.

Since the enactment of the *Canada Transportation Act* in 1996, the Agency has received 26 notices from shippers of their intention to submit their disputes to FOA. About half of those cases were withdrawn or settled before arbitration. Information on important rail disputes and the Agency's findings on FOA jurisdictional challenges can be found on its Web site.

* While the *Canadian Bill of Rights* is not as often referred to as the 1982 *Canadian Charter of Rights and Freedoms*, this legislation is still in effect in Canada.

Certificates of fitness

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

One new certificate of fitness was issued in 2005 to Tshiuetin Rail Transportation Inc. for proposed freight and passenger rail operations between Emeril, NL, and Schefferville, QC. The certificate of fitness for the Montreal, Maine & Atlantic Canada Co. was varied to reflect a change in railway operations to permit passenger service over its railway lines. The certificate of fitness for CPR was amended to include Mount Stephen Properties Inc. in its list of subsidiaries, associated or affiliated railway companies. The Agency also suspended the certificate of fitness for Ferroequus Railway Company Limited and cancelled the certificate of fitness for Prairie Alliance for the Future Inc. because neither company met the requirement of subsection 92(1) at the time.

Construction approval

Subject to certain exclusions, the Agency must approve the location of new railway lines, including main lines, branch lines, sidings, spurs, yard tracks or other auxiliary trackage. The Agency may also be asked to approve the construction of railway crossings, including bridges and underpasses. In each case, the Agency must first assess the environmental impact of a project under the *Canadian Environmental Assessment Act*

(CEAA). In late 2005, the Agency received an application from CN to approve the construction of a new spur to serve the Oshawa, ON, harbour and will consider the proposal early in 2006.

In 2005, the Agency continued its leadership of the interdepartmental screening committees for three CPR projects: the Detroit River Tunnel Project at Windsor, ON; the relocation of part of the Coutts Subdivision near Milk River, AB; and a new spur line into a Toyota plant near Woodstock, ON. The Agency is also participating in the environmental assessment of the Ottawa Light Rail Transit Project, the Pearson AirLink Project in Toronto, the Highway 10 expansion near Sherbrooke, QC, and the Rabaska Liquefied Natural Gas Project near Quebec City. In addition, the Agency is monitoring for potential environmental effects the Calgary Ring Road; the Highway 69 twinning between Parry Sound and Sudbury, ON; the Bracebridge, ON, West Transportation Corridor; various GO Transit expansions in Greater Toronto; and the Terasen Pipeline Project from Hinton, AB, to Jackman Hill, BC.

The Agency made two environmental screening decisions in 2005, allowing the projects to proceed when assured that the applicant took measures deemed appropriate to mitigate any significant adverse environmental impacts.

Infrastructure issues

The Agency resolves disputes over railway rights of way, tracks, crossings, supporting facilities, protective devices and other physical aspects of a railway's operation. In 2005, the Agency reached decisions in two disputes about road crossings of railways, three disputes over utility crossings and two disputes about private railway crossings. The Agency also received 90 agreements

filed by parties who had conducted their own negotiations related to railway crossings.

The Agency may also issue decisions apportioning costs among railways and other parties for railway protective devices such as crossing signals or fencing along rights of way, and it may rule on matters concerning compensation for damages caused by railway actions. The Agency issued decisions in two cases involving such compensation in 2005. The Agency completed 23 reviews of existing orders or decisions, primarily related to road crossings, where relevant facts or circumstances had changed. In most cases, legal responsibility for roads and road crossings had been transferred from one government to another.

The Minister of Transport and the Province of Ontario have previously agreed that the federal railway crossing laws would apply to railways under Ontario provincial jurisdiction and that the Agency should administer those laws. In 2005, the Agency and the Province of British Columbia proposed a similar agreement which, when signed by the Minister of Transport and the Minister of Community, Aboriginal and Women's Services for British Columbia, would authorize the Agency to apply federal railway crossing laws respecting British Columbia railways.

Railway charges for crossing maintenance and construction

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

On July 1, 2005, the Agency completed an update of its *Guide to Railway Charges for Crossing Maintenance and Construction* revising the maintenance rates therein to reflect up-to-date Class I railway costs. This guide, first published on January 1, 2004, is intended for use by Canadian federally regulated Class I railways when charging for construction or maintenance work performed at crossings, crossing warning systems or for any other crossing-related work, either agreed to by the parties or authorized by an order of the Agency.

Transfer and discontinuance

Railways may rationalize their lines without regulatory approval if they follow the process prescribed in Division V, Part III of the *Canada Transportation Act*. The Agency may be asked to determine whether a railway company has complied with that process. Pursuant to section 140(1) of the Act, a yard track, siding, spur or other track auxiliary to a railway line is exempt from the prescribed discontinuance process. As a result, the Agency may also be asked to determine whether a specific piece of track is subject to the prescribed process.

In 2005, the Agency determined that a piece of track, designated by the Burlington Northern and Santa Fe Railway Company Limited as the Burrard Inlet Barge Dock Spur in the city of Vancouver, did not constitute a yard track, siding, spur, or other track auxiliary to a railway line under subsection 140(2) of the Act; and that it was a railway line for the purposes of Division V, Part III of the Act.

The Agency also received notices of discontinuance for the following CPR subdivisions: Stirling Subdivision in Saskatchewan between mile 20.1 (near Etzikom) and mile 34.4 (near Foremost); and the Radville

Subdivision in Saskatchewan between mile 70.5 (near Bengough) and mile 98.2 (near Willow Bunch), as well as for auxiliary trackage from mile 4.30 to mile 5.62 on CN's Drummondville Subdivision in Quebec.

No railway lines were transferred in 2005.

Western grain revenue caps and revenue

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

On December 30, 2005, the Agency ruled that CN's revenues for the movement of Western grain exceeded its revenue cap and that CPR's revenues did not exceed its revenue cap for the crop year 2004–05. CN's grain revenue of \$305,788,835 was \$118,714 above its revenue cap of \$305,670,121, while CP's grain revenue of \$323,068,715 was \$513,061 below its revenue cap of \$323,581,776.

2004–05 was the Agency's fifth year for revenue cap determinations, and marked the second time a railway had exceeded the maximum revenue entitlement.

In April 2005, the Agency had announced a year-over-year increase of 4.4 per cent in the Volume-Related Composite Price Index for the movement of Western grain for crop year 2005–06. The index is an inflation factor

to reflect CN's and CPR's price changes for railway labour, fuel, material and capital inputs. It is used with other inputs (volume and length of haul) to calculate the Western grain revenue caps.

Grain transportation issues

In 2005, Agency staff continued to assist Transport Canada in assessing the potential impact of the disposal of the Government of Canada's grain hopper car fleet on the grain revenue cap. There are approximately 12,400 railway hopper cars in the government-owned fleet. These cars are provided at no cost to the railways for the transportation of grain from the Prairies for export through the ports of Vancouver, Prince Rupert, BC, Thunder Bay, ON, and Churchill, MB.

On March 9, 2005, the Government of Canada announced that it would open negotiations with the Farmer Rail Car Coalition (FRCC), a group of Western grain producers, concerning the transfer of the federal hopper car fleet to the coalition.

In late June, Transport Canada asked Agency staff to develop and make available an appropriate methodology to be used by the Agency to adjust the railway revenue caps in the event that the Government should transfer the fleet to the FRCC. Agency staff conducted a written consultation with more than 30 Western grain participants, held a consultation session in Winnipeg in early September and sent its report to Transport Canada and the participants in early November. The methodology provided for the removal of hopper car maintenance costs to be embedded in the revenue caps at the time of the fleet transfer as well as for the inclusion of lease costs to be incurred by the railways in a subsequent deal with the FRCC. Given certain assumptions regarding lease

rates and normal inflation, Agency staff showed that in its methodology the fleet transfer to FRCC would result in a slight (0.4 per cent) decrease in the railway revenue caps in 2006–07.

This latest work followed two requests by Transport Canada in 2004 for Agency staff to assess the amount of money embedded in the 2003–04 revenue caps to cover hopper car maintenance costs and for an estimate of the actual expenditures for such maintenance in 2003–04. Transport Canada had released the Executive Summary of that Agency assessment in April 2004, which showed that an amount of \$4,329 per car was embedded in the 2003–04 revenue caps. With respect to an estimate of actual maintenance expenditures, Agency staff provided its report to Transport Canada in early 2005.

On November 24, 2005, the Government of Canada announced that it had reached an agreement-in-principle with the FRCC for the transfer of the hopper car fleet. According to the news release, the lease-purchase agreement will be finalized in 2006, following confirmation that the FRCC has agreements in place with CN and CPR for the use of the cars.

Cost of capital

In early 2005, the Agency approved separate cost of capital rates for CN and CPR. The annual rates are used to develop the volume-related price index which, in turn, is used to determine the railway revenue cap for the movement of Western grain. The Agency also determines rates for cost of capital for other railway costing requirements, including the development of interswitching costs and rates.

The cost of capital rates for CN and CPR, which will be used in calculating their respective revenue caps for crop year 2005-06, are 8.11 per cent and 8.30 per cent respectively. The cost of capital is the return expected and required from an investment in a firm's debt or equity. The Act and applicable regulations recognize it as an established economic cost of railway operations. The cost of capital includes the costs of financing the acquisition of capital assets – namely, interest on debt and return on equity. The cost of debt is equal to the interest on related bonds. Measuring cost of equity, or the return that shareholders expect, involves an analysis of various financial models, risk assessment and other technical relationships.

In determining applicable cost of capital rates, the Agency assesses several market-driven models including the Capital Asset Pricing Model and the Discounted Cash-Flow Model in determining the cost of equity. Regarding elements of the Capital Asset Pricing Model, the Agency will continue to assess short- and long-term bond rates during the month of January and monitor such rates for their reasonableness to determine risk-free rates. When calculating beta values, the Agency will consider a period of five years (when possible) of monthly or weekly data obtained from the Standard & Poors/Toronto Stock Exchange Composite Index, and the Agency will continue to assess the market risk premium on a continuing basis, by use of a time period that has sufficient length to incorporate many business cycles, periods of low and high performance, periods of volatility and stability, as well as to reflect the impact of unusual events and significant changes in world events. The Agency will continue to assess Canadian data for its cost of equity estimations.

Net salvage value determinations

Section 143 of the *Canada Transportation Act* requires railway companies to advertise the availability of railway lines for continued operation before discontinuing them. Parties are free to negotiate an acceptable sale price. However, any party to the negotiation can ask the Agency to set the net salvage value of the line for continued operation. The requesting party must reimburse the Agency for its costs in handling the application. If the railway does not transfer the line after advertising it, it must offer to transfer the line to the federal, provincial, municipal or district government for not more than net salvage value of the line. Either the railway or government may ask the Agency to determine the net salvage value at no cost. Governments may use the line for any purpose after taking possession. The Agency received no requests for net salvage value determinations in 2005.

Regulatory railway costing

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

As part of the process for setting interswitching rates, the Agency makes visits to railway yards to review interswitching operations. Each year, the Agency visits different yards to ensure that the rates reflect the cost of interswitching traffic at all locations across Canada. In 2005, the Agency visited four rail yards in Ontario (CN Sarnia, CN Windsor, CPR London and CN Toronto) and four yards in Alberta (each of CN's and CPR's Calgary and Red Deer rail yards).

In responding to a Transport Canada request, Agency staff provided technical rail costing expertise to assist in the negotiations to transfer the Quebec Northshore and Labrador rail line between Emeril, NL, and Schefferville, QC, to the Tshiuetin First Nation. Following an agreement between parties to transfer the line, Transport Canada requested Agency staff to provide continued costing expertise to the parties as requested under the said agreement.

Historical price indices

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

Mediation

In 2005, rail shippers and carriers brought a variety of rail infrastructure issues, including crossing entitlements, maintenance, repair, construction, cost apportionment and funding agreements, and issues involving flooding and noise to the Agency's voluntary mediation program. Level-of-service issues, specifically product loss and delayed delivery, were also resolved through mediation, including a

chronic, recurring problem between a major railway and several producers for which a strategy for long-term improvement was collaboratively developed. Parties opting for mediation to resolve their differences in the rail transportation environment included large and small federal and provincial railways, various municipalities and townships, a major municipal utility, and several individual producers and private citizens.

With seven cases in progress at the beginning of the year and 19 new requests during the course of the year, the Agency handled a total of 26 mediation cases regarding rail disputes in 2005. Ten cases were resolved through mediation. In three cases, the respondents were unwilling to mediate and 13 cases were pending at year end.

Continuing efforts by Agency staff to promote mediation as an alternate way to resolve disputes resulted in fewer respondents refusing to participate in 2005 (seven refusals in 2004 and three refusals in 2005). As a result, while the number of mediation cases remained stable, there was a significant increase in the number of cases resolved by mediation (three in 2004 and 10 in 2005).

Major rail carrier praises mediation process

Mediation is now considered the first alternative for dispute resolution by one of the country's largest rail carriers. The carrier wrote in a letter to the Agency following the satisfactory completion of several mediation sessions that: "...we will continue to utilize the (Agency's) mediation program as an effective means of reaching resolutions". The carrier also stated that participating in mediation sessions provided valuable information and insights, and that the carrier appreciated the flexibility and cost effectiveness achieved in telephone mediation.

Communicating with Canadians

In 2005 as in previous years, the railway industry and its users as well as those affected by railway operations remained the subject of extensive communications activities carried out by the Agency. With the tabling of Bill C-44, an act to amend the *Canada Transportation Act*, many of the communications activities centred on the Agency's existing mandate and the proposals put forth by the Minister of Transport.

Throughout the year, Agency Members and senior staff met a variety of shipper organizations including the Canadian Industrial Transportation Association, the Western Canadian Shippers' Coalition, the Canadian Fertilizer Institute and the Canadian Forest Products Association as well as railways and their organizations such as the CPR, the CN, the Capital Railway and the Railway Association of Canada (RAC). The Chairman and some Agency Members participated in a RAC-organized rail tour in Western Canada which allowed for discussions between senior government officials and representatives from the railways and some of their most important partners and clients.

Later in the year, another rail tour gave the Agency an opportunity to continue its dialogue with the United States Surface Transportation Board on issues affecting North American rail transportation.

The Agency also continued to focus on the province of British Columbia following the acquisition of BC Rail by CN. During the year, Agency staff held meetings with representatives of the BC government and the cities of Langley and Port Coquitlam, the BC Safety Authority, a provincial member of the Legislative Assembly and numerous landowners in the Town of Quesnel.

A consultation with respect to the Revenue Cap Inflation Index was held in 2005 with numerous organizations in Western Canada, including provincial governments, producer



groups, various pool grain and terminal operators, the Canadian Wheat Board, CN and CPR.

Agency staff held a consultation session with Western grain participants in Winnipeg in September as part of the process in responding to a request by Transport Canada for staff to develop an appropriate methodology for adjusting the Revenue Cap Inflation Index in the event that the Government of Canada should transfer its grain hopper cars to the FRCC.

There were also formal consultations regarding maintenance rates and charges for railway work at road/rail crossings for non-Class I railways and for railway noise and proximity issues. The Agency is participating in the joint Railway Association of Canada / Federation of Canadian Municipalities venture to produce a framework to resolve noise and other proximity issues.

Formal presentations were made during the year to diverse groups such as the American Railway Development Association and visiting railway delegations from China. Presentations were received from Shell Canada, CN and the City of Ottawa. Agency staff also attended the Western Transportation Advisory Council's Freight Forecasting Forum, the TFI/CFI North American Fertilizer Transportation Conference, the Fields on Wheels Conference, the AAR North American Customer Forum and the National Industrial Transportation League Exhibition and Conference. Staff also participated in seven municipal trade shows in British Columbia, Alberta, Saskatchewan, Ontario, Quebec and Newfoundland and Labrador. The Agency hosted its annual forum for members of the RAC to meet Agency staff and representatives of other Government of Canada departments and agencies.

Overall in 2005, the Agency responded to more than 409 inquiries and requests for information from various parties in the rail industry. Most of these queries were related to the existing provisions of the Act, such as the competitive access provisions, level of service, interswitching, FOA, railway crossing agreements and disputes, certificates of fitness, transfer and discontinuance, and the Western grain revenue cap. Inquiries also came from grain shippers and from producers who load their own grain into railway cars. Their questions related to car supply, car maintenance and various aspects of railway service.



Cases before the courts

Federal Court of Appeal – Cases Dismissed in 2005

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

Court File No. A-63-04

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

Federal Court of Appeal – Cases Discontinued in 2005

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

Court File No. A-546-04

Application for judicial review, seeking relief in the nature of a writ of prohibition prohibiting the Agency from referring to arbitration the submission of the Elk Valley Coal Corporation for a final offer arbitration of rates to be charged by Canadian Pacific Railway for movement of coal by rail. On May 18, 2005, the Appellant filed its Notice

of Discontinuance with the Federal Court of Appeal.

Federal Court of Appeal – Appeals Granted in 2005

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

Court File No. 04-A-43

Application for leave to appeal Agency Decision No. 485-R-2004 dated September 14, 2004, relating to an application by Earl T. Mufford and Roy H. Mufford pursuant to section 102 of the *Canada Transportation Act* for a private crossing across and over the Canadian Pacific Railway Company's right of way on the Page Subdivision, in the township of Langley, in the province of British Columbia. By judgment dated December 5, 2005, the appeal was allowed.

Petitions to the Governor in Council – Cases Pending in 2005

Village of Stenen v. Canadian Transportation Agency

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

List of Federal Railways

Marine Algoma Central Railway Inc.
Arnaud Railway Company
Burlington Northern and Santa Fe Railway Company, The (Burlington Northern (Manitoba) Ltd. and Burlington Northern and Santa Fe Manitoba, Inc.)
Canadian National Railway Company
Canadian Pacific Railway Company
Chemin de fer de la Matapédia et du Golfe Inc.
Corporation of the City of Ottawa carrying on business as Capital Railway
CSX Transportation Inc. (Lake Erie and Detroit River Railway Company Limited)
Eastern Maine Railway Company
Essex Terminal Railway Company
Ferroequus Railway Company Limited
Goderich-Exeter Railway Company Limited
Hudson Bay Railway Company
International Bridge and Terminal Company, The
Kelowna Pacific Railway Ltd.
Kettle Falls International Railway Company
Maine Central Railroad Company and Springfield Terminal Railway Company
Minnesota, Dakota & Western Railway Company
Montreal, Maine & Atlantic Railway Ltd. and the Montreal, Maine & Atlantic Canada Co.
National Railroad Passenger Corporation (Amtrak)
Nipissing Central Railway Company
Norfolk Southern Railway Company
Okanagan Valley Railway Company

Ottawa Central Railway Inc.

Pacific and Arctic Railway and Navigation Company/British Columbia Yukon Railway Company/British Yukon Railway Company Limited carrying on business as or proposing to carry on business as White Pass & Yukon Route

Quebec North Shore & Labrador Railway Company

RailLink Canada Ltd.

St. Lawrence & Atlantic Railroad (Québec) Inc.

Sault Ste. Marie Bridge Company

Sydney Coal Railway Inc.

Toronto Terminals Railway Company Limited, The

Tshiuetin Rail Transportation Inc.

Union Pacific Railroad Company

VIA Rail Canada Inc.

Wabush Lake Railway Company, Limited

CHAPTER

4

Marine Transportation



Pilotage Act

The *Pilotage Act* requires that a qualified Canadian marine pilot be on board most ships to navigate into or out of major Canadian ports and along some Canadian waterways designated as compulsory for pilotage. Four pilotage authorities (Atlantic, Laurentian, Great Lakes and Pacific) are responsible for providing pilotage services in their respective regions and they set tariffs for these services. Any proposed change or increase in a tariff must be published in Part I of the *Canada Gazette*.

Objections to a tariff proposal must be filed with the Agency within 30 days of its publication date. Once an objection has been filed, the Agency must carry out an investigation of the proposed tariff and after examining operational, financial and commercial considerations, the Agency must determine if the tariff is in the public interest.

On March 5, 2005, the Laurentian Pilotage Authority (LPA) published proposed tariff increases of five and 4.9 per cent applicable to District 1 (between Montréal and the city of Québec) to cover the added costs of an arbitration award related to fees payable to the Corporation des pilotes du Saint-Laurent Central (CPSLC) for the July 1, 2002, to June 30, 2003, period. Marine pilotage on the St. Lawrence River is compulsory from the St. Lambert Lock in the Port of Montréal, District 1-1; from Montréal to Québec, District 1; and from Québec to Les Escoumins, including the Saguenay River; District 2. Beyond Les Escoumins, pilotage is not compulsory and these waters are referred to as District 3. The LPA had appealed the homologation of the District 1 award (a process to make the award binding) to the Federal Court of Appeal, but the Federal Court of Appeal issued a ruling on October 1, 2004, that denied the appeal. The arbitration award

granted the District 1 pilot corporation an eight per cent fee increase as opposed to the three per cent increase contained in the original contract.

The proposed five per cent tariff increase published by the LPA was intended to cover the annual recurring difference between the award and the original fee increase. The additional 4.9 per cent increase published was intended to cover the accumulated arrears owing to the pilot corporation as the LPA had not made any extra payments since the award was handed down.

Objections to the tariff increase proposal were filed by the Canadian Shipowners Association and the Shipping Federation of Canada on the grounds that the proposed increases were not in the public interest. The Canadian Shipowners Association also argued that the tariff proposal should be applied to all districts rather than just one district while the Shipping Federation argued that the tariff proposal should be applied in District 1 only to avoid cross-subsidization.

The CPSLC objected to the proposed tariff increases being applied to a single district since all previous LPA tariffs had been applied across all districts. It also questioned the validity of the tariff proposal because part of the proposed increase was to be applied for an unspecified length of time.

The LPA tariff proposal of March 5, 2005 was published in Part II of the *Canada Gazette* on June 15, 2005, with an effective date of July 1, 2005. On that date, the LPA began charging users the increased fees.

The Agency conducted an investigation of the tariff proposal, which included a hearing in Montréal on September 27 and 28, 2005. On October 14, the Agency issued a decision, recommending that the tariff proposal was not in the public interest.

On November 5, 2005, the LPA published a new tariff increase proposal in the *Canada Gazette* that announced increases in addition to those already rejected by the Agency.

Reasons for the Agency's October 14 decision followed on November 30, 2005. In its detailed decision on the March 5 proposal, the Agency stated that it was not sufficient for the LPA to invoke financial difficulties stemming from the arbitration award to obtain the Agency's approval for a proposed tariff increase. Pursuant to the *Pilotage Act*, the Agency must take into consideration the concept of public interest. In doing so in this case, the Agency, based on the evidence, was unable to conclude that the proposed tariff increases were in the public interest. In its conclusions, the Agency urged the LPA and CPSLC to "work together in fulfilling their respective mandates of providing service in the interest of effective marine transportation."

With respect to the LPA's new tariff publication in the *Canada Gazette* on November 5, two objections to this proposal were received on December 5, 2005: one objection from the Shipping Federation of Canada and a joint filing by the Canadian Shipowners Association and the Chamber of Maritime Commerce.

At year end, the Agency had begun its investigation into this matter and will issue a decision in 2006.

On February 5, the Great Lakes Pilotage Authority (GLPA) published a tariff increase proposal of 5.5 per cent in the *Canada Gazette* so as to break even at the end of the 2005 shipping season. On May 14, the GLPA published another tariff increase for the four international districts where pilotage services are shared with U.S. pilots. The GLPA and U.S. pilotage services are governed by a Memorandum of Understanding between the

two countries that stipulates pilotage charges are to be the same amount. The GLPA proposed to eliminate the Currency Equalization Factor and to increase the charges in Canadian funds to reflect the exchange rate that existed in 2002 (CAN\$1.59 = US\$1.00). No objections were received to either of the GLPA tariff proposals.

As well, the GLPA published a proposed two per cent surcharge tariff proposal on November 5, 2005. The Shipping Federation of Canada filed an objection to this proposal.

The Atlantic Pilotage Authority published a tariff proposal in the *Canada Gazette* on October 8, 2005, for tariff increases varying between three and 10 per cent at nine compulsory pilotage ports, to maintain financial self-sufficiency in each port and eliminate cross-subsidization. No objections were received with respect to this proposal.

Canada Marine Act

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

The port authorities manage port operations, which include shipping, navigation, transportation of passengers and goods, handling and storage of goods, as well as the federal property where the port is situated. They also set fees for the use of port facilities and various transportation services. Objections to the port fees may be filed with the Agency.

In 2005, the Agency received several complaints regarding port fees.

On June 3, 2005, Adventure Tours Inc. (ATI), a tour boat operator, filed a complaint against the St. John's Port Authority. ATI complained that the per-passenger fee charged to tour boat operators was unjustly discriminatory, unfair and posed undue hardship. After an exchange of pleadings the Agency rendered a majority decision that the complaint by ATI should be dismissed. One Panel Member found that in this case the discrimination was based on a commercially accepted economic strategy that was deemed fundamental to the development of the Pier 7 tourist initiative. While discrimination in the fee did exist, it was deemed to be an acceptable commercial practice. A second Panel Member found that since choices were offered to tour boat operators who wished to operate out of the port there was no need to determine if there was discrimination in the fee. The dissenting Member found that there was unjust discrimination in that it did not represent a differentiation among operators that was based on either the volume or value of passengers they transported and that the fee had no commercial relation to the extent or value of port services being used by operators.

On October 11, 2005, the Agency received the first of 53 complaints filed by individuals and companies against the Nanaimo Port Authority in BC. The complaints alleged that the port authority had instituted an unjustly discriminatory per-passenger fee on March 1, 2005, which varied from \$0.15 per BC Ferries passenger, to \$0.85 per Fast Ferry passenger, to \$1.50 per float plane passenger. The complaints stated that the *Canada Marine Act* does not permit a port authority to charge an individual passenger fee based on the annual volume of the carrier; that the effect of the charges is to "channel" passengers to BC Ferries' services due to its lower charge; and that it is unjust discrimination for the

Nanaimo Port Authority to charge a different fee based on the passenger volume of the carrier. The Agency will issue a decision on the complaints in 2006.

The St. Lawrence Seaway Management Corporation is responsible for managing the Seaway and establishes the fees for the use of Seaway property and services. All tariffs of fees must be filed with the Agency. Complaints about fees also can be filed with the Agency. In 2005, the Agency received no complaints.

The Federal Bridge Corporation manages several major bridges and transportation facilities that cross the Seaway. The Seaway International Bridge Corporation and the Jacques-Cartier and Champlain Bridges Corporation, both subsidiaries of the Federal Bridge Corporation, set fees to cover the cost of managing, maintaining and operating the bridges. These two corporations must file their tariffs with the Agency and the tariffs are subject to investigation upon complaint. No complaints were filed in 2005.

Shipping Conferences Exemption Act, 1987

In 2005, the Agency carried out an investigation that involved the first complaint ever lodged under the *Shipping Conferences Exemption Act, 1987*.

The Agency administers this Act which exempts shipping conferences, or cartels of shipping lines, from the *Competition Act* and allows them to set common tariffs and conditions of carriage if they comply with the provisions of the Act and file specific documents with the Agency such as conference agreements, service contracts, notices of tariff increases and surcharges.

Under the Act, a complaint may be filed with the Agency if a person believes that a

conference agreement, or an action by a member line, reduces competition and results in an unreasonable increase in price or a reduction in service.

On October 25, 2004, the first complaint ever lodged under this provision was filed by Pangea Logistics Inc. of Vancouver, on behalf of its client, NorskeCanada, against the Canadian Pacific/Latin America Freight Association. The complaint alleged unreasonable increases in the cost of shipping paper products to Latin American destinations and unreasonable reductions in service to these destinations. Compania Chilena de Navegacion Interoceanica S.A., Hamburg-Sudamerikanische Dampfschiffahrtsgesellschaft and Maruba s.c.a. Empresa de Navegacion Maritima S.A. are the member lines of the Association. The Agency began an investigation of the complaint, but on July 12, 2005, the complaint by Pangea was withdrawn and the Agency closed its file.

Coasting Trade Act

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

As part of its efforts to improve service and turnaround times, the Agency unveiled on July 12, 2005, a revised Canadian Vessel Information System on its Web site. The system contains lists of Canadian registered vessels in operation in Canadian waters

according to type and area of service. Information contained in the lists is compiled from the Agency's database, which is used to carry out the Agency's mandate under the *Coasting Trade Act*.

The Act safeguards the interests of owners and operators of Canadian registered ships, while offering the flexibility to allow access to the specialized vessels available in the international fleet when there is no suitable Canadian vessel available to carry out a commercial activity in Canadian waters.

In 2005, the Agency received 102 applications. Of these, 95 were approved, two were denied and two were withdrawn; three applications were still outstanding at year-end.

The Agency's *Guidelines Respecting Coasting Trade Licence Applications* are available on the Agency Web site. They provide information on how to complete coasting trade applications, and how operators and owners of Canadian vessels can file an objection. Information is also available about time frame requirements, the importance of providing adequate information to substantiate a position, and of the suitability, availability and identical or similar adequate marine service elements that the Agency will consider, when applicable.

In past consultations, the industry has expressed concern about timing requirements because of unforeseen circumstances. In 2005, 70 applications were received that required decisions within shorter time frames. Of those, 48 were for large tankers to move crude oil on the East Coast. Another 22 were for other situations, such as the importation of historical tall ships for special Canada Day celebrations and application for pipe-laying vessels.

In 2005, the Agency received seven applications for foreign seismic research and survey

vessels to carry out activities on Canada's East Coast. Of those, one application was denied and six were approved.

Communicating with Canadians

The Agency maintains frequent contact with the marine industry through consultations and presentations that outline its marine mandate, and by attending marine conferences, functions and workshops. The Agency regularly attends meetings hosted by the Association of Canadian Port Authorities and semi-annual meetings of the Canadian Marine Advisory Council.

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

During 2005, the Agency and its staff also met numerous other parties associated with the marine industry, including the Canada-Newfoundland Offshore Petroleum Board, the Canada-Nova Scotia Offshore Petroleum Board, the Canadian Association of Petroleum Producers, the Atlantic, Pacific, Great Lakes and Laurentian pilotage authorities, the Canadian Marine Pilots Association, the Association of St. Lawrence Shipowners and the Canadian Shipowners Association. Meetings were held in Ottawa, St. John's, Courtenay, BC, Montréal, the city of Québec, Halifax, and Tampa, FL. Agency officials also met with representatives of the provincial governments from Newfoundland and Labrador and Nova Scotia.

Agency Members and staff held several consultations and made presentations to

organizations involved primarily in the oil and gas industry in Atlantic Canada. Concerns were expressed by the industry that oil and gas exploration may be hampered by the *Coasting Trade Act*. The Agency clarified its role under the legislation and explained the process to parties who were unfamiliar with the workings of the Act. Regular dialogue with the industry is an ongoing Agency commitment.

Cases before the courts

Federal Court Trial Division – Cases Pending in 2005

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

Court File No. T-1103-00

Application for judicial review of Order-in-Council P.C. 2000-889, dated June 9, 2000, which rescinded Agency Decision Nos. 73-W-2000, dated February 4, 2000, and LET-W-98-2000, dated April 7, 2000. The hearing has been adjourned *sine die*.



CHAPTER

5

The Agency team



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

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

Who we are

The Agency exercises its powers through its Members – up to seven permanent Members appointed by the Governor in Council and up to three temporary Members appointed by the Minister of Transport. As of December 31, 2005, there were seven permanent Members, including the Chairman, who is also the Agency's Chief Executive Officer (CEO), and the Vice-Chairman.

The Members perform their quasi-judicial responsibilities by hearing formal complaints relating to a variety of transportation issues, and by issuing decisions. As cases are received by the Agency, the Chairman appoints a Panel of Members to hear them.

If a request for mediation is received, the Chairman is responsible for appointing mediators.

The Chairman, as CEO, also oversees all aspects of the administration and operation of the Agency. She is required to play an active role in allocating financial and human resources, responding to government priorities and improving the organizational effectiveness of the Agency. As CEO, she chairs the Agency's Executive Committee and is responsible for setting the strategic direction and priorities of the organization.

The Vice-Chairman is a member of the Agency's Executive Committee and replaces the Chairman in her absence.

A staff of about 263 provides operational support and assists the Members in their decision-making process.



Members



Marian L. Robson,
Chairman and CEO
Born in Saskatoon, SK
Former port executive, railway
manager and National
Transportation Agency Member
Appointed July 1, 1996;
reappointed July 1, 2001



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



Gilles Dufault,
Vice-Chairman
Born in Montréal, QC
Former VIA Rail executive and
business strategy consultant
Appointed January 19, 1998,
as a Member; appointed Vice-
Chairman in August 2000;
reappointed January 19, 2001



George Proud, Member
Born in Charlottetown, PEI
Former Member of Parliament for
Hillsborough and former Member
of the Legislative Assembly of
Prince Edward Island
Appointed January 8, 2001;
reappointed January 8, 2002



Mary-Jane Bennett,
Member
Born in Saint-Boniface, MB
Lawyer and active member of
various boards and committees
Appointed January 19, 1998;
reappointed May 17, 2004



Beaton Tulk, Member
Born in Ladle Cove, NL
Former Deputy Premier and
Premier of Newfoundland and
Labrador, as well as Minister
of Industry, Trade and Rural
Development
Appointed December 16, 2002



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

Mandates

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

The Air and Accessible Transportation Branch

Air transportation

The Agency issues licences and charter permits to publicly available Canadian and foreign air carriers and enforces licensing requirements. It helps negotiate international air agreements which it implements, and administers international air tariffs.

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

For consumer complaints related to air travel, the Agency attempts to informally resolve them. When this is not possible and when the complaint relates to a carrier's possible failure to apply its tariffs, the Agency can address the issue through its formal complaint process. The Agency also handles complaints related to air fares on non-competitive domestic routes.

Accessible transportation

Under Part V of the *Canada Transportation Act*, the Agency has the mandate to eliminate undue obstacles to the mobility of persons

with disabilities in the federal transportation network, which includes air, rail and ferry transportation, as well as inter-provincial bus transportation.

The Agency seeks to remove undue obstacles by promulgating regulations, developing codes of practice, communicating with the transportation industry and the community of persons with disabilities, resolving individual accessibility-related complaints and by ordering corrective measures, if required.

The Rail and Marine Branch

Rail transportation

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

Marine transportation

The Canadian Transportation Agency exercises its marine mandate under the *Coasting Trade Act*, the *Canada Marine Act*, the *Pilotage Act* and the *Shipping Conferences Exemption Act, 1987*. In response to applications to use foreign ships in Canadian waters, the Agency makes recommendations to the Minister of National Revenue on whether suitable Canadian ships are available to perform the activity described in the application. When the activity entails the carriage of passengers by ship, the Agency must determine that an identical, or similar, adequate marine service is not available. The Agency also has the power to determine, in response to a complaint, whether tariffs, tolls and fees established by a federal port

authority, the St. Lawrence Seaway Development Corporation, the Federal Bridge Corporation and pilotage authorities are unjust, unreasonable, discriminatory or prejudicial to the public interest. Finally, the Agency administers the *Shipping Conferences Exemption Act*, 1987, and examines complaints of unreasonable increases in transportation costs or unreasonable reductions in service.

The Legal Services and Secretariat Branch

The Legal Services Directorate provides legal advice and counsel in enforcement cases and in cases of air travel complaints. It represents the Agency before the courts, including the Federal Court of Appeal and the Supreme Court of Canada, when Agency decisions are submitted to the appeal process. Branch staff also assists with Agency meetings and hearings.

The Secretary has the duty, under the *Canada Transportation Act*, of maintaining a record of any rule, order, decision and regulation of the Agency. The branch also plays a major role in developing and applying the Agency's procedures and regulations.

The Chairman's Office provides administrative and managerial support to the Chairman, the Vice-Chairman and the Members. It includes the Internal Auditor and the Communications Directorate. The Internal Auditor is responsible for providing objective assessments about the design and operation of management practices, control systems, and information, in keeping with modern comptrollership principles.

The Communications Directorate plays an active role in ensuring that Canadians understand their rights and obligations along with the Agency's mandate under the *Canada Transportation Act*. It publishes brochures and reports, advertises, issues news releases,

responds to information requests and operates the Agency's Web site; it co-ordinates participation at public events and trade shows with Members and staff to meet Canadians and answer their questions; and it plans and evaluates the Agency's communications activities.

The Corporate Management Branch

supports the overall function of the Agency by providing corporate services related to human resources, strategic planning, financial management and administration as well as information management and technology.

The formal hearing process

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

The modified hearing

Modified hearings have been developed by the Agency to help resolve disputes when a question or issue cannot be resolved through the formal public hearing process. A modified hearing is simpler than a formal hearing in that it takes place around a conference table. Members question witnesses directly and Agency staff needed to assist the Members

is kept to a minimum. This modified process allows for a timely, less costly and less formal resolution of disputes while maintaining the benefits of a formal hearing.

Mediation

In 2005, mediation continued to grow as an alternative to the Agency's formal complaint resolution process for disputes dealing with rail, marine and accessible transportation. The Agency is committed to voluntary dispute resolution as one of its core processes.

Voluntary and informal, mediation is confidential and relatively non-confrontational, allowing disputing parties to understand other perspectives, identify facts, check assumptions, recognize common ground and test possible solutions. The process allows disputing parties to develop creative solutions that may not be available through formal adjudication.

Awareness and understanding of this option within the federal transportation network has been developing since its inception in 2000 and was evident in 2005 with a significantly increased use and acceptance of the process by major carriers in both rail and air modes. In fact, it is now considered the first alternative for dispute resolution by one of the country's largest rail carriers. A more diverse range of accessible transportation issues, commercial disputes and infrastructure matters were referred to mediation in 2005.

Appealing an Agency ruling

Should parties in a proceeding not agree with a decision or an order, they may: apply to the Agency for review if, since the decision or order, there has been a change in the facts or circumstances pertaining to the decision or order; seek leave to appeal to the Federal Court of Appeal on a question of law or jurisdiction within one month after the date of

the decision or order; or they may petition the Governor-in-Council at any time.

Government on-line

A key priority of the Government of Canada and the Agency is to communicate and conduct its affairs with Canadians in the easiest, most accessible ways possible. Besides implementing the Communication Policy of the Government of Canada, the Agency uses information technology to provide citizen-centred and integrated services to Canadians at any time, anywhere and in the official language of their choice.

During 2005, the Agency received 744 complaints via its on-line form on the Agency Web site: 708 air travel complaints (not including complaints against Jetsgo), 18 accessibility complaints, 3 pricing complaints and 15 tariff complaints.

In 2005, a total of 1,306 people were signed up for the subscription service offered on the site. This service alerts subscribers when new content is added to the site, such as general announcements, news releases, publications and decisions.

Accessibility Advisory Committee

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

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

Representatives from the community of persons with disabilities

Alliance for Equality of Blind Canadians – M. Cummings
Aquarelle Travel Agency – J. Gilbert
Canadian Association for Community Living – A. MacQuarrie
Canadian Association of the Deaf – J. Jickels
Canadian Association of Independent Living Centres – V. Miele
Canadian Council of the Blind – C. Cartier
Canadian Hard of Hearing Association – C. Cantlie
Canadian Hearing Society – L. McIntyre
Canadian National Institute for the Blind – F. Cutler
Canadian National Society of the Deaf-Blind – J. Sayer
Canadian Paraplegic Association – M. Styner
Canadian Pensioners Concerned Incorporated – B. Black
Confédération des organismes provinciaux de personnes handicapées au Québec (COPHAN) – C. Serradori
Council of Canadians with Disabilities – P. Danforth
Centre québécois de la déficience auditive – M. Bergevin
Guide Dog Users of Canada – J. Main
Institut Nazareth et Louis-Braille – P. Ferland
Kéroul – G. Déry
Seniors' Voice – W. Coates

Representatives from the transportation industry

Air Canada – M. Hurter
Air Canada Jazz – B. Boudreau
Air Transport Association of Canada – F. Gaspar
Association québécoise des transporteurs aériens inc. – J. McKenna
Canadian Airports Council – S. London
Charlottetown Airport Authority – E. McDonald
Greater Toronto Airports Authority – I. Hawrylyshyn
Marine Atlantic – W. Harbin
Railway Association of Canada – G. Gauthier
VIA Rail Canada Inc. – J. Lemyre
WestJet – L. MacKenzie
Winnipeg Airports Authority – D. Jones

Other interested parties

Canadian Human Rights Commission – K. Izzard

Canadian Air Transport Security Authority – C. Sauvé

Canadian Standards Association – G. Schidowka

Government of Alberta – S. Wong

Social Development Canada, Office for Disability Issues – M. Regnaud

Transport Canada

Cabin Safety Standards – C. Cudahy

Transportation Development Centre – C. Dubé

Accessible Programs – L. Lanthier

Domestic Regulations – N. Vachon

CHAPTER

6

Assessment of the Act



It is the responsibility of the Canadian Transportation Agency to submit an annual assessment of the *Canada Transportation Act*.

In 2000 and 2001, the *Canada Transportation Act* Review Panel conducted a statutory review of the Act. In 2001, the Minister of Transport initiated a Blueprint exercise to establish a framework for transportation policy for the future.

As a result of these two initiatives, Bill C-26, an act to amend the *Canada Transportation Act*, was introduced in Parliament in February 2003. The Bill died on the Order Paper. On March 24, 2005, Bill C-44, an Act to amend the *Canada Transportation Act* and the *Railway Safety Act*, to enact the *VIA Rail Canada Act* and to make consequential amendments to other Acts was introduced in Parliament. On November 28, 2005, it died on the Order Paper after receiving Second Reading.

Rail transportation

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



Final offer arbitration

Currently, final offer arbitration provisions are available to shippers who are dissatisfied with the rate or rates charged or proposed to be charged by a carrier for the movement of goods, or with any of the conditions associated with the movement of goods.

Certain groups have indicated to the Agency that these actual or proposed rates and conditions associated with movements subject to the arbitration process do not necessarily represent all the costs and conditions applicable to their traffic, and further costs are determined subsequent to the decision of the arbitrator.

In the fall of 2005, the Canadian National Railway Company filed an application with the Federal Court of Canada indicating that the “final-offer arbitration” process in the *Canada Transportation Act* is contrary to provisions of the *Bill of Rights**.

* CN claims in part that subsection 165(4) of the *Canada Transportation Act* deprives the applicant of its right to obtain the reasons for an arbitration award in violation of paragraph 2(e) of the *Canadian Bill of Rights*, assented to on August 10, 1960. While the *Canadian Bill of Rights* is not as often referred to as the 1982 *Canadian Charter of Rights and Freedoms*, this legislation is still in effect in Canada.

Certificates of fitness

The Act provides little guidance or restriction on structuring an organization to come under, or to avoid, Government of Canada jurisdiction. It also does not provide for the review of a transfer of a rail line from a main-line carrier to a short-line carrier.

As a consequence, there are no means to ensure that: a new short-line carrier is operating under the proper jurisdiction; shippers and consumers have all the rights accruing to them; adequate liability insurance protects shippers and consumers; or proper railway safety and accident investigation regimes are applied.

Railway line construction

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

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

Transfer and discontinuance of railway lines

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

- the lack of a requirement for a notice of impending transfer, which would allow affected parties located on a line to

prepare for the effects of changes in railway operations;

- the possibility that there may be no continuation of rights for shippers and governments once a railway leaves federal jurisdiction;
- the lack of a requirement for evidence of transfer to ensure that railway lines transferred without advertisement will continue to operate;
- the short time frames for governments to decide whether to buy a railway offered for transfer;
- the requirement that a government must accept a railway's offer to transfer a railway line before the government can ask the Agency to determine the price or net salvage value (subsection 145(5) only);
- the lack of any standard for negotiations between railways and governments on net salvage value and other aspects of a transfer (section 145 only); and
- the lack of certainty about the cessation of railway obligations under the Act in cases where a railway and a government continue to negotiate the details of the transfer long after reaching the agreement to transfer the railway line.

As well, the lack of a provision for regulatory oversight of transfer agreements makes it difficult for parties to:

- ensure that a transfer was made for continued operations and ascertain the jurisdiction under which the new short-line carrier should operate;
- in the case of leases, determine whether the terms of the lease constitute a valid transfer as contemplated by the Act or who

(the lessee or the lessor) is the proper operating authority on that line;

- determine the regulatory consequences of the termination of a lease by either party, including the eligibility of former grain-dependent branch lines for compensation for discontinuance; and
- determine the future jurisdiction of a line and any other consequences of a lease expiring.

Other issues include:

- the lack of clarity concerning the rights or obligations of either a railway company or a government should the transfer of a railway line between them be unable to be completed in accordance with their agreement;
- a reduction to the 12-month period during which a line must remain in a railway company's three-year plan prior to proceeding with the discontinuance plan, may be beneficial to governments or community-based groups interested in acquiring the line, but harmful to those parties who may require the extra time to evaluate their options; and
- the fact that a municipality negotiating for the net salvage value of a line to be discontinued may not have the same benefit available to it as a municipality negotiating for continued operations of a line, as the Agency does not have the authority under section 145 (as it does under the net salvage value process of section 143) to reduce the net salvage value of a railway line by the cost of replacing any infrastructure it believes the railway has removed to reduce traffic.

Noise, vibration, pollution and other environmental effects

Section 95 of the Act provides that a railway company shall do as little damage as possible in the exercise of the powers granted under that section, but does not provide a mechanism for the Agency to investigate complaints or to provide any type of remedy.

Under existing Government of Canada transportation legislation, as clarified by a decision of the Federal Court of Appeal, civil courts are the only dispute-resolution mechanism available to parties affected by noise, vibration and other environmental effects (such as fumes, drainage, coal dusting) caused by day-to-day railway operations.

Private crossings

A recent Federal Court of Appeal decision clarified that section 102 of the Act, which is designed to ensure that railway companies provide and maintain, at their expense, crossings of their trackage whenever the construction of the line divided a landowner's land, does not provide for the situation where the construction of the railway line denies access by a landowner to a public road. The Court noted that any resulting hardship from this or other scenarios could be addressed by the Agency under section 103 of the Act (which provides that the Agency may authorize a crossing for a landowner who is adjacent to a railway line but only at the landowner's expense) if the Agency had the discretion to apportion costs in such cases as it used to have prior to the enactment of the Act.



Air transportation

Domestic pricing

The wording of subsection 66(3) of the *Canada Transportation Act* has led to problems for the Agency in obtaining relevant information needed to make determinations regarding allegations of unreasonable pricing on non-competitive routes and has unduly restricted the Agency's ability to consider certain factors in reaching its conclusions on pricing investigations.

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

The Agency had a temporary authority under subsection 66(7) of the Act to require that, on specified routes, carriers keep it informed of amendments to their tariffs and provide tariff-related information to the Agency on request. This authority sunsetted on July 5, 2004, when subsection 66(6), which gave the Agency the authority to make findings about unreasonable pricing on non-competitive routes within Canada on its own motion, ceased to have effect.

Tariff information on carrier sites

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

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

Notice of discontinuance and reduction of service

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

A licensee may apply to the Agency for a reduced public notice period. In assessing such applications under subsection 64(3), one of the factors the Agency will consider is whether the licensee has complied with subsection 64(1.2), which states that a licensee shall, as soon as practicable after giving notice, provide an opportunity for elected officials of the municipal or local government of the community of the point or points, as the case may be, to meet and discuss with the licensee the impact of the proposed discontinuance or reduction.

There is an inconsistency between the requirements under these provisions, insofar as a licensee would not have yet given notice when making its application for a reduced notice period. Currently, the Agency addresses this by making the requirement to notify officials a condition of the formal order when the Agency grants an air carrier's request for a reduction of the notice period. Minor amendments to these provisions would remedy this situation.



Annex – Statutes and Regulations

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

The Agency has primary responsibility for the following legislation:

<i>Canada Transportation Act</i>	S.C. 1996, c. 10
----------------------------------	------------------

The Agency shares responsibility for the following legislation:

<i>Access to Information Act</i>	R.S.C. 1985, c. A-1
<i>Canada Marine Act</i>	S.C. 1998, c. 10
<i>Canadian Environmental Assessment Act</i>	S.C. 1992, c. 37
<i>Civil Air Navigation Services Commercialization Act</i>	S.C. 1996, c. 20
<i>Coasting Trade Act</i>	S.C. 1992, c. 31
<i>Energy Supplies Emergency Act</i>	R.S.C. 1985, c. E-9
<i>Financial Administration Act</i>	R.S.C. 1985, c. F-11
<i>Official Languages Act</i>	R.S.C. 1985, c. 31 (4th Supp.)
<i>Pilotage Act</i>	R.S.C. 1985, c. P-14
<i>Privacy Act</i>	R.S.C. 1985, c. P-21
<i>Public Service Employment Act</i>	R.S.C. 1985, c. P-33
<i>Public Service Staff Relations Act</i>	R.S.C. 1985, c. P-35
<i>Railway Relocation and Crossing Act</i>	R.S.C. 1985, c. R-4
<i>Railway Safety Act</i>	R.S.C. 1985, c. 32 (4th Supp.)
<i>Shipping Conferences Exemption Act, 1987</i>	R.S.C. 1985, c. 17 (3rd Supp.)

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

Air Transportation Regulations (SOR/88-58)

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

Canadian Transportation Agency General Rules (SOR/2005-35)

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

Railway Costing Regulations (SOR/80-310)

Railway Interswitching Regulations (SOR/88-41)

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

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

Railway Traffic Liability Regulations (SOR/91-488)

Uniform Classification of Accounts and Related Railway Records

The Agency shares responsibility for the following regulations:

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

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

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

The Agency, in consultation with Transport Canada, is considering revoking the following engineering regulations:

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

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

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

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

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

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